

GAHC010190672020



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

**Case No. : Crl.Rev.P./232/2020**

PANKAJ PAUL @ PANKU  
S/O LATE ANIL KRISHNA PAUL, R/O KALIBARI NEW MARKET, P.O., P.S.  
AND DIST-DIBRUGARH, PIN-786001 ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.  
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

3:VIJENDRA SINGH  
BRANCH MANAGER/AUTHORIZED REPRESENTATIVE/ATTORNEY  
HOLDER OF BAJAJ PARIBAHAN PVT. LTD.  
MAKUM ROAD  
P.O.  
P.S. AND DIST-TINSUKIA  
PIN-786170  
ASSA

**Advocate for the Petitioner : MR. R HAZARIKA**  
**Advocate for the Respondent : MR. B B GOGOI(ADDL.PP, ASSAM)**

**BEFORE**  
**HONOURABLE MRS. JUSTICE MALASRI NANDI**

**JUDGMENT AND ORDER (CAV)**

**Date : 19-07-2023**

Heard Mr. N. Hasan, learned counsel for the petitioner and Mr. B.B. Gogoi, learned Addl. Public Prosecutor for the State respondent.

2. This is an application under Section 482 Cr. P.C. read with Sections

397/401 Cr.P.C. filed by the petitioner against the impugned order dated 27.11.2020, passed by the learned Chief Judicial Magistrate, Tinsukia in connection with Tinsukia P.S. Case No. 824/2020 (Corresponding to G.R. Case No. 1386/2020) under Sections 407/420/34 IPC, whereby the learned CJM has rejected prayer of the petitioner for taking custody of 98 made tea bags and seized amount of Rs. 2,70,150/-.

3. The case of the petitioner is that the petitioner is a proprietor of M/s. Paul & Company, deals with the business of tea packeting at Kalibari, Dibrugarh. The Dibrugarh Municipal Board has also issued the trade license to M/s. Paul and Company for running the said business.

4. On 24.07.2020, an FIR was lodged before the Officer-in-Charge of Tinsukia Police Station by one Sri Lalan Rai alleging inter alia that he is the owner and proprietor of M/S. New Assam Bengal Roadliness situated at Tamulbari, Tinsukia and he deals with the business of truck supplier and commission agent under M/s. New Assam Bengal Roadliness. On 20.07.2020, the complainant supplied a truck bearing Registration No. AS-01-FC-6203 to M/s. Bajaj Parivahan Limited for the purpose of carrying made tea bags from Tinsukia to Jorabat, Guwahati and after loading the made tea bags from the Godown, the truck proceeded to Guwahati on 21.07.2020. On 23.07.2020 at about 8.40 a.m. the complainant received a phone call from the driver of the truck Mithun Mura that he reached the destination but on the said day at about 2.00 p.m. the complainant received a call that the truck did not reach the destination. On receipt of the information, complainant made a phone call to the driver and the owner of the truck but their mobile phones were found switched off. It is alleged that the driver and the owner of the truck made conspiracy and with ulterior motive had misappropriated and sold out the said made tea bags of 17800 K.G., which was

loaded in the truck bearing Registration No. AS-01-FC-6203.

5. On receipt of the said FIR, a case was registered vide Tinsukia P.S. Case No. 824/2020 under Sections 407/420/34 IPC. During investigation, police arrested the present petitioner and seized some articles such as passbook, mobile phone, tea bags and cash amount of 2,70,150/- from the house/ Godown of the petitioner and the same were seized vide MR Nos. 276/20 dated 30.09.2020, 289/20 dated 06.10.2020 and 290/20 dated 06.10.2020.

6. Subsequently, the petitioner has filed two petitions before the learned Chief Judicial Magistrate, Tinsukia for custody of seized articles and money. Another petition was filed for custody of the said made tea bags by one Sri Vijendar Singh for M/s. Bajaj Parivahan Pvt. Ltd. The learned CJM, Tinsukia, after hearing both sides and considering the case of the petitioner, called for the report from the Investigating Officer and accordingly the I. O. of Tinsukia P.S. Case No. 824/2020 submitted report on 26.11.2020.

7. On receipt of the report from the Investigating Officer, the learned CJM, Tinsukia passed an order dated 27.11.2020 and rejected the prayer of the petitioner for custody of 98 made tea bags and allowed the same to Sri Vijendra Singh and also rejected the prayer of the petitioner for taking zimma of seized Rs. 2,70,150/-.

8. Being highly aggrieved and dissatisfied with the impugned order dated 27.11.2020, passed by the leaned Chief Judicial Magistrate, Tinsukia in connection with Tinsukia P.S. Case No. 824/2020, the petitioner has preferred this revision petition.

9. The learned counsel for the petitioner has submitted that at the time of search in the house/ godown of the petitioner, the money amounting to Rs.

2,70,150/- was seized which was hard earned money of the petitioner and no one claimed the said money. However, the learned trial court passed the impugned order rejecting the prayer of the petitioner with an observation that the cash amount was deposited in the Tinsukia Treasury by the I.O. and therefore, the same was in the safe custody. According to the learned counsel for the petitioner the said observation is not tenable in the eye of law as there was no sufficient reason shown by the learned Chief Judicial Magistrate, Tinsukia while rejecting the prayer of zimma of the seized money.

10. On the other hand, learned Addl. PP has argued that the I.O. has submitted his report by stating that it is not proved who is the actual owner of the said money. Hence, it is not advisable to release the said money in favour of the petitioner at this stage.

11 I have considered the submissions of the learned counsel for the parties. I have perused the case diary and other documents available on record.

12. It appears from the case diary that during search in the factory-cum-residence of the present petitioner, the Investigating Officer has seized 98 stolen made tea bags and cash amount of Rs. 2,70,150/-. It is alleged that the said amount are the sale proceeds of stolen tea bags. The Investigating Officer has also submitted one report, which reveals that he seized 98 made tea bags from Pankaj Paul @ Panku, the present petitioner from his tea factory-cum-residence at Dibrugarh. As per the statement of the petitioner, another accused Manash Pratim Gogoi brought the said tea bags from M/s. Bajaj Parivahan Co. Ltd. and he sold the said tea bags to his factory i.e. Paul & Company. As per the statement of Pankaj Paul @ Panku and Manash Pratim Gogoi, the said tea bags belonged to M/s. Bajaj Parivahan Pvt. Ltd., Tinsukia. Accordingly, the said 98 made tea bags were given zimma to M/s . Bajaj Parivahan Pvt. Ltd., Tinsukia as

per order of the learned CJM, Tinsukia.

13. It is also reported by the Investigating Officer that during investigation, an amount of Rs. 2,70,150/- was seized from the tea factory/ residence of the petitioner Sri Pankaj Paul and deposited the said amount at Tinsukia Treasury as per order of the Court. It is also reported that as per the statements of Sri Pankaj Paul i.e. the present petitioner and his staff that the seized amount was received by selling of stolen tea bags and therefore, it could not be ascertained who was the actual owner of the said seized amount.

14. On the basis of the report of the Investigating Officer, it reveals that the seized amount is the sale proceeds of stolen tea bags. Though it was seized from the factory-cum-residence of the present petitioner, but it cannot be said that the seized amount belongs to him.

15. Having regard to the entirety of the matter, at this stage, there is no any conclusive proof that the seized money belongs to the petitioner. Under such backdrop, prayer for zimma of the seized money will be considered at the trial stage after examining the relevant witnesses and the documents available on record.

16. With the above observation, the revision petition is disposed of.

17. Send back the case diary.

**JUDGE**

**Comparing Assistant**