

GAHC010217392022



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

Case No. : Crl.Pet./504/2022

THE STATE OF ASSAM
REP. BY COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR-6.

VERSUS

AJEET KUMAR BHADANI
S/O LATE AMARCHAND BHADANI
PRESENTLY RESIDING AT BYE-LANE NO. 2
HOUSE NO. 35
SANGATI PATH
TARUN NAGAR
GUWAHATI
KAMRUP (M)
ASSAM

Advocate for : PP
ASSAM

Advocate for : MR. B D DEKA appearing for AJEET KUMAR BHADANI

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 15-03-2023

Heard Mr. P. Borthakur, learned Public Prosecutor for the petitioner. Also heard Mr. A. Islam, learned counsel appearing on behalf of the respondent.

2. This is an application filed under Section under Section 482 *read with* Sections 401 of the Code of Criminal Procedure, 1973 and *read with* Article 227 of the Constitution of India, challenging the impugned order dated 06.05.2022, passed by the Court of learned Chief Judicial Magistrate, Cachar in petition No. 1019/22 and petition No.1106/22 allowing Zimma of the seized areca nuts in connection with Silchar Police Station Case No. 365/2022.

3. Brief facts leading to the filing of the present petition is that;

3.1 On 04.02.2022 information was received from the reliable sources that some persons have stored illegal betel nuts at Samragudam Madhurban under Silchar Police Station and accordingly, on receipt of the information Police searched one godown of Mahapragya Roadlines Pvt. Ltd. at Madhurban Samragudan. During search 800 bags of illegal stored betel nuts were recovered from the godown from the possession of one Chandan Yadav. During investigation it was found that the betel nuts have been smuggled from a foreign country without paying Govt. revenue causing loss to the government. Subsequently, an FIR was lodged in this regard which was registered and numbered as Silchar Police Station Case No. 365/2022, registered under Sections 120(B)/420/379/411 IPC.

3.2 During investigation Police also seized other 107 bags betel nuts from the same godown as being shown by the arrested person on 07.02.2022. Thereafter, the IO of the case vide its letter dated 08.02.2022 & 11.02.2022 requested the Food & Safety Officer and the District Agriculture Officer, Cachar, Silchar for sampling of the seized areca nuts as well as requested the said officer to submit the expert opinion report as to ascertain whether the seized betel nuts are fit for human consumption and their origin.

3.3 Thereafter, the District Agriculture Officer, Cachar, Silchar vide its letter dated 15.02.2022 submitted samples of seized areca nuts to the Director, Central Plantation Crops Research Institute for analysis with respect to its origin and suitability for human consumption.

3.4 Accordingly, a report has been received by the IO from the Food Analyst on 25.03.2022, wherein, it is opined that the seized areca nuts were **not fit for human consumption** as per Food Safety & Standards Regulations. Thereafter, District Agriculture Officer, Cachar vide its letter dated 02.04.2022 forwarded the analysis report of areca nuts samples along with proforma invoice received from ICAR, Kasaragod, Kerela and informed the IO of the instant case that the analysis report is not conclusive with respect to its origin. It was further informed that if the IO wants, they can place the guard sample available with them before expert committee constituted by the Deputy Commissioner for analysis based on the physical characteristics for identification of its origin.

3.5 In the meantime the respondent Ajeet Kumar Bhadani filed a zimma petition being Petition No.1019/22 before the learned CJM, Cachar, Silchar stating he is the owner of seized 800 bags of betel nuts and prayed for custody of the same. On 18.04.2022 the case was put up before the learned Court below and accordingly, the IO, was directed to submit a report specifying “*whether the said seized 800 bags of betel nuts is required for the purpose of investigation into the offence?*”, and the matter was fixed on 27.04.2022 and accordingly, the IO of the case submitted its report before the learned Trial Court on 27.04.2022 objecting the Zimma petition.

3.6 In pursuant to vide letter dated 02.04.2022, the IO of the case requested vide its letter dated 25.04.2022 requested the District Agriculture Officer, Cachar, Silchar to place the guard samples of areca nuts available with them before the Expert Committee constituted by the Deputy Commissioner for analysis based on the physical characteristics for identification of its origin.

3.7 But, the Expert Committee issued a Certificate certifying that on physical analysis of the sample, the Expert Committee opined that the sample is of Indian origin and cultivated in India.

3.8 The learned counsel for the petitioner stated the Certificate issued by the Deputy Commissioner is of no value, as the certificate was issued on the basis of physical analysis of the samples and not by any

laboratory testing.

3.9. Thereafter, the learned Chief Judicial Magistrate, Cachar, Silchar vide impugned order dated 06.05.2022 allowed the aforesaid zimma petition, thereby, allowing the custody of the seized areca nuts to the respondent. The learned Trial Court allowed the said zimma petition without applying judicious mind and also failed to appreciate the fact that ***Trade Licence, GST Registration Certificate*** does not prove the ownership of the goods. Further, the learned Trial Court completely overlooked the fact that the seized areca nuts/betel nuts were **not fit for human consumption** as per Food Safety & Standards Regulations, report. If, the Zimma of such areca nuts is given to the respondent, there is every possibility that he may sale the areca nuts in the open market thereby endangering the life and well-being of the people.

4. Being highly aggrieved by and dissatisfied with aforesaid impugned order dated 06.05.2022 passed by the learned Chief Judicial Magistrate, Cachar, Silchar, the petitioner preferred the petition on the grounds set forthwith in the petition itself that;

I. the learned Chief Judicial Magistrate, Cachar while allowing the Zimma to the respondent had arrived at an erroneous finding and as such the order dated 06.05.2022 is liable to be interfered with and the same is liable to set aside.

II. The said Court had wrongly held that the respondent has valid papers with regard to the seized areca nuts/betel nuts/supari and also failed to appreciate the fact that ***Trade Licence, GST Registration Certificate*** does not prove ownership of the goods. Further, the quantity seized and the quantities showed by the respondent as purchased by him vastly differ, which clearly shows that the seized areca nuts were not purchased legally. However, the learned Trial Court completely overlooked the said facts.

III. The said Court also unnoticed the fact that the respondent inspite of knowing the fact that police has seized the areca nuts neither approached the police nor submitted the relevant documents regarding the ownership and source of areca nuts.

IV. The learned Court below while passing the impugned order has completely neglected the fact that the seized areca nuts were not fit for human consumption as per Food Safety & Standard Regulations.

5. With the above specified grounds the learned counsel for the petitioner's has accordingly prayed for setting aside and quashing of the impugned order dated 06.05.2022, which was passed by the learned Court of Chief Judicial Magistrate, Cachar, Silchar.

6. In this regard, the respondent filed an affidavit-in-opposition in connection with the instant criminal petition and pleaded that he is a proprietor of business establishment called Glorious Retails, doing business of resale of betel nuts/areca nuts/ which is registered under the Goods & Service Tax Act, 2017, UDYAM registered and also possess Food Safety License, issued by the Food Safety & Standard Act, 2006. By virtue of this food safety license, the respondent is also duly authorized to deal with food items as well.

6.1 A brief fact of the case is elucidated by the respondent that; in the month October, 2021 and November, 2021 he had purchased 87,912 Kgs of areca nuts/supari from various traders/sellers of different places in Cachar District, Assam. The said purchases were made in two separate lots of 81,334 Kgs and 6,578 Kgs respectively, which together became 87,912 Kgs. In purchasing those areca nuts, requisite GST bills 5% were duly paid by the respondent in compliance with the GST Rules and an e-way bill has been generated in this regard.

6.2 In purchasing areca nuts/supari from unregistered sellers/traders where the consignment value were less than 50,000/-, there was no necessity of e-way bills as per the Rule 138 of CGST Rules, 2017.

6.3 After purchasing the said betel nuts were transported through local tempo van to the godown of Mahapragya Road Lines Pvt. Ltd. located at Chamragudam, Silchar and thus the areca nuts were stored in the said godown for onward transportation/sell.

6.4 On 01.02.2022 from first lot of 81,334 Kgs he sold 35,280 Kgs of areca nuts and remaining

46,054 Kgs of areca nuts were packed into 800 bags. Similarly, second lot consisting 6,578 Kgs were also packed into 107 bags, so altogether 907 bags of areca nuts were kept in the said godown for onward transportation as and when necessary.

6.5 But, surprisingly on 04.02.2022, the police personnel of Silchar Police Station seized 80 bags of areca nuts in connection with Silchar P.S.GDE No. 81/22 from the said godown and arrested the caretaker/employee namely Chandan Yadav, who was subsequently released on bail.

6.6 Thereafter, the FIR was lodged on 05.02.2022 and accordingly the police team visited the godown and seized the remaining 107 bags of areca nuts and kept the godown unattended. The respondent further added that no provision of Custom Act, 1962 or GST Act, 2017 has been invoked in the instant case, as the question of smuggling or evasion of taxes has no applicability in this case.

6.7. The petitioner has contradicted the findings given by the competent authority empowered by the State itself. If the sample is damaged and not fit for laboratory test then the only option available is to go for physical verification test which is applied in this instant case by the Expert Committee. More so the IO has not taken any steps to carry on a laboratory test so as to clarify the doubts of actual origin of those seized betel nuts, if at all he was not satisfied with such report.

6.8. Thus, the respondent here in this case has submitted that the said impugned order does not suffer from any impropriety, infirmity or illegality. Moreover said impugned Zimma order also conform the SOP dated 16.09.2021, issued by the Govt. of Assam regarding seizure and disposal of betel nuts. It has been passed with proper application of mind by considering the materials available on record in the light of ratio decided by the Hon'ble Apex Court in this regard. Hence, in the instant case the interference of this Court is not required. Because the said Court did not rely on Trade Licence, GST Registration Certificate while passing the said order rather he examined all the relevant documents pertaining to the ownership of those seized areca nuts like invoices, e-bills, GST return etc. Moreover, the question of discrepancy in weights is totally misplaced which is apparent from the seizure list wherein weight of 800 bags of areca nuts was not mentioned. Further, it is a settled legal position that the provisions of Section 451 do not require any adjudication of the ownership of Property.

7. With the aforementioned points, the learned counsel for the respondent has pleaded to reject the prayer made by the petitioner in the instant case.

8. On the other hand, Mr. P. Borthakur, learned Public Prosecutor for the petitioner has submitted that though the learned Trial Court has allowed the zimma petition with a direction to file affidavit that the respondent shall not use the seized areca nuts for human consumption in any form and also to submit a certificate after disposal of the said betel nuts stating the modes and manner of the disposal. But till date no such report has been submitted by the respondent. Thus, he raised the questions that how the respondent will ascertain the learned Trial Court that the seized areca nuts will not be sold in the open market and for human consumption which may cause health hazardous to public at large.

9. Further, he raised a point in regards to the SOP for disposal of the seized areca nuts/betel nuts, which is annexed as annexure -15, where as per the said SOP in clause 15, it is stated that ***“It may happen that even if the seizures are unfit for human consumption there may be a owner or a claimant who may submit a plea before the Court that they would use such betel nuts as a raw material for manufacturing of some non-edible products and that the same will not be used for human consumption. In that case the Superintendent of Police would get the claim verified and report to the Court. If the claim is genuine, then the Court should be requested to impose strict conditions to ensure that the betel nuts are used as per claim and not for human consumption.”***

10. In support of his arguments the learned counsel for the petitioner has also submitted a decision cited in the co-ordinate Bench of this Court in criminal petition being numbered as No.Crl.Petn.597/2022, wherein, it has been stated that ***“the seized areca nuts can be put into auction by following proper procedure and sale proceeds thereof be deposited in the Government treasury and subject to outcome of the Criminal case, the same may be disposed of”***.

11. In this regard, Mr. A. Islam, learned counsel for the respondent has submitted that the learned Trial Court had allowed the zimma of the 907 bags of areca nuts, with a direction to submit an affidavit to that effect that the respondent shall use for the seized items for non edible products only and shall furnish a certificate after disposal of the said betel nuts stating the modes and manner of the disposal and in default, a Bond of Rs.1(one) crore shall be executed to the satisfaction of this Court

12. More so, the learned counsel for the respondent has already filed appropriate documents before the learned Trial Court that the present respondent is the owner of the seized areca nuts, which were seized from the godown where it was stored for further transportation. He further submitted that he has furnished all the relevant documents including GST bills, e-bills where the costs of betel nuts are shown more than 50,000/-. More so also revealed that the areca nuts/betel nuts are not from foreign origin but it is of Indian origin.

13. Further, the learned counsel for the respondent relied on the decision of co-ordinate Bench i.e. in the case numbered as Crl.Rev.P.371/2022, wherein, it has been stated that *“the zimma petition was allowed, which was earlier rejected by the learned Trial Court, where it was observed that seized betel nuts were not required for the purposes of investigation, and that no body, except the petitioner had claimed the betel nuts and considering the value of betel nuts are diminishing day by day and subject to speedy and natural decay.”* The said judgment was also based on the decision of the Hon’ble Apex Court in the case of ***Sundarlal Ambala Deshai Vs. State of Gujrat*** reported in (2002) 10 SCC 283 and ***M/S Kumar Traders & Company & Anr. Vs. The State of Assam & 4 Ors***; WP(C)4785/2017.”

14. He also relied on the decision of this Court which was reported in 2003 (1) GLT 202 in the case of ***Sunil Gogoi Vs. State of Assam***, wherein, it has been stated that *“the instant case falls within the ambit of Section 457 as the property in question has been seized by the police and the same has not been produced before the Court and the Trial is yet to start. Accordingly, in my considered opinion that the ends of justice would be satisfied if the zimma of the seized articles with a condition of furnishing bank guarantee from any nationalized bank to the like amount of the valuation of the seized property.”*

15. After hearing the submissions made by the learned Advocates of both sides and also perusing the case record and annexure appended thereto in the petition, it is seen that the learned Chief Judicial Magistrate, Cachar, Silchar passed the zimma order after considering the report submitted by the IO as well as by food analyst report. While, considering the zimma petition, it was observed by the said Trial Court that the seized articles are not required for further investigation. In the same time, also considered the food analyst report, wherein, it was stated that the seized areca nuts is not good for

human consumption. In the same time, it is also observed that the areca nuts can be used for in dying cloths, tanning leather as modern in producing variety of shades with metallic salts etc.

16. Accordingly, considering the fact that the areca nuts can be used for non-edible purpose even though it is not fit for human consumption. The learned Trial Court has considered the present respondent as the owner of the seized areca nuts and accordingly he also submitted various documents claiming his ownership, which includes GST bills, e-way bills, Trade license etc. Accordingly, the said Court allowed the zimma petition of the seized 907 bags of areca nuts with the following conditions:-

- (i). the petitioner shall execute a bond of Rs. 1 Crore to the satisfaction of this Court.
- (ii) the petitioner shall a filed an affidavit that he shall not use the seized areca nuts for human consumption in any form. In the event, it is found that the petitioner violates the condition and use it for human consumption, he shall be held responsible for criminal and civil action.
- (iii) the petitioner shall also submit a certificate after disposal of the said betel nuts stating the modes and manner of the disposal.

17. But, it is nowhere mentioned, as to how it will be verified the fact that the areca nuts which were given to the respondent will not be used for human consumption or it will be used solely for the purposed for the non-edible products. Likewise, if the respondent sells the said areca nuts in the open market then in that case, there may be health hazard, which may cause endangered of life and also the well-being of the general public. As per the SOP in clause-15, for disposal of the seized betel nuts issued by the Additional Director General of Police, CID, Assam, where the verification is to be done by the SP, whether, the seized areca nuts would be used for raw material for manufacturing non-edible products and that the same will not be used human consumption.

18. But, here in this instant case it is seen that the learned Trial Court has passed the order for Zimma without any satisfaction to that effect. The claim of the respondent was genuine or not was not verified by police authority. Thus, it is seen without any report from the SP or concerned authority, the learned Trial Court passed the order of Zimma only by considering the submissions made by the respondent that he will used the areca nuts for other purpose and not for human consumption. Further, from the order itself it reveals that the learned Trial Court also asked to furnish certificate after disposal of the

areca nuts. But there is no such report available in the record.

19. Thus, the order passed by the learned Trial Court dated 06.05.2022 is not appropriate and hence, I find that interference of this Court is necessary. Accordingly, the said order of Zimma petition is set aside and quashed, with a direction to the respondent to collect report from the SP regards to genuineness of claim that the seized areca nuts will not be used for human consumption and after verification of relevant documents etc, the SP will submit a report before the learned Trial Court. Accordingly, the learned Trial Court, if finds the report is satisfactory one, then the said court may disposed of the Zimma petition in accordance with law.

20. With the above observations, this criminal petition stands disposed of.

21. Send back the LCR forthwith to the learned Court below with a copy of this judgment.

JUDGE

Comparing Assistant