

GAHC010130682023



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

Case No. : Crl.Pet./588/2023

JAHIDUL ISLAM
S/O ABBACH ALI
VILL- NO. 2 TUPAMARI
P.S. NAGARBERA
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:REBO MEDHI
ASI
RANGIA POLICE STATION
VILL- BORNIBARI P.S. MUKALMUA
DIST. NALBARI
ASSAM
PIN-78130

Advocate for the Petitioner : MR. P RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 20-09-2023

1. Heard Mr. P Rahman, learned counsel for the petitioner. Also heard Mr. R J Baruah, learned Addl. PP, Assam.

2. By the present petition, an order dated 10.06.2023 passed by the learned SDJM (M) Rangia is being challenged. By the aforesaid order, the learned Magistrate has rejected the prayer for zimma of 3655 kgs (43 bags) of seized areca nuts in connection with Rangia PS Case No.630/2022 under sections 379/411/418 IPC.

3. The basic reason of rejection of such application for zimma of the areca nuts is that though the sample of the seized betel nuts were sent to the Sub Divisional Agricultural Officer, Rangia and Sub Divisional Food and Civil Supplies Officer, Rangia, no report has been received by the I/O. Further the report of the I/O reveals that the seized betel nuts were required for further investigation as the expert opinion has not been received from the concerned Department.

4. The apex court in the case of ***Sunder Bhai Ambala Desai Vs. State of Gujrat*** reported in ***(2002) 10 SCC 283*** while dealing with the power of a magistrate under section 451 and 457 Cr.P.C., regarding disposal of seized material has laid down the following proposition of law that:-

I. The power under section 451 Cr.P.C and 457 Cr.P.C., should be exercised expeditiously and judiciously with the object that the owner of article should not suffer for it being remaining unused or by its misappropriation,

II. The hon'ble apex court at paragraph 17 observed that whatever the situation be, it is of no use to keep the materials more particularly seized vehicles at police station for a long period and a magistrate is to pass appropriate order immediately by taking appropriate bond and guarantee as well as security for return of vehicles, if required at any point of time.

III. Referring to section 451 Cr.P.C of the paragraph 5 of the judgment Sunderbhai Ambala Desai (supra) the court opined that the power under section 451 Cr.P.C is required to be exercised expeditiously and judiciously with the object that the owner of the article would not suffer because of its remaining unused or by its misappropriation.

5. From the order impugned and from the I/O's report, it is seen that no dispute has been raised that the petitioner is not the owner of the seized areca nuts. Therefore, taking into note the principles laid down in Sunderbhai (Supra), this court is of the view that the petitioner is entitled for the custody of the areca nuts.

6. From the materials available on record, it is also seen that the investigating officer has already collected sample for further investigation in the matter and in the considered opinion of this court as the sample has been collected and the same has been sent for expert opinion, the remaining ereca nuts shall not be necessary for further investigation inasmuch as in view of the settled proposition of law the decay of seized material cannot be allowed and failure of the competent authority to give report on the sample sent for verification cannot be a ground for rejection of zimma, in the given facts of the present case.

7. In view of the aforesaid reasons, this court is of the view that the seized areca nuts be released to the petitioner with the following conditions:

I. The investigating authority shall prepare proper panchnama of such articles take photographs of such article and get the signature of the representative of the petitioner.

II. The investigating authority may keep some sample of the aforesaid areca nuts for further investigation like sending it to the forensic laboratory for any purpose relating to the investigation including confirmation of its place of origin.

8. With the aforesaid the present petition stands allowed.

JUDGE

Comparing Assistant