

GAHC010077332024



2024:GAU-AS:9674

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

Case No. : Crl.Rev.P./151/2024

SHAHIDUL SIKDAR
S/O AJGAR ALI
R/O VILL- BONIARAPARA, P.S. BARPETA,
P.O. GOREMARI, IN THE DISTRICT OF BARPETA, ASSAM, PIN-781314

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:THE STATE OF ASSAM
FOREST DEPTT.
REP. BY THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
DEPTT. OF FOREST
DISPUR
GUWAHATI-781006

Advocate for the Petitioner : MR. J KALITA, MR S AHMED,MR B HAZARIKA,MR. M R
SODIAL

Advocate for the Respondent : PP, ASSAM, MR. B SARMA, SPL. P.P., FOREST DEPTT. ,MR. P N
GOSWAMI, S.C., FOREST DEPTT.

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT & ORDER (ORAL)

Date : 26-09-2024

Heard Mr. J. Kalita, learned counsel for the petitioner Shahidul Sikder, who has filed this application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (CrPC for short) for setting aside and quashing the order dated 02.04.2024 passed by the learned Additional Chief Judicial Magistrate, Kamrup (M) in connection with Basistha Police Station Case No. 110/2024 (G.R. No. 994/2024) registered under Section 120-B/379 of the Indian Penal Code, 1860 (IPC for short) read with Section 24/21 of the Assam Forest Regulation, 1891 and directing to release of the timber which was loaded in the truck vide registration No. AS-2BC-9717.

2. Heard learned Additional Public Prosecutor Mr. B. Sarma for the respondent State.

3. The FIR unfolds that at the time of naka checking a truck bearing registration No. AS-28C-9717 approaching from Meghalaya side and loaded with timber was stopped and when the Investigating Team asked for the documents, the driver of the truck was unable to produce the documents. Suspecting that there was some illegality in transporting the logs, the truck was seized and the driver of the truck was arrested and seizure list was prepared and the signatures of the witnesses were taken at the place of occurrence and the loaded truck was driven along with the driver to the Police Station.

4. It is submitted by the learned counsel for the petitioner that the seizure list marked as Annexure-2 clearly reflects that timber was not seized separately.

Timber was seized along with the loaded truck and thus vide order dated 12.03.2024, the learned Magistrate was pleased to pass an order which is reproduced herein below verbatim :

“It is seen that the seized vehicle and loaded timber in this case is kept at open spaces since 22.02.2024 which may be detrimental to its condition. Moreover, I have also considered the fact that the I.O. has only produced the seizure list before this Court along with photographs and failed to produce the seized vehicle. Thus, in light of the apex Court judgment in Sunderbhai Ambalal Desai vs. State of Gujrat in (2002) 10 SCC 283, this Court deems it fit to pass the following order:

The I/O is directed to give zimma of vehicle no. AS-28C 9717 loaded with timber, One Oppo A79 5G, One original driving license bearing DL NO-AS1520160025092 and Cash Rs 3000/- to the registered owner after duly verifying the documents and being fully satisfied of his identity and claim over the vehicle and only after observing all necessary formalities and on executing a bond of present market value of the vehicle.

The I.O is directed to prepare a panchnama and take photographs clearly displaying the mobile and vehicle before giving zimma. The photographs are to be countersigned by the actual owner. The actual owner is to bear the expenses of the photographs.

The actual owner is further directed to produce the mobile and vehicle, as and when directed by this Court or any other Court. Further, the actual owner shall not dispose of the aforesaid mobile and vehicle in any manner and also not change the size, color, nature and shape of the aforesaid.

Inform the I/O accordingly.

Send the copy of this order to I.O. concerned P.S.

Petition Nos. 7406,7407 and 7408 are disposed of.

Send back the case record.”

5. It is contended that this order was reviewed by the same Court and vide

order dated 02.04.2024, learned SDJM (S) No. 2, Kamrup (M) passed the order reproduced herein below :

“C.R. put up today.

Seen the petition No. 44 filed by the petitioner Shahidul Sikder praying to pass an order to release the timber seized in the Instant case.

Heard the Id. Counsel for the petitioner as well as the Id. APP representing the State.

Perused the case record along with the petition.

Upon perusal, It appears that vide order dated 12.03.2024 only vehicle was granted zimma and vide order dated 27.03.2024, I.O. was directed to handover the said seized timber to Forest Department as per their prayer that there was no sufficient space at Jorabat O.P. for keeping the said Timbers.

Accordingly, the zimma pet. No. 44 is rejected and disposed off.

Send back the case record.”

6. It is contended that the learned Magistrate had earlier passed the order dated 12.03.2024 directing the IO to give zimma of the vehicle loaded with timber, one Oppo phone and one original driving license and cash of Rs.3000/- (Rupees Three Thousand) to the registered owner and the learned Court reviewed its own order by stating that only the vehicle was handed over to the owner of the vehicle whereas the seized timber was not handed over to the owner of the timber and the timber was directed to be handed over to the Forest Department vide order dated 27.03.2024.

7. On the contrary, learned Additional Public Prosecutor has submitted that

the order dated 12.03.2024 is very clear. The vehicle was only handed over to the owner of the vehicle and not the seized timber. The latter part of the order clearly reflects that the *IO is directed to prepare a panchnama and take photographs clearly displaying the mobile and vehicle before giving zimma. The photographs are to be countersigned by the actual owner. The actual owner is to bear the expenses of the photographs.* Thus, it is apparent from the order that only the vehicle has been given in zimma and it has been wrongly projected that the vehicle along with the timber have been given in zimma by drawing the attention of this Court to the seizure list marked as Annexure-2 of the petition.

8. I have scrutinized the scanned copies of the Trial Court Records and the order dated 27.03.2024 is reflected herein below verbatim :

“C.R. put up.

Seen the prayer of I.O. Inspector Bhaskar Jyoti Deka praying to pass an order for handing over seized timer to Forest department as there is no sufficient space at Jorabat Out Post for keeping the Timber seized in this case vide M.R. No. 98/2024

Heard both side and perused the petition.

Prayer of the I.O. is allowed. I.O. to do the needful as per proper provisions of law.

Send a copy of this order to the I.O. concerned.”

9. Learned counsel for the petitioner laid stress in his argument that this order was passed without hearing the petitioner but if the orders dated 12.03.2024, 27.03.2024 and 02.04.2024 are read in a seriatim, it is nothing but apparent that the IO was directed to hand over only the vehicle seized in connection with the aforementioned case, to the owner Thus, it cannot be

presumed that the learned Trial Court has reviewed its own order. There appears to be no illegality and impropriety in the order for the same to be set aside. The orders are very clear and there is nothing to be misconstrued that the vehicle loaded with the logs or timber was given in zimma to the petitioner or to the owner of the vehicle. Thereby, petition is dismissed as the petition is devoid of merits. However, the petitioner is at liberty to approach the proper forum for zimma of the timber along with the documents to prove his ownership of the timber.

10. In term of the above observation, this petition stands disposed of.
11. Send back the Case Diary as well as the Trial Court Record.

JUDGE

Comparing Assistant