

GAHC010200752024



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

Case No. : Crl.Pet./1193/2024

SARMINA IASMIN
W/O HABIBUR RAHMAN
R/O VILL- GARUGAON PT. I
P.S. BONGAIGOAN
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:S.I. HIRAK JYOTI DAS
S.I. OF GOLAKGANJ P.S.
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. A AHMED, MR A AHMED,U U KHAN,MR. M A
CHOUDHURY

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 17-12-2024

Heard Mr. A. Ahmed, the learned counsel for the petitioner and also heard Ms. S.H. Bora, the learned Additional Public Prosecutor appearing on behalf of State respondent no.1.

2. This is an application u/s 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Article 227 of the Constitution of India against the impugned order dated 18.09.2024 passed by learned JMFC, Dhubri whereby the zimma prayer of the present petitioner was rejected and allowed the prayer of the Investigating Officer for auction sale of the seized areca nuts.

3. Report received from the Investigating Officer. Perused the same.

4. Mr. Ahmed submitted in this regard that the present petitioner is the owner of the seized areca nuts which were duly purchased by her from local market and she is the proprietor of Hiya Enterprise and having registration. These areca nuts were purchased by the petitioner from local market but on the day of incident due to some technical error her husband could not collect the GST bill and accordingly prior to the collection of the GST bill her husband was arrested by the police. The truck was seized when it was parked in the road side and the driver was to collect the E-way bill. However, the present petitioner is the owner of the seized areca nuts and accordingly claiming her ownership she filed a petition before the learned Trial Court below seeking zimma of the seized areca nuts. However, her prayer for zimma was rejected by the learned Trial Court below only on the ground that the seized areca nuts are not fit for human consumption as per the report of the Food Analyst and the petitioner failed to assure the Court that in case the zimma of the seized areca nuts is granted to the petitioner then the petitioner shall not use it for human consumption and shall use the same only for industrial purpose only. But, the petitioner was never given any chance for production of any undertaking before the learned Trial

Court below which is required as per SOP from Clause No. 15. However, he is ready to file an undertaking of the learned Trial Court below and so that it can be verified by SP regarding the genuineness of the claim and as required under the said SOP.

5. Ms. S.H. Bora submitted in this regard that as per report of the Investigating Officer, the petitioner could not produce any documents of sale of areca nuts for industrial purpose nor collected any proper order from the SP Office. However, it is submitted that till date no auction is initiated. Ms. Bora further submitted that if the petitioner files application before the learned Trial Court by giving undertaking, State has no objection if the same is verified by the SP concerned.

6. From entire submissions by learned counsel for both sides and other aspects of the case, it is seen that vide the impugned order dated 18.09.2024, the prayer for zimma was rejected only on the ground that the areca nuts were not fit for human consumption and at the same time the claim as not verified by the SP as required under the SOP. However, the petitioner has submitted some relevant documents to prove the ownership of the areca nuts.

7. In view of this, the impugned order dated 18.09.2024 is hereby set aside and quashed passed in respect of zimma and auction of the areca nuts and the petitioner is at liberty to file a fresh application seeking zimma of the seized areca nuts. The learned Court below will accordingly obtain an undertaking that these areca nuts which are not for human consumption will only be used for industrial purpose and not used for human consumption. On furnishing such undertaking the learned Trial Court below will accordingly verify the claim through office of the concerned SP and will pass the zimma order accordingly.

- 8.** Status Report filed by the Investigating Officer be kept as a part of the record.
- 9.** With the above observations, the present criminal petition stands disposed of.

JUDGE

Comparing Assistant