



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

CRL.PET No. 1 OF 2024

Abul Kalam Azad,
Aged about 48 years,
S/o- Late Abdul Jabbar,
R/o- Village Jorshimuli, P.S. Chhaygaon,
Dist- Kamrup, Assam.

.....**Petitioner**

-Versus-

1. The State of Assam,
Represented by the Public Prosecutor, Assam.

2. Ankit Kumar,
S.I.(P), Of Chhaygaon Police Station,
Dist- Kamrup, Assam, PIN- 781127

3. Labanya Boro,
S.I. of Chhaygaon Police Station
Dist- Kamrup, Assam, PIN- 781127

Cum the Investigation Officer of
Chhaygaon P.S. Case No. 235/2023

.....**Respondents**

For the Petitioner : Mr. S. Hoque, Advocate.
For the Respondent : Mr. K. Baishya,
Additional Public Prosecutor
Date of Judgment : 16.05.2024

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGEMENT**

1. Heard Mr. S. Hoque, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Additional Public Prosecutor for the State.

2. This application under Section 482 of the Code of Criminal Procedure, 1973, read with Article 227 of the Constitution of India has been preferred by the petitioner, namely, *Abul Kalam Azad* impugning the order dated 09.11.2023 passed by the learned Additional Sessions Judge, Kamrup, Amingaon in Criminal Revision No. 39/2023 whereby the learned Additional Sessions Judge, Kamrup, Amingaon has upheld the orders dated 28.07.2023 and 23.08.2023 passed by the learned Chief Judicial Magistrate, Kamrup, Amingaon in connection with Chhaygaon P.S. Case No. 235/2023 whereby the prayer of the present petitioner seeking *zimma* of the 460 bags of rice (each bag containing

49 kgs. rice approximately) which were seized in connection with Chhaygaon P.S. Case No. 235/2023 was rejected.

3. The facts relevant for consideration of the instant criminal petition, in brief, are as follows:-

i. That on 15.05.2023, one Ankit Kumar, SI of Police had lodged an FIR before the Officer-in-charge of Chhaygaon Police Station, *inter alia*, alleging that on the basis of an information received from some reliable sources that one Abul Kalam Azad (present petitioner) has illegally collected huge quantity of rice from different places and stored in his godown located in Jorshimuli market for smuggling the same for his personal gain. On receipt of said information, a general diary was made in the police station and the informant along with the other police personnel arrived at the godown of Abul Kalam Azad and recovered total 460 bags of rice (each bag containing approximately 49 kg of rice).

ii. It is also stated in the FIR that the owner of the godown Abul Kalam Azad was present at the time of conducting the search, however, he failed to produce any document relating to purchase and storage of such huge quantity of rice. It is also stated in the FIR that the seized rice was brought to the police station and the petitioner was also brought to the police station for

interrogation. On receipt of said FIR, Chhaygaon P.S. Case No. 235/2023 was registered.

4. Learned counsel for the petitioner has also submitted that the petitioner Abul Kalam Azad was arrested in connection with Chhaygaon P.S. Case No. 235/2023 on 15.05.2023, however, as the Court of learned Chief Judicial Magistrate, Kamrup granted him bail and he was released on 16.06.2023. It is also submitted by the learned counsel for the petitioner that the petitioner is a businessman carrying out the business of rice in the name and style of "Saraighat Enterprise" and he used to purchase rice from Jorshimuli market at a cheaper rate and stored it in his godown situated in the said market. The petitioner has annexed as Annexure- I, a certificate issued by the President and Secretary of Jorshimuli Anchalik Market Management Committee to the effect that the petitioner is running the business of rice at Jorshimuli weekly Saturday market.

5. It is also submitted by the learned counsel for the petitioner that the petitioner used to purchase the "Atap" rice from the open market and used to store the same in his godown. It is also submitted by the learned counsel for the petitioner that after getting released on bail, the petitioner had filed a *zimma* petition before the learned Chief Judicial Magistrate, Kamrup seeking *zimma* of the seized rice, however, the learned Chief Judicial Magistrate by his order

dated 23.08.2023 rejected the prayer for *zimma* on the ground that by an earlier order dated 28.07.2023, he had already directed the Investigating Officer to sell the entire quantity of seized rice through auction.

6. Being aggrieved by the said order, the petitioner had filed the criminal revision petition before the Court of the learned Additional Sessions Judge, Kamrup, Amingaon. The said criminal revision petition has been registered as Criminal Revision No. 39/2023. By judgment dated 09.11.2023, learned Additional Sessions Judge, Kamrup, Amingaon upheld the orders dated 28.07.2023 and 23.08.2023 passed by the learned Chief Judicial Magistrate in connection with Chhaygaon P.S. Case No. 235/2023 and dismissed the revision petition filed by the petitioner.

7. Learned counsel for the petitioner has submitted that as the petitioner purchased the rice in small quantity from local villagers and thereafter stored it in his godown and therefore he was not in a position to produce any cash memo as generally for purchasing small quantities of rice in open village markets cash memos are not provided. He has also submitted that the petitioner has produced a letter dated 15.05.2023 addressed to the in-charge of Jorshimuli Police Out Post by 45 numbers of villagers stating in the said letter that the petitioner, namely, Abul Kalam Azad used to purchase "Atap" rice from open market and they had also

sold the rice to the petitioner. Learned counsel for the petitioner has also submitted that though the said letter dated 15.05.2023 was produced before the learned Chief Judicial Magistrate as well as learned Additional Session Judge, however, same was not relied upon either by the Chief Judicial Magistrate, Kamrup, Amingaon or by the learned Additional Session Judge, Kamrup, Amingaon.

8. Learned counsel for the petitioner has submitted that while passing the impugned order dated 23.08.2023 learned Chief Judicial Magistrate did not take into consideration the fact that when the order dated 28.07.2023 was passed, no application for *zimma* was pending before the said court and therefore the seized rice was directed to be sold in auction. However, on 23.08.2023 the present petitioner by filing petition No. 569 before the learned Chief Judicial Magistrate, Kamrup, Amingaon had narrated in detail as to how the petitioner had purchased the rice from open market and stored in his godown for business purpose. Learned counsel for the petitioner has also submitted that the seized rice is still kept in the custody of police and it has not yet been auction as per the order dated 28.07.2023 and there is every likelihood that as the rice is perishable item it would soon be damaged.

9. Learned counsel for the petitioner has also submitted that both the courts of learned Chief Judicial Magistrate,

Kamrup, Amingaon as well as learned Additional Sessions Judge, Kamrup, Amingaon had failed to take into consideration the fact that the rice was seized from the possession of the present petitioner and no one else has come forward for seeking *zimma* of the seized rice and merely because of the fact that the petitioner was unable to show any cash memo his prayer for *zimma* of rice was rejected, which was improper considering the fact that the rice is a perishable item.

10. On the other hand, learned Additional Public Prosecutor has submitted that merely because no one else has claimed the custody of the seized rice, same cannot be given in *zimma* to the present petitioner as the petitioner has failed to produce any valid document of ownership of the said rice. He has also submitted that considering the huge quantity of rice recovered in this case, learned Additional Session Judge, Kamrup, Amingaon was right in not believing the letter written by some of the villagers on 15.05.2023 wherein they have stated that they used to sell the "Atap" rice to the petitioner. Learned Additional Public Prosecutor has also submitted that there is no error or irregularity in orders passed by the learned Chief Judicial Magistrate, Kamrup, Amingaon as well as by the learned Additional Session Judge, Kamrup, Amingaon and therefore this criminal petition may be dismissed.

11. I have considered the submissions made by the learned counsel for both the sides and also perused the materials available on recording including the case diary of Chhaygaon P.S. Case No. 235/2023.

12. For the sake of convenience, the order dated 23.08.2023, passed by the learned Chief Judicial Magistrate, Kamrup, Amingaon in GR Case No. 593(K)/2023 corresponding to Chhaygaon P.S. Case No. 235/2023, is quoted herein below:-

"CR put up before me today along with zimma petition no. 569 filed by one Abul Kalam Azad seeking zimma of 460 nos. of rice bags (49 kgs) which has been seized in connection with this case.

I have heard learned counsel for the petitioner. I have heard learned Addl. P.P. I have also perused the case record.

On perusal of the case record, it is seen that this court vide order dated 28.07.2023 directed the IO that the entire quantity of rice seized vide MR no. 75/2023 be sold through auction.

In view of the order dated 28.07.2023 passed by this court in the instant case, the zimma petition no. 569 is rejected."

13. On bare perusal of the aforesaid order, it appears that the *Zimma* petition filed by the present petitioner before the learned Chief Judicial Magistrate, Kamrup, Amingaon was rejected only on the ground that by a previous order i.e.,

28.07.2023, the Investigating Officer of the case was directed to sell the entire seized rice through auction. If we peruse the order dated 28.07.2023, it appears that the learned Chief Judicial Magistrate, Kamrup, Amingaon by the said order had directed the Investigating Officer to take steps for selling the seized rice by way of auction as till that date when the said order was passed, nobody had appeared seeking *zimma* of the seized rice.

14. It also appears from record that the learned Chief Judicial Magistrate, Kamrup, Amingaon had directed auction sale of the seized rice on 27.08.2023 itself, however, till the order dated 23.08.2023 that was passed by the learned Chief Judicial Magistrate rejecting the prayer for *zimma* of the seized rice by the present petitioner, the seized rice was not auctioned as per the direction of the learned Chief Judicial Magistrate.

15. It is pertinent to mention herein that Mr. K. Baishya, learned Additional Public Prosecutor, has informed this court that the Investigating Officer of the case has informed him over telephone that the seized rice has not yet been sold in auction and it is still stored in the campus of Jorshimuli Police Out Post. It also appears from the records that no stay on the order dated 28.07.2023 passed in G.R. No. 593(K)/2023 corresponding to Chhaygaon P.S. Case No. 235/2023 has been passed either by this Court or by the Court of learned

Additional Sessions Judge. However, in spite of that the seized rice could not be sold at auction by the Investigating Officer pursuant to the direction given by the learned Chief Judicial Magistrate, Kamrup, Amingaon.

16. Though, the petitioner has not been able to produce any cash memo or any other document regarding purchase of the rice, however, it is not disputed that the rice which was seized has been recovered from his possession from his go down. It is also relevant to note herein that the Investigating Officer could not collect any evidence till now to show as to from whom the alleged rice was stolen. It appears that there is no evidence or record as on date to show that the seized rice is a stolen property.

17. The Office of the Deputy Commissioner, Food and Civil Supplies and Consumer Affairs Branch, Kamrup (M) has also reported that there is no incident of pilferage, theft or missing of rice stock from the depots under FCI, DO, Guwahati. Till now, neither the person from whom the seized rice is alleged to be stolen could be ascertained nor the said rice which is still dumped in the premises of Jorshimuli Police Out Post could be disposed of on auction. The claim of the present petitioner was rejected only because he had produced only a copy of letter dated 15.05.2023 from some of the villagers from whom he had purchased the said rice. There is no denial of the fact that the rice was seized from

the godown of the present petitioner. As the rice is a perishable item and already almost one year has lapsed since the date of seizure of the seized rice and there is every possibility of natural decay of the seized rice as the rice seized in the instant case was seized from the possession of present petitioner and as present petitioner has stated before the Investigating Officer that he had purchased this rice from open market from local villagers and as nobody has come forward from whom the said rice is alleged to have been stolen. Moreover, neither during the investigation nor could the Investigating Officer could find any person from whom the said rice has been stolen, therefore, this court is of considered opinion that to prevent the seized rice from getting perished and to secure the ends of justice, the seized rice is to be given in the custody of somebody and under the facts and circumstances of this case the present petitioner appears to be the best person to whom the custody of seized rice may be given.

18. In view of above, the impugned order passed by the learned Chief Judicial Magistrate, Kamrup, Amingaon as well as the impugned order passed by the learned Additional Sessions Judge, Kamrup, Amingaon is hereby interfered with and the Investigating Officer of Chhaygaon P.S. Case No. 235/2023, is here by directed to give the *zimma* of the seized 460 bags of "Atap" rice to the petitioner, on his furnishing an

indemnity bond of Rs.10 Lakhs before the Investigating Officer. At the time of giving *zimma* of the said rice. The Investigating Officer shall take the photographs of seized rice as well as make an inventory of the seized rice to be annexed with the *zimmanama* and same shall be forwarded to the court of learned Chief Judicial Magistrate, Kamrup, Amingaon, to be tagged with the case record of G.R. No. 593(K)/2023 corresponding to Chhaygaon P.S. Case No. 235/2023.

19. With the above observation, this criminal petition is accordingly disposed of.

20. Sent back the case diary along with a copy of this judgment.

JUDGE

Comparing Assistant