

GAHC010110982024



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

Case No. : Crl.Rev.P./209/2024

SHAHANAZ BEGUM
D/O IKRAMUL HOQUE, R/O BARAPAKA, RUPAHIHAT, P.S.-RUPAHIHAT,
DIST- NAGAON, ASSAM, PIN-782125

VERSUS

STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MS. G BORAH, M.A. ISLAM, MR H A RASHID, MR A A DEWAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

06-11-2024

Heard Ms. G. Borah, learned counsel for the petitioner and Ms. S. Jahan, learned Additional Public Prosecutor, Assam for the respondent State.

2. As per the FIR dated 08.03.2024 lodged before the Officer-in-Charge of Gossaigaon Police Station by an Assistant Sub-Inspector of Police serving at Grahampur Out Post, the case is that on the night of 07.03.2024 on receipt of a specific information that a vehicle

coming from the side of West Bengal towards Srirampur via Naisapur village is illegally transporting cows for slaughtering purpose, police personnel from the said police Outpost rushed to village Naisapur wherein, they found a vehicle bearing Registration No. AS-26-AC-0184 loaded with ten numbers of cattle (cows) without having any valid documents. The police personnel also found that the driver and the helper of the said vehicle had already fled away from the place of occurrence. Thereafter, police received another information from the reliable source that one more vehicle, which was guiding the vehicle that was found at Naisapur village with ten cows, has been noticed in the Grahampur area loaded with numbers of cattle. Immediately, those police personnel from Grahampur Outpost proceeded to the concerned area and found the Seltos G1.5 6MT HTK PLUS vehicle bearing registration No.AS-01-FM-6628 during the last part of the night of 07.03.2024 and early morning of 08.03.2024, around 03:10 AM with two persons inside the said vehicle, who are from village Kochagaon under Rupahi Police Station of District Nagaon.

3. On checking their mobile phones police personnel from Grahampur Outpost obtained various information like photos, videos and UPI transactions relating to transportation of cattle and as such, both the persons, namely, (i) Jamal Uddin, son of Md. Rustom Ali Village-Gehua Chali, Police Station-Rupahi, District-Nagaon and (ii) Saiful Islam, son of late Muslimuddin, Village-Kochagaon, Police Station-Rupahi, District-Nagaon were apprehended. On their examination and from their WhatsApp messages in their mobile phones it was found that one Mustafa, resident of Village-Chalchali, Police Station-Rupahi, District-Nagaon and another, namely, Rejaul, resident of Purva Fulaguri, Police Station-Baxirhat, District-Cooch Behar, West Bengal, were found involved in the illegal business of smuggling of cattle. Accordingly, said FIR was registered as Gossaigaon P.S. Case No. 45/2024 under Sections 379/411/34 IPC read with Section 13(1)/14 of the Assam Cattle Preservation Act, 2021, corresponding to G.R. No. 48/2024.

4. In said Gossaigaon P.S. Case No. 45/2024, said Seltos G1.5 6MT HTK PLUS (Glacier White Pearl Colour) vehicle bearing registration No. AS-01-FM-6628 was seized.

5. The petitioner stated that she being the registered owner of said vehicle No. AS-01-FM-6628 filed a Zimma Petition No. 12/2024 in said Gossaigaon P.S. Case No. 45/2024 before the learned Sub-Divisional Judicial Magistrate, Gossaigaon praying for release of her said vehicle and to give its zimma to her. But the learned SDJM (M), Gossaigaon by order dated 22.04.2024 rejected the said Zimma Petition No. 12/2024 of the petitioner.

6. Hence, the petitioner, namely, Shahanaz Begum, daughter of Ikramul Hoque, resident of Barapaka, under Rupahihat Police Station of District-Nagaon, Assam has filed this petition under Sections 397 and 401 CrPC, read with Section 482 CrPC praying amongst others, to recall and/or to cancel the said order dated 22.04.2024 passed by learned SDJM (M), Gossaigaon rejecting her Zimma Petition No.12/2024 filed in said Gossaigaon P.S. Case No.45/2024 and further prayed to release her said Seltos G1.5 6MT HTK PLUS vehicle bearing registration No. AS-01-FM-6628 that has been seized in said Gossaigaon P.S. Case No.45/2024.

7. Petitioner has annexed a copy of the Registration Card of said Seltos G1.5 6MT HTK PLUS vehicle bearing registration No.AS-01-FM-6628 that has been issued in her name by the Registration Authority of Kamrup District, Motor Transport Department, Government of Assam.

8. The petitioner relying on the decision of the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat* reported in (2022) 10 SCC 283 submitted that the Hon'ble Supreme Court in the said case observed that — "*In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police station for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicle, if required at any point of time. This can be done pending hearing of application for return of such vehicles*".

9. Ms. Borah, learned counsel for the petitioner submitted that the learned SDJM (M), Gossaigaon in its order dated 22.04.2024 passed in Gossaigaon P.S. Case No. 45/2024 while rejecting her Zimma Petition No. 12/2024 failed to consider the said observation of

the Hon'ble Supreme Court and also failed to give specific direction to the Investigating Officer of said Gossaigaon P.S. Case No. 45/2024 to verify the actual ownership of the seized vehicle and to hand over its custody to its owner, i.e., to the petitioner herein.

10. By order dated 04.06.2024 the Court called for a report from the concerned Investigating Officer of said Gossaigaon P.S. Case No. 45/2024 as to whether, said vehicle bearing Registration No. AS-01-FM-6628 is required for investigation of the said case.

11. Perused the report dated 31.07.2024 of the Investigating Officer of said Gossaigaon P.S. Case No. 45/2024, placed before the Court today by Ms. Jahan, learned Additional Public Prosecutor, Assam.

12. Said report of the Investigating Officer of the Gossaigaon P.S. Case indicates that arrested accused duo, named above; during investigation of the case revealed that they had been using the said vehicle, seized in the case, regularly trespassing cattle that was known to its owner, and that the said vehicle No. AS-01-FM-6628 has been attached under Section 11 (11) of the Assam Cattle Preservation Act, 2021.

13. In the said report dated 31.07.2024, the Investigating Officer also stated that since the crime involved in said Gossaigaon P.S. Case No. 45/2024 is an organized one, therefore, the owner of the vehicle appears to have been engaged in smuggling of cattle and for its slaughtering purpose for monetary benefit and to stop such smuggling and slaughtering of cattle, which is prevented under the provisions of the Assam Cattle Preservation Act, 2021; the criminals involved in the racket of such cattle smuggling and slaughtering in the case required to be identified and if the vehicle seized in the case is released, it will not be possible to get the details of other accused persons involved in such criminal activities.

14. The Investigating Officer of Gossaigaon P.S. Case No. 45/2024 in his said report dated 31.07.2024 further submitted that if the said vehicle, seized in the case, is released and its zimma is given, then in all probability the offender(s) shall again use the said vehicle for similar offences that will hamper the society and also the investigation. Stating all those grounds, the Investigating Officer of Gossaigaon P.S. Case No. 45/2024 objected

for releasing of the said vehicle No. AS-01-FM-6628 seized in said Gossaigaon P.S. Case No. 45/2024.

15. On perusal of the said report dated 31.07.2024 of the Investigating Officer of Gossaigaon P.S. Case No. 45/2024 it can be seen that there is no mention of requirement of the said vehicle for further investigation of the case.

16. It is seen that the said Seltos G1.5 6MT HTK PLUS vehicle bearing registration No. AS-01-FM-6628 was seized by police on 08.03.2024 in said Gossaigaon P.S. Case No. 45/2024 and since then it is in custody of police.

17. If the said seized vehicle No.AS-01-FM-6628 is further kept unused in the Gossaigaon Police Station that too under the open sky, it will lead to its damage and shall diminish its value. Moreover, keeping the said vehicle under custody at Gossaigaon Police Station, it would not serve any useful purpose, rather it would result in constraints of space in the said Police Station.

18. Considering the above, the vehicle being in custody since 08.03.2024, various decisions of the Hon'ble Supreme Court, including the case of *Sunderbhai Ambalal* (Supra) regarding Zimma (custody) of vehicles seized in criminal cases and other provisions relating to it, this Court hereby directs that the Investigating Officer of said Gossaigaon P.S. Case No. 45/2024 shall forthwith find out the actual owner of said Seltos G1.5 6MT HTK PLUS vehicle bearing registration No. AS-01-FM-6628 that was seized in connection with said Gossaigaon P.S. Case.

19. Thereafter, on an approach of its actual owner, the said Seltos G1.5 6MT HTK PLUS vehicle bearing registration No. AS-01-FM-6628 shall be handed over to the actual owner, on furnishing a Bank Guarantee of ₹.4,00,000/- (rupees four lacs) by its actual owner before the Court of learned Sub-Divisional Judicial Magistrate (M), Gossaigaon and to the satisfaction of the said Court, if the said vehicle is not required for investigation of any other case.

20. Further, before releasing the said Seltos G1.5 6MT HTK PLUS vehicle bearing registration No. AS-01-FM-6628 to its actual owner, the Investigating Officer of said

Gossaigaon P.S. Case No. 45/2024 shall capture the videograph of the said vehicle, its engine number, its chassis number, copy of its registration certificate.

21. Moreover, the actual owner, to whom the said Seltos G1.5 6MT HTK PLUS vehicle bearing registration No. AS-01-FM-6628 is to be given zimma, shall have to produce it in proper condition as and when it is required during the trial of the case for necessary evidence and that the said zimmadar shall not alienate and/or transfer the said vehicle to anyone without the leave of the Court of learned S.D.J.M.(M), Gossaigaon. Furthermore, the said zimmadar shall not use the said Seltos G1.5 6MT HTK PLUS vehicle bearing registration No. AS-01-FM-6628 for commission of any criminal offence in future.

22. Copy of the report dated 31.07.2024 of the Investigating Officer of said Gossaigaon PS Case No. 45/2024, noted above, be kept as a part of the record of this case.

23. With the above observation and directions, this petition stands allowed to the extent above.

JUDGE

Comparing Assistant