

GAHC010094022024



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

Case No. : Crl.Rev.P./192/2024

AMIR HUSSAIN AND ANR
S/O HAZARAT ALI, R/O VILL- NO. 2 BHALATAL, P.O.-BHALATAL, P.S.-BIJNI,
DIST-CHIRANG, PIN-783390

2: JANGSER ALI
S/O FAZAR ALI
R/O VILL- NO. 2 BHALATAL
P.O.-BHALATAL
P.S.-BIJNI
DIST- CHIRANG
PIN-78339

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:INCHARGE OF THE GOSHALA PORICHALANA COMMITTEE
DOWKIJHAR
BAGMARA
CHOURIGURI
GAON PANCHAYAT
P.O.- P.S.-BONGAIGAON
DIST- BONGAIGAON
ASSAM
PIN-78338

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Ms. U. Nanda, Adv

For the Respondents : Mr. D. Das, Addl.PP.

Date of Hearing : 28.05.2024

Date of Judgment : 28.05.2024

JUDGMENT & ORDER (ORAL)

1. Heard Ms. U. Nanda, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State.
2. The present application under Section 397 and 401 of the Code of Criminal Procedure, 1973 is filed assailing order dated 04.04.2024 passed by the learned Judicial Magistrate 1st Class, Bijni in connection with Panbari P.S. Case No. 18/2024, whereby, the learned Magistrate was pleased to reject the prayer for zimma of 5 (five) numbers of cattle seized in connection with the aforesaid case.
3. By the impugned order dated 04.04.2024, the learned Magistrate had refused to grant zimma of the seized cattle to the petitioner taking note of the fact this Court under its judgment and order dated 02.03.2023 passed in CrI. Pet. No. 284/2022 along with other criminal petition, held that "at the investigation stage, seized articles cannot be released by a Court under Section 451 Cr.P.C. However, under Section 457 Cr.P.C., the Criminal Court has the jurisdiction to give custody of the seized property/articles at the stage of investigation, when those seized property are not produced before the Court.
4. Ms. Nanda, learned counsel for the petitioners submits that the seized cattle were duly purchased from the registered cattle market and the petitioner had

already produced the receipt of purchase before the I.O., and that being the position, the learned Magistrate could not have rejected the zimma of the cattle.

5. Mr. D. Das, learned Additional Public Prosecutor, Assam for the respondents relying on the determination made by a Hon'ble Division Bench in Criminal Petition No. 284/2022 and other connected Criminal Petitions preferred by the State argues that the Hon'ble Division Bench after elaborately dealing with all previous determinations made by the Hon'ble Apex Court held that at the investigation stage, seized article cannot be released by a Court under Section 451 of Cr.P.C. It was further held that under Section 457 Cr.P.C., the Criminal Court has the jurisdiction to give custody of the seized property/article at the stage of investigation when those seized property are not produced before the Court and therefore, it is contended that in the present case, the custody could not have been granted. The Hon'ble Division Bench at paragraph 25 and 45 held as follows:-

“25... On reading the various judgments enumerated in the foregoing paragraph and the provisions of Chapter XXXIV of the Code of Criminal Procedure, we are of the view that the Court can make an order for the proper custody of the seized property under Section 451 Cr.P.C only after a charge-sheet is filed. Section 452 Cr.P.C is to be applied for disposal of property, only at the conclusion of an inquiry or trial. Section 459 Cr.P.C, on the other hand, allows for the Court to sell the seized property, if the person entitled to possession of the property is unknown or absent and the property is subject to speedy and natural decay or that the sale would be for benefit of the owner or the value of the property is less than Rs. 500/-.

45. In view of the reasons stated above, we answer the reference by holding that at the investigation stage, seized articles cannot be released by a Court under Section 451 Cr.P.C. However, under Section 457 Cr.P.C., 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”.

6. Such determination made by the Hon’ble Division Bench is a binding precedent upon this Court. It was also observed by the Hon’ble Division Bench that the Hon’ble Apex Court in the case of **Sundarbhai Ambalal Desai vs State of Gujarat** reported in **(2022) 10 SCC 283** did not go into the question whether Section 457 Cr.P.C. could be applied by a criminal Court during the stage of investigation. The Hon’ble Division bench further went to say that the Hon’ble Apex Court in the case of **Ram Prakash Sharma –Vs- State of Haryana** reported in **(1978) 2 SCC 491** did not deliberate on the scope of Section 457 of Cr.P.C. and accordingly expressed its conclusion as discussed hereinabove.
7. There is no iota of doubt that the decision rendered in Criminal Petition No. 284/2022 (**State of Assam –Vs- Ram Shankar Maurya**) is binding precedent for this Court as regards applicability and stage of filing application under Sections 451 and 457 of Cr.P.C. inasmuch as such interpretation was made after consideration of **Sundarbhai Ambalal Desai** (supra). However, at the same time, the principle as laid down by the Hon’ble Apex Court for disposal of seized materials is also binding upon all the Courts in terms of the mandate under Article 141 of the Constitution of India. The Hon’ble Apex Court 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.

8. Therefore, this Court while passing an order granting or refusing zimma under its revisional jurisdiction or the Magistrate in exercise of its power under Section 451 or 457 of Cr.P.C., is to follow the principles as laid down in the case of **Sundarbhai Ambalal Desai** (Supra).

9. Accordingly, in view of the aforesaid factual and legal backdrop, the impugned order dated 04.04.2024 passed by the learned Judicial Magistrate 1st Class, Bijni, Assam whereby the prayer for zimma of seized cattle were rejected in connection with Panbari Police Station Case No. 18/2024 under Section 379/411/34 of the IPC read with Section 13(1) of the Assam Cattle Preservation Act, 2021, is set aside and the present revision petition stands allowed following the principles as laid down in the case of **Sundarbhai Ambalal** (supra) and it is provided that zimma of the seized cattle be granted to the petitioner on the following terms and conditions:

I. The investigating authority shall prepare proper panchnama of the cattle and take photographs of such cattle and get the signature of the owner or representative of the owner and the owner shall give a bond of Rs. **2,00,000/-** and undertake that such cattle shall be produced as and when called for.

II. The petitioner/owner shall not sale out the cattle and shall not deal with the cattle with cruelty.

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

10. Accordingly, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant