

GAHC010040432024



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

Case No. : Crl.Pet./226/2024

CHUNU KR MAHATO
S/O BINDESHAR MAHATO
PERMANENT RESIDENT OF
WARD NO. 3,
JIMISINGH TOLA,
LALGARH YOGIYA, DUMRI
SHEOHAR, P.O. LALGAR
P.S. SAYAMPUR BHATAHA
DIST. SHEOHAR, BIHAR
PIN NO. 843329
PRESENTLY RESIDING AT
HOUSE NO. 282, KUDA, C. KHEL
DIMAPUR, P.O. KUDA,
P.S. WEST POLICE STATION
NAGALAND, PIN NO. 797112

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PP, ASSAM

2:THE SUPERINTENDENT OF POLICE

KARBI ANGLONG
DIPHU
ASSAM

PIN NO. 782460.

3:THE OFFICER-IN-CHARGE OF DILLAI POLICE STATION

DILLAI

KARBI ANGLONG
ASSAM

PIN NO. 78248

Advocate for the Petitioner : MR. N K MURRY

Advocate for the Respondent : PP, ASSAM

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

06.03.2024

Heard Mr. N. K. Murry, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This is an application filed under Section 482 of Code of Criminal Procedure, 1973, *read with* Article 227 of the Constitution of India challenging the order of rejection dated 17.10.2023 passed by the learned Judicial Magistrate First Class, Bokajan, Karbi Anglong, Assam (in short Id. JMFC, Karbi Anglong) in zimma petition No. 3130 arising out of PRC Case No.78/2023.

3. It is submitted by the learned counsel for the petitioner, Mr. Murry that the present petitioner is a business man by profession and a Proprietor of "Mahato Marketing" situated at Mugri Patti, Nagabazar, Dimapur, Nagaland. It is contended by the petitioner that he filed a zimma petition in connection with Dillai P. S. 29/2023, registered under Sections 420/379/411 of IPC dated 07.04.2023, wherein, 220 bags/110000 KG of areca nuts were seized which was supposed to be delivered to one M. H. Traders situated at K-10 Arcade, G/5, opposite Divya Cinema, 100 feet Road, Anand, Gujrat. Thereafter, investigation was carried out and after completion of said

investigation; the case was charge-sheeted under Sections 120(B)/420/336 which is presently registered as PRC Case No.78/2023 dated 28.08.2017, pending before the Court of Id. JMFC, Karbi Anglong.

4. He also submits that the present petitioner is the owner of the of the seized areca nuts and accordingly, he had filed a zimma petition claiming the same with supporting documents in support of his claims so as to establish his right over the seized areca nuts. Thereafter, a report was called for, and accordingly, the Id. JMFC, Karbi Anglong passed vide order dated 24.07.2023, wherein, it has been opined that as per the report received from the concerned IO, one part of a slip vide Unique No.8913 0225 8396 and another part of a slip vide Unique No. 8013 0225 7127 has already been verified and found to be genuine. The Trial Court had also gone through the Report of the Assistant Commissioner of the State Taxes, Diphu, Karbi Anglong, which states that the documents are found to be genuine.

5. He further submitted that the petitioner has even stated in his affidavit that, if the zimma of said areca nuts is granted to him, he shall not use it for human consumption. Thereafter, the Id. JMFC, Karbi Anglong forwarded the matter to the Superintendent of Police, Karbi Anglong, Assam (in short SP, Karbi Anglong) to consider the zimma of the seized areca nuts in terms of the "S.O.P." dated 16.09.2021 by directing him to verify the documents and authenticity of the documents of ownership and to report the Court accordingly. The Id. JMFC, Karbi Anglong also directed the petitioner to approach the SP, Karbi Anglong along with the documents and prayer for zimma. And thereafter, the matter was fixed for report on 04.08.2023.

6. Mr. Murry, learned counsel for the petitioner also submits that the petitioner is a registered Trade license holder and he was running a business as a Proprietor of "Mahato Marketing" and his license has been issued by the concerned Authority of Dimapur Municipal Council, Dimapur, Nagaland bearing Registration/License No.4187/19 dated 05.04.2020 which is valid up to 31.03.2024. Vide said license, he

was permitted to do trade or business relating to forest, agriculture products including vegetables wholesale. The petitioner used to purchase the areca nuts from various sources and he used to sell those areca nuts to various customers including M. H. Traders who is a wholesaler/retailer/supplier of supari and spices. The petitioner also received an amount of Rs. 52 lakhs during the period between 10.03.2023 to 10.04.2023 from the aforesaid M. H. Traders in course of said business transaction between them. He has also furnished all the invoices and details of onward supply etc. before the Id. JMFC which were verified by the authority concerned and they had submitted a report stating that all the documents submitted by the petitioner were found to be genuine one.

7. However, it is contended by the informant that the seized areca nuts had been suspected to be stolen or smuggled by the driver of the vehicle without paying custom tax and other documents to the Government for which the Government is facing huge tax loss. Also, the seized areca nuts were suspected to be Burmese origin and thus, with such an allegation the vehicle loaded with supari was intercepted by the Police. Accordingly, a case was registered as Dillai P. S. 29/2023 under Sections 420/379/411 of IPC.

8. He also submits that though the report was called for, by the Id. JMFC, Karbi Anglong from the SP, but, the SP could not furnish the report and only after issuance of several reminder, on 28.08.2023 the SP submitted a report on 12.09.2023 along with a report received from SI (P), Arindom Borah dated 07.09.2023 purported to have been issued by M. H. Traders. As per the report dated 07.09.2023, submitted by the SI (P), Arindom Borah, it has been stated that he had physically verified the M. H. Traders and found that said traders had not issued any letter to the petitioner, i.e. "Mahato Marketing" for purchase of supari/beetle nut either raw or damaged and they does not know any M/S Mahato Marketing.

9. On the basis of the report submitted by the SI (P), Arindom Borah, through the

SP, Karbi Anglong on 12.09.2023, the Id. JMFC, Karbi Anglong dismissed the prayer for zimma petition of the petitioner, after perusal of the record in connection with zimma petition No. 3130 arising out of PRC Case No.78/2023. From the report of SP, Karbi Anglong, the claim could not be verified to the satisfaction and thus, considering the same, the Id. JMFC, Karbi Anglong rejected the zimma petition due to non satisfaction of SP regarding the claim of the present petitioner.

10. It is further submitted by the learned counsel for the petitioner, Mr. Murry that the Id. JMFC, Karbi Anglong passed the rejection order of zimma petition only on the basis of a report submitted by SP, which was obtained through the S.I (P) Arindom Borah on 07.09.2023. He further submits that there was no physical verification of the genuineness of the claim as the M. H. Traders is situated at Gujrat and the police from the Karbi Anglong could not verify the entire matters within a very short time. It is also submitted that only on the basis of a report received from M. H. Traders, the genuineness or ownership of the claim cannot be verify by the SP without going into further details of other documents which were supplied and which were stated to be genuine by the authority concerned. Though, a report received from the M. H. Traders has stated that the company had not issued any letter to the petitioner, i.e. "Mahato Marketing" for purchase of supari/beetle nut either raw or damaged and the does not know any M/S Mahato Marketing, but, here the question arises that without verification of all the documents including the tax invoices etc how the SP can submit a report regarding genuineness of the claim only on the basis of a report submitted by the SI (P).

11. Accordingly, it is submitted by the learned counsel for the petitioner that without any physical verification or without going into detail verification of all the documents, the Id. JMFC, Karbi Anglong rejected the zimma petition only on the basis of a report submitted by SP, Karbi Anglong which was obtained through the S. I. (P), Arindom Borah. Thus, the learned counsel for the petitioner prays before this Court to direct

the SP to verify the matter afresh by setting aside the order of rejection passed by the Id. JMFC, Karbi Anglong.

12. In this regard, Mr. Borthakur, learned Additional Public Prosecutor has submitted that it is the claim of the petitioner is that the entire consignment supari loaded were supposed to be supplied to the M. H. Traders, but, the said Traders after physical verification has submitted that they have never purchased any supari/beetle nut either raw or damaged from M/S Mahato Marketing. Thus, the SP, Karbi Anglong submitted a proper report before the Id. JMFC, Karbi Anglong as per the guidelines of the SOP provided by the Government and thus, no illegality has been committed by the learned Court below while dealing with the zimma petition.

13. After hearing the submissions made by the learned counsels of both sides, as well as after perusing the entire facts and circumstances of the case record and the relevant documents placed along with the petition, it is seen that all the documents were verified and it was reported to be genuine. Further, the seized areca nuts were supposed to be delivered to M. H. Traders, however, the said trader has stated that they had not purchase any supari/beetle nut either raw or damaged from the "Mahato Marketing" and also they do not know any M/S Mahato Marketing. The petitioner has submitted various documents and tax invoices to prove his ownership, thus, the entire claim of ownership of the petitioner cannot be outrightly rejected only on the basis of the report received from the M. H. Traders.

14. In view of above, the petitioner is hereby directed to file fresh petition for zimma before the Id. JMFC, Karbi Anglong, and the Trial Court shall direct the SP, Karbi Anglong to verify all the documents supplied by the petitioner to establish his genuineness of his claim over the seized areca nuts as per the guidelines made in the SOP. And the learned Court below shall, accordingly, dispose of the matter in accordance with law.

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

JUDGE

Comparing Assistant