

GAHC010113542024



2024:GAU-AS:13143

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

Case No. : Crl.Pet./658/2024

MD. JIYAU PASA
S/O LATE SALIM PASA, NALBARI TOWN, WARD NO-8, P.S. AND P.O.-
NALBARI, DIST-NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MD S HOQUE, MR. M DEKA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

25-07-2024

Heard Md. Saminul Hoque, learned counsel for the petitioner and Ms. Nandita Das, learned Additional Public Prosecutor, Assam for the State.

2. The Manager of M/s DA Motors, Rangia on 31.10.2023 at around 12:30 pm informed the Officer-in-Charge of Rangia Police Station that since 19.10.2023 a TATA Dumper bearing Registration No. AS-14C-1112 had been parked in front of their TATA motor workshop and though the owner/driver of the said vehicle was requested to take it away from the said place, in spite of that it was parked in front of their workshop for the last 10 days, which caused serious trouble for others to ingress/egress to the said TATA workshop.

3. The said information was accordingly entered in to as G.D. Entry No. 27 dated 31.10.2023 at Rangia Police Station. An Assistant Sub-Inspector (ASI) of Police of said Police Station was entrusted with the case and the concerned ASI proceeded to the place of occurrence, seized the said TATA Dumper bearing Registration No. AS-14C-1112 in presence of witnesses that was kept on abandoned condition by preparing seizure list dated 31.10.2023 and on 03.11.2023 the said seizure list was placed before the learned Sub Divisional Judicial Magistrate (M) (SDJM, in short), Rangia, Kamrup, Assam vide MR No. 210/2023 along with photograph of the said seized vehicle. On perusal of the said MR No. 210/2023 in GD Entry No. 27 dated 31.10.2023 the learned SDJM (M), Rangia by order dated 03.11.2023 recorded the same and returned the seizure memo to the concerned Investigating Officer directing the said authority to keep the copy of the same with the case record.

4. It is seen that the concerned Investigating Officer after seizing the said TATA

Dumper bearing Registration No. AS-14C-1112 informed its registered owner, i.e., the petitioner by post about the seizing of the said vehicle and also about placing of the seizure memo before the learned SDJM (M), Rangia and also informed him that the said vehicle after seizure, has been parked in a Parking lot at Rangia. Thereafter, the petitioner on 14.11.2023 filed a Zimma petition vide No. 672 before the learned SDJM (M), Rangia for zimma of his said TATA Dumper bearing Registration No. AS-14C-1112 that was seized by in Rangia Police Station GD Entry No. 27/2023.

5. However, the learned SDJM (M), Rangia by order dated 14.11.2023 considering the fact that the matter is in the investigation stage and that the said seized vehicle was produced before the said Court vide MR No. 210/2023 and that during the stage of investigation of the case, the said Court under Section 451 CrPC cannot release the vehicle involved in the case. The said Magistrate also observed it is only the criminal Court under Section 457 CrPC has the jurisdiction to give custody of such seized property/article at the stage of investigation when such seized property is not produced before the Court. For the reasons above, the learned SDJM(M), Rangia by order dated 14.11.2023 rejected the Zimma Petition No. 672 preferred by the petitioner for zimma of his said TATA Dumper bearing Registration No. AS-14C-1112.

6. Against the said order dated 14.11.2023 of the learned SDJM(M), Rangia, the petitioner preferred a criminal revision petition before the learned Additional Sessions Judge, Rangia, Kamrup being Criminal Revision No. 08/2023. After hearing the learned counsels for the parties and considering the Judgment dated 08.04.2024 of a Co-ordinate Bench of this Court passed in Criminal Petition No. 284/2022 as well as the provisions of Sections 451 and 457 of the CrPC, the learned Additional Sessions Judge, Rangia, Kamrup, by order dated 14.11.2023 rejected the said Criminal Revision Petition No. 08/2023 of the petitioner upholding the order, dated 14.11.2023 passed by learned SDJM(M), Rangia rejecting the interim zimma of the said TATA Dumper bearing Registration No. AS-14C-1112 that was seized in said Rangia P.S. GD Entry No. 27/2023 dated 31.10.2023.

7. Hence, this criminal petition by the petitioner.

8. By order dated 07.06.2024 a report from the concerned Investigating Officer of Rangia P.S. G D Entry No. 27/2023 dated 31.10.2023 pertaining to the registered owner of the vehicle involved in the case and regarding zimma of the said vehicle involved in the case was called for.

9. Ms. N. Das, learned Additional Public Prosecutor, Assam today placed the relevant records of said Rangia P.S. GD Entry No. 27 dated 31.10.2023 in which the said TATA Dumper bearing Registration No. AS-14C-1112 was seized in presence of witnesses, which was parked in front of the TATA workshop on 31.10.2023 and also placed the communication dated 19.07.2024 of the concerned Investigating Officer of the case forwarded by the Officer-in-Charge of Rangia Police Station.

10. It is seen from the records of the case that the Investigating Officer of Rangia P.S. GD Entry No. 27/2023 dated 31.10.2023 informed the petitioner, i.e., the registered owner of said TATA Dumper bearing Registration No. AS-14C-1112 seized in said GDE No. 27/2023, which was placed before the learned SDJM (M), Rangia along with MR No. 210/2023 with the photograph of the said vehicle in his postal address. By the said communication dated 19.07.2024, the Investigating Officer of the case also placed before the Court that the petitioner did not approach the concerned police station to take zimma of the said seized vehicle till date.

11. On perusal of the records, it is seen that the concerned Investigating Officer of Rangia P.S. GD Entry No. 27 dated 31.10.2023 by his communication dated 07.11.2023 intimated the petitioner in his postal address by a letter through post regarding the seizure of said TATA Dumper bearing Registration No. AS-14C-1112 and the reasons for such seizure and also about the fact that the said seizure along with seizure memo and photograph of the said vehicle was placed before the learned SDJM (M), Rangia, Kamrup and that after seizing his said vehicle on 31.10.2023 it has been parked in a parking area at Rangia and requested the petitioner to approach the Court

of Hon'ble SDJM (M), Rangia for zimma of the said vehicle.

12. Probably after receipt of said letter from the concerned Investigating Officer of the case pertaining to seizure of said TATA Dumper bearing Registration No. AS-14C-1112 in said Rangia P.S. GD Entry No. 27 dated 31.10.2023, the petitioner filed the application being Zimma petition vide No. 672 for zimma of his said vehicle, noted above.

13. It is seen that the said TATA Dumper bearing Registration No. AS-14C-1112 was seized on 31.10.2023 in said Rangia P.S. G D Entry No. 27 dated 31.10.2023 and since then for last several months the said vehicle was parked in the parking lot at Raniga under the sunlight.

14. Considering the entire aspect of the matter, as the concerned Investigating Officer found the petitioner to be the registered owner of the said TATA Dumber bearing Registration No. AS-14C-1112, the petitioner is directed to approach the Officer-in-Charge of Rangia Police Station for zimma of the said TATA Dumper vehicle bearing Registration No. AS-14C-1112 seized on 31.10.2023 in connection with Rangia P.S GDE No. 27 dated 31.10.2023.

15. On his such approach, if the said vehicle is not required for further investigation of the case, after taking photograph/video recording of the vehicle along with Engine Number, Chassis Number and on proper identification of the petitioner that he is the registered owner of the said vehicle, shall be released the same to the petitioner on sufficient financial guarantee, on conditions that the petitioner shall not alienate/transfer and or alter the said TATA Dumper vehicle bearing Registration No. AS-14C-111; he shall produce the said vehicle before the police for necessary investigation of the case as well as before the Trial Court as and when required in connection with said Rangia P.S. GD Entry No. 27 dated 31.10.2023.

16. Consequently, in exercise of the power under Section 482 CrPC, the order of the learned SDJM(M), Rangia dated 14.11.2023 rejecting the Zimma Petition No. 672

preferred by the petitioner for zimma of his said TATA Dumper bearing Registration No. AS-14C-1112 as well as the order of the learned Additional Sessions Judge, Rangia, Kamrup, dated 14.11.2023 rejecting the Criminal Revision Petition No. 08/2023 of the petitioner, noted above, are set aside and quashed for the ends of justice.

17. With the above observation and direction this criminal petition stands allowed.

JUDGE

Comparing Assistant