

GAHC010267302022



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

Case No. : Crl.Rev.P./605/2022

JAKIR HUSSAIN @ ZAKIR HUSSAIN
S/O- LATE TARUN ALI, VILL- SONAPUR, P.S- MUKALMUA, DIST- NALBARI,
ASSAM

VERSUS

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

2:SOURAV GUPTA
THE ADDL DY SP OF NALBARI DISTRICT
DIST- NALBARI
ASSAM
PIN- 78133

Advocate for the Petitioner : MR. A T SARKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 30-05-2023

- 1.** Heard Mr. A.T. Sarkar, learned counsel for the petitioner Md. Jakir Hussain @ Zakir Hussain.

2. The petitioner has filed an application u/s 397/401 of the Code of Criminal Procedure (Cr.PC for short) challenging the legality and propriety of the order dated 17.11.2022 passed by the learned Judicial Magistrate, First Class, Nalbari in connection with Belsor P.S. Case No. 40/2022 u/s 120B/468/471/420/472/474/466/34 of the Indian Penal Code (IPC for short) whereby the petition No. 1000/2022 with prayer for zimma with respect to the property seized in connection with this case has been rejected.

3. Heard Ms. S.H. Bora, learned Addl. P.P., Assam.

4. The FIR unfolds that twelve (12) sale deeds were found in the custody of the petitioner, who is serving as a Lat Mandal at Paschim Nalbari Revenue Circle. These sale deeds after verification were found to be forged. Mutation against these sale deeds have been passed by the Office of the Circle Officer, Paschim Nalbari. The mutation of the sale deeds have been initiated by the petitioner for the last two-three years. Some mutations which were disposed against the sale deeds were also cancelled on later dates and again the petitioner initiated mutations over the same sale deeds without proper verification. Twelve sale deeds, registered mostly in the Office of the Sub-Registrar of Mukalmua and Belsor were found to be forged. The petitioner had admitted that the sale deeds were forged, but he has submitted that the articles seized in connection with the Belsor P.S. Case No. 40/2022 were not used in connection with the alleged offence.

5. It was also further mentioned in the FIR that the applicant for mutations of three such mutations was Hemanta Nath. The Circle Officer relied on the petitioner due to the work load. The petitioner is

responsible for verification of the original deeds. Mutation in favour of Ramcharan Nath was also initiated by the petitioner. Regarding sale of land belonging to Kamini Nath the present petitioner is involved with the mutation and cancellation of sale deed. The petitioner may have worked in collusion with other individuals and has committed forgery by forging the sale deeds as alleged. The sale deeds have been referred to in the FIR.

6. It is submitted on behalf of the petitioner that his vehicle is seized by the Investigating Officer (IO in short). On 10.08.2022 the IO filed an application u/s 83 Cr.PC for an order of proclamation and attachment of property of the petitioner whereby the learned JMFC, Nalbari after perusal of the records passed the order dated 12.08.2022, whereby the petition of the IO was partially allowed and proclamation was issued against the petitioner. The IO did not challenge the order and the prayer of attachment of the vehicle was not allowed and this was not however challenged by the IO. Before completion of 30 days of the order of proclamation, the IO filed another application u/s 83 Cr.PC before the JMFC, Nalbari with prayer to issue an order of attachment of property and the learned JMFC vide order dated 15.08.2022 ordered for the attachment of the properties belonging to the petitioner. A criminal revision petition was preferred by the petitioner bearing petition No. 455/2022 before this Court u/s 397/401 Cr.PC challenging the legality and propriety of the order dated 23.06.2022, 12.08.2022 and 15.08.2022 passed by the learned JMFC, Nalbari. The criminal revision petition was listed before this Court on 06.09.2022 under 'Motion' column and this court vide order

dated 23.06.2022 stayed the impugned NBWA till returnable date. This order was communicated to the OC, but the OC Belsor P.S. as well as the IO of this case with malafide executed the impugned order dated 15.08.2022 in defiance of the order of this Court. The petitioner was compelled to file an interlocutory application before this court u/s 482 Cr.PC and this court after hearing the parties directed the trial court to release the petitioner on bail of Rs. 25,000/- with suitable sureties of like amount. A copy of the order dated 22.09.2022 in I.A. (Crl.) No. 563/2022 and copy of the order dated 22.09.2022 in Criminal Revision Petition No. 445/33 are marked as Annexure-4 & 5 respectively. After the petitioner was granted bail by the trial court vide order dated 28.09.2022, he has prayed for custody of the properties seized in connection with this case including immovable properties as well as the movable properties, but the respondent No. 2 i.e. the Additional S.P. Mr. Sailab Gupta, ignored the prayer of the petitioner, which impelled the petitioner to file a zimma petition before the Judicial Magistrate, 1st Class, vide petition No. 1000/2022 u/s 451 Cr.PC praying for release of the seized properties but vide order dated 17.11.2022 the prayer for zimma was rejected on the ground that the court has no power to exercise power u/s 451 Cr.PC during investigation as held by this court in Criminal Revision Petition No. 597/2022.

7. It is submitted that as soon as the petitioner appeared before the trial court on 28.09.2022, the attachment order got automatically withdrawn which is also reflected in the order of this court dated 06.09.2022 but the trial court without going to the root of the case,

mechanically passed the impugned order which is not sustainable in the eye of law and deserves to be set aside and quashed. It is submitted that the property which was attached in connection with this case was not involved with commission of any offence. It is submitted that at present the petitioner is unable to withdraw his salary because his salary has also been attached. The petitioner is placed under suspension. As the petitioner is unable to withdraw his salary he is facing immense difficulties. Moreover, his vehicle is lying in the open and is getting damaged. The petitioner has referred to the decision of the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai & Others v. State of Gujarat*, reported in 2002 (10) SCC wherein the concerned Magistrate was directed to take immediate action u/s 451 Cr.PC for releasing the seized property, so as to ensure that the same was not kept in police station for more than 15 days to 1 month at the stage of trial. The petitioner has also referred to a decision of this court in *State of Assam and Others v. Ram Shankar Marya & Others* in Criminal Petitions 284/2022 and other criminal petitions. Through a common judgment, it has been held that at the investigating stage, seized articles cannot be released by a court u/s 451 Cr.PC. However, u/s 457 Cr.PC, the criminal court has the jurisdiction to give custody of seized property, articles at the stage of investigation when those seized properties are not produced before the court. It is submitted on behalf of the petitioner that though the vehicles were shown to have been seized by the respondent No. 2 through seizure list dated 08.06.2022 and vide order dated 15.08.2022, the learned court below attached the vehicles. The attachment order u/s 85(1) was withdrawn

and the respondent No. 2 was directed to do the needful by an order dated 28.09.2022 but the vehicle was not released to the custody of the petitioner.

7. The learned Addl. P.P. has submitted that the vehicle was attached vide order dated 15.08.202 and thereafter the order of attachment was withdrawn on 28.09.2022. The petition for prayer of zimma u/s 451 Cr.PC was filed at the stage of investigation and vide order dated 17.11.2022, the prayer for zimma was rejected. The report of the IO is dated 09.03.2023 which depicts that during investigation two vehicles bearing registration No. AS-14E-92941, a Hero Scooty and another vehicle bearing registration No. AS-01EP-5758, a Honda i20 car were seized in connection with this case from the petitioner's house. It is submitted by the learned Addl. P.P. that the petitioner has not co-operated with the investigation.

8. The IO has submitted a report that to unearth where other forged vehicles are kept hidden by the accused, the seized vehicles are required for investigation. The order dated 17.11.2022 was passed by the learned Magistrate during the course of investigation. The petition No. 1000/2022 was filed u/s 451 Cr.PC so there is no illegality or impropriety in the order dated 17.11.2022. Through the order dated 22.09.2022 (Annexure-4) passed by this court in I.A.(Crl.) 563/2022, it has been observed that appearance of the petitioner before the trial court, the attachment would automatically be withdrawn as per Section 85(1) of the Cr.PC. So the IO has to comply with the order passed by this court on 22.09.2022 in connection with case No. I.A.(Crl.)563/2022, which will consequentially release the

salary of the petitioner from attachment. It is apparent from this present petition that the petitioner has already preferred a revision petition challenging the order dated 23.06.2022, 12.08.2022 and 15.08.2022. Subsequently, the impugned order dated 17.11.2022 was passed. As the petitioner had already filed a revision petition earlier with the prayer for releasing the attachment of bank account of the petitioner being Account No. 3471752124, releasing the aforesaid bank account from attachment does not arise in connection with this case. Moreover, it has already been mentioned in my foregoing discussions that it has been held by a co-ordinate Bench of this court that after the appearance of the petitioner before the trial court and on him being released on bail, the order of attachment will automatically be withdrawn. I do not believe that petitioner will be prejudiced if the earlier order of this court in connection with I.A.(CrI.) 563/2022 is complied with. The petitioner has also preferred a revision against the attachment of his immovable properties i.e. the vehicle seized in connection with this case as well as his movable properties. Thereafter, the petitioner has filed a subsequent revision petition u/s 397/401 Cr.PC with prayer for releasing the articles seized and attached in connection with this case.

9. It has also been held in my foregoing discussions that the order impugned by the petitioner i.e. the order dated 17.11.2022 does not suffer from illegality and impropriety. However, the petitioner is at a liberty to approach the trial court with an appropriate petition and the trial court is directed to consider the petition as per merits of the case. It is not clear if investigation has culminated into charge-sheet.

The trial court can best decide if the properties attached and seized in connection with this case can be handed over to the petitioner. The trial court is at liberty to impose conditions if the court deems fit and proper in case the court decides to handover the articles seized in connection with this case to the owner of the articles. The petitioner is also at liberty to pray for withdrawal of attachment of his salary if the attachment of his salary is not withdrawn so far, and trial Court may pass an order as per merits of the case.

10. This disposes of the petition.

JUDGE

Comparing Assistant