

GAHC010086992024



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

Case No. : Crl.Pet./509/2024

MD. JOHUR UDDIN
S/OLATE MUJIBUR RAHMAN
R/O VILL- NO. 2 PANCHALI, P.S. LANKA, P.O. LASKAR PATHAR,
DIST.HOJAI, ASSAM, PIN-782446

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE PP, ASSAM

2:GANESH BARMAN
HEAD CONSTABLE
HEMREN POLICE STATION
DIST. WEST KARBI ANGLONG
ASSAM
PIN-78248

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent : MR. K. K. PARASHAR, ADDL. PP, ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. A. I. Uddin, Adv.
For the Respondents : Mr. K. K. Parashar, Addl.PP.
Date of Hearing : 03.05.2024
Date of Judgment : 22.05.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. A. I. Uddin, learned counsel for the petitioner. Also heard Mr. K. K. Parashar, learned Additional Public Prosecutor for the State.
2. The present application is filed under Section 482 of the Code of Criminal Procedure 1973 assailing an order dated 04.04.2024 passed by the learned Judicial Magistrate First Class, Hamren, West Karbi Anglong in Petition No. 37/2024 in connection with PRC No. 35/2024 corresponding to G.R. Case No. 29/2024 arising out of Hamren Police Station Case No. 03/2024 registered under Sections 428 IPC read with Section 13 of the Assam Cattle Preservation Act 2021 also read with Section 11(1) (a) (d) (e) (h) of the Prevention of Cruelty to Animals Act 1960, whereby and whereunder the learned Magistrate while allowing petition No. 37/2024 filed under Section 451 of the Code by the petitioner praying for custody of his Bolero Pick UP vehicle bearing Registration No. AS-31-C-0882 imposed a condition to furnish bank guarantee equivalent to the market value of the vehicle.
3. This Court under its Judgment and Order (CAV) dated 22.05.2024

passed in CrI.Rev.P./143/2024, laid down the following propositions of law:-

- I. Sub Section 14 of Section 7 of the Act, 2021, Sub Sections 3, 4 and 5 of Section 11 of the Act, 2021 and Section 102 of the Code of Criminal Procedure, 1973, is enacted to facilitate investigation and to give the police officers the power to gather evidence to support the allegations made, which includes search, seizure and detain etc.
- II. The release of seized material as envisaged under sub Section 5 of Section 11 of the Act, 2021 and envisaged under Section 102 of Cr.P.C., are relatable only to the stage of seizure under Sub Section 3 of Section 11 of the Act, 2021 and under Chapter VII of the Cr.P.C., respectively. And, therefore, such prescription cannot be made relatable to a provision of disposal of property during enquiry and trial.
- III. The Act, 2021 is silent as regards disposal of property during enquiry and trial and that being the position and in absence any specific prescription in the Act, 2021, the provision of Chapter XXXIV of the Code, 1973 shall be applicable so far the same relates to disposal of property, seized under the provision of Section 11 of the Act, 2021. Therefore, when application under Section 451 or Section 457 of Cr.P.C. is made, the principles laid down in **Sunderbhai Ambala Desai –Vs- State of Gujrat** reported in **(2002) 10 SCC 283** shall be made applicable.
- IV. The prescription made under sub section 5 of Section 11 of the Act, 2021 is relatable only to a situation/stage when the authorised

officer(s) exercises its power under sub sections 3 of Section 11 of the Act, 2021 or under sub section 14 of Section 7 of the Act, 221 and reports the same to the Judicial Magistrate First Class in terms of sub section 4 of Section 11 of the Act, 2021.

V. A revision either under Section 401, 397 or 482 of Cr.PC. shall not be maintainable against an order passed in exercise of power under sub section 5 of Section 11 of the Act, 2021 and appropriate remedy shall be an appeal under Section 12 of the Act, 2021.

VI. No appeal shall be maintainable under section 12 of the Act, 2021 when a determination is made in an application filed under Section 451 or Section 457 of the Cr.P.C. as the case may be.

4. Now, coming to the case in hand, it is seen that 10 numbers of bullocks were seized from a vehicle bearing registration No. AS-31-C-6887 which is a Bolero Pick-up van. 10 numbers of bullocks were seized from a vehicle bearing registration No. AS-02-DC-1999, 9 numbers of bullocks were found in a vehicle bearing registration No. AS-02-DC-4262, 8 numbers bullocks were found in a vehicle bearing registration No. AS-02-DC-4043 and 10 numbers of bullocks were found in a vehicle bearing registration No. AS-31-C-6887.

5. The present petition relates to the vehicle bearing registration No. AS-31-C-0882 from which 10 numbers of bullocks were recovered.

6. As recorded hereinabove, the present application is filed assailing the order dated 04.04.2024 passed by the learned Magistrate 1st Class, Hamren, West Karbi Anglong, whereby the zimma of the Bolero vehicle was

granted with a condition that the petitioner is to furnish a bank guarantee equivalent to the market value of the vehicle in terms of Section 11(5) of the Act, 2021. The investigating agency has already filed charge sheet. At paragraph 5 of the petition, it is stated that the zimma was sought under the provision of Section 451 of the Code of Criminal Procedure, 1973.

7. Thus, in view of the determination made hereinabove, when the application for zimma is filed after the charge sheet was laid, the consideration of grant of zimma cannot be said to be an exercise of power under sub section 5 of Section 11 of the Act, 2021 and therefore, the insistence of bank guarantee as prescribed under Sub Section 5 of Section 11 of the Act, 2021 shall not be applicable. Accordingly, as determined hereinabove, this Court is of the view that the impugned order dated 04.04.2024 is not sustainable under law inasmuch as on the date of filing of the application, the investigation was already concluded and same is discernible from the order of the learned Magistrate itself. In view of the aforesaid, the present petition stands allowed by setting aside the order dated 04.04.2024 passed by the learned Judicial Magistrate First Class, Hamren, West Karbi Anglong and it is directed that the zimma of the seized vehicle bearing registration No. AS-31-C-0882 be granted to the registered owner/petitioner on the following terms and conditions:

- I. The investigating authority shall prepare proper panchnama of the vehicle and take photograph of such vehicle and get the signature of the owner or representative of the owner and the owner shall give a bond of Rs.5,00,000/-.
- II. The petitioner/owner shall not change the colour or structure of

the vehicle and shall not also dispose of the vehicle till disposal of the case.

III. The petitioner/owner shall produce the vehicle before the I/O or concerned authority as and when called for the purpose of investigation or trial.

8. This criminal petition stands disposed of.

JUDGE

Comparing Assistant