

GAHC010121912024



2024:GAU-AS:10441

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

Case No. : Crl.Rev.P./235/2024

SAMSUTDDIN AHMED @ SAMSUDDIN AHMED @ BOGA AND 4 ORS
S/O NASIRUDDIN AHMED, R/O VILL- HALADHIBARI, P.O.-NIZ-DANDUA,
P.S. AND DIST-MORIGAON

2: MD. SAHIDUL HOQUE
S/O BABUL HUSSAIN
R/O VILL- HALADHIBARI
P.S. AND DIST-MORIGAON

3: SUJAL HOQUE
S/O CHAHAB ALI
R/O VILL AND P.O.-HATIPARA
P.S.-CHAYGAON
DIST-KAMRUP

4: JEHERUL ISLAM
S/O ABBAS ALI
R/O VILL- RANGIA GAON
P.S.-SARTHEBARI
DIST-BARPETA

5: REKIB UDDIN
S/O NIJAMUDDIN ALI
R/O VILL- DAMARA PATHAR
P.S.-SONAPUR
DIST- KAMRUP (M

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. R ALI, MR A HOSSAIN,MR R L CHUTIA,MR. L MOHAN,MR. J I BORBHUIYA

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 24-10-2024

Heard Mr. J.I. Borbhuiya, learned counsel for the petitioners, who has filed this application under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (CrPC for short) challenging the order dated 06.06.2024 passed by the learned S.D.J.M.-II, Kamrup (M) in petition No. 1097/24 in connection with Basistha Police Station Case No. 424/2023 rejecting the prayer of the petitioner Nos. 1. Samsutddin Ahmed @ Samsuddin Ahmed @ Boga, 2. Md. Sahidul Hoque, 3. Sujal Hoque, 4. Jeherul Islam and 5. Rekib Uddin.

2. It is submitted that the petitioner No. 1 has prayed for zimma of Rs.4,51,000/- (Rupees Four Lacs Fifty One Thousand),

Petitioner No. 2 has prayed for zimma of Rs.4,30,000/- (Rupees Four Lacs Thirty Thousand),

Petitioner No. 3 has prayed for zimma of Rs.8,70,000/- (Rupees Eight Lacs Seventy Thousand),

Petitioner No. 4 has prayed for zimma of Rs.4,30,000/- (Rupees Four Lacs Thirty Thousand) and,

Petitioner No. 5 has prayed for zimma of Rs.4,50,000/- (Rupees Four Lacs Fifty

Thousand) i.e. a grand total of Rs.26,31,000/- (Rupees Twenty Six Lacs Thirty One Thousand), out of Rs.26,65,000/- (Rupees Twenty Six Lacs Sixty Five Thousand) belonging to the petitioners which were seized on 18.07.2023 in connection with the aforementioned case i.e. Basistha Police Station Case No. 424/2023.

3. Heard Mr. K.K. Das, learned Additional Public Prosecutor for the respondent State.

4. The FIR unfolds that on a tip off that two persons in a vehicle bearing registration No. AS-04FF-0527 proceeding from Brnyihat side to Nagaon was carrying money for illegal transportation of cattle. The Investigating Team then proceeded from Jorabat Outpost towards Jorabat Tiniali for a naka checking. At about 8:15 PM, a vehicle of Bolero make bearing registration No. AS-01-FF-0527 approaching from Shillong en route to Nagaon was intercepted at Jorabat Tiniali and after following the proper procedure, a naka checking was held and the driver Samsuddin Ahmed @ Boga and Sahidul Islam was found carrying cash of Rs.5,00,000/- (Rupees Five Lacs) in a white coloured plastic polythene packet, Rs.21,28,000/- (Rupees Twenty One Lac Twenty Eight Thousand) in a black coloured shoe box, Rs.34,500/- (Rupees Thirty Four Thousand Five Hundred) was recovered from Samsuddin Ahmed @ Boga, Rs.3000/- (Rupees Three Thousand) was recovered from Sahidul Islam and, Two mobile phones were recovered from Samsuddin Ahmed @ Boga and Sahidul Islam.

5. These articles were seized from the petitioner No. 1 Samsutddin Ahmed @ Samsuddin Ahmed @ Boga and the petitioner No. 2 Md. Sahidul Hoque. Rs.5,00,000/- (Rupees Five Lacs) wrapped in white coloured plastic polythene was found inside the vehicle concealed under the green carpet of front side seat near the driver seat whereas Rs.28,000/- (Rupees Twenty Eight Thousand) was found near back seat floor.

6. It is further stated in the FIR that suspicion arose when the petitioner No. 1 and 2 had indulged in criminal conspiracy with others and procured the money from sources of cattle smuggling for their wrongful gain. When confronted, the petitioners could not give satisfactory reply relating to the money seized from their possession (which was also concealed in a mysterious manner). The petitioners were brought to book due to the unaccounted money recovered from their possession.

7. It is submitted on behalf of the petitioners that the petitioners had sold cattle and had earned profit of Rs.2,00,000/- and thus, the petitioners were in possession of the money. Even if the money found in possession of the petitioners under mysterious circumstance was not accounted, the police has no jurisdiction except for the fact that the petitioners are answerable to the Income Tax Department. The petitioners were wrongly arrested in connection with this case.

8. It is further submitted that thus the petitioners were granted anticipatory bail vide order of this Court dated 22.09.2023 in connection with A.B. No. 3059/2023. It is further submitted that the impugned order was erroneously passed by the learned SDJM-II, Kamrup (M).

9. The petitioners have relied on the judgment & order of the Division Bench of this Court in *State of Assam & Anr. Vs. Ram Sankar Maurya & Ors. reported in 2023 (3) GLT 9* wherein it has been observed that :

“45. The fact that the Hon'ble Supreme Court has given a direction to the learned Criminal Court to consider release of seized property/articles at the investigation stage under Section 457 Cr.PC, shows that Section 457 Cr.PC. can be applied by the Criminal Court at the investigation stage for release of seized property. The submission made by the counsel for the appellant that the judgment of the Apex Court in Ram Prakash Sharma (supra) did not deliberate on the scope of Section 457 CL.PC, for granting custody of seized property at the stage of investigation cannot be accepted by us. While different situations and circumstances could arise in respect of seized property, one situation that can arise is when the police submit a final negative report and the police authorities fail to release custody of the seized property in terms of Section 102 Cr.P.C. In that case, there would be no remedy for the aggrieved person, except to approach the High Court under Section 482 Cr.P.C or Article 226 of the Constitution, which would be a difficult task for people living in far flung areas and those belonging to the weaker sections of society. In that event, Section 457 Cr.P.C would become redundant. After considering the decisions of the Apex Court and the various High Courts alongwith Section 457 Cr.P.C, we are of the considered opinion that the words "and such property is not produced before a Criminal Court during an inquiry or trial", appearing in sub-Section (1) of Section 457 Cr.P.C, cannot be restricted to mean that the stage of inquiry or trial is a condition precedent, for a Court to have jurisdiction for exercising power under Section 457 Cr.P.C. at the investigation stage. We are of the view that the words "and such property is not produced before a Criminal Court during the inquiry or trial" appearing in Section 457(1) Cr.P.C would have to be considered to be a reference to a stage of investigation and not the stage of inquiry or trial. Further, we are bound by the decision of the Apex Court in Ram Prakash Sharma (supra). In terms of Article 141 of the Constitution of India, as it is the mandate of the Constitution that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Also, in the case of Anil Kumar Neotia Vs. Union of India & Ors., reported in AIR 1988 SC 1353, it has been held that the High Court cannot question the correctness of the decision of the Supreme Court. Even though the points stated before the High Court were not considered by the Supreme Court.

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.

10. Relying on the decision of this Court in Ram Sankar Maurya (supra), learned counsel for the petitioners has submitted that money has to be released as per observation of this Court if a petition under Section 457 of CrPC is filed

before the Court.

11. Learned Additional Public Prosecutor has raised serious objection stating that investigation is still under progress. The Income Tax Department has issued notice to the petitioners but it is not clear from the Case Diary whether the petitioners have appeared before the Income Tax Department relating to the unaccounted money seized in connection with this case. The petitioners have taken a plea that they had purchased cattle and they had earned profits but the impugned order 06.06.2024 clearly reflects that the CD Record reveals that the location of the mobile of the petitioners show that they were not present in Golaghat Cattle Market but they were at the location showing that they were somewhere around Byrnihat area, Morigaon district and Kamrup (M). There are also incriminating materials in the Case Diary against the petitioners.

12. I have also scrutinized the Case Diary. At this juncture, I am hesitant to discuss the merits of this case as investigation is still under progress. Sound reasonings were recorded by the learned SDJM-II, Kamrup (M) while rejecting the petition with prayer for zimma of cash seized in connection with this case. At this juncture, the impugned order dated 06.06.2024 is not interfered with. There appears to be no justified ground to invoke the inherent jurisdiction of this Court. Petition is hereby rejected at this stage.

13. No order as to costs.

JUDGE

Comparing Assistant