

GAHC010158342024



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

Case No. : Crl.Pet./951/2024

SHAILENDRA SINGH
S/O LATE RAMADHAR SINGH
R/O WARD NO. 13, BONGAIGAON,
P.O. AND P.S. BONGAIGAON, ASSAM, PIN-783380

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR S CHOUDHURY, MS R MEDHI, MR R.CHANDA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

27.08.2024

Heard Mr. S Choudhury, learned counsel for the petitioner as well as Mr. B Sharma, learned Additional Public Prosecutor, Assam.

This is an application filed under section 482 CrPC praying for quashing the order dated 21.03.2024 passed by the learned Chief Judicial Magistrate, Bongaigaon in Bongaigaon P.S. Case No. 458/2023.

An HSD Oil tanker bearing registration No. NL-01N-7273 (TATA tanker) was seized by Police in

connection with the aforesaid case, which was registered under Sections 379/381/406 IPC read with Section 7 of the Essential Commodities Act, 1955.

The petitioner Sri Shailendra Singh prayed for giving custody of the aforesaid vehicle along with HSD Oil inside the said tanker. But, the prayer for custody was rejected by the learned Chief Judicial Magistrate, Bongaigaon on the ground that the case was already registered under Section 7 of the Essential Commodities Act, 1955.

Mr. Choudhury has relied upon the judgment of the Hon'ble Supreme Court that was rendered in State of Madhya Pradesh and Ors. Vs. Rameshwar Rathod, reported in (1990) 4 SCC 21. Paragraph 6 of the said judgment is quoted as under:

“ 6. It was next contended by the respondent before the High Court that the Criminal Court was empowered under [section 7](#) of the Act to confiscate the vehicle after due and proper inquiry and therefore the proceedings by the District Collector under [section 6A](#) and [Section 6B](#) of the Act should be quashed. Reliance was placed on several decisions and authorities. Our attention was drawn to the decision of the Mysore High Court in the case of [The State v. Abdul Rasheed](#), AIR [1967] Mysore 231; [Sri Bharat Mahey & Ors. v. The State of U. P. & Ors.](#), [1975] CrL.J. 890 as well as the decision of the learned Single Judge in [State of M.P. v. Basant Kumar](#), [1972] J.L.J. Short Note No. 99. On a consideration of the relevant authorities, the High Court came to the conclusion that the criminal Court had jurisdiction to deal with the matter. Mr. Deshpande sought to argue that in view of the enactment of the provisions of [Section 6A](#) as well as [section 7](#) of the Act, it cannot be held that the criminal Court continued to retain jurisdiction. He submitted that in view of the enactment of these provisions, it would be useless to hold that the criminal Court continued to retain jurisdiction, otherwise the very purpose of enacting [section 6A](#) read with [section 7](#) would be defeated. We are, however, unable to accept this contention because normally under the [Criminal Procedure Code](#), the Criminal Courts of the country have the jurisdiction and the ouster of the ordinary criminal Court in respect of a crime can only be inferred if that is the irresistible conclusion flowing from necessary implication of the new Act. In view of the language used and in the context in which this language has been used, we are of the opinion that the High Court was right in coming to the conclusion that the Criminal Court retained jurisdiction and was not completely ousted of the jurisdiction. In that view of the matter, the High Court was therefore right in passing the order under consideration and in the facts and circumstances of the case to return the vehicle to the respondent on furnishing the security. In the premise the appeal must fail and is dismissed. There will, however, be no order as to costs.”

I have considered the submission made by the learned counsel for both the sides. The Criminal Courts jurisdiction to entertain an application under section 523 read with section 6-A and 7 of the Essential Commodities Act is not completely ousted even if the case is registered under Section 6-A and 7 of the Essential Commodities Act.

This court is of the opinion that keeping the aforesaid vehicle in police custody would not serve any purpose. Therefore, it is directed that the vehicle bearing registration No. NL-01N-7273 (TATA tanker) along with HSD oil inside the tanker, which has been seized in connection with in Bongaigaon P.S. Case No. 458/2023, shall be given in custody of the registered owner on taking a bond of Rs.50,000/- after proper verification and identification.

The criminal petition is disposed of.

JUDGE

Comparing Assistant