

GAHC010049572024



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

Case No. : Crl.Pet./266/2024

ANOWAR HUSSAIN LASKAR
S/O ALIM UDDIN LASKAR, VILL -LAILAPUR, BHAGA BAZAR, DIST-
CACHAR, ASSAM, PIN-788120

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. N H BARBHUIYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 15.05.2024

Heard Mr. N.H. Barbhuiya, learned counsel for the petitioner and Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State respondent.

2. In this petition, under Section 482, Cr.P.C., the petitioner, namely, Anowar Hussain Laskar has challenged the correctness or otherwise of the order dated

08.01.2024, in connection with Dholai P.S. Case No. 49/2022, passed by the learned Chief Judicial Magistrate, Cachar, Silchar.

3. It is to be noted here that vide impugned order dated 08.01.2024, the learned Chief Judicial Magistrate, Cachar, Silchar has modified the order passed by the Judicial Magistrate 1st Class, Cachar, Silchar, dated 31.07.2023 in Dholai P.S. Case No. 49/2022 and orders dated 07.09.2023 and 16.09.2023.

4. The background facts, leading to filing of this present petition, are adumbrated herein below:

“The petitioner is a businessman of Cachar, Silchar and he deals with the business of betel nuts/areca nuts. On 07.02.2022, the Officer-in-charge of Dholai P.S., in connection with Dholai P.S. Case No. 49/2022 had conducted search and seized 2090 bags of areca nuts from the godown of the present petitioner. Thereafter, the petitioner had filed one petition before the Court of learned Judicial Magistrate 1st Class, Cachar, Silchar, seeking custody of the aforesaid seized areca nuts. Then, vide order dated 09.05.2022 and subsequent orders dated 31.07.2023 and 07.09.2023, the learned Judicial Magistrate 1st Class, Cachar, Silchar had ordered the I.O. of the case, to release the seized areca nuts in favour of the petitioner imposing following conditions:

- (i) He shall dispose of the said areca nuts without causing any risk to the public health;
- (ii) He shall not use the said areca nuts for the purpose of human consumption; and
- (iii) He shall restore the said areca nuts or pay the zimma bond amount if the interim zimma is not made absolute at the conclusion

of the trial.

But, in spite of the direction given to the I.O. by the learned Judicial Magistrate 1st Class, Cachar, Silchar, the I.O. had not released the seized areca nuts in favour of the present petitioner. Thereafter, vide impugned order dated 08.01.2024, the learned Chief Judicial Magistrate, Cachar, Silchar, after hearing the matter, had modified the conditions so imposed by the learned Judicial Magistrate 1st Class, Cachar, Silchar, as under:

- (i) The rightful owner shall receive the custody of the seized areca nuts on furnishing bank guarantee of Rs. 9,00,000/- only to the satisfaction of the I.O. concerned;
- (ii) The zimmaradar must ensure that the seized areca nuts shall not be used for human consumption; and
- (iii) The zimmaradar shall not dispose of the seized areca nuts without prior permission of the I.O. concerned.

Thereafter, the petitioner had approached the I.O. concerned and also the Superintendent of Police, Cachar, Silchar, for releasing the seized areca nuts, but, the said areca nuts were not released in his favour. Being aggrieved, the petitioner has approached this Court by filing the present petition under Section 482, Cr.P.C."

5. Mr. Barbhuiya, learned counsel for the petitioner submits that the impugned order dated 08.01.2024 suffers from manifest illegality as the learned Chief Judicial Magistrate has no power to modify the conditions so imposed by the learned Judicial Magistrate 1st Class. Secondly, Mr. Barbhuiya, the learned counsel for the petitioner submits that even then the petitioner is ever ready to comply with the conditions so imposed by the learned Court below, vide order

dated 08.01.2024. Further, Mr. Barbhuiya submits that the petitioner has already contacted one industry, situated at Darjeeling, West Bengal for selling the aforesaid areca nuts for industrial purpose. But, in spite of his request, the I.O. concerned and also the Superintendent of Police, Cachar, Silchar have not released the articles in his favour. Referring to the SOP, dated 16.09.2021, issued by the Addl. DGP, CID, Assam at Clause No. 15, Mr. Barbhuiya, the learned counsel for the petitioner submits that by not releasing the seized areca nuts in the favour, the I.O. and the Superintendent of Police have violated condition No. 15 of their own SOP and as such, the learned counsel for the petitioner submits that the I.O. concerned or the Superintendent of Police as the case may be directed to verify the claim so made by the petitioner, pursuant to Clause No. 15 of the SOP, or to modify the conditions so imposed by the learned Chief Judicial Magistrate, Cachar, Silchar.

6. On the other hand, Mr. B.B. Gogoi. Learned Additional Public Prosecutor submits that necessary direction may be issued to the I.O. concerned and to the Superintendent of Police, Cachar, Silchar to comply with Clause 15 of the SOP after getting the claim of the petitioner verified from the concerned industry, to which the petitioner is willing to sell the seized areca nuts.

7. Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record and also perused the orders passed the learned Judicial Magistrate 1st Class, Cachar, Silchar and the impugned order dated 08.01.2024, passed by the learned Chief Judicial Magistrate, Cachar, Silchar and also perused the SOP, specially Clause No. 15 of the OP dated 16.09.2021.

8. It is not in dispute that 2090 bags of areca nuts were seized in connection

with Dholai P.S. Case No. 49/2022, under Section 120B/420/379/411, IPC by the I.O. concerned from the godown of the petitioner. Further from the materials available on the record, it appears that the seized areca nuts are unfit for human consumption, for which the petitioner is willing to sell the same to one industry situated at Darjeeling, West Bengal for industrial purpose. But, the same has not been released by the I.O. concerned and also by the Superintendent of Police, Cachar for the reasons best known to them.

9. It is not in dispute that the seized articles are perishable items and unless it is disposed of in time, the same will perish and will be rendered useless and consequently, it will cause huge loss to the petitioner.

10. Under the aforementioned facts and circumstance and as agreed upon by both the parties and without embarking into discussion in respect of merit of the impugned order passed by the learned Chief Judicial Magistrate, Cachar, Silchar, this Court is inclined to dispose of this petition by directing the petitioner to make a written prayer to the I.O. of the present case and also to the Superintendent of Police, Cachar, Silchar, on receipt of which the I.O. or the Superintendent of Police as the case may be, shall verify the claim of the petitioner and if the claim is found to be genuine, then the I.O. and the Superintendent of Police shall release the seized 2090 bags of areca nuts in favour of the petitioner, in compliance of the conditions so imposed by the learned Chief Judicial Magistrate, Cachar, Silchar, vide impugned order dated 08.01.2024, and also in compliance of the Clause 15 of the SOP.

11. The entire exercise has to be carried out by the I.O./Superintendent of Police within a period of two months from today.

12. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant