

GAHC010175192021



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

Case No. : WP(C)/5600/2021

SHREE BHAIKAV NATH ENTERPRISES
REP. BY HEREIN BY ITS PROPRIETOR SRI SUNILKUMAR MANKASH,
HAVING ITS OFFICE AT WARD NO. 30, SAURAV NAGAR,
NEAR A.G. OFFICE, DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPARTMENT, DISPUR, SACHIVALAYA, GUWAHATI-781006

2:THE DEPUTY COMMISSIONER

KARIMGANJ
DIST. KARIMGANJ
ASSAM

3:THE SUPERINTENDENT OF POLICE

KARIMGANJ
DIST. KARIMGANJ
ASSAM

4:THE DEPUTY INSPECTOR GENERAL OF POLICE (RAILWAY)

GUWAHATI
ASSAM

5:THE OFFICER IN CHARGE

BADARPUR GRPS
KARIMGANJ

ASSA

Advocate for the Petitioner : MR S BORTHAKUR, MR. D GOGOI,MS J RAJKUMARI

Advocate for the Respondent : GA, ASSAM,

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

ORDER

29.08.2024

- 1.** Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Senior Government Advocate representing 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 nut seized on the basis of which the aforementioned FIR was registered and the resultant auction notice dated 28.09.2021 and 12.10.2021 for auction of 13 wagons of dry betel nut weighing approx 2,95,127 kgs.
- 3.** On 21.10.2021, while issuing notice and on the basis of instruction that the auction has in the meantime been completed, this Court by an interim order directed that the auction money shall not be disbursed to any one till disposal of the present writ petition.

4. The learned State Counsel has also produced the case diary of Badarpur GRPS Case No. 13/2021. From the material available on record, certain undisputed facts emerge:-

- I. The FIR was lodged with the backdrop that the police had received specific information that unlawful goods/ substances were being transported through malicious usage of goods transportation service provided by the Indian Railways.
- II. Accordingly, a parcel train in question was halted suspecting that there may be unlawful substances concealed with other consignments. Thus, the train was halted and the areca nuts were seized on the backdrop of the information that unlawful and dangerous goods are being transported in the train.
- III. Thereafter, the suspected goods (areca nuts) i.e. 4,680 number of gunny bags amounting to total of approximately, 3,85,164 Kgs were seized in presence of Executive Magistrate and other independent witnesses.
- IV. According to the police, the expert opinion report further discloses that the materials are fit for human consumption and they are primarily agricultural product so, without proper possessing/storing in controlled atmosphere, their decay is going to be quicker in normal/natural conditions. Accordingly, an application was filed before the Chief Judicial Magistrate on 20.09.2021 for auction of the seized unclaimed betel nuts (areca nuts) under section 451 Cr.P.C.

5. From the aforesaid it is seen that though there was information of

transporting unlawful and dangerous goods and on the basis of such information, the areca nuts were seized, however, there is nothing on record to show that these areca nuts are dangerous or involved in any offence. However only on the ground that the owner could not be found out, the learned Magistrate allowed such application and the areca nuts were auctioned.

- 6.** From the case diary as well as material so far collected, there is nothing to show that the areca nuts were either stolen goods or the same has been illegally procured rather there are sufficient material to suggest that the petitioner is engaged in the business of supply of local areca nuts to different organization in the state/ in the country. The railway challan, payment receipt, GST invoice etc. clearly discloses that areca nuts were booked declaring it to be areca nuts with detailed address of the petitioner.
- 7.** In view of the aforesaid and the material available on record, this Court is of the unhesitant view that the suspicion of the investigating authority and the information received were not resulted to be correct and therefore, this Court is having no option but to hold that such seizure was illegal.
- 8.** One of the reasons that is discernible from the material on record including the case diary for seeking auction was that such huge quantity of areca nuts seized could not be kept in the railway platform. At the same time, the learned Magistrate has also passed the order very mechanically without applying its mind to the given facts of the present case inasmuch as it has only allowed the auction on the ground that the owner could not be found whereas materials available as regards booking in the railway discloses what are the materials, for which due payments were made,

therefore, the auction could not have been directed so hurriedly.

- 9.** Be that as it may, as in the meantime, auction has been carried out therefore, the only relief that can be granted to the petitioner is to direct the authorities to return the money received in the auction sale dated 21.10.2021 carried out in terms of the order of the Magistrate dated 21.09.2021 to the petitioner after proper identification. Ordered accordingly.
- 10.** The money be transferred to the account of the petitioner within a period of 10 (ten) days from the date of receipt of a certified copy of this order to be furnished by the petitioner before the authority(s) after proper verification of the identity.
- 11.** With the aforesaid, the present petition stands allowed.
- 12.** Record be returned back to Mr. D. Nath, learned Senior Government Advocate.

JUDGE

Comparing Assistant