

GAHC010132742024



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

Case No. : Crl.Pet./798/2024

TRIPLE I ACHUMI TRADERS
REGISTERED OFFICE AT HOUSE NO. 65, PADAM PUKHURI, BLOACK-4,
DIMAPUR, STATE-NAGALAND, REPRESENTED BY ITS PROPRIETOR- MRS.
INATOLI, AGE 42 YEARS, W/O MR. INAKHU ACHUMI, R/O HOUSE NO. 65,
PADAM PUKHURI BLOCK-4, DIMAPUR, NAGALAND, PIN-797116

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. K BORUAH, MS. P BORAH,MR. M ALAM

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 21-08-2024

Heard Mr. K. Baruah, learned counsel for the petitioner Triple Achumi Traders represented by its proprietor Mrs. Inatoli, who has filed this application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 (CrPC for short) challenging the order dated 18.03.2024 passed by the

learned Judicial Magistrate First Class, Bongaigaon (JMFC for short) in connection with Bongaigaon GRPS Police Station Case No. 22/2024 whereby the zimma of the seized areca nuts was rejected.

2. Heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam for the respondent State.

3. The FIR unfolds that a secret information was received by the Railway Police on 26.02.2024 at about 7:30 AM that a huge quantity of contraband Burmese supari areca nuts suspected to be smuggled was being carried from Dimapur Railway Station towards Khurda Road Orissa Railway Station by the Kanniyakumari Vivek SF Express vide DN Train No. 22504 in the SLRs. The aforementioned train was searched at Platform No 1A at 12:40 PM at Bongaigaon Railway Station and 40 + 40 plastic bags of betel nuts suspected to be smuggled Burmese supari were recovered from the front and rear SLR, respectively. The total weight of the betel nut was around 5600 kgs.

4. The petitioner is before this Court as the petitioner is the owner of the seized betel nuts. Annexure-A of the petition is the registration certificate of the petitioner's firm i.e. Triple I Achumi Traders. Annexure-D series are the railway luggage booking tickets and Annexure-C series are the E-Way bills to the transportation of the 40 + 40 bags of areca nuts but the areca nuts are not shown to be Burmese suparis.

5. It is submitted that the areca nuts were not Burmese suparis. The order dated 18.03.2024 has been erroneously passed by the learned JMFC. The petitioner has also relied on the decision of a Coordinate Bench of this Court in Criminal Petition No. 74/2023 wherein vide order dated 27.02.2024 it was observed that:

“8. The another aspect of the matter which is raised as regards quality of the edibility of seized article or quality of items of human consumption cannot be a concern while granting or rejecting of zimma of edible materials inasmuch as if the seized goods are used for human consumption after its release, the same will give a different cause of action for different authorities to take action against those persons in accordance with law and it cannot be within the jurisdiction and concern of the investigating authority.”

6. The petitioner has also relied on the decision of a Division Bench of this Court in Case No. Cus.Ref./1/2022 wherein vide order dated 02.06.2023 it was observed that :

“(xv) Coming to the point of quality of the seized betel nuts, it is reflected from record that immediately after the seizure, on examination by scientific expert, the goods were found to be fit for human consumption. However, in the second test conducted after almost seven months, the same goods were found to be not fit for human consumption. If that be so, it cannot be a concern of the Customs Authority to assail the decision of the Tribunal on the ground that the Tribunal ought not to have set aside the order of confiscation inasmuch as from the record itself it is established that the goods seized became unfit for human consumption during the period they were under seizure.

(xvi) If the confiscated goods are used for human consumption after its release, the same will give a different cause of action for different authorities to take action against those persons in accordance with law and it cannot be within the jurisdiction and concern of the Customs authority. Accordingly, this substantial question of law is also answered against the appellant and in favour of the respondents.”

7. Learned Additional Public Prosecutor has submitted that a report relating

to the seized areca nuts has been called for. It is submitted that the ownership cannot be ascertained. It is also submitted that the areca nuts were sent for examination and the food analysis report reveals that areca nuts are not fit for human consumption.

8. I have considered the submissions that the areca nuts are not fit for human consumption but the areca nuts can be used for other purposes like industrial purpose and making of aromatic articles etc. I have also relied on the decisions of this Court in the case of Cus.Ref./1/2022 and in CrI. Pet. 74/2023. It is submitted that the case is at the stage of investigation. Therefore, the order dated 18.03.2024 in connection with Bongaigaon GRPS PS Case No. 22/2024 is hereby set aside. The petitioner is at liberty to approach the proper forum with the relevant documents in support of her ownership of the areca nuts. The petitioner is directed to appear and place her prayer for zimma of the areca nuts and the petitioner's prayer for zimma may be considered in accordance with law.

9. In terms of the above observations, this Criminal Petition stands disposed of.

JUDGE

Comparing Assistant