

GAHC010140382022



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

Case No. : Crl.Rev.P./371/2022

MD. RAJIBUL ISLAM
S/O ABDUL MUTALEB
RESIDENT OF DONGARPAR, WARD NO. PS MOIRABARI, DIST MORIGAON,
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY PP ASSAM

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI 6

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
TAXATION DEPARTMENT
DISPUR
GUWAHATI 06

4:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY
CENTRAL CUSTOM
SASTRI BHAWAN
NEW DELHI 11000

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

Date of hearing : 17.08.2022

Date of verdict : 30.08.2022

VERDICT (CAV)

This revision petition, under Sections 401/397 of the Code of Criminal Procedure, is directed against the order dated 09.06.2022, passed by the learned Judicial Magistrate, Bokajan, Karbi-Anglong, Assam, in Khatkhati P.S. Case No. 27/2022, under section 379/411 IPC. It is to be noted here that vide impugned order, dated 09.06.2022, the learned Judicial Magistrate, Bokajan, Karbi-Anglong, Assam, has rejected the petition No. 105/2022, filed by the petitioner- Md. Rajibul Islam, seeking custody of 26 bags of betel nuts, seized by Police in connection with the aforementioned case.

2. The factual background, leading to filing of the present petition, is briefly stated as under:

“On 14.03.2022, S.I. Atikur Rahman of Khatkhati Police Station lodged an FIR with the Officer-In-Charge, Khatkhati P.S. to the effect that on that day at about 12-30 pm, during Naka Checking they found 26 bags of betel nuts, weighing 1936 kg, being carried by one Md. Rajibul Islam, inside the dicky of a bus, bearing registration No.

AS 02 BC 2451, which was proceeding towards Bokajan side, and he could not produce any supporting documents and as such the same are suspected to be stolen article and seized accordingly preparing seizure list. Upon the said FIR, Khatkhati P.S. Case No. 27/2022, under section 379/411 IPC has been registered and investigation was being carried out. Thereafter, the petitioner had filed one petition, No. 105/2022, seeking custody of the seized 26 bags betel nuts before the learned Judicial Magistrate, Bokajan, Karbi-Anglong, Assam and then vide impugned order, dated 09.06.2022, the learned Magistrate, had rejected the petition filed by the petitioner- Md. Rajibul Islam.”

3. Being highly aggrieved, the petitioner has approached this court by filing the present petition, on the ground that the learned court below had failed to consider the fact that the seized betel nuts, are lying in the police station for more than 128 days, and that it had failed to consider the report of the I.O. that the seized betel nuts were not required for the purpose of investigation, and that no body, except the petitioner had claimed the betel nuts, and that the petitioner, had purchased the same locally from Zutovi Village, Dimapur, Nagaland and transporting the same to Rupahi, and that the petitioner is ready to pay tax for the same, and that the value of the betel nuts are diminishing day by day and subject to speedy and natural decay and in the event of damage, the petitioner will suffer loss of Rs. 4,50,000/, and that the learned court below had failed to exercise its jurisdiction under section 451 Cr.P.C. and that one Mobile Phone was also seized by Police and the same is required for his personal use and therefore, it is contended to allow the petition.

4. The respondents side has not filed any objection herein this petition, though opportunity is afforded to it.

5. I have heard Mr. M.A. Sheikh, learned counsel for the petitioner, and also heard Mr. P. Borthakur, the learned Addl. P.P. for the state respondent.

6. Mr. Sheikh, the learned counsel for the petitioner, submits that the petitioner had purchased the betel nuts locally from Zutovi Village, Dimapur and transported the same to Rupahi and he is the legal owner of the same and he is ready to pay Tax and that the betel nuts are lying the P.S. Campus for more than 128 days and is a subject to speedy natural decay and in the event of damage he will suffer lose to the tune of Rs. 4,50,000/ and that the learned court below has committed manifest illegality by dismissing the petition. Mr. Sheikh has also produced documents of purchasing the same from Dimapur Nagaland. Mr. Sheikh, therefore, contended to allow the petition by setting aside impugned order. Mr. Sheikh also referred following case laws in support of his submission:-

- (i) **Sunderbhai Ambala Deshai vs. State of Gujarat : (2002) 10 SCC 283**
- (ii) **M/S Kumar Traders And Company & Anr. vs. The State of Assam & 4 Ors. : WP(C) 4785/2017**

7. Per contra, Mr. P. Borthakur, learned Addl. P.P. submits that the order, passed by the learned court below, against which this petition is being preferred, suffers from no infirmity or illegality and it requires no interference of this court.

Mr. Borthakur further submits that the petitioner could not produce any documents of the seized betel nuts before the learned court below and also before the I.O. and in support of the same Mr. Borthakur has produced one Status Report which he had received from the I.O. Mr. Borthakur therefore, contended to dismiss the same.

8. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the grounds mentioned therein and the documents placed on record. Also I have carefully gone through the cases laws, referred by Mr. Sheikh, and the Status Report submitted by Mr. Borthakur and perused also the impugned order.

9. The Seizure List, Annexure-2 of the petition, reveals that the I.O. had seized 26 bags of betel nuts weighing 1936 kg and one mobile phone on 14.03.2022.

10. A careful perusal of the impugned order dated 09.06.2022, reveals that while dismissing the petition, the learned court below has considered the report of the I.O. that the seized betel nuts are not required for the purpose of investigation. The learned court below has also considered the fact that ownership of the betel nuts could not be established by producing the GST Bills by the petitioner and also due to non receipt of report from the Agriculture Department as to whether the betel nuts are fit for human consumption or not.

10. While the seized betel nuts are not required for the purpose of investigation, as is apparent from the report of the I.O., the grounds, so assigned for rejection of zimma petition, filed by the petitioner, by the learned

court below, seems to be not in conformity with the law, so laid down by Hon'ble Supreme Court in the year 2002, in the case of **Sunderbhai Ambala Desai (supra)**. The relevant paragraph may be reproduced below:-

"In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It 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 property 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."**

11. Here in this case, the seized betel nuts are subject to speedy natural decay. And the same are not required for the purpose of investigation. From the date of seizure, till date, more than 128 days, already elapsed. There is no allegation of theft in respect of the said seized betel nuts. The learned counsel for the petitioner has also produced one certificate issued by Gaon Burah and Chairman of Zutovi Village in respect of purchasing of betel nuts from their village. Moreover, he is ready to pay tax, if required by any rule, for the same. Under the above facts and circumstances, it cannot be said that the impugned order withstand the test of legality, propriety and correctness.

12. In the result, I find sufficient merit in this revision petition, and accordingly,

same stands allowed. The impugned order dated 09.06.2022, stand set aside and quashed. The learned court below is directed to released the seized betel nuts in the custody of the petitioner, on his executing a bond of Rs. 4,50,000/, to its satisfaction. The learned court below, however, will be at liberty to impose any such condition, as it deemed fit and proper.

13. The parties have to bear their own costs.

JUDGE

Comparing Assistant