

GAHC010048852024



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

Case No. : Crl.Rev.P./97/2024

AZHAR HUSSAIN
S/O ABDUL JALIL
VILL- LAMAJUAR, P.S. BADARPUR
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

28.03.2024

Heard Mr. H.R. Choudhury, learned counsel appearing for the petitioner.
Also heard Mr. B. Sarma, learned Addl. P.P., Assam appearing for the State respondent.

2. By way of this petition filed under Section 401 read with 482 Cr.P.C, the petitioner has sought setting aside and quashing of the impugned order dated 06.02.2024 passed by the learned Addl. Chief Judicial Magistrate, Karimganj in Badarpur P.S. Case No. 347/2023 rejecting the zimma prayer of the betel nuts of the petitioner.
3. Mr. B. Sarma, learned Addl. P.P. submits that the report dated 26.03.2024 received from the Investigating Officer indicates that the expert report of District Agricultural Office and the FSL report has been received.
4. It appears that as per the aforesaid FSL report, the sample of the seized betel nuts is opined to confirm to the prescribed standards as per Food Safety Regulations with respect to the tests carried out. Further, in terms of the agricultural report of the expert, it appears that the betel nuts are not local in nature.
5. Section 451 and 457 of CrPC, 1973 is reproduced hereunder for ready reference:-

“451. Order for custody and disposal of property pending trial in certain cases.—When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, "property" includes—(a) property of any kind or document which is produced before the Court or which is in its custody; (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. Procedure by police upon seizure of property.—(1) Whenever the seizure of property by any police officer is reported to a Magistrate

under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. (2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

6. The Apex Court in the case of ***Sunderbhai Ambalal Desai vs State of Gujarat*** reported in ***(2002) 10 SCC 283***, while dealing with disposal of seized materials irrespective of whether it is an application under Section 451 or an application under Section 457 of Cr.P.C. has laid down the following propositions of law:-

- A. That the application for zimma of seized material shall be dealt expeditiously and judiciously with the object that the owner of the seized article should not suffer for it being remaining unused or by its misappropriation.
- B. Whatever the situation be, it is of no use to keep the seized materials at police station for a long period.
- C. If proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before Court during trial.
- D. To protect the interest of the investigation/trial, the seized article can be handed over to the applicant by preparing detail and proper panchnama of such article, taking photographs of such article and a bond that such article would be produced if required at the time of trial/investigation. The Court for this

purpose, may take proper security also.

7. In the present case, the zimma application of the petitioner was rejected by the Court of Addl. Chief Judicial Magistrate, Karimganj, vide order dated 06.02.2024 primarily on the ground that the reports of the expert and FSL were not available. Since, the aforesaid reports are now available, this Court is of the considered view that this matter can be disposed of with a direction for a fresh consideration of the zimma application of the petitioner.

8. Accordingly, in view of the aforesaid, the impugned order dated 06.02.2024 passed by the learned Addl. Chief Judicial Magistrate, Karimganj in Badarpur P.S. Case No. 347/2023 is hereby set aside and quashed and the matter is remanded back to the Court of the Addl. Chief Judicial Magistrate, Karimganj to consider the zimma petition of the petitioner afresh in terms of the determination made in ***Sunderbhai Ambalal Desai*** (supra) and in accordance with law.

9. Accordingly, this Criminal Revision Petition stands disposed of.

10 A copy of the report dated 26.03.2024 is kept on record.

JUDGE

Comparing Assistant