

GAHC010270442022



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

Case No. : Crl.Rev.P./612/2022

MD. SAMSUL HOQUE
S/O HABIJ ALI, R/O LAHKAGHAT, P.S.-DHING, DIST-NAGAON (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MS. G BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 24-02-2023

Heard Mr. G. Bora, learned counsel for the petitioner Md. Samsul Hoque.

The petitioner has filed a petition under Section 497/401 Cr.P.C. challenging the propriety and legality of the order dated 30.11.2022 passed by the Chief Judicial Magistrate, Nagaon in connection with Zimma Petition No. 2291/2022 in Nagaon P.S. Case No. 1148/2022.

Heard Mr. B. Sharma, learned Addl. P.P. for State.

The petitioner's vehicle was seized in connection with Nagaon Sadar P.S. Case No. 1148/2022 under Sections 379/411/201 IPC. The vehicle bears Registration No. AS02AA0944. Another vehicle was also seized in connection with the same case. The vehicle is of Swift Desire make. When the vehicles were intercepted by the police, the driver and the conductor fled. On searching the other vehicle of TATA DI make some sacks containing rice husk were recovered along with nine calves. When the driver and the conductor were apprehended and confronted they could not produce any documents regarding the transported cattle.

It is submitted that the petitioner is an owner of the vehicle and he is not involved in smuggling of cattle. The learned CJM vide order dated 30.11.2022 rejected the prayer for *zimma* of the vehicle. The order of the learned CJM is produced herein below verbatim.

“In Crl. Pet. No. 597/2022 Hon’ble Gauhati High Court observed as below:

The word ‘investigation’ as defined in Section 2(h) Cr.PC is different from the word ‘inquiry’ as defined in Section 2(g) Cr.PC. It is not disputed that while the impugned judgment and order was passed by the learned Sessions Judge, Hailakandi, the case has not been charge-sheeted and was under the investigation and as held by the Hon’ble Supreme Court, during ‘investigation’, the power under Section 451 Cr.PC cannot be exercised by Criminal Courts. It is to be noted here that the power under Section 451 Cr.PC can be exercised only during inquiry and trial as stated in the case of Nevada Properties (P) Ltd. (supra). In the case of Subderbhai Ambalal Desai (supra), also it has been held that Section 451 Cr.PC empowers the Court to pass appropriate order with regard o property for proper custody, pending conclusion of the inquiry or trial.”

The learned Addl. P.P. Mr. B. Sharma has submitted that charge sheet has been laid in connection with this case vide C.S. No. 1036/2022 dated 31.12.2022. The order of the learned CJM clearly reflects that the petition under Section 451 Cr.PC was rejected because the provision under Section 451 Cr.PC can be exercised only during inquiry and trial.

As charge-sheet has already been laid, the present petitioner is hereby directed to approach the learned CJM, Nagaon and file a petition with prayer for *zimma* of the afore-mentioned vehicle and the petition will be considered as per merits of the case.

This disposed of the petition accordingly.

JUDGE

Comparing Assistant