

GAHC010122192023



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

Case No. : Crl.Rev.P./225/2023

ABDUL MANNAF
S/O LATE MAUD ALI, R/O VILL- CAMP BAZAR, BHATIPARA, P.S.-
GOALPARA, DIST-GOALPARA, ASSAM, PIN-783101

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MS. T SOM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 18.10.2023

Heard Ms. T. Som, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Addl. P.P., Assam appearing for the State respondent.

2. The petitioner filed an application under Section 397/401 Cr.P.C. in connection with Matia P.S. Case No. 151/2022 registered under Section 420/421/403/409 IPC r/w Section 7 of E.C. Act.

3. The factual matrix dealing with the case is that the petitioner is the

businessman by profession dealing with selling and purchasing of rice in the name and style of M/s Krishijana Kalyan Enterprise, situated at Dalgona, P.S. Mornai in the District of Goalpara, Assam. The business establishment/firm of the petitioner is duly registered under GST. On 12.12.2022, Inspector of Food, Civil Supplies and Consumer Affairs has lodged an FIR at Matia police station stating *inter alia* that 144 bags of paddy containing 45 kg in each bag recovered from the godown of the petitioner which were stored illegally and seized the same. Hence, the FIR. On the basis of the said FIR, a case was registered vide Matia P.S. Case No. 151/2022.

4. The learned counsel for the petitioner has submitted that the petitioner is the owner of the seized rice which was seized from his godown. Being the lawful owner of the said seized paddy, the petitioner approached before the Judicial Magistrate, Goalpara by filing a petition for releasing the said seized paddy. But after perusal of the police report, the learned court rejected his prayer of zimma on the ground that seized paddy was required for further investigation of the case and the petitioner failed to produce the valid document to prove his ownership of the said paddy.

5. It is further submitted that the petitioner is the wholesale dealer of the rice and he was running his business for last many years. The alleged paddy which are not government allotted rice and the same has been legally purchased by the petitioner from Aamjonga Anchalik Unnayon Samiti on 16.12.2022 and the said Samiti has issued a receipt to the petitioner on purchasing the said rice.

6. It is also the submission of learned counsel for the petitioner that the petitioner is the attorney holder of 'Sipahi Rice Mill' and in the said rice mill, the petitioner has been converting the paddy to rice, purchased by him and running his business accordingly. Moreover, the petitioner is regularly paying the income

tax for his business establishment.

7. The learned counsel for the petitioner has also argued that as per report, the investigating officer has not stated any specific reason why the seized rice has been required for further investigation of the case, as it appears from the report that the said rice does not belong to the Government.

8. It is also submitted that the seized paddy are perishable in nature and will be decomposed if it is stored for a long time. The petitioner is the owner who is claiming the seized paddy with valid documents and as such, the petitioner is the lawful owner of the aforesaid seized paddy. The learned counsel for the petitioner further prayed to give zimma of the seized 144 bags of paddy in favour of the petitioner.

9. In response, the learned Additional Public Prosecutor has submitted that on perusal of the case diary, it reveals that no document is available in the record which shows that the petitioner is the lawful owner of the seized paddy.

10. I have considered the submissions made by the learned counsel for the parties. I have also perused the case diary.

11. As per seizure list, 144 bags of paddy were seized on being produced by the informant Abtab Uddin Ahmed which was stored in a godown at Pashim Matia by Abdul Mannaf. It cannot be ascertained from the case diary whether the godown belongs to the petitioner. In support of claiming of ownership of the seized paddy, the petitioner has submitted one Xerox copy of receipt issued by Aamjonga Anchalik Unnayon Samiti from which it reveals that one Abdul Mannat purchased 144 bags of paddy from Aamjonga Anchalik Unnayon Samiti. But during investigation, the I/O has failed to collect any document showing that the petitioner had purchased the said rice from Aamjonga Anchalik Unnayon Samiti.

From the said receipt, it is not reflected where the said Amjonga Anchalik Samiti is located. The case diary is totally silent regarding existence of any local wholesale dealer namely Aamjonga Anchalik Unnayon Samiti wherefrom the present petitioner purchased the seized paddy.

12. In ***Sunderbhai Ambalal Desai Vs. State of Gujarat***, reported in ***(2002) 10 SCC 283***, the Hon'ble Supreme Court held that in case of seized vehicles/articles, it is no use of keeping them at police station for long and it is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and bank guarantee as well as security for return of the said vehicles.

13. In view of the above mandate, it is desirable that the claim of the petitioner for interim *zimma* of the seized paddy is settled expeditiously and judiciously so as to prevent any damage to the articles and loss to the owners.

14. Therefore, it is provided that the learned Magistrate shall decide the matter of lawful ownership of the seized paddy and give zimma of the same in interim as per procedure provided in Section 451 Cr.P.C. within a period of 2(two) weeks from the date of receipt of a copy of this order.

15. In order to enable the learned Magistrate to decide the claim of lawful owner of paddy afresh as per procedure, the petitioner shall file appropriate petition supported by relevant documents in original.

16. With the above directions, the criminal petition stands disposed of.

17. Send back the case diary.

JUDGE

Comparing Assistant