

GAHC010175132023



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

Case No. : Crl.Rev.P./307/2023

RAMESH RAI
S/O RAJ MANGAL RAI
PERMANENT RESIDENT OF VILL-
R/O WARD NO. 27, NH-34, OPPOSITE ASSAM OIL PETROL PUMP, NEAR
NILACHAL
PARKING, BEHARBARI,
P.S. BASISTHA, GUWAHATI-781029,
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR I RAFIQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

04.04.2024

Heard Ms. R.R. Saikia, learned counsel for the petitioner and also heard Mr. B.B.

Gogoi, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. In this petition under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973, read with Article 227 of the Constitution of India, the petitioner has put to challenge the correctness or otherwise of the order dated 20.06.2023 passed by the learned Chief Judicial Magistrate, Dhemaji, in G.R. Case No.274/2023, arising out of Dhemaji P.S. Case No.93/2023 under Section 379/411 IPC, read with Section 13(1) of the Assam Cattle Preservation Act, 2021, read with Section 11(1)(d) of the Prevention of Cruelty to Animals Act. It is to be noted here that vide impugned order dated 20.06.2023, the learned Court below has dismissed the petition filed by the petitioner seeking custody of the vehicle, bearing Registration No.NL-02Q-3757.

3. The background facts leading to filing of the present petition is that the petitioner is the owner of a vehicle (goods carrier), bearing Registration No.NL-02Q-3757 and the said vehicle was hired by Megha Goods Cargo for transportation of cement to the NHPC Ltd. Subansiri Lower Hydro Electric Project, Dhemaji and the vehicle of the petitioner has transported cement for Calcom Cement India Ltd. through Megha Goods Cargo in different parts of Assam and Arunachal Pradesh. Then on 22.05.2023 the said vehicle was loaded with 700 bags of cement for transportation to Dhemaji. Thereafter, on 31.05.2023 the vehicle of the petitioner was seized by Dhemaji Police Station in connection with Dhemaji P.S. Case No.93/2023 under Section 379/411 IPC, read with Section 13(1) of the Assam Cattle Preservation Act, 2021, read with Section 11(1)(d) of the Prevention of Cruelty to Animals Act, on the allegation that the vehicle was used for transporting cattle illegally. Thereafter, the petitioner has preferred an application before the learned Chief Judicial Magistrate, Dhemaji, seeking custody of the said vehicle and thereafter, the learned Chief Judicial Magistrate has called for a report from the I.O. concerned and thereafter, having considered the submission of learned Advocates of both the parties and considering the police report, the learned Court below has dismissed the petition.

4. Being aggrieved, the petitioner has approached this Court on the grounds mentioned hereinbelow:-

- (i) That the learned Court below has whimsically dismissed the petition seeking custody of the vehicle vide order dated 20.06.2023.
- (ii) That the learned Court below has failed to consider the law laid down by the Hon'ble Supreme Court in the case of **Sundarbhai Ambalal Desai v. State of Gujrat**, reported in **(2002) 10 SCC 290**.
- (iii) That learned Court below has dismissed the petition without application of mind and therefore, it is contended to set aside the same.

5. Ms. R.R. Saikia, learned counsel for the petitioner submits that the petitioner Ramesh Rai is the registered owner of the vehicle and in support of her submission, Ms. Saikia has referred to page-14 of the application, which is the Registration Certificate and further submits that the vehicle was used for transporting cement to Subansiri Lower Hydro Electric Project, Gerukamukh and Annexure-B is the Tax Invoice at page-15 and 16 of the application and Annexure-C is another Tax Invoice. Ms. Saikia further submits that the vehicle was seized on 31.05.2023 and since then it has been lying unattended in the P.S. campus for about a year and that the learned Court below vide impugned order dated 20.06.2023, had dismissed the same on the ground that the vehicle will be used again in the same manner and that the ownership of the vehicle has not yet been ascertained. Ms. Saikia further submits that the vehicle is the only earning source of the petitioner and if the same is not released in the interim custody of the petitioner, then it will be damaged completely as it is being exposed to sun and rain and its value is diminishing day by day and that the petitioner will produce the vehicle during the trial as and when directed and therefore, it is contended to allow the petition.

6. On the other hand, Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam,

submits that though a report was called for from the Officer-in-Charge, concerned police station, yet instead of the said report he has received the case diary from the Officer-in-Charge, concerned P.S. and having referred to the stage of investigation, Mr. Gogoi, learned Additional P.P. submits that material part of the investigation is almost over.

7. Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Gogoi, learned Additional P.P.

8. It appears that the vehicle was seized by the I.O. of Dhemaji P.S. on 31.05.2023 and since then the same has been lying unattended in the P.S. campus. Further, it appears that the petitioner has approached the learned Court below on 20.06.2023 seeking custody of the vehicle and the learned Court below called for a report from the I.O. concerned and thereafter, dismissed the petition on the basis of the report, wherein it is stated that the vehicle will be needed for further investigation of the case and the ownership of the vehicle is yet to be ascertained and that there is every possibility of involving the vehicle for transportation of cattle in the same manner again.

9. However, having gone through the case diary, produced before this Court by the learned Additional P.P., I find that the investigation is almost completed. Further, it is not in dispute that the petitioner is the registered owner of the vehicle.

10. Having considered above and also having considered the facts and circumstances on the record as well as submissions of learned Advocates of both the parties, this Court is inclined to allow this petition. It is provided that on furnishing an indemnity bond of ₹ 25,00,000/-, the vehicle shall be released in the interim custody of the petitioner, which of course, subject to the following conditions:-

(i) The petitioner shall produce the vehicle before the Court as and when directed.

- (ii) The petitioner shall not use the vehicle for committing such offences in future.
 - (iii) The petitioner shall not alienate the vehicle or change its colour or modify it, without prior permission of the Court.
11. In terms of above, this criminal revision petition stands disposed of.
12. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant