

GAHC010191642022



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

Case No. : Crl.Pet./976/2022

MARCOFED (NAGALAND STATE CO OPERATIVE MARKETING AND
CONSUMERS FEDERATION LTD)
DIMAPUR, NAGALAND), GOVT. OF NAGALAND, REP. BY ITS CHAIRMAN,
M CHUBA AO, AGE ABOUT 65 YEARS
S/O LATE MAPU AO
R/O WARD NO. 9, CHUMUKIDIMA TOWN,
P.O. CHUMUKIDIMA
P.S. CHUMUKIDIMA
DIST. DIMAPUR, NAGALAND.

VERSUS

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

2:ASI (UB) SHYAMANANDA G. MOMIN
SO LATE BALINDRA R. MARAK
ADDRESS- ASI OF GUWAHATI GRPS VILL- BASISTHA GANESH NAGAR
BAIKUNTHA PATH

P.S. BASISTHA

DIST. KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 07-08-2023

1. Heard Mr. A Ahmed, learned counsel for the petitioner. Also heard Mr. K.K. Parashar, learned Addl. PP, Assam.
2. By the present petition, an order dated 07.09.2022 passed by the learned JMFC, Kamrup (M), (Guwahati) is being challenged. By the aforesaid order, the learned Magistrate has rejected the prayer for zimma of seized areca nuts in connection with Guwahati GRPS Case No.24/2022.
3. The basic reason of rejection of such application for zimma of the areca nuts were that the report of the investigating authority reveals that the ownership of the seized areca nuts is yet to be ascertained and that there is no document to substantiate the claim of the petitioner that the areca nuts were sent for industrial purpose to M/S Shiva Trading Delhi. The further ground of such rejection was that the report of the District Agriculture Officer discloses that such areca nuts are not fit for human consumption.
4. While assailing such order the learned counsel for the petitioner contends that the petitioner is a State Govt. Organization, which is dealing with the business of areca nuts and the organization has sent the areca nuts to the consignee by following all due process of law including paying the required tax to the government. According to him all the relevant documents of ownership of the areca nuts were

part of the application, however, the learned Magistrate had come to a perverse conclusion that ownership of the areca nuts is not established.

5. The further contention of the learned counsel for the petitioner is that once ownership is established it cannot be a concern of the magistrate while considering granting of zimma of the areca nuts, whether such nuts can be used for industrial purposes even if the same is not human consumable. He further contends that the learned magistrate while exercising a power either under section 451 Cr.P.C., or 457 Cr.P.C is not having any jurisdiction to refuse zimma of seized material on the basis of the determination of the quality of such seized product.

6. On the other hand, the learned Addl. PP, has vehemently opposed the contention of the learned counsel for the petitioner and he argues that the petitioner cannot be termed as owner of the seized products inasmuch as the consignment was sent to one M/S Shiv Trading, Delhi and said organization has not come to the court claiming the custody of the seized materials and for this reason the learned magistrate has rightly concluded that ownership of the material seized are not yet established.

7. The learned Addl. PP further contends that the magistrate has rightly looked and considered the fact that areca nuts seized are not human consumable and if such areca nuts are given custody that may create public health hazard. Accordingly, he submits that the present petition is devoid of any merit and is liable to be dismissed.

8. This court has given anxious considerations to the arguments advanced by the learned counsel for the parties.

9. As the annexures annexed to the original zimma petition were not made part of the present application, this court by order dated 03.08.2023 asked the learned counsel for the petitioner to bring the certified copies of the petition alongwith the annexures and accordingly an affidavit was filed annexing the same.

10. Perusal of the said documents and zimma petition it is clear that the petitioner is a statutory body under the government of Nagaland and the petition is filed by its Chairman. It is State Level Cooperative Marketing and Consumer Federation sponsored by the Government of Nagaland and affiliated to National Agricultural Cooperative of Marketing Federation Ltd and it is having power to involve in activities of selling and transporting agricultural and non agricultural products under the Nagaland State Cooperative Act, 2017. The areca nuts were transported by the petitioner totaling 104 bags of local betel nuts having due challan and such consignment was to be delivered to one M/S Shiv Trading Delhi for use of industrial purpose. It is also pleaded that the petitioner has purchased it from different agents which was permissible under the provision of the Act of 2017.

11. The copy of the challan along with the payment of invoice was made a part of the zimma petition. The permit to transport such areca nuts dated 17.04.2021 was also annexed and a copy of the challan dated 03.02.2021 and the copy of the authorization letter of the Managing Director was also made a part of the zimma petition. A

notification dated 31.01.2020 was also annexed with the zimma petition which shows no objection and permission from the Government of Nagaland to transport such areca nuts by the petitioner organization.

12. 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.

13. In the considered opinion of this court the petitioner has been able to established that it is the owner of the seized areca nuts and same was dispatched by it to Shiv Trading with due permission and after paying the required tax. Therefore, taking into note the principles laid down Sunderbhai (Supra), this court is of the view that the petitioners are entitled for the custody of the areca nuts.

14. Coming to the point of quality of the areca nuts, it is the specific stand of the petitioners that the same was sent for industrial use. The FIR on the basis of which the areca nuts were seized nowhere reflects that the areca nuts seized are not of human consumable. Rather, it is their case that betel nuts/supari was of Burma origin and booked by unknown person from Dimapur railway station with false and manipulated records surveying their ill motives. If the materials so sized are suspected to be of foreign origin, the police will have no jurisdiction to prosecute or confiscate such products under the provision of IPC rather it is the authority under the Customs Act, 1962 who are having power and authority to seize the same and confiscate the same under the provisions of section 115 of the Customs act 1962 inasmuch as the Hon'ble Division Bench in Cus.Ref No.1/2022 laid down that the police shall have no authority to confiscate and prosecute when the seized materials are alleged to be of foreign origin.

15. This court in Cus.Ref No.1.2022 the ***Commissioner of***

Custom (Preventive) and Anr Vs. Smti Nemluni, while dealing with the issue whether a confiscation of seized goods by custom can be ordered when it was found that it is not human consumable, the court answered that if the confiscated goods is not human consumable, the same should not be the concern of the custom authority inasmuch as if the seized goods are used for human consumption even though not consumable by human, shall give rise to fresh cause of action to take action against those erring person under appropriate provisions of law. Therefore this court is also of the view that applying the same principle the learned Magistrate ought not to have rejected such prayer of zimma.

16. 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 and the petitioner shall give a bond that such articles should be produced on issuing a bond of Rs.30,00,000/-

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

17. With the aforesaid the present petition stands allowed.

JUDGE

Comparing Assistant