GAHC010067892022

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

Case No. : Crl.Pet./1255/2022

THE STATE OF ASSAM AND ANR
REP. BY COMMISSIONER AND SECRETARY
GOVT.OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-6.

2: INVESTIGATING OFFICER NAMELY SI MADAN CHANDRA KALITA

S/O LATE G. KALITA
R/O GRPS GUWAHATI
PERMANENT RESIDENT OF NAMPANI GAON
NAGAON
ASSAM
VERSUS

SHYAM SUNDAR PAUL
S/O AMULYA RATAN PAUL

VILL- EAST KANISHALI

DIST. KARIMGANJ
ASSAM

Advocate for : MR. R R KAUSHIK
Advocate for : MR. D HUSSAIN appearing for SHYAM SUNDAR PAUL

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

27.02.2024.

1. Heard Mr. P. N. Goswami, learned Additional Advocate General, Assam representing the petitioners. Also heard Mr. R. A. Choudhury, learned counsel for the respondents.

2. By way of this petition filed under Section 482 of the Cr.P.C., 1973, the State of Assam have sought for quashing and setting aside the order dated 12.10.2022 passed by the learned Judicial Magistrate First Class, Kamrup (M), Guwahati in Petition No. 6344/2022 allowing zimma of the seized areca nut in connection with Guwahati GRPS Case No. 119/2022 under Sections 120(B)/420/471/379/413 of IPC.

3. Mr. P. N. Goswami, learned Additional Advocate General, Assam for the petitioners relying on the determination made by a Hon'ble Division Bench in Criminal Petition No. 284/2022 and other connected Criminal Petitions preferred by the State argues that the Hon'ble Division Bench after elaborately dealing with all previous determinations made by the Hon'ble Apex Court held that at the investigation stage, seized article cannot be released by a Court under Section 451 of Cr.P.C. It was further held that under Section 457 Cr.P.C., the Criminal Court has the jurisdiction to give custody of the seized property/article at the stage of investigation when those seized property are not produced before the Court and therefore, it is contended that in the present case, the custody could not have been granted. The Hon'ble Division Bench at paragraph 25 and 45 held as follows:-

"***25... On reading the various judgments enumerated in the foregoing paragraph and the provisions of Chapter XXXIV of the Code of Criminal***

Procedure, we are of the view that the Court can make an order for the proper custody of the seized property under Section 451 Cr.P.C only after a charge-sheet is filed. Section 452 Cr.P.C is to be applied for disposal of property, only at the conclusion of an inquiry or trial. Section 459 Cr.P.C, on the other hand, allows for the Court to sell the seized property, if the person entitled to possession of the property is unknown or absent and the property is subject to speedy and natural decay or that the sale would be for benefit of the owner or the value of the property is less than Rs. 500/-.

45. In view of the reasons stated above, we answer the reference by holding that at the investigation stage, seized articles cannot be released by a Court under Section 451 Cr.P.C. However, under Section 457 Cr.P.C., the Criminal Court has the jurisdiction to give custody of seized property/articles at the stage of investigation, when those seized property are not produced before the Court".

4. Such determination made by the Hon'ble Division Bench is a binding precedent upon this Court. It was also observed by the Hon'ble Division Bench that the Hon'ble Apex Court in the case of **Sundar Bhai Ambalal Desai vs State of Gujarat** reported in (2022) 10 SCC 283 did not go into the question whether Section 457 Cr.P.C. could be applied by a criminal Court during the stage of investigation. The Hon'ble Division bench further went to say that the Hon'ble Apex Court in the case of **Ram Prakash Sharma –Vs- State of Haryana** reported in **(1978) 2 SCC 491** did not deliberate on the scope of Section 457 of Cr.PC and accordingly expressed its conclusion as discussed hereinabove.

5. In the aforesaid backdrop, a consensus has been expressed by the learned counsel for the contesting parties that the matter may be relegated to the learned Court below who has passed the order impugned to take a fresh determination in terms of the decision rendered by the Hon'ble Division Bench.

6. There is no iota of doubt that the decision rendered in Criminal Petition No. 284/2022 (**State of Assam –Vs- Ram Shankar Maurya**) is binding precedent for this Court as regards applicability and stage of filing application under Sections 451 and 457 of Cr.P.C. inasmuch as such interpretation was made after consideration of **Sundar Bhai Ambalal Desai** (supra). However, at the same time, the principle as laid down by the Hon'ble Apex Court for disposal of seized materials is also binding upon all the Courts in terms of the mandate under Article 141 of the Constitution of India. The Hon'ble Apex Court while dealing with disposal of seized materials irrespective of whether it is an application under Section 451 or an application under Section 457 of Cr.P.C. has laid down the following propositions of law:-

A. That the application for zimma of seized material shall be dealt expeditiously and judiciously with the object that the owner of the seized article should not suffer for it being remaining unused or by its misappropriation.

B. Whatever the situation be, it is of no use to keep the seized materials at police station for a long period.

C. If proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of it production before Court during trial.

D. To protect the interest of the investigation/trial, the seized article can be handed over to the applicant by preparing detail and proper panchnama of such article, taking photographs of such article and a bond that such article would be produced if required at the time of trial/investigation. The Court for this purpose, may take proper security also.

7. Therefore, this Court while passing an order granting or refusing zimma under

its revisional jurisdiction or the Magistrate in exercise of its power under Section 451 or 457 of Cr.P.C., is to follow the principles as laid down in the case of **Sundar Bhai Ambalal Desai** (Supra).

8. The another aspect of the matter which is raised as regards quality of the edibility of seized article or quality of items of human consumption cannot be a concern while granting or rejecting of zimma of edible materials inasmuch as if the seized goods are used for human consumption after its release, the same will give a different cause of action for different authorities to take action against those persons in accordance with law and it cannot be within the jurisdiction and concern of the investigating authority.

9. Accordingly, in view of the consensus arrived at by the learned counsel for the parties, the impugned order dated 12.10.2022 passed by the learned Judicial Magistrate First Class, Kamrup (M), Guwahati in Petition No. 6344/2022 allowing zimma of the seized areca nut in connection with Guwahati GRPS Case No. 119/2022 under Sections 120(B)/420/471/379/413 of IPC, is set aside and matter is relegated to the learned Court/Magistrate to consider the application afresh in terms of determination made in **Ram Shankar Maurya** (supra) and in terms of the principles laid down in **Sundar Bhai Ambalal Desai** (supra) and in terms of determination made in this order.

10. Accordingly, this criminal petition stands disposed of.

JUDGE

Comparing Assistant