

**(1991) 01 GAU CK 0009**

**Gauhati High Court**

**Case No:** Criminal Revision No. 14 of 1991

Sheikh Mohammad Alam

APPELLANT

Vs

Md. Afajuddin Ahmed

RESPONDENT

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**Date of Decision:** Jan. 22, 1991

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2
- Criminal Procedure Code, 1973 (CrPC) - Section 432, 451, 452
- Specific Relief Act, 1963 - Section 43

**Citation:** (1991) 2 GLR 78

**Hon'ble Judges:** R.K. Manisana Singh, J

**Bench:** Single Bench

**Advocate:** K.K. Mahanta, B. Chodhury and A.K. Sarkar, for the Appellant; None, for the Respondent

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**Judgement**

Manisana, J.

This revision petition arises from an order of the chief Judicial Magistrate Darrang made on 22.12.90 in case No. 1971 of 1981 directing the Petitioner Sheikh Mohammad Alam to Produce the vehicle before the Court with a view to deliver the same to the opposite party Md. Afajuddin Ahmed.

2. Facts--In connection with CR Case No 1971 of 1978 instituted by the complainant Mohamad Alam in the Court of the Chief Judicial Magistrate Darrang against Binod Prasad and his brother, a truck bearing registration mark ASU 5721 was seized from the possession of the Respondent Afajuddin who was not a party in the case. On 28.5.89, the trial Judge acquitted the accused of all the charges and after the conclusion of the trial, the trial Judge passed an order for delivery of the vehicle to the Respondent Afajuddin Ahmed from whom the vehicle was seized. On appeal filed by the complainant-Petitioner, the Sessions Judge dismissed the appeal, Being aggrieved by the order of the Sessions Judge Criminal Revision No 371 of 1990 was

filed in this Court and this Court dismissed the revision petitions on 31.10.90. Thereafter, the Petitioner Sheikh Mohammad Alam filed Title Suit No 36 of 1990 in the Court of the Assistant District Judge Darrang against the accused in the Criminal case imp leading the Respondent as a party. In the suit the Petitioner filed an application under Order 39 Rule 1 and 2 for the injunction being Mis (J) No 20/90. On 11.5.90 the trial Court issued an ex parte interim injunction. The ad interim injunction runs as follows:

So an ad interim injunction is granted restraining the Defendants opposite parties, their servants, agents, workmen, employees from interfering with the possession of the vehicle tata Truck No ASU 5721 for taking delivery of the vehicle from the Plaintiff-Petitioner until further order.

On 22.12.99, on the application of the Respondents, the Chief Judicial Magistrate made an order in CR Case No 1971 of 1988 referred to above directing the Petitioner to produce the vehicle on 29.12.90 for delivery of the same to the Respondent herein. But on 29.12.90, the Petitioner was absent and therefore, 8.1.91 was fixed for the production of the vehicle by the Petitioner. Hence this petition.

3. The interim custody of the vehicle given to the Petitioner during the pendency of the trial u/s 451, Code of Criminal Procedure, in my judgment, is custodia legis. viz, property considered to be in the custody of the Court. Therefore, a party may be effected by the interim order of a Magistrate u/s 451 and may cause some inconveniences or to some extent prejudice one party but the possession of the vehicle can be treated as a possession of the party finally declared to be entitled to possession thereof u/s 432, Code of Criminal Procedure. It is also equally true that a Criminal Court cannot satisfactorily decide the question of title to the vehicle in a proceeding u/s 452 as the proceeding u/s 452 is not a legal process which is suited for an adjudication of complicated question and order passed u/s 452 of the Code of Criminal Procedure does not confer title on any person, Therefore, the unsuccessful party may move to the Civil Court for appropriate relief. The Civil Court has jurisdiction to give a finding different from what the Magistrate had reached, i.e. the decree of the Civil Court is binding on the Criminal Court in such a matter.

4. The question then is--Whether the concluded order u/s 452 after the trial made by a Magistrate of competent jurisdiction should be set at naught merely because an unsuccessful party has approached the Civil Court ? It would depend upon the circumstance of its case.

5. For the implementation or execution of the concluded order of the Magistrate u/s 452, the Respondent filed the application for delivery of the vehicle to him. The injunction may amount to restraining the Respondent from prosecuting a judicial proceeding pending before the institution of the suit. However, I am not expressing any opinion as to such an interim Injunction can be passed in view of the provisions under Clauses (a) and (b) of Section 43 of the Specific Relief Act at this stage. On the

facts and in the circumstance of the case, I am of view that at this stage if it is ordered and directed that the Magistrate shall take the vehicle in to his custody and keep the same under police custody or otherwise as he seems fit without delivery of the vehicle to any one of the parties till disposal of interim injunction matter by the trial Court, it will be proper, I do so accordingly.

6. In the result, the learned Chief Judicial Magistrate Darrang shall have the custody of the vehicle in question till the disposal of the injunction matter by the trial Court as directed above and then shall dispose of the vehicle according to the result of the injunction matter.

This disposes of the petition.