
(2022) 12 GAU CK 0038

Gauhati High Court

Case No: Criminal Revision Petition No. 546 Of 2022

Muminul Islam
Mazumder

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision: Dec. 22, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 120B, 379, 413, 416, 418, 420
- Code Of Criminal Procedure, 1973 - Section 397, 401, 451

Hon'ble Judges: Mitali Thakuria, J

Bench: Single Bench

Advocate: B U Laskar

Final Decision: Disposed Of

Judgement

1. Heard Mr. S. Banik, learned counsel for the petitioner. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Sections 397/401 of the Code of Criminal Procedure for setting aside and quashing the impugned order dated

13.10.2022, passed by the learned Chief Judicial Magistrate, Cachar, Silchar, whereby, the learned Court below rejected the prayer of the petitioner

for Zimma of 85 bags of Betel nuts seized in connection with Silchar P.S. Case No. 2133/2022.

3. It is stated that the petitioner purchased the Betel nuts from the village of Banskandi area in the District of Cachar and collected 85 bags of Betel

nuts in order to transport the same to Howly town in the District of Barpeta, Assam. The petitioner paid necessary E-Way bills on different dates, for

which, GST of total 85 bags of local Betel nuts have been paid using the respective addresses of the proprietors with their consent. In order to

transportation of Betel nuts, the petitioner contacted with one Jakir Hussain Laskar, who is a truck driver, and handed over the possession of the Betel

nuts to him on 04.09.2022, at about 9.00 a.m. But, on the same day, at about 10.00 p.m., the petitioner was informed about the seizure of Betel nuts

and he came to know that the police of Arunachal outpost suspected the Betel nuts as Burmese Supari. The Arunachal outpost, accordingly, made a

G.D. Entry No. 48, dated 04.09.2022, and also arrested the truck driver- Jakir Huaain Laskar and another driver, namely, Khairul Islam Laskar, of

Night Super bus, bearing Registration No. AS-01-GC-2434, by whom the Betel nuts were carried through the Night Super. Subsequently, on

05.09.2022, the case was registered as Silchar P.S. Case No. 2133/2022, under Sections 120B/416/418/420/379/413 of the Indian Penal Code.

Accordingly, the 80 bags of Suparis, suspected to be Burmese Suparis, were also seized by the police preparing Seizure List.

4. It is further stated that the petitioner, being the owner of 85 bags of Betel nuts, preferred a Zimma Petition, along with relevant documents, before

the learned Chief Judicial Magistrate, Cachar, Silchar, seeking Zimma of the seized Betel nuts. However, the learned Court below, on being objected

by the Investigating Officer, rejected the prayer of the petitioner and directed the Investigating Officer to protect the seized articles allowing the

petitioner to do the needful for maintenance etc. The learned Chief Judicial Magistrate, Cachar, Silchar, rejected the prayer for the Zimma merely on

the objection raised by the Investigating Officer that the report of Food Safety and Agriculture Department are yet to be received. But, till date, no

such process has been initiated by the Investigating Officer for obtaining the certificate from the concerned department. Further, though the learned

Court below directed the petitioner to maintain the Betel nuts with the assistance of the Investigating Officer, yet it is not possible to maintain the

seized goods which are kept in a small place and as a result of which, the Betel nuts have started affecting with moisture. The learned Court below

failed to consider that the petitioner paid E-Way bills for transportation of Betel nuts on various dates and rejected the prayer for Zimma without

applying judicial mind and hence, the present revision petition has been filed by the petitioner seeking Zimma of the seized 80 bags of the areca

nuts/Betel nuts and further prayed to send the sample of areca nuts/Betel nuts, seized from the petitioner, to any other Central Forensic Science

Laboratory and to dispose the Zimma petition in accordance with law.

5. Mr. S. Banik, learned counsel for the petitioner, has submitted that the order passed by the learned Court below is not a legal order as the learned

Court below rejected the petition for Zimma due to non-receipt of food safety report from the Agriculture Department and also considering the initial

stage of investigation, viz-a-viz the objection raised by the Investigating Officer. It is further submitted that as per Section 451 of the Code of Criminal

Procedure, Magistrate has the authority to dispose of the petition for Zimma in any enquiry or trial, but the Honâ€™ble Apex Court in the case of

Sunderbhai Ambalal Desai Vs. State of Gujarat, reported in (2002) 10 SCC 283, has observed that the Magistrate can exercise the power under

Section 451 of the Code of Criminal Procedure and the property, which is subject to speedy and natural decay, should be dispose of expeditiously.

Further, it is submitted that alternative remedy can also be provided to the petitioner by sending the sample to any other Central Forensic Science

Laboratory of India for examination or to determine as to whether the Betel nuts are fit for human consumption.

6. On the other hand, learned Additional Public Prosecutor, Mr. K. K. Das, has submitted that the learned Chief Judicial Magistrate, Cachar, Silchar,

has rightly rejected the prayer for Zimma as it is very essential to get the report from Food Safety and Agriculture Department to determine as to

whether the seized areca nuts/Betel nuts are fit for human consumption or not and hence, it requires no interference of this Court to the order passed

by the learned Court below. More so, the petitioner could not produce any documents to prove the ownership of the seized Betel nuts, for which the

zimma petition was filed before the learned Court below.

7. Per contra, the learned counsel for the petitioner, Mr. S. Banik, has submitted that the petitioner has already produced the E-Way bills through

which he also paid the necessary GST and the same is sufficient to establish his ownership over the seized Betel nuts. Further, it is submitted by the

learned counsel for the petitioner that considering the nature of the seized goods, which is perishable one, the order of zimma can be given to the

present petitioner, who is the owner of the seized goods or in alternative, the Betel nuts can be sent to any Central Forensic Science Laboratory to

determine as to whether the sized areca nuts/Betel nuts are fit for human consumption.

8. After considering the submissions of learned counsels for both sides, it is seen that the present petitioner produced the E-Way bills and the

supporting documents before the learned Court below while seeking zimma of the seized 85 bags of Betel nuts. But, the learned Court below rejected

the same on the ground that the I.O. could not produce any report from the food analyst to ascertain as to whether the seized Betel nuts are fit for

human consumption. It is the admitted fact that if the food analyst report is not received and if the seized areca nuts/Betel nuts are not fit for human

consumption, it may be health concerned for the general public and hence, I find that alternative prayer made by the petitioner to examine the seized

Betel nuts at any Central Forensic Science Laboratory of Indian can be allowed. And, thereafter, on receiving the report from the Central Forensic

Science Laboratory, the learned Court below can accordingly, dispose of the zimma petition.

9. In view of above, the impugned order dated 13.10.2022, passed by the learned Chief Judicial Magistrate, Cachar, Silchar, stands set aside. The

petitioner will file fresh application before the learned Court below for sending the sample of Betel nuts to any Central Forensic Science Laboratory of

India and the learned Court below will, accordingly, dispose of the zimma petition on receipt of food analyst report from the Central Forensic Science

Laboratory. The I.O. of the case shall also do the needful in sending the sample to Central Forensic Science Laboratory as per direction of the learned

Court below.

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