

GAHC010236022024



2024:GAU-AS:12678

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

Case No. : Crl.Pet./1349/2024

MOHAMMAD TAHZEEB
S/O MOHAMMAD MOTIUR RAHMAN
R/O TIPONG, P.S. LEKHAPANI
DIST. TINSUKIA, ASSAM-786182,
PH. NO. 98634 37161

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PP, ASSAM

2:THE DIRECTOR

DIRECTORATE OF GEOLOGY AND MINING
KAHILIPARA
GUWAHATI
ASSAM-781019.

3:THE SENIOR GEOLOGIST

OFFICE OF THE RESIDENT GEOLOGIST
DIRECTORATE OF GEOLOGY AND MINING
ASSAM

DIBRUGARH-78600

Advocate for the Petitioner : MR. B D KONWAR SR. ADV., MR S Z AHMED,MRS J M
KONWAR,MR J SINGH,MR H AGARWAL

Advocate for the Respondent : PP, ASSAM,

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

13.12.2024

Heard Mr. B. D. Konwar, learned Senior Counsel assisted by Mr. H. Agarwal, learned counsel for the petitioner. Also heard Ms. S. H. Borah, learned Additional Public Prosecutor for the State respondent.

2. This application is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, read with Section 438 thereof, against the impugned Order dated 04.10.2024, passed by the learned Sub-Divisional Judicial Magistrate (M), Margherita, whereby the petitioner's application for zimma/custody of the seized coal in connection with Lekhapani P.S. Case No. 35/2024 was rejected, and further observing that, vide Order dated 27.09.2024, zimma of the said seized coal was granted to the Directorate of Geology and Mining, Assam.

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

4. It is submitted by Mr. Konwar, learned Senior Counsel, that the petitioner's business involves processing coal into coke and distributing it across India. He had taken leased land for the coal depot with authorization from the landowner, Mr. Hetobi Sema. Additionally, the petitioner has registered his proprietorship concern with the GST department to conduct his business. The petitioner contends that he has acquired the requisite NOC from Lalpahar Village Panchayat, as well as consent to establish from the Pollution Control Board to set up the coal depot. He also has a license from Lekhapani Gaon Panchayat and a certificate of registration under the Assam Shops and Establishment Act. However, on 15.07.2024, the Sub-Divisional Officer (Civil), Margherita, seized the coal stored at the petitioner's depot, along with all goods, machinery, furniture, buildings, and other items located there, without providing any

prior notice to the petitioner. Subsequently, the SDO (Civil), Margherita, issued a notice to the landowner, Mr. Hetobi Sema, vide No. MRJ.1/2023/PT, dated 15.07.2024, stating that during a spot visit, the said coal was found stored on his premises as of 16.07.2024. The landowner was further directed to submit certain details regarding the coal stored on his premises, including land documents. The respondent No. 3, the Senior Geologist from the Office of the Resident Geologist, Directorate of Geology and Mining, Assam, then handed over the custody of the coal to SI (P) Rajib Deka of Lekhapani Police Station, vide a Handling Over Certificate dated 16.07.2024, bearing No. DGM/RM/MM/CIL/25. Thereafter, the Directorate of Geology and Mining approached the learned Trial Court with a petition for zimma, which was disposed of on the grounds that it might be hazardous to the people of the locality. Accordingly, the prayer was allowed by the Trial Court, vide order dated 27.09.2024. Subsequently, the petitioner approached the learned Trial Court with a petition for zimma on 01.10.2024 (Petition No. 382/2024), seeking zimma of the seized coal. He also submitted various documents in support of the petition to prove the ownership of the coal, as well as to show that he legally purchased the coal for business purposes. However, the learned Trial Court rejected the petitioner's prayer merely on the ground that, by its earlier order dated 27.09.2024, the Court had already allowed the zimma of the seized coal to the Directorate of Geology and Mining, Assam. Thus, the petition was rejected without even perusing the documents annexed to it.

5. Mr. Konwar, learned Senior Counsel, further submits that it is settled law that under Section 106 of the BNSS, a police officer is not empowered to seize immovable property, land, plots, residential houses, streets, or similar properties. As such, in the instant case, the sealing of the petitioner's premises by putting a lock amounts to the seizure of the same and, therefore, violates the law laid down by the Hon'ble Supreme Court in the case of **Nevada Properties Private Limited vs. The State of Maharashtra & Anr., reported in (2019) 20 SCC 119**, wherein, he relies on paragraph 47 of the said judgment, which reads as follows:

47. If the argument of the appellant and the State of Maharashtra is accepted then there was no need for the legislature to have introduced Chapter VIIA. It would also be pertinent to mention that the power of attachment and forfeiture is given to courts and not to police officer. As pointed out in the judgment of my learned brother, if a police officer is given the power to seize immovable property it may lead to an absolutely chaotic situation. To give an example, if there is a physical fight between the landlord and the tenant over the rented premises and if the version of the appellant is to be accepted, the police official would be entitled to seize the tenanted property. This would make a mockery of rent laws. To give another example, if a person forges a will and thereby claims property on the basis of the forged will, can the police officer be Criminal Appeal arising out of given the power to seize the entire property, both movable and immovable, that may be mentioned in the will? The answer has to be in the negative. Otherwise it would lead to an absurd situation which could never have been envisaged by the Legislature. The power of seizure in Section 102 has to be limited to movable property.

6. On the other hand, Ms. Borah, learned Additional Public Prosecutor, has submitted that the zimma of the seized coal has already been granted to the Directorate of Geology and Mining, Assam/respondent No.2. From the materials available in the case diary, it is revealed that the seized coal is kept on the premises of Hetobi Sema, who has still not appeared before the Investigating Officer. However, one Nujrul Mia has already been arrested in connection with this case. She further submitted that the petitioner has filed sufficient documents to prove the ownership of the seized coal. Accordingly, at this stage, she submits that the petitioner may be directed to approach the learned Trial Court with a fresh application for zimma, which may be considered by the said Court in accordance with law.

7. In this regard, Mr. Konwar, learned Senior Counsel, has submitted that the quality of the coal has already deteriorated, as it has been under custody since 16.07.2024. However, the petitioner is ready and willing to execute an indemnity bond if the seized coal is released in his favor.

8. In this context, Ms. Borah, learned Additional Public Prosecutor, has further

submitted that, as per the Order dated 27.09.2024, the learned Trial Court allowed the zimma prayer made by the Directorate of Geology and Mining, Assam/respondent No. 2 and also permitted to sell the seized coal through auction, with the amount to be deposited in the Government Treasury after keeping a sample. The Court set the next date for a compliance report on 30.10.2024. Accordingly, she submits that by this time, the auction procedure may have been initiated or completed.

9. In reply, Mr. Konwar, learned Senior Counsel, has submitted that this Court, vide order dated 11.11.2024, has already stayed the auction proceedings that were allowed by the learned Trial Court, vide its order dated 27.09.2024. Hence, there has been no initiation of the auction process by the concerned department, even after the order was obtained from the Trial Court.

10. Hearing the submissions made by the learned counsels for both sides, I have perused the case diary along with the case record and the annexures filed with the petition. It is seen that the respondent No. 3 had handed over the custody of the coal to SI (P) Rajib Deka of the Lekhapani Police Station, vide a Handing Over Certificate dated 16.07.2024, which is annexed as Annexure-9 to the petition. Accordingly, the learned Trial Court, by its order dated 27.09.2024, allowed the prayer for zimma in favor of the Directorate of Geology and Mining, Assam/respondent No. 2, and also permitted the sale of the seized coal through auction. Thereafter, the petitioner filed a zimma petition on 01.10.2024 (Petition No. 382/2024), seeking zimma of the seized coal before the trial court. However, the same was rejected solely on the ground that the zimma had previously been granted to the respondent No. 2. However, from the tax invoices annexed with the petition and other documents, it is evident that the petitioner has produced all necessary documents to establish his ownership of the coal. Furthermore, no material has been collected so far by the Investigating Officer to suggest that the coal seized by the police in connection with this case is stolen property. The investigation is still ongoing in that regard, but *prima facie*, it appears

that the petitioner has provided all relevant documents to prove his ownership and he is the genuine purchaser of the coal, which he claims to have bought from Wangshu Enterprise.

11. Accordingly, the orders passed by the learned Trial Court on 04.10.2024 and 27.09.2024, whereby the prayer for zimma was rejected and respondent No. 2 was granted zimma along with permission to sell the seized coal at auction, respectively, need to be reconsidered. Considering the submissions of the learned counsels for both sides and the fact that the petitioner has produced all relevant documents proving that he is the genuine purchaser of the seized coal, it is directed that the petitioner shall appear before the learned Court below and file a petition for zimma. The learned Court below shall consider the petition in accordance with the law. Further, the learned Trial Court shall be at liberty to fix the amount of indemnity bond before granting zimma of the said coal to the petitioner, considering the value of the coal.

12. In terms of above, this criminal petition stands disposed of.

13. The Case Diary be returned.

JUDGE

Comparing Assistant