

GAHC010146232024



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

Case No. : Crl.Pet./884/2024

KHWRWMSHAR BRAHMA
S/O SURESH CHANDRA BRAHMA
VILL- KASHIBARI, P.O. KHAGRABARI, P.S. KAJALGAON
DIST. CHIRANG (BTR), ASSAM, PIN- 783380

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
ENVIRONMENT AND FOREST DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE CHIEF WILD LIFE WARDEN
ASSAM ARANYA BHAWAN
PANJABARI
GUWHATI-781037

3:THE DIVISIONAL FOREST OFFICER

AIE VALLEY DIVISION
BONGAIGAON
P.O. AND DIST. BONGAIGAON
ASSAM
PIN-78338

Advocate for the Petitioner : MR. M KHAN, K MAINUDDIN,MS J AKTAR

Advocate for the Respondent : MR. P N GOSWAMI, Spl. P.P., Wildlife,

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 13.11.2024

Heard Mr. M. Khan learned counsel for the petitioners. Also heard Mr. R.R. Gogoi, learned Standing counsel, Forest Department.

2. This is an application filed under Section 528 of BNSS, 2023, against the impugned order dated 21.05.2024, passed by the learned Sessions Judge, Bongaigaon in connection with Sessions Case No. 01/2024, whereby prayer for zimma of the vehicle was rejected.

3. The brief facts of the case is that on 06.11.2023, the police personnel of Bongaigaon police station detected one Gecko (Lizard) near Bongaigaon College gate from a white colour Santro vehicle bearing Regd. No. AS-26-B-7515. Thereafter, a case was registered vide Offence Report No. BGN/06 dated 07.11.2023 under Section 9, 39, 48(A), 49(B), 50, 51 and 57 of Wildlife Protection Act, 1972 and Section 379 IPC.

4. The learned counsel for the petitioner submits that the FIR named accused persons were released on bail by this Court on 05.02.2024. Thereafter, a petition vide No. 375/2024 filed before the learned Special Judge, Bongaigaon seeking zimma of the seized vehicle bearing No. AS-26-B-7515 and after going through the report, the learned trial court rejected the zimma petition vide order dated 21.05.2024. Hence, the present petition has been filed.

5. It is further submitted that the seizing officer in his report stated that the vehicle in question is necessary for further investigation and in fact, the charge sheet has already been laid in this case and the case is in evidence

stage where some PWs have already been examined. Since the matter is in trial stage where production of the said vehicle may not be required and the vehicle lying under the custody of the forest officer since 06.11.2023. Hence, considering the background of the case, learned counsel for the petitioner has prayed that the zimma of the seized vehicle may be granted in favour of the petitioner.

6. On the other hand, Mr. Gogoi, learned Standing counsel, Forest Department has submitted that the impugned order of the learned trial court suffers from no illegality or infirmity requiring any interference of this Court. It is also submitted that the before confiscation, the petitioner was given opportunity by the Authority, Forest Department, Bongaigaon for adducing the evidence to the petitioner, who is the owner of the vehicle for commission of forest offence and thereafter, confiscated the same and as such, no interference of this order is warranted by this Court. As such, he has prayed to dismiss the petition.

In support of his submission, the learned Standing counsel, Forest Department has placed reliance on the following case law-

(i) Deep Kumar vs. State of Assam, reported in 2022 SCC OnLine Gau 1248, wherein the zimma of the vehicle committing forest offence was rejected. On appeal, the Hon'ble Supreme Court observed as follows in Special Leave to Appeal (Crl.) No. 3129/2023-

“What is applicable in the present case is Sections 49(4) and 49(6) of the Assam Forest Regulation, 1891 (as amended). Against an order of confiscation of vehicles and goods, there is an appeal under Section 49-C before the District Judge.

In this case, the petitioner preferred an appeal before the District Judge. The contention of the petitioner was that he, as the owner of the vehicle, was not aware that the vehicle was being used for illegally transporting the forest produce. The learned District Judge has held that the petitioner failed to prove the said contention. This finding has been affirmed by the High Court by the impugned judgment. While affirming the view taken by the District Judge, the High Court has relied upon a decision of this Court in the case of State of Karnataka v. K. Krishnan² wherein this Court held that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not be normally returned to a party till culmination of all proceedings in respect of such offence. Only for exceptional reasons that the vehicles can be released. In this case, as can be seen from the impugned orders of the District Court and the High Court, no such exceptional reasons were available. Therefore, no case is made out to interfere with the impugned order. The Special Leave Petitions are accordingly dismissed.”

7. I have considered the submissions made by the learned counsel for the parties. I have also perused the impugned order along with the relevant documents available in the record.

8. In view of the above legal proposition laid down by Hon'ble Supreme Court and as the alleged seized vehicle relates to commission of the forest offence, this Court finds no illegality in the impugned order passed by the learned trial court vide order dated 21.05.2024 as such, the prayer for

zimma of the seized vehicle is rejected.

9. Accordingly, the criminal petition stands disposed of.

JUDGE

Comparing Assistant