

GAHC010118892023



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

Case No. : WP(C)/3171/2023

R K RUHNUNA @ ROHNUNA
S/O R.K. NUNTLIANGA VILL. BUHCHANGPHAI P.O. AND DIST. KOLASIB
MIZORAM PIN 796091

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT. DISPUR GUWAHATI -6

2:THE SUPERINTENDANT OF POLICE
HAILAKANDI
P.O. AND DIST. HAILAKANDI ASSAM PIN 788151

3:THE OFFICER IN CHARGE
PANCHAGRAM POLICE STATION P.O. PANCHAGRAM DIST. HAILAKANDI
ASSAM PIN 78880

Advocate for the Petitioner : MR S U LASKAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 07-06-2023

Heard Mr. M. Islam, learned counsel for the petitioner as well as Mr. M.

Chetia, learned counsel for the respondents.

2. The petitioner had approached the Court of learned JMFC, Hailakandi with an application under section 457 Cr.P.C. for obtaining custody of seized Neem Coated urea (fertilizer). In respect of Panchgram P.S. case no.6/2023 under sections 120(B)/420/379/411 IPC was registered corresponding to GR case no.67/01/23. The learned CJM, Hailakandi by an order dated 19.04.2023 allowed the custody petition and directed the IO to hand over the seized Neem Coated urea (fertilizer) to the petitioner on his furnishing a zimma bond of Rs.2.00 lakh and upon verifying the identity of the petitioner.

3. The learned counsel for the petitioner has submitted that pursuant to the said order, the petitioner had executed a bond on 02.05.2023 and went to the Officer-in-charge of Panchgram P.S. However, the seized fertilizer was not released to the petitioner. The petitioner then again approached the Court of learned JMFC, Hailakandi with petition no.266/23 to project that the order dated 19.04.2023 by the learned Court, allowing custody of the seized Neem Coated urea (fertilizer) was not complied with. Accordingly, the said learned Court by order dated 04.05.2023, directed the Officer-in-Charge, Panchgram P.S. to be personally present. On the date fixed for appearance, the Officer-in-Charge of Panchgram P.S. was absent and a reminder was issued for appearance on 18.05.2023.

4. On the date of appearance i.e. on 18.05.2023, the Officer-in-Charge of Panchgram P.S. appeared before the Court of JMFC, Hailakandi and had admitted that the petitioner had visited the police station to take zimma of the

seized Neem Coated urea (fertilizer) but as he was availing leave, due to inadvertent mistake of his subordinate staff the order of the Court was not followed, which was not intentional. Accordingly, the said learned Court accepted the explanation of the Officer-in-Charge of the Panchagram P.S. and directed the petitioner to appear before the Officer-in-Charge with his valid identity proof and proof of ownership of the seized articles.

5. The learned counsel for the petitioner further submits that the petitioner again appeared before the Officer-in-Charge of Panchgram P.S. on 19.05.2023 at 10:00 a.m. but the seized fertilizer was not handed over to him and instead, the petitioner was asked by the Officer-in-Charge, Panchgram P.S. to fulfill his immoral demand. It is stated that as the petitioner was incapable of fulfilling his demand, the Officer-in-Charge of Panchgram P.S. had not handed over the seized consignment to the petitioner. Accordingly a complaint was made to the Superintendent of Police on 24.05.2023.

6. From the above projection, it *prima facie* appears that there is a willful and deliberate non-compliance of the order dated 19.04.2023, not only by the IO of Panchgram P.S. case no.6/2023 but also by the Officer-in-Charge of Panchgram P.S. as well as the Superintendent of Police, Hailakandi as another representation was submitted before the said authority on 25.05.2023. The learned counsel for the petitioner has *prima facie* been able to satisfy the Court that despite the order passed by the learned Judicial Magistrate First Class, on 19.04.2023, the seized consignment was not handed over to the petitioner.

7. Although this matter has merit, yet this Court is of the considered

opinion that exercise of power under Article 226 of the Constitution of India below ought not to be used to execute and/ or enforce the orders passed by the learned Court below as there are alternative remedies available, which is by way of filing an application to enforce the order dated 19.04.2023 or by approaching this Court under contempt jurisdiction.

Accordingly, the Court grants a liberty to the petitioner to approach the Court under the contempt jurisdiction.

8. The petitioner shall produce a certified copy of the order before the Superintendent of Police, Hailakandi by e-mail and if within 7(seven) days, without any lawful cause the order of the Court of Judicial Magistrate , First Class, Hailakandi dated 19.04.2023 is not complied with, the petitioner would be at liberty to approach this Court again under its contempt jurisdiction.

9. For the ends of justice, the learned Govt. Advocate shall also communicate the downloaded copy of this order to the Superintendent of Police, Hailakandi to bring the order to the notice of the said authority.

JUDGE

Comparing Assistant