

GAHC010079442024



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

**Case No. : Crl.Pet./460/2024**

KHAIRUL ISLAM  
S/O ABDUR RAHMAN  
R/O VILL- TELIACHAPARI  
P.S. RUPOHI  
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY THE LD. PP, ASSAM

**Advocate for the Petitioner : MR A SHARMA**

**Advocate for the Respondent : PP, ASSAM**

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

**ORDER**

**Date : 29.05.2024**

Heard Mr. A. Sharma, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Additional Public Prosecutor for the State respondent.

**2.** This is an application under Section 482 *read with* Section 451 of the Code of Criminal Procedure, 1973 against the order dated 27.03.2024, passed by the learned SDJM, Nagaon in Samaguri P.S. Case No. 72/2024, whereby the prayer for zimma of 22 numbers of cattle was rejected, which were seized by Samaguri Police in connection with Samaguri P.S. Case No. 72/2024, under Sections 379/411 of the Indian Penal Code *read with* Section 11 (1) (d) of prevention of Cruelty to Animal Act, 1960.

**3.** It is submitted by Mr. Sharma, learned counsel for the petitioner, that the present petitioner is the absolute registered owner of 22 numbers of cattle, which were seized by the Investigating Officer on 15.03.2024. After the seizure of an Oil Tanker Vehicle, 22 numbers of cattle were found inside the vehicle, which were subsequently kept under the custody of Gaousola, namely, M/S Kamdhenu Enterprise, and presently the cattle are lying in the open sky without any care and protection. The petitioner is a businessman by profession and he is running the business of cattle since long time and the cattle, which were seized in connection with this case, were purchased from weekly markets, namely, Barma Bazar and Ropahi Bazar, and he has the money receipt in regards to purchase of cattle. But he was not at all aware of the fact that those cattle were carried in an Oil Tanker and he came to know about the same only when he saw the news in T.V. channel. But the petitioner is no way connected in the alleged offence as stated in the F.I.R. The cattle were seized by Samuguri Police only on suspicion of theft, but he is a genuine purchaser of those cattle and he could not even return the money to the person from whom he took loan for purchasing the cattle. The petitioner has not illegally transported the cattle nor he had committed any offence of theft. Moreover, when the cattle were seized

by police, he produced the money receipt, but the Investigating Officer refused to accept the money receipts.

**4.** The learned counsel for the petitioner further submitted that on earlier occasion, the petitioner prayed for zimma of the cattle before the Court of learned SDJM, Nagaon, but his prayer was rejected by the learned Court below considering the report submitted by the Investigating Officer. He further submitted that he has all genuine money receipts regarding the purchase of 22 numbers of cattle and if the cattle are being kept further in the custody of the said Gaousola, the cattle may suffer due to non-availability of proper care and protection. In this context, he also relied on a decision of a Division Bench of this Court, passed in **Crl. Pet. No. 284/2022**, wherein it has been held that the Criminal Court has the jurisdiction to give custody of seized property/articles at the stage of investigation, when those seized property are not produced before the Court.

**5.** Mr. Baishya, learned Additional Public Prosecutor, has submitted in this regard that the I.O. has submitted the detail report, as called for, and as per the report of the I.O., it is seen that the documents, which were produced by the petitioner, may be the fake documents only to get back the stolen cattle which were recovered from an Oil Tanker. More so, prior to recovery of the cattle, the petitioner had not reported the matter before the Samuguri Police Station or the nearby police station regarding the missing of cattle, though the petitioner claim himself to be the genuine owner of the cattle, which were seized in connection with this case. Further, the I.O. has submitted that all the cattle were carried in an Oil Tanker which is not authorized to carry animal at any cost and it was

surprising to see that all 22 numbers of cattle were dumped so cruelly inside the tanker and that it was hardly possible for the cattle to move amongst themselves. The learned Additional Public Prosecutor further submitted that as per the report of the I.O., the oil tanker was also equipped with fan above the tanker which otherwise reveals that the tanker was frequently used for such illegal smuggling. The claimant may be the perpetrator of the entire crime who was trying to smuggle the cattle carrying them in a very cruel manner. The seized Oil Tanker vehicle was having Registration No. AS-01-CC-8260 and on inspection, 2 (two) number plates bearing Registration No. AS-09-C-7132 was found inside the tanker. Thus, reasonable doubt arises that the different registration numbers were applied for illegal smuggling of the cattle. Accordingly, the learned Additional Public Prosecutor has submitted that the I.O. raised objection in handing over the cattle to the present petitioner as the investigation is still in the nascent stage and some of the culprits are yet to be apprehend in connection with his case.

**6.** After hearing the submissions made by the learned counsels for both sides, I have also perused the case record and the report of the I.O.

**7.** As per the report of the I.O., it is seen that the cattle were dumped in an Oil Tanker and was carrying in a very cruel manner and the tanker is not supposed to carry any animal. More so, from the report of the I.O. as well as from the submission made by the learned Additional Public Prosecutor, it is seen that the oil tanker has 2 (two) number plates which may be used for illegal transportation of the cattle. It is the claim of the petitioner that he is the genuine purchaser of the cattle from various weekly markets and was supposed

to supply in various parts of the State, but there is no explanation as to how the cattle were carried in an Oil Tanker. If the petitioner is the actual owner or genuine purchaser of those cattle, he must be aware about the means of transportation of the cattle and without his knowledge, it is not possible to carry those cattle in an Oil Tanker that too in a very cruel manner.

**8.** In view of above and also considering the entire circumstances of this case as well as the report of the I.O, viz-a-viz the submission made by the learned Additional Public Prosecutor, I am of the view that this is not a fit case to allow the zimma of 22 numbers of cattle to the present petitioner and therefore, I do not find any reason to make any interference in the order dated 27.03.2024, passed by the learned SDJM, Nagaon in Samaguri P.S. Case No. 72/2024.

**9.** Resultantly, I do not find any merit in this petition and accordingly the same stands dismissed.

**10.** However, the petitioner will be at liberty to file fresh application for zimma in due course.

**11.** In terms of above, this criminal petition stands disposed of.

**JUDGE**

**Comparing Assistant**