

GAHC010102252023



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

Case No. : WP(C)/2751/2023

HASON AHMED
S/O - ABDUL MANNAN RESIDENT OF VILLAGE - KHELMA PART- I , DIST-
CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HOME DEPARTMENT, DISPUR, GUWAHATI-6

2:THE SUPERINTENDENT OF POLICE

HAILAKANDI
ASSAM.

3:THE OFFICER-IN-CHARGE
RAMNATHPUR POLICE STATION
HAILAKANDI
ASSAM

Advocate for the Petitioner : MR. J LASKAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 24.05.2023

Heard Mr. J. Laskar, learned counsel for the petitioner. Also heard

Ms. S. Sarma, learned Govt. Advocate for the respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction upon the respondents to hand over 3450.200 KG of betel nuts contained in 43 bags in terms of order dated 06.03.2023, passed by the Judicial Magistrate First Class, Hailakandi.

3. The case of the petitioner is that a truck coming from Mizoram was intercepted and the betel nuts were found hidden under a load of plastic scrap and it was suspected that the betel nuts were of Burmese origin and as the driver could not produce any valid documents, Ramnathpur P.S. Case No. 91/2022 was registered under section 120B/420/379/411 IPC. The petitioner had moved the Court of jurisdictional Magistrate with the zimma petition under section 457 Cr.P.C. and the learned Court by an order dated 06.03.2023 had allowed the prayer for zimma. It is alleged that the police authorities are not releasing the betel nuts in terms of order dated 06.03.2023 passed by the learned Judicial Magistrate First Class, Hailakandi in connection with the hereinbefore referred police case. It is also submitted that in similar circumstances, a coordinate Bench of this Court has issued notice of motion.

4. Having regard to the facts of this case, the Court is of the considered opinion that the Judicial Magistrate First Class, who has passed the order dated 06.03.2023 does not lack competence to enforce its own orders. In the opinion of the Court, if a writ petition is entertained to enforce the orders passed by the Court of Judicial Magistrate First Class, Hailakandi, it would amount to convert this Court to exercise writ jurisdiction under Article 226 of the Constitution of India for enforcement and execution of the orders passed by the learned trial Court. As the power of execution or enforcement of the orders of the trial Court is not vested with this Court under Article 226 of the

Constitution of India, the petitioner has to be relegated back to the Court of Judicial Magistrate First Class, Hailakandi to have its orders enforced. Even otherwise, there are other alternative remedies by virtue of which the petitioner can agitate his grievance of non-compliance or wilful disobedience of the orders lawfully passed by the learned Court below.

5. Accordingly, as two alternative remedies are available to the petitioner, the Court is not inclined to entertain this writ petition under Article 226 of the Constitution of India to enforce the orders of the Court below and accordingly, this writ petition stands closed with liberty as indicated above.

JUDGE

Comparing Assistant