

GAHC010175192021



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

Case No. : WP(C)/5472/2021

M/S SK TRADING CO.
REPRESENTED BY ITS PROPRIETOR SUNIL KUMAR DAS
AGED ABOUT 29 YEARS
S/O HIRALAL DAS
VILL-6/45 KELA BAGAN ROAD
JAGATDAL
DIST-NORTH 24 PARGHANA
WEST BENGAL

VERSUS

THE STATE OF ASSAM AND 10 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

2:THE SUPERINTENDENT OF POLICE
KARIMGANJ
DIST-KARIMGANJ
ASSAM

3:THE DEPUTY COMMISSIONER
KARIMGANJ
DIST-KARIMGANJ
ASSAM

4:DEPUTY INSPECTOR GENERAL OF POLICE (RAILWAY)
GUWAHATI
ASSAM

5:THE SUPERINTENDENT OR RAILWAY POLICE
PANDU
GUWAHATI
ASSAM

6:THE OFFICER IN CHARGE BADARPUR GRPS
CUM INVESTIGATING OFFICER IN BADARPUR GRPS CASE NO. 13/2021
NAMELY SI BUDDHA CHANDRA SINGHA

7:ASI MOJIUBUR RAHMAN
BADARPUR GRPS
BADARPUR
KARIMGANJ
ASSAM

8:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GUWAHATI
PIN-781012

9:DIRECTOR TRAFFIC COMMERCIAL (CLAIMS)
RAILWAY BOARD

10:PRINCIPAL CHIEF COMMERCIAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON GUWAHATI
PIN-781012

11:THE STATION MANAGER
BADARPUR RAILWAY STATION (JUNCTION)
BADARPUR
DIST-KARIMGANJ
ASSAM

Advocate for : MS S S ZIA

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 10 ORS

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

29.08.2024

- 1.** Heard Ms. S. S. Zia, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Senior Government Advocate representing the State respondents.
- 2.** The present application is filed assailing an FIR dated 11.09.2021 lodged before the Officer in Charge of Badarpur GRPS registered as Badarpur GRPS Case No. 13/2021. The further challenge is an order dated 21.09.2021 passed by the learned Additional Chief Judicial Magistrate, Karimganj, whereby the Deputy Commissioner of the District was directed to initiate the auction of the areca nuts seized on the basis of which the aforementioned FIR was registered.
- 3.** Petitioner has a business of agricultural products, organic raw materials including areca nuts.
- 4.** The petitioner supplied a consignment of 530 bags of areca nuts, weighing 42400 kgs of Indian origin to M/s Muskan Traders at West Bengal worth Rs. 31,80,000/- by paying necessary GST and other requisite taxes to the concerned consignor through Indian Railways by booking Special Railway Parcel Van from Jiribam on 08.09.2021. However, the said Special Parcel Van was intercepted at Badarpur Railway Station in the district of Karimganj by the GRPS and seized the entire amount of areca nuts that he sent to M/s Muskan Traders at West Bengal.

5. It is contended by the petitioner that as those nuts are of Indian origin and petitioner sent it through proper way by paying necessary GST and other requisite taxes, there is no reason to seize the said nuts by the respondent. Hence, this writ petition by the petitioner praying for release of the same, which is under the custody of the Badarpur Police Station forthwith as the said nuts are perishable, is going to damage.
6. The investigating officer in the aforesaid case being Badarpur PS Case No.13/2021, filed an application under Section 451 of the Cr.P.C., before the learned Additional Chief Judicial Magistrate, Karimganj, for auction of the unclaimed areca nuts. Accordingly, the learned Magistrate vide order dated 21.09.2021 allowed such application on the ground that inspite of the examination of the witnesses and preliminary investigation, no consignors could be identified. At the same time, in view of the quantity of the seized goods, it is difficult for securing proper accommodation for the custody of the seized property. It was also a consideration that the seized goods are fit for human consumption and therefore, same cannot be left as such as it may be damaged, causing loss to the revenue of the State and also to the owner of the goods. In the aforesaid backdrop, the Magistrate allowed such petition for auction. Being aggrieved, the present petition is filed.
7. This court under its order dated 08.10.2021 restrained the respondents not to alienate/sale/destroy the said areca nuts seized. It is not disputed by the respondents that an affidavit has been filed whereby the ownership of the goods has not been disputed by the respondents in their affidavit. Thus it is not in dispute that the petitioner is not the owner of the said areca nuts inasmuch as the petitioner has also produced the railway challan by

which it was transported, the GST payment voucher etc.

8. This Court has given anxious consideration to the submissions made by the learned counsel for the parties. Also perused the materials available on record.
9. The Hon'ble Apex Court in the case of **Sunder Bhai Ambala Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283**, while dealing with the power of a magistrate under section 451 and 457 Cr.P.C., regarding disposal of seized material has laid down the following proposition of law that:-
 - I. The power under section 451 Cr.P.C and 457 Cr.P.C., should be exercised expeditiously and judiciously with the object that the owner of article should not suffer for it being remaining unused or by its misappropriation,
 - II. The Hon'ble Apex Court at paragraph 17 observed that whatever the situation be, it is of no use to keep the materials more particularly seized vehicles at police station for a long period and a magistrate is to pass appropriate order immediately by taking appropriate bond and guarantee as well as security for return of vehicles, if required at any point of time.
 - III. Referring to section 451 Cr.P.C of the paragraph 5 of the judgment **Sunderbhai Ambala Desai** (supra) the court opined that the power under section 451 Cr.P.C is required to be exercised expeditiously and judiciously with the object that the owner of the article would not suffer because of its remaining unused or by its misappropriation.
10. In the considered opinion of this court the petitioner has been able to establish that he is the owner of the seized areca nuts. Therefore, taking into note the principles laid down **Sunderbhai Ambala Desai** (Supra), this court is of the view that the petitioner is entitled for the custody of the areca nuts.
11. Similarly, the ground whether the areca nuts will be used for industrial purpose or for human consumption cannot be a ground for rejection of zimma. In the

event, the areca nuts which are not fit for human consumption and if used for human consumption shall give rise fresh cause of action to take against those erring person under appropriate provision of law. In view of the aforesaid, this Court is of the view that the learned Court below has committed serious error of law in not granting the zimma of the areca nuts.

12. In view of the aforesaid reasons, this court is of the view that the seized areca nuts be released to the petitioner with the following conditions:

I. The investigating authority shall prepare proper panchnama of such articles take photographs of such article and get the signature of the representative of the petitioner and the petitioner shall give a bond of Rs.32,00,000/-.

II. The investigating authority may keep some sample of the aforesaid areca nuts for further proceeding like sending it to the forensic laboratory for any purpose relating to the investigation/trial including confirmation of its place of origin.

13. With the aforesaid the present petition stands allowed.

14. Record be returned back to Mr. D. Nath, learned Senior Government Advocate.

JUDGE

Comparing Assistant