

GAHC010180682023



2024:GAU-AS:13122

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

Case No. : Crl.Rev.P./320/2023

JAGADISH PRASAD SAH
S/O- LATE MUSAFIR LAL SAH, R/O- FANCY ALI, P.S. AND DIST. JORHAT,
ASSAM, PIN- 785001.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR P KATAKI, MRS R BEGUM, MS N KASHYAP

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

24/07/2024

Heard Ms. Rukia Begum, learned counsel for the petitioner and Mr. P S Lahkar, learned Additional Public Prosecutor, Assam for the State respondent.

2. During a Naka checking at night on 01.08.2022, police personnel from Gaurisagar Police Station at Gaurisagar Bazar Tiniali, after a huge chase could intervene one TATA 1109 vehicle bearing registration No. UP 32 QN 7217 that came from Sivasagar side towards Jorhat on NH 37

that did not stop in spite of signal and recovered 48 nos. of drums containing suspected crude oil from the said vehicle. The said vehicle and those 48 nos. of drums suspected to be crude oil were accordingly seized. Both the driver and handyman of the said vehicle were also taken into custody. Police personnel involved in Naka checking and seizing the vehicle considered those 48 drums of crude oil to be stolen crude oil being essential commodities transported illegally to different parts of the State and the country. In that regard, an FIR was lodged before the Gaurisagar Police Station that was registered as Gaurisagar P.S. Case No. 90/2022 under Sections 120(B)/379/411/353 IPC read with Section 7 of the Essential Commodities Act, 2010 corresponding to G.R. No. 578/2022 (PRC No. 111/2023).

3. After investigation of the case, police vide chargesheet No. 15 dated 24.05.2023 submitted the chargesheet in said Gaurisagar P.S. Case No. 90/2022 against the driver and handyman of the said vehicle and three others, including the petitioner and the owner of one M/S. Shyam Enterprise under Sections 120(B)/379/411/353 IPC read with Section 7 of the Essential Commodities Act.

4. The FSL report dated 28.09.2022 with regard to the contents in those 48 nos. of drums seized in said Gaurisagar P.S. Case No. 90/2022 that was suspected to be crude oil, specified that the said seized oil gave positive tests for fuel oil.

5. The petitioner filed a petition being No. 184/2023 before the learned Judicial Magistrate, First Class (JMFC), Sivasagar for zimma of oil found in those 48 nos. of drums seized by police on 01.08.2022 in connection with said Gaurisagar P.S. Case No. 90/2022.

6. The learned Additional Chief Judicial Magistrate (CJM), Sivasagar in said zimma petition of the petitioner being No. 184/2023 vide order dated 26.05.2023 called for the report from the concerned Investigating officer of Gaurisagar P.S. Case No. 90/2022 pertaining to (i) ascertainment of ownership of said 48 nos. of drums containing burnt/Mobil/industrial lubricants/oily sludge etc. and (ii) whether said 48 nos. of drums containing such oil required further for the purpose of investigation.

7. Pursuant to the same, the Officer-in-Charge of the Gaurisagar Police Station approached the Assistant Commissioner of Taxes, Sivasagar Unit seeking report on two nos. of tax invoices that were found during investigation of the case.

8. The office of the Assistant Commissioner of State Tax, Sivasagar by its communication No.

SIB/2022-23/421 dated 16.08.2022 informed the Officer-in-Charge of Gaurisagar Police Station that the said office could detect two nos. of tax invoices that were generated against the same recipient M/S. Jagdish Prasad Sah (GSTIN 18BZPS3700E1ZE) amounting to Rs.42,952/- and Rs.33,040/- respectively and no such e-way bill was found to be generated by Mr. Prem Darshan Singh, proprietor of M/S. Shyam Enterprises (GSTIN 18AGKPS675OR2Z9) specifying that M/S Shyam Enterprises (GSTIN 18AGKPS675OE2Z9) had issued tax invoices against M/S Jagdish Prasad Shah (GSTIN 18BZPS3700E1ZE), whose GSTIN had been cancelled since 2021 observing that such process indicates evasion of tax.

9. After obtaining such report as well as the FSL report dated 28.09.2022, the Officer-in-Charge of Gaurisagar Police Station submitted its report before the Additional Chief Judicial Magistrate, Sivasagar on 31.05.2023 specifying that the ownership of 48 nos. of drums containing fuel oil could not be ascertained as whatever GST receipt provided by the accused party have been found to be invalid receipts, since the report of the Assistant Commissioner of Sales Taxes, Sivasagar clearly indicates that the GSTIN No. 18BZPS3700E1ZE issued in favour of M/S. Jagdish Prasad Sah was cancelled way back in 2021 and with a further report that seized oil are not required for any further investigation.

10. Pursuant to the letter of the Superintendent of Police, Sivasagar dated 10.02.2023 with regard to the FSL report dated 28.09.2022, noted above, regarding clarification relating to the seized oil to be fuel oil, the Scientific Officer of the Directorate of Forensic Science, Assam on 04.04.2023 specified that considering the density and flash point of the said seized oil and as per the Bureau of Indian Standards (BIS) Specifications IS 1593, the said oil seized in connection with Gaurisagar P.S. Case No. 90/2022 found to be a category of fuel oil/furnace oil and the said report of the Scientific Officer, Directorate of Forensic Science, Assam was forwarded to the Superintendent of Police, Sivasagar by the Director of Forensic Science, Assam vide communication dated 05.04.2023.

11. The learned JMFC, Sivasagar considering the fact that the petitioner who claimed zimma of the seized oil contained in 48 nos. of drums seized on 01.08.2022 in said Gaurisagar P.S. Case No. 90/2022 is not the valid owner of the same, rejected the said claim of the petitioner vide order dated 13.07.2023.

12. Even in this petition, the petitioner could not place any valid document to be the owner of those 48 nos. of drums of oil seized by the police personnel of Gaurisagar Police Station on the

night of 01.08.2022 from the said TATA 1109 vehicle as the petitioner by all means failed to prove or establish that the said 48 nos. of drums of oil seized in connection with Gaurisagar P.S. Case No. 90/2022 belongs to him.

13. The Court did not find any such illegality in the said order dated 13.07.2023 passed by the learned Judicial Magistrate, First Class, Sivasagar rejecting the zimma petition of the petitioner being No. 184/2023 with regard to the said 48 nos. of drums of fuel oil.

14. Accordingly, this criminal revision petition, being without merit, stands dismissed.

15. The interim order passed earlier on 22.08.2023 stands vacated.

16. Registry shall forthwith communicate this order to the Court of learned Judicial Magistrate, First Class, Sivasagar as well as the Court of learned Additional Chief Judicial Magistrate, Sivasagar.

JUDGE

Comparing Assistant