

GAHC010157952024



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

Case No. : Crl.Rev.P./298/2024

BABUL HUSSAIN
S/O ABDUL HASHIM
R/O VILL- KHALIHAMARI
P.S. SAMAGURI
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR M HOQUE, MS J BEGUM
Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

30.08.2024

Heard Mr. M. Hoque, learned counsel for the petitioner as well as Mr. B. Sarma, learned Additional Public Prosecutor appearing for the State respondent.

2. This application has been filed under Sections 438/442 read with Section 528 of the BNSS, 2023 against the impugned order dated 19.07.2024 passed by the learned Sub-Divisional Judicial Magistrate(S), Nagaon, (Assam) arising out of Samaguri PS Case No. 72/2024, under Section 379/411 of the IPC, R/W Section

11(1)(d) of Prevention of Cruelty to Animal Act, 1960 whereby the zimma petition filed by the petitioner was rejected.

3. The background of the case is that on 14.03.2024, an FIR has been lodged before the officer in-charge of Samaguri PS stating inter alia that on receipt of secret information that some unknown culprits were trying to smuggle stolen cattle inside an oil tanker from nearby area of Samaguri Baliajan bridge, one vehicle bearing No.AS01CC8260 along with 22 numbers of cattle were found in abandoned condition. Thereafter, a case were registered vide Samaguri PS Case No. 72/2024 and the vehicle was seized.

4. The learned counsel for the petitioner has submitted that the petitioner is the registered owner of the vehicle bearing No.AS09C7132 and the police seized the vehicle bearing No.AS01CC8260. But the driver of the vehicle without the knowledge of the petitioner had carried the cattle by hanging the aforesaid number plate instead of original number plate and fled away from the spot. But, actually the registration number of the seized vehicle is AS09C7132. Later on, police arrested the petitioner and subsequently, he was released on bail.

5. It is also the submission of learned counsel for the petitioner that the petitioner is the registered owner of the seized oil tanker bearing No. AS09C7132. The petitioner engaged one driver and one helper to run the said vehicle to carry oil to various places in Assam. The petitioner has no knowledge regarding carrying of cattle in his vehicle instead of oil by the driver and his associates. The petitioner approached before the SDJM, Nagaon seeking zimma of his seized vehicle but it was rejected.

6. Learned counsel for the petitioner has further submitted that the petitioner has no knowledge regarding the alleged offence and the seized vehicle is the only

source of his income. Considering the fact in its entirety, the seized vehicle be given in zimma to the petitioner.

7. In response, Mr. B. Sarma, learned Additional Public Prosecutor submits that the seized vehicle is an oil tanker but 22 numbers of cattle were found inside the said oil tanker. How it is possible to keep 22 cattle in the oil tanker without modification of the said vehicle.

8. Learned Additional Public Prosecutor also produced a report from the concerned IO which reveals that on that night when the oil tanker vehicle was seized, it was surprising to see that all 22 numbers of cattle were dumped so cruelly inside the tanker that it was hardly possible for the cattle to move among themselves.

9. It is further reported that during inquiry, it came to the knowledge that the seized oil tanker was having a registration No. AS01CC8260 and on inspection, another number plate bearing registration No. AS01C7132 were found inside the tanker. After thorough investigation, it was learnt that the actual number of the seized vehicle is AS01C7132 and several number plates were used to commit such illegal act.

10. Having heard the learned counsel for the parties and the report submitted by the concerned IO, it reveals that though the petitioner claimed that he is the owner of the seized oil tanker bearing No.AS01C7132 but the vehicle seized in connection with this case is AS01CC8260. It also appears that several number plates were used in the seized oil tanker to commit such illegal acts like transportation of cattle etc. it also appears from the report of the IO that investigation is still under process. Basically the oil tankers are manufactured to transport oil or natural gas. These vehicles are not authorized to carry cattle at any cost.

11. Under such backdrop, the prayer of the petitioner seeking zimma of the seized vehicle is rejected.
12. The criminal revision petition is disposed of accordingly.

JUDGE

Comparing Assistant