

GAHC010044872023



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

Case No. : Crl.Rev.P./105/2023

RAFIK KHAN
S/O CHANDU KHAN
VILL- NICHUKA, P.S. BARPETA ROAD,
DIST. BARPETA, ASSAM
PIN-781315

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 15.03.2023

Heard Mr. A. M. Ahmed, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 397/401 *read with* Section 482 of the Code of Criminal Procedure, 1973, *read with* Article 227 of the Constitution of India, praying for setting aside and quashing the impugned order dated 28.12.2022, passed by the learned SDJM (M), Gossaigaon, in Gossaigaon P.S. Case No. 231/2022, under Sections 406/420/468/428 of the Indian Penal Code *read with* Section 11 (1) (d) (e) (h) of the Prevention of Cruelty to Animal Act, 1960, whereby, the learned Court below has modified its own order dated 26.12.2022 putting additional condition only on the basis of an application filed by the learned Additional Public Prosecutor.

3. It is submitted by the learned counsel for the petitioner, Mr. A. M. Ahmed, that the earlier revision petition was filed before this Court against the order passed by the learned SDJM (M), Gossaigaon, whereby, the learned Court below rejected the prayer for custody of the seized vehicle (Swift Dzire), bearing Registration No. AS-01-EF-7097, in connection with Gossaigaon P.S. Case No. 231/2022, under Sections 406/420/468/428 of the Indian Penal Code *read with* Section 11 (1) (d) (e) (h) of the Prevention of Cruelty to Animal Act, 1960. Further, vide order dated 20.12.2022, this Court, while setting aside the order dated 29.11.2022, passed by the learned SDJM (M), Gossaigaon, directed the petitioner to file a fresh zimma petition with all relevant documents before the learned SDJM (M), Gossaigaon. The petitioner, accordingly, filed a fresh zimma petition before the learned Court below. Thereafter, vide order dated 26.12.2022, the petition for zimma was allowed by the learned Court below and the I.O. was directed to give interim zimma of the vehicle after verifying identity and on executing a personal bond equivalent to the present market price of the vehicle with a condition that the vehicle shall be kept as security and no change

shall be made therein. But, the learned Court below modified its own order on 28.12.2022 and an additional condition was put therein for furnishing a bank guarantee for the vehicle, on the basis of a petition filed by the Additional Public Prosecutor, stating that it is a mandatory provision of law for furnishing bank guarantee before receiving the zimma of the vehicle. The learned Court below, accordingly, observed that as per proviso of Section 11 (5) of the Assam Cattle Preservation Act, 2021, it is necessary to file bank guarantee which is a mandate of law and accordingly, the zimma was allowed with a modified condition to furnish the bank guarantee before taking zimma of the vehicle. The learned counsel for the petitioner further submitted that without any authority, the learned Court below has modified its own order, which is not permissible under Section 362 Cr.P.C. and thus, the order passed by the learned Court below is liable to be set aside.

4. In this context, the learned Additional Public Prosecutor, Mr. P. Borthakur, has submitted that it is a fact that after the order passed by this Court, a fresh zimma petition was filed before the learned SDJM (M), Gossaigaon, seeking zimma of the vehicle, bearing Registration No. AS-01-EF-7097 (Swift Dzire), and accordingly, the zimma petition was allowed with a condition for furnishing a personal bond for the said vehicle. But, after receiving a petition from the learned Additional Public Prosecutor, the learned Court below had modified the condition and an additional condition was put for furnishing a bank guarantee equivalent to the market value of the vehicle. The learned Additional Public Prosecutor further submitted that as per proviso of Section 11 (5) of the Prevention of Cruelty to Animal Act, 1960, the vehicle or any materials has to be released on interim zimma only on furnishing a bank guarantee equivalent to the value of the material or the vehicle. Further it reveals from the record that

the I.O. also submitted the present market value of the vehicle in question and as per order dated 21.02.2023, it is seen that the learned Court below held that the market value of the vehicle is approximately Rs. 7,00,000/- and accordingly, the petitioner was directed to furnish a bank guarantee of Rs. 7,00,000/- for zimma of the vehicle. The learned Additional Public Prosecutor further submitted that as per Section 362 Cr.P.C., the Court cannot alter or modify its judgment or any final order nor can review the same except to correct the clerical or mathematical error, if any.

5. After considering the submissions made by the learned counsels of both sides and also considering all aspects of the case, it is seen that the learned Court below, while allowing the zimma of the vehicle, vide its order dated 26.12.2022, put condition for furnishing a personal bond of vehicle equivalent to the market value of the same. However, subsequently, vide order dated 28.12.2022, the learned Court below has put an additional condition as find it necessary because of the provision of Section 11 (5) of the Prevention of Cruelty to Animal Act, 1960. It is further seen that after the assessment made by the I.O., the market value of the said vehicle comes to approximately Rs. 7,00,000/-, and it is submitted by the learned counsel for the petitioner that the petitioner is not in a position to furnish bank guarantee of Rs. 7,00,000/- and his vehicle is an old one. In the same time, it is seen that Section 362 Cr.P.C. is very specific and the learned Court below is not supposed to make any alteration or modification of the order passed by him and is not authorized to put any additional condition by reviewing his own order. Further it is seen that the learned Court below put the additional condition only with a view that as per provision under Section 11 (5) of the Prevention of Cruelty to Animal Act, 1960,

furnishing of bank guarantee is mandatory.

6. So, considering all aspects of the case and also considering the fact that the learned Trial Court has modified its own order, I find that the order dated 28.12.2022, passed by the learned SDJM (M), Gossaigaon, in Gossaigaon P.S. Case No. 231/2022, under Sections 406/420/468/428 of the Indian Penal Code *read with* Section 11 (1) (d) (e) (h) of the Prevention of Cruelty to Animal Act, 1960, needs some interference and accordingly, the same is hereby set aside and quashed. The petitioner is hereby directed to approach the I.O. with all relevant documents and the I.O. will, accordingly, give zimma of the vehicle after obtaining necessary bond equivalent to the market value of the vehicle as well as after proper identification and verification of all relevant documents with regards to the ownership.

7. With the above observation and direction, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant