

GAHC010151012023



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

Case No. : Crl.Pet./699/2023

INAMUL HAQUE
S/O RAFIQUUL ISLAM, R/O MOIRABARI TOWN, P.O.-MOIRABARI, DIST-
MORIGAON ASSAM, PIN-782126

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR S DEWRI

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

27.09.2023

Heard Mr. A. Deka, learned counsel for the petitioner and also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This petition under Section 482 of the Code of Criminal Procedure, 1973, is

preferred by the petitioner, namely, Inamul Haque challenging the correctness or otherwise of the order dated 02.01.2023, passed by the learned Sub-Divisional Judicial Magistrate (M), Jonai, in PRC Case No.122/2022, arising out of Simen Chapori P.S. Case No.24/2022, under Section 379/411 IPC read with Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 read with Section 13(1) of the Assam Cattle Preservation Act, 2021. It is to be noted here that vide impugned order dated 02.01.2023, the learned Court below has rejected the prayer of the petitioner seeking custody of the seized TATA LPT 2518 Truck, bearing Registration No.AS-01CC-8694.

3. Mr. Deka, learned counsel for the petitioner submits that the petitioner is the Power of Attorney holder and on the strength of same, he filed a petition before the learned Court below seeking custody of the vehicle, but the learned Court below, vide impugned order dated 02.01.2023, had dismissed the petition on the ground that the case is under investigation and the petitioner is not the registered owner of the said vehicle. Mr. Deka further submits that though the petitioner is not the registered owner of the vehicle yet, he is the Power of Attorney holder and on the strength of the same, he has filed this application seeking custody of the aforesaid seized Vehicle. Therefore, Mr. Deka contended to allow this petition.

4. On the other hand, Mr. P. Borthakur, learned Additional Public Prosecutor, Assam, submits that as per record of the learned Court below, the petitioner is not the registered owner of the vehicle and as such, the petition cannot be allowed. However, Mr. Borthakur submits that the petition may be disposed of by directing the present petitioner to file fresh zimma petition along with registered owner of the vehicle before the learned Court below and in the event of filing such an application, the learned Court below may be directed to consider and dispose of the same in accordance with law.

5. Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record. Also perused the impugned order of the learned Courts below.

6. It is not in dispute that the present petitioner is not the registered owner of the aforesaid vehicle. But, he is the Special Power of Attorney holder and the said Power of

Attorney is enclosed with this petition as Annexure-2 (page-17), which has not been registered in accordance with law and as such, this Court is of the view that it would be not appropriate to release the vehicle in the custody of the petitioner.

7. Accordingly, this petition is disposed of by directing the petitioner to approach the learned Court below by filing appropriate application along with the registered owner of the vehicle and in that case, the learned Court below shall consider the same in accordance with law, specially examining the requirement of the vehicle for the purpose of investigation.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant