

GAHC010025852023



2024:GAU-AS:11200

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

Case No. : Crl.Rev.P./72/2023

SUMAN SEN
S/O LATE SUDHANYA SEN
R/O BISHNU PALLY
P.S. HOJAI
DIST. HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A R SIKDAR, MR. M M ZAMAN, MD A ALI, D HUSSAIN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 18.11.2024

Heard Mr. A. R. Sikdar, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 397/401 of the Code of Criminal Procedure, 1973 *read with* Section 482 of the Code of Criminal Procedure, 1973 against the impugned order dated 09.01.2023, passed by the learned Judicial Magistrate First Class in Kaki P.S. Case No. 92/2022 rejecting the prayer of the petitioner for custody of the mobile phone being model No. OPPO Reno 5 Pro, bearing IMEI No. 868222053275517, which has been seized in connection with the said Kaki P.S. Case No. 92/2022.

3. It is submitted by Mr. Baruah, learned Additional Public Prosecutor, that the report, as sought for by this Court, is not yet received from the I.O. However, from the intimation he received from the I.O., it is stated that the report could not be submitted as the CFSL Report is not yet received by the I.O. in regards to the mobile handset along with SIM Card, which was sent for examination.

4. Mr. Sikdar, learned counsel for the petitioner, submitted in this regard that the present revision petition is pending before this Court since 21.02.2023 after rejection of the prayer for zimma by the learned Trial Court below. He further submitted that in spite of the several reminders and steps taken by the State respondent, the I.O. could not furnish the report and on each occasion, it is stated that the Report could not be furnished due to non-receipt of FSL Report. Mr. Sikdar further submitted that the case is pending for investigation since long and the mobile handset was sent for examination after seizure of the mobile handset and hence, there cannot be any further requirement of the mobile handset for the purpose of investigation and the I.O. has not been able to produce the FSL Report in spite of several reminder and directions by this Court. He further submitted that in paragraph No. 4 of the petition, it is admitted by the petitioner regarding the defamatory post and it is stated that the petitioner

never had any intention to insult any community and there is no statement made by the petitioner to defame or insult any community. Thus, it is otherwise admitted by the petitioner that there was no intention to insult any community by the said post and hence, there cannot be any further requirement of the certificate under Section 65B of the Evidence Act. Accordingly, he submitted that the matter may be disposed of and the I.O. may be directed to release the mobile handset in favour of the present petitioner.

5. Mr. Baruah, learned Additional Public Prosecutor, submitted in this regard that the I.O. could not furnish the report in regards to zimmerman of the seized mobile handset as the FSL Report is still pending and the mobile handset is not yet returned from the FSL. However, he submitted that the direction may be given to the I.O. to collect the FSL Report from the concerned laboratory during investigation.

6. After hearing the submission made by the learned counsels for both sides and also on perusal of the case record, it is seen that the order of rejection was passed by the learned Trial Court below on 19.01.2023 and it is also not disputed regarding the ownership of the mobile handset as well as the seizure of the same. The present petition is pending only because of non-receipt of the report from the I.O. as the I.O. could not collect the Report of the mobile handset which was sent to FSL examination during investigation. But the learned counsel for the petitioner has submitted that the petitioner has already admitted regarding the relevant Facebook post which is the subject matter of the investigation and the case. Apart from that, it is also seen that the I.O. has not taken any steps for collecting the FSL Report and to submit the same

regarding the zimma as sought by this Court in spite of several reminders and directions of this Court. Thus, it is seen that the I.O. got sufficient time to investigate the case and the concerned laboratory also took several months to examine the mobile handset which was sent for examination by the I.O. during the investigation of this case.

7. In view of above, the I.O. is hereby directed to collect the FSL Report and the mobile handset from the concerned laboratory and to release the mobile handset being model No. OPPO Reno 5 Pro, bearing IMEI No. 868222053275517 in favour of the petitioner without any further delay.

8. In terms of above, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant