

GAHC010023332024



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

Case No. : Crl.Rev.P./44/2024

HASNA BANU AND 3 ORS
D/O ABDUL KALAM
VILL- JORDANGA PT. II
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
PIN-783131

2: ESTIAQ REZA
S/O WAHEDUR REZA
VILL- JELDUPARA
P.S. HALLYDYGANJ
DIST. WEST GARO HILLS

MEGHALAYA
PIN-794104

3: REZABUL HOQUE SARDAR
S/O HAMIDUR RAHMAN SARDER
R/O VILL- HATSINGIMARI
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA-MANKACHAR
ASSAM
PIN-783135

4: CHAPIJAAL ISLAM
S/O MANNAN MIAH
VILL- DHAPGURI KURALBHANGA PT.I
P.S MANKACHAR

DIST. SOUTH SALMARA- MANKACHAR
ASSAM
PIN-78313

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

09.02.2024

Heard Mr. S. Nawaz, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Public Prosecutor for the State respondent.

This is an application under Sections 379/401 of Code of Criminal Procedure, 1973, *read with* Article 227 of the Constitution of India praying for setting aside and quashing the impugned order dated 22.01.2024, passed by the learned Judicial Magistrate, 1st Class in petition No.1235, whereby, the learned Trial Court rejected the interim zimma petition filed by the petitioners in connection with Sukchar P.S. Case No. 04/2024, under Section 379/411/34 of IPC *read with* Section 7 of EC, Act, 1955.

It is submitted by the learned counsel for the petitioners, Mr. Nawaz, that the learned Trial Court vide order dated 22.01.2024 had rejected the prayer for zimma without even calling for the Police Report. In addition to his submission, he relies on the decision passed by this Court in the case of *Dhananjay Roy & others vs. State of Assam reported in (2014) 2 GLR 57*, wherein, this Court has opined that Section 6(E) of EC, Act, 1955 is applicable only when there is confiscation proceeding is pending/has initiated. It is further submitted that the petitioner is a registered owner of the seized vehicle and the vehicle is no way connected with the seized articles. Further it is submitted that the vehicle is in the custody of the police for last 1 (one) month, but the learned Court below did not consider all these facts and rejected the petition for zimma only considering the fact that the case is at the stage of investigation.

In this context, the learned Public Prosecutor, Mr. P. Borthakur, submitted that there is no provision for giving custody of the seized property/article at the stage of investigation by the Court under Sections 451 or 457 Cr.P.C. In support of his decision, he relies on the decision passed by the Coordinate Bench in *Criminal Petition No. 284/2022 [State of Assam and Anr. vs. Ram Sankar Maurya dated 02.03.2023]*. Thus, he raised objection on the prayer made by the learned counsel for the petitioner.

In reply, Mr. Nawaz, learned counsel for the petitioner has submitted that Section 457 of Cr.P.C. may not be applicable only when the articles are produced before the Court.

Considering the submissions of learned counsels of both sides, I find it appropriate to direct the petitioner to file fresh petition for zimma before the learned Trial Court, and after ascertaining the ownership of the vehicle and obtaining the report of status of investigation etc., and also considering the view of this Court expressed in the above referred judgment, the learned Court below shall, accordingly, dispose of the matter in accordance with law.

With the above observation and direction, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant