GAHC010178532020

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

Case No. : Crl.Rev.P./223/2020

KAMAL HASSAN MIAH
S/O LATE ASIRUDDIN, R/O VILL-PAHARSING PARA, P.S.-MORNOI, DIST-GOALPARA, ASSAM, PIN CODE-

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MS. T SOM
Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

O R D E R

22-12-2020.

Heard the submission of the learned counsel for the petitioner rand the learned Additional Public Prosecutor.

On 03.10.2020 Basista Police Station intercepted a vehicle carrying 1000 packets of rice bags and as the driver of the vehicle could not produce any valid legal documents in respect of the rice bags, same was seized suspecting to be meant for Public Distribution System and an FIR was lodged in this regard which was registered as Basistha PS Case No.1302/2020 under Section 379 IPC read with Section 7 of EC Act.

The petitioner herein claiming the owner of the said rice made a prayer for zimma of the seized rice before the court of learned JMFC, Kamrup(M) which was rejected by the court by its order dated 23.11.2020. Challenging the aforesaid order, the present revision petition has been preferred

with a prayer for setting aside the aforesaid order and praying for zimma of the seized rice.

A report from the IO was called for which is now been furnished in the court wherein it is submitted by the IO that the sample of seized rice was also examined through the Inspector of Food and Civil Supplies but could not ascertained whether it pertains to PDS or not. IO in his report has also submitted that as the ownership of the rice could not be ascertained and the petitioner claimed himself to be the owner of the seized rice bags, it will be proper if the seized article is released in favour of the petitioner otherwise the articles may be demolished and court can consider the matter of zimma in favour of the petitioner as prayed for.

The rice was seized only on the basis of suspicion and there is no conclusive prove is yet whether the said rice are stolen one. On the other hand, the rice is perishable article and keeping the same for a long time, till disposal of the case is not justified.

The Hon'ble Apex Court has observed in Sunderbhai Ambala Desai V. State of Gujarat, reported in AIR 2003 SC 638 that the matter of custody and disposal of seized property, pending trial can be dealt under Section 451 of the CrPC. The Hon'ble Supreme Court is of the view that the power under Section 451 of the CrPC should be exercised expeditiously and judiciously, which would serve various purposes, namely:

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the properly in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

Accordingly, it is directed that the seized rice may be released in favour of the present petitioner on execution bond of Rs.1,00,000/- after verification of the relevant documents with further condition that the petitioner will co-operate with the investigation.

The report came from the IO be kept on record.

JUDGE

Comparing Assistant