

GAHC010235052024



2024:GAU-AS:11357

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

Case No. : Crl.Rev.P./443/2024

ABDUL SATTAR
S/O LATE ALI HUSSAIN
R/O VILL- GRANT BASTI,
P.S. NAGAON,
DIST. NAGAON, ASSAM
PIN-782427

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR A N IQBAL, R HAQUE,MR. S RAHMAN

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

21.11.2024

Heard Mr. A. N. Iqbal, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent.

This is an application filed under Section 438/442 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging the order dated 04.10.2024 passed by the learned Judicial Magistrate First Class, Nagaon in connection with Khatowal P.S. Case No. 21/2024 registered under Sections 291/302(2)/317(2) of the BNS read with Section 11(1) (a)(d)(e) of the Prevention of Cruelty of Animals Act read with Section 13(1) of the Assam Cattle Preservation Act whereby, rejecting the prayer of the petitioner being owner for giving zimma of the 22 numbers of buffaloes.

The Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioner, Mr. Iqbal, that the present petitioner is the genuine owner of the buffaloes, which were purchased from Bihara Saptahik Goru (Mah) Bikri Bazar (Bihara Weekly Cattle Market), registered under the Golaghat Zilla Parishad. Initially, there were 28 buffaloes, but 06 of them died in the custody of the goshala. He further submitted that the petitioner was subsequently arrested and granted bail by the learned trial court on 16.08.2024. Thereafter, the petitioner filed a zimma petition before the learned Chief Judicial Magistrate, Nagaon, for the zimmar of the buffaloes. However, the petition was rejected by the learned JMFC, Nagaon, on 04.10.2024, on the grounds that the purchase receipts submitted to the Investigating Officer (IO) were forged, and the ownership of the buffaloes could not be ascertained. He further submitted that the Secretary of the concerned cattle market had certified the purchase of the buffaloes,

as annexed in Annexure-4 of the petition. Thus, he submits that the learned trial court erred in rejecting the zimma petition without considering these aspects of the case and prays for the setting aside and quashing of the order passed on 04.10.2024 by the learned Judicial Magistrate First Class, Nagaon.

On the other hand, Mr. Baruah, learned Additional Public Prosecutor, submitted that at the time of interception, both the petitioner and the driver fled away from the place of incident. He further stated that although some receipts were produced before the IO during the investigation, these receipts were found to be forged upon verification. Some serial numbers were repeated, showing the purchase of 28 buffaloes. He added that during the investigation, the IO found the purchase receipts to be fraudulent, and as of now, the ownership of the buffaloes could not be ascertained. The investigation is still ongoing, and two accused persons are yet to be arrested. Therefore, he submits that at this stage, granting zimma of the buffaloes, without ascertaining the ownership and based only on receipts alleged to be forged, would not be appropriate.

Mr. Iqbal, learned counsel for the petitioner, further submitted that the buffaloes do not fall under the provisions of Section 11(1)(a)(d)(e) of the Prevention of Cruelty to Animals Act, read with Section 13(1) of the Assam Cattle Preservation Act, and accordingly he prays for the zimma of the buffaloes. As per Assam Cattle Preservation Act, 2021 in Section 3(c) defined 'Cattle' as follows:

"Cattle means an animal specified in the Schedule of the Act"

The 'Schedule' appended to the aforesaid Act includes the following animals as cattle:

- 1) Bulls,
- 2) Bullocks;
- 3) Cows;
- 4) Heifer; and
- 5) Calves.

Considering the submissions made by the learned counsels for both sides, and after perusal of the case diary and case records, it is observed that during the investigation, the IO obtained sufficient incriminating material against the accused/petitioner. It was also discovered that the 15 money receipts submitted by the petitioner were fake and forged, and some documents were submitted multiple times to mislead the investigation. The ownership of the buffaloes remains unascertained to date. While the petitioner claims to have purchased the buffaloes from a registered market, it is evident that the investigation is still ongoing, and the IO has not yet confirmed the ownership.

In light of the above, I find that the learned trial court did not commit any error in rejecting the petitioner's prayer, and consequently, I find that interference by this court is not warranted. The petition is, therefore, dismissed.

In terms of the above, this petition stands disposed of.

JUDGE

Comparing Assistant