

GAHC010114502023



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

Case No. : Crl.Pet./516/2023

RASHIDUL ISLAM
S/O ABDUL HALIM
R/O VILL- TEPORPARA
P.S. AMPATI
DIST. SOUTH WEST GARO HILLS, MEGHALAYA.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR R HUSSAIN

Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

21.06.2024

Heard Mr. R. Hussain, the learned counsel appearing for the petitioner. Also heard Mr. D. Das, the learned Addl. Public Prosecutor, Assam representing the State.

2. This is an application under Section 482 of the CrPC challenging the order dated 03.11.2022 passed by the learned Special Judge, Goalpara in Goalpara P.S. Case No.176/2022 corresponding to G.R. No.1005 of 2022.

3. In the aforesaid case, a 407 Truck bearing Registration No.ML-08H-3418 was seized by police for trafficking codeine based cough syrups from Dhubri to Meghalaya via Goalpara.

4. The petitioner being the owner of the said Truck filed an application praying for custody of the said vehicle.

5. The learned court below refused the prayer of the petitioner on two grounds. The first ground is that- the fitness/permit of the vehicle had expired and the second ground is that- the insurance policy of the vehicle also expired. The learned court below further observed that the ownership of the said vehicle was also transferred on 16.09.2022 i.e. after the occurrence of the case. Further the trial court has held that if the offence is proved against the accused of the case, then the vehicle would be required for confiscation.

6. I have considered the submissions made by the learned counsel of both sides.

7. In *Sunderbhai Ambalal Desai v. State of Gujarat*, (2002) 10 SCC 283, the Supreme Court has held as under:

“7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. court or the police would not be required to keep the article in safe custody;
3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

9. The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

10. To avoid such a situation, in our view, powers under Section 451 CrPC should be exercised promptly and at the earliest.”

8. Under the circumstances, I find that the impugned order dated 03.11.2022 passed by the learned Special Judge, Goalpara in Goalpara P.S. Case No.176/2022 corresponding to G.R. No.1005 of 2022 refusing the prayer of the petitioner, is bad in law and stands set aside.

9. The custody of the Truck bearing Registration No.ML-08H-3418 shall be given to its registered owner on verification of necessary documents.

The criminal petition stands disposed of.

JUDGE

Comparing Assistant