

GAHC010032502023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./71/2023

SHRIKANT KUMAR AND ANR
PROPRIETOR, M/S GANDHARVA TRADERS
S/O SHANKAR RAUT
PERMANENT RESIDENT OF VILL- MATHIYA,
DIST. MATHIA SARAN, BIHAR,
PIN-841417
PRESENTLY RESIDING AT - DAKSHIN NAITY, JANAI, HOOGLY, WEST
BENGAL, PIN-712702

2: YADWINDER SINGH
S/O UTTAM SINGH
R/O NAUSHERA

PANNUAN TARAN
FIROZPUR
PUNJAB
PIN-14340

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR I RAFIQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 26-04-2023

Heard Mr. I. Rafique, learned counsel for the petitioners namely, [1] Srikant Kumar and [2] Yadwinder Singh.

The petitioners have filed an application under Section 401 read with Section 482 Cr.PC read with Article 227 of the Constitution of India, challenging the legality and propriety of the impugned order dated 02.02.2023, passed by the JMFC, Sivasagar in Haluwating P.S. Case No. 20/2022 under Sections 120B/379/413/468/420 IPC.

Heard Mr. P. Borthakur, learned Addl. P.P. for the State.

The petitioner No. 2 is the owner of the fourteen (14) wheeler transportation truck bearing Registration No. PB 05 AL 4737. The petitioners' firm have collected 340 bags of areca nuts on 27.11.2022 after completing necessary formalities but on 28.11.2022, on a tip of, this truck was stopped at Amguri P.S. Estate Chariali and the truck was searched. The driver failed to produce valid documents and produced some suspicious forged documents. This truck along with another truck was searched and areca nuts were seized and the aforesaid case was registered initially against the drivers and the handyman who were transporting the areca nuts. The present petitioners applied for zimma of the areca nuts and the seized truck and vide order dated 02.02.2023 passed by the learned Magistrate, the prayer for zimma was rejected.

The learned Addl. P.P. submitted that the status report regarding the seized areca nuts and the vehicle was called for. According to the report of the IO the areca nuts as per Foods Safety and Standard Regulation are not fit for human consumption. The GST and UAP produced by the driver were fake.

It is submitted on behalf of the petitioner No. 2 that Xerox copy of the registration certificate was produced before the Elaka Magistrate but the R.C. was not accepted as a valid document of ownership and prayer for zimma of the vehicle bearing registration No. PB 05 AL 4737 was rejected. It is also submitted that the areca nuts have been lying in the custody of the police since 28.11.2022 which has rendered the areca nuts not fit for human

consumption. Huge amount of money was invested by the petitioner No. 1 who purchased the areca nuts and he will suffer irreparable loss if the areca nuts were not handed over to his custody.

It is also submitted by the learned Add. P.P. that as at present the areca nuts are not fit for human consumption a direction may be given to the learned trial Court to dispose of any appropriate application for the zimma of areca nuts if filed by the petitioners with assurance that the areca nuts will not be used for human consumption.

After considering the submissions of both the sides, the petitioners are allowed to file an application before the learned Magistrate with assurance to use the seized areca nuts for other purposes and not for human consumption and the Magistrate may pass appropriate orders to the SP so that the SP will verify the genuineness of the claim of the petitioner as per the SOP of the State of Assam bearing No. CID-XI/SOP/Betel Nut/2021/3571 dated 16.09.2021. Regarding the Vehicle No. PB 05 AL 4737, the learned Magistrate may pass the order for zimma of the vehicle, to the custody of the registered owner in any manner and under such terms as the learned Court deems fit and proper. The matter of custody of the vehicle is to be disposed of within 1 (one) month from the date of this order.

JUDGE

Comparing Assistant