

GAHC010267592023



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

Case No. : Crl.Rev.P./518/2023

NUR HUSSAIN ALI
S/O LT. NIJAM UDDIN
R/O VILL- BAMUNBARI, P.O. BAMUNBARI
P.S. MUKALMUA
DIST. NALBARI, ASSAM-781312

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE STANDING COUNSEL, EXCISE DEPARTMENT,
GOVT. OF ASSAM

2:SRI DIGANTA DEKA
INSPECTOR OF EXCISE
BIHPURIA CIRCLE
DIST. LAKHIMPUR
ASSA

Advocate for the Petitioner : MR. A GANGULY

Advocate for the Respondent : SC, EXCISE DEPTT.

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

06.03.2024

Heard Mr. A. Ganguly, learned counsel for the petitioner. Also heard Mr. D. Gogoi, learned Standing Counsel Excise Department.

This is an application under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 for setting aside the impugned Order dated 07.10.2023 passed by the learned Sub-Divisional Judicial Magistrate (S), Lakhimpur, North Lakhimpur in C.R(Excise) Case No. 14/2023 under Section 53(1)(a) of the Assam Excise (Amendment) Act, 2018, whereby the learned Court below rejected the prayer of the petitioner for Zimma of TATA Truck bearing Regn. No. AS-25-FC-3278.

The facts of the case is that at about 7:55 PM, the jurisdictional Inspector of Excise alongwith patrol party intercepted a Truck bearing Regn. No. AS-25-FC-3278 at Pathali Pahar near toll gate on NH-15 and accordingly recovered IMFL and Beer in presence of witnesses. Accordingly, a case was registered.

In connection with the aforesaid case, the said vehicle was seized. The petitioner is the registered owner of the said vehicle. The petitioner filed a Zimma petition before the Court of Sub-Divisional Judicial Magistrate (S), Lakhimpur, North Lakhimpur being petition No. 2988/2023 for granting the custody of the said TATA Truck bearing Regn. No. AS-25-FC-3278. However the Sub-Divisional Judicial Magistrate (S) by Order dated 07.10.2023 rejected the said Zimma petition.

Mr. A. Ganguly, learned counsel for the petitioner submits that the Trial Court has rejected the said Zimma petition in a most mechanical manner without any application of mind whatsoever. He further submits that the driver of the said vehicle, who was apprehended at the spot has already been released on bail by this Court by Order dated 01.09.2023 in Bail Appln. No. 3023/2023. He further submits that the subject Truck has been in custody of the Police since 03.08.2023.

Mr. D. Gogoi, learned Standing Counsel Excise Department fairly submits before this Court that a bare perusal of the impugned Order dated 07.10.2023 indicates that the said order has been passed without application of mind.

I have heard the submissions made at the bar and have perused the materials available on record.

Section 451 of the Cr.PC is reproduced hereunder for ready reference:-

“DISPOSAL OF PROPERTY

451. Order for custody and disposal of property pending trial in certain cases.-When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation. For the purposes of this section, "property" includes-

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been Committed or which appears to have been used for the commission of any offence.”

Thus, it is imperative that the criminal Court has to judicially exercise its discretion with regard to the Zimma petition. Pertinent to refer to the decision of the Apex Court in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat***, reported in ***(2002) 10 SCC 283***. Para 17 of the aforesaid decision is reproduced hereunder for ready reference:

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the Police Station for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicle, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”

In the present case, the Sub-Divisional Judicial Magistrate (S) Lakhimpur, North Lakhimpur rejected the Zimma prayer of the petitioner without considering the prayer.

That being so, the impugned Order dated 07.10.2023 that the Court of the Sub-Divisional Judicial Magistrate (S), Lakhimpur, North Lakhimpur is set aside and quashed.

In view of the above, the matter is remanded back to the Court of Sub-Divisional Judicial Magistrate (S), Lakhimpur, North Lakhimpur to re-hear the Zimma petition No. 2988/2023 fresh in accordance with law.

With the above observation and direction, the Criminal Revision Petition stands disposed of.

JUDGE

Comparing Assistant