

GAHC010256172024



2024:GAU-AS:12949

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

Case No. : Crl.Rev.P./509/2024

JYOTI BARUAH
W/O LATE RANJIT BARUAH
R/O HOUSE NO. 4, BYLANE NO. 4, BELTOLA, SURVEY, AJANTA PATH,
UNDER DISPUR, POLICE STATION, KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. D K BAIDYA, MR. M S HUSSAIN, MR. D GAGAI

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 19.12.2024

Heard Mr. D. K. Baidya, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 442/438 *read with* Section 528 of BNSS for setting aside the impugned order dated 09.08.2023, passed by the learned District and Sessions Judge, Kamrup (M), Guwahati in Sessions Case No. 17/2022, whereby the prayer for disposal of the vehicle which the petitioner had already received on zimma/custody was rejected.

3. Mr. Baidya, learned counsel for the petitioner, submitted that the present petitioner is the registered owner of the vehicle, bearing Registration No. AS 01 AG 2194 (Chevrolet Car), and the F.I.R. was lodged against her daughter- Ms. Rajkanya Baruah with the allegation of rash and negligent driving, which was registered as Dispur P.S. Case No. 3616/2021, under Section 279/338/294/353 of IPC. Presently, the case is at the stage of evidence, but till date, no witness could be examined by the prosecution. He further submitted that on 10.03.2022, the petitioner approached the learned Sessions Judge seeking zimma of the vehicle which was involved in the alleged accident and the learned Sessions Judge, vide order dated 10.03.2022, allowed the prayer for zimma of the present petitioner and granted the interim custody of the vehicle on furnishing a bond of Rs. 3,00,000/- on proper verification to the satisfaction of the Officer-In-Charge of the concerned Police Station with a condition that the

petitioner shall produce the said vehicle as and when required by the Court.

4. Mr. Baidya further submitted that as no witness could be examined by the prosecution till date, there is no probability of completion of trial within the near future. He further submitted that the petitioner is paying Rs. 2,00/- per day for parking the vehicle in a garage and till date, she had already paid Rs. 40,500/- for parking the vehicle in the Kamakhya Auto Service. The vehicle was completely damaged out of the accident and it is not in a reparable condition and that apart, the Chevrolet Company has already shut down its car company from India and hence, the petitioner now intends to dispose of the vehicle, which is laying in the garage, in a government scrap yard. The petitioner has also annexed some photograph of the vehicle along with the petition. Accordingly, the petitioner approached before the learned Sessions Judge with a prayer for disposal of the vehicle, but her prayer was rejected by the learned Sessions Judge vide order dated 09.08.2023 with an observation that the case is still at the stage of evidence and the prosecution is yet to examine witnesses and allowing the vehicle for disposal may adversely affect the trial of the case.

5. Accordingly, Mr. Baidya submitted that as the vehicle cannot be repaired and in the same time, the Chevrolet Company had also shut down and hence, except to dispose of the vehicle in a scrap yard, there is no other alternative as the petitioner had to pay a huge amount of money only for the parking of the vehicle in the garage.

6. In this context, Ms. Bora, learned Additional Public Prosecutor, submitted that from the photograph annexed along with the petition, it is seen that the vehicle may be beyond reparable condition, but as per the order of the learned

Sessions Judge, the petitioner was directed to produce the vehicle as and when it may be required at the stage of trial.

7. After hearing the submissions made by the learned counsels for both sides, I have also perused the case record and the photographs which were annexed along with the petition. It is a fact that the vehicle was alleged to have been involved in an accident and the daughter of the present petitioner is also arrayed as an accused in the said case. In the same time, it is also an admitted fact that the vehicle was given temporary zimma in the custody of the present petitioner, who is the registered owner of the said vehicle. Thus, in pursuant to the order of the learned Sessions Judge, the vehicle is still in custody/zimma of the present petitioner. But, considering the nature of the case, it is seen that the vehicle may not be required for production before the learned Trial Court at the time of recording evidence and it is also an admitted position that the petitioner is the registered owner of the said vehicle on the basis of which the vehicle was given zimma to the present petitioner. But there was a direction from the Court to produce the vehicle as and when it will be required by the Court at the time of trial. However, it is an admitted fact that the vehicle is not in a condition to be repaired and keeping the vehicle further in the garage, it will be a financial burden on the present petitioner.

8. In view of above, this Court is of opinion that the prayer of the petitioner for disposal of the vehicle in a government scrap yard may be allowed. Accordingly, impugned order dated 09.08.2023, passed by the learned District and Sessions Judge, Kamrup (M), Guwahati in Sessions Case No. 17/2022 is hereby set aside and quashed. The petitioner is allowed to dispose of the

vehicle in a government scrap yard with a further direction to produce the photograph of the vehicle as well as all the relevant documents of the disposal of the vehicle before the learned Trial Court below, which may be kept as a part of the record.

9. In terms of above, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant