

(2024) 03 GAU CK 0055

In the Gauhati High Court

Case No : Criminal Revision Petition No. 16 Of 2024

Abhijit Saikai

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 20-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 102, 102(1), 145, 146, 397, 401, 451, 459, 482
Assam Cattle Preservation Act, 2021 — Section 8, 11(1), 11(5)
Food Safety Standard Act, 2006 — Section 89

Citation : (2024) 03 GAU CK 0055

Hon'ble Judges : Mitali Thakuria, J

Bench : Single Bench

Advocate : N. Saikia, P. Borthakur

Final Decision : Disposed Of

Judgement

1. Heard Ms. N. Saikia, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor appearing for the Assam.

2. This is an application under Section 397 Cr.P.C read with Section 401 and 482 of Cr.P.C, 1973 for setting aside the orders passed by the learned Court below rejecting the prayer of the petitioners for Zimma of Vehicle, two mobile phones and removal of seal of cold storage.

3. The case of the petitioner in brief is that the petitioner is a Practicing Advocate by profession and he is also managing the Eden Cold Storage on the honorary basis which is located at N.H Khanapara. On 29.11.2023 a vehicle (refrigerated van) having registration No. AS01EC8381 was preceded with packaged buffalo meat from a factory located at Kishanganj, Bihar to Eden Cold Storage Guwahati. The factory of the petitioner is having valid license of FSSAI from Govt. of India. The said vehicle was intercepted by the police at Srirampur gate and after checking 4/5 packets of meat and necessary papers of carrying goods etc were seized by police and the petitioner was also illegally detained on 09.12.2023.

Thereafter, the petitioner also applied for Zimma vehicle in the Court of S.D.J.M(M) Gossaigaon but, the same was not considered as the petitioner failed to furnish bank guarantee as per Section 11(5) of the Assam Cattle Preservation Act. But the learned Court below failed to appreciate the Act that as per Section 11(1) of the said Act, the I.O have no jurisdiction to seize the mobile phones, i20 car and the cold storage which is beyond the local of the police jurisdiction. As per Section 11(5) of the said Act, the vehicle which is carrying cattle in inter district without any approval can be seized but, herein in the instant case, no cattle's were being carried in the vehicle and as such the bank guarantee as per Section 11(5) of the Assam Cattle preservation Act is not at all required.

4. The cold storage is also registered under FSSAI Act, 2006 and except the food safety officer no one else has authority to take samples. More over as per Section 89 of the Food Safety Standard Act, 2006 has overriding effect on all other food related laws. Further as per the Section 102 of Cr.P.C the police cannot seized immovable property.

5. The petitioner is carrying business of storing the packaged processed buffalo meat which is processed and packed in the factory located in different States like U.P, Bihar. The factory also has the valid license under FSSAI issued by the Government of India. In the present case the food analyst is eligible for examination of the food under the FSSAI Act, and thus, the samples were illegally seized and have sent to Forensic department for examination as police is not at all a competent authority to examine the food quality or issue any certificate.

6. The learned counsel Ms. N. Saikia further submitted that the Assam Cattle Preservation Act, 2021 was enacted for regulating slaughter, fresh meat consumption, illegal transportation of cattle for preservation of cattle and thus, the said Act deals with transportation and slaughter of live cattle and sale of beef of freshly slaughtered animal and which is to be supervise by the Animals and Husbandry Department. Thus, the I.O grossly violated the Section 11(1) of the said Act and by detaining and arresting the petitioner along with illegally seizing one of the chambers of the Cold Storage, 2 mobile phones and one i20 car and other documents of Eden Cold Storage Pvt. Ltd.

7. She further submits that the petitioner is covered under the FSSAI Act 2006 and he is no way or remotely connected to Assam Cattle Preservation Act 2021 which deals with live cattle, slaughters and unprocessed meat.

8. Accordingly, it is submitted by Ms. N. Saikia, learned counsel for the petitioner that under the above facts and circumstances of this Case, the mobile phones and his personal car may be handed over to him and cold storage which is an immovable assets, may be released which was illegally seized by police having no authority under Section 102 of Cr.P.C.

9. In support of his submission, the learned counsel for the petitioner also relies

on the decision of Hon'ble Apex Court reported in AIR 2019 Supreme Court 4554 [Nevada Properties Private Limited Through Its Directors v. State of Maharashtra and Anr] and further relies on another decision of Delhi High Court passed in WP(CRL)/1256/2020 in Indiabulls Commercial Credit Limited vs. Economic Offences Wing & Ors.

10. She mainly emphasized on the para of 19, 20 & 21 of the above referred judgment of Hon'ble Apex which is read as under:

"19. The first part of sub-section (1) of Section 102 of the Code relates to the property which may be alleged or suspected to have been stolen. Immovable property certainly cannot be stolen and cannot fall in this part. The second part relates to the property which may be found by a police officer under circumstances which create suspicion of the commission of any offence. We have already referred to the judgments of the Delhi High Court in the case of P.K. Parmar (1992 Cri LJ 2499 (Del) (supra), Ms. Swaran Sabharwal (1988 Cri LJ 241) (Del) (supra), and Jagdish Chander (supra), which have elucidated and in a restricted and narrow manner defined the requirement for invoking the second part.

However, we have come across a decision of this Court in Teesta Atul Setalvad v. State of Gujarat, on an appeal from the judgment of the Gujarat High Court and had dealt with a situation when an act of freezing the accounts was a sequel to the crime as the crime was detected earlier. The Gujarat High Court took a somewhat contrary view, by not interfering and directing defreezing, observing that even if the action of the investigating agency at the inception to seize may not be regular, the Court cannot be oblivious to the collection of substantial material by the investigation agency which justifies its action under Section 102 of the Code. Further when the investigation had progressed to a material point, de-freezing the bank accounts on the basis of such arguments would paralyse the investigation which would not be in the interest of justice. After referring to the factual matrix in Teesta Atul Setalvad (supra), this Court observed that the Investigating Officer was in possession of material pointing out to the circumstances that had created suspicion of the commission of an offence, in particular the one under investigation, and therefore exercise of power under Section 102 of the Code would be in law legitimate as it was exercised after following the procedure prescribed in sub-sections (2) and (3) of the same provision.

20. Section 102 postulates seizure of the property. Immovable property cannot, in its strict sense, be seized, though documents of title, etc. relating to immovable property can be seized, taken into custody and produced. Immovable property can be attached and also locked/sealed. It could be argued that the word 'seize' would include such action of attachment and sealing. Seizure of immovable property in this sense and manner would in law require dispossession of the person in occupation/possession of the immovable property, unless there are no claimants, which would be rare. Language of Section 102 of the Code

does not support the interpretation that the police officer has the power to dispossess a person in occupation and take possession of an immovable property in order to seize it. In the absence of the Legislature conferring this express or implied power under Section 102 of the Code to the police officer, we would hesitate and not hold that this power should be inferred and is implicit in the power to effect seizure. Equally important, for the purpose of interpretation is the scope and object of Section 102 of the Code, which is to help and assist investigation and to enable the police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the charge sheet. The Section is a part of the provisions concerning investigation undertaken by the police officer. After the charge sheet is filed, the prosecution leads and produces evidence to secure conviction.

Section 102 is not, per se, an enabling provision by which the police officer acts to seize the property to do justice and to hand over the property to a person whom the police officer feels is the rightful and true owner. This is clear from the objective behind Section 102, use of the words in the Section and the scope and ambit of the power conferred on the Criminal Court vide Sections 451 to 459 of the Code. The expression 'circumstances which create suspicion of the commission of any offence' in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not 'any property' is required to be seized. The word 'suspicion' is a weaker and a broader expression than 'reasonable belief' or 'satisfaction'. The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences. In case and if we allow the police officer to 'seize' immovable property on a mere 'suspicion of the commission of any offence', it would mean and imply giving a drastic and extreme power to dispossess etc. to the police officer on a mere conjecture and surmise, that is, on suspicion, which has hitherto not been exercised. We have hardly come across any case where immovable property was seized vide an attachment order that was treated as a seizure order by police officer under Section 102 of the Code. The reason is obvious. Disputes relating to title, possession, etc., of immovable property are civil disputes which have to be decided and adjudicated in Civil Courts. We must discourage and stall any attempt to convert civil disputes into criminal cases to put pressure on the other side (See Binod Kumar and others v. State of Bihar and Another). Thus, it will not be proper to hold that Section 102 of the Code empowers a police officer to seize immovable property, land, plots, residential houses, streets or similar properties. Given the nature of criminal litigation, such seizure of an immovable property by the police officer in the form of an attachment and dispossession would not facilitate investigation to collect evidence/material to be produced during inquiry and trial. As far as possession of the immovable property is concerned, specific provisions in the form of Sections 145 and 146 of the Code can be invoked as per and in accordance with law. Section 102 of the Code is not a general provision which

enables and authorises the police officer to seize immovable property for being able to be produced in the Criminal Court during trial. This, however, would not bar or prohibit the police officer from seizing documents/papers of title relating to immovable property, as it is distinct and different from seizure of immovable property. Disputes and matter relating to the physical and legal possession and title of the property must be adjudicated upon by a Civil Court.

21. In view of the aforesaid discussion, the Reference is answered by holding that the power of a police officer under Section 102 of the Code to seize any property, which may be found under circumstances that create suspicion of the commission of any offences, would not include the power to attach, seize and seal an immovable property.

11. Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondents has submitted that the learned Court below rightly passed the order considering the entire facts and circumstances of this case and also considering the report of the I.O and hence, there is no reason to make interference in the order passed by the learned Court below. He further submits that as per report of the I.O the mobile handsets sent to FSL, but, as the accused did not disclose the password of the mobile phones, same could not be examined and it is suspected that some important documents related to current and past transaction regarding transportation of beef from outside State and local distribution network may be available in the mobile handsets and thus, he submits that the mobile handsets may be required for further investigation in this case.

12. The learned Additional Public Prosecutor further submits that as per the report of the I.O, the cold storage will also be required for further investigation of this case and apart from that the report of the FSL states that the sample which was sent for FSL examination has gave the positive test for presence of cow antigen which ascertained that the samples are beef. And accordingly, he raised objection in unsealing the cold storage and the zimma of the mobile handsets to the accused/petitioner at this stage as those may be required for interest of the further investigation of this case.

13. After hearing the submissions made by the learned counsel for both sides, it is seen that the one cold storage (refrigerator van) was seized by police which was proceeded to Khanapara cold storage of the petitioner with packaged buffalo meat which were brought from Kishanganj Bihar who has the valid license for transporting the processed meat. Further it is the case of the petitioner that the cold storage of the present petitioner is also registered under FSSAI Act 2006 and except the food safety officer no one else has the authority to take samples. Further it is the case of the petitioner that the refrigerator van of the petitioner was carrying only the packaged processed buffalo meat and only the food analyst is eligible for examination of food under FSSAI Act. And thus, samples were illegally seized and sent for forensic department for examination as the police are not at all the competent authority to examine the food quality or issue any

certificate.

14. Further, the learned counsel for the petitioner also raised the issue that the police also have no authority to seal one chamber of the cold storage of the petitioner as no police officer can seize any immovable property under Section 102 of Cr.P.C to that effect, she also relied on the above records of judgment of Hon'ble Apex Court.

15. Ms. N. Saikia, learned counsel for the petitioner also stress on Section 11(5) of the Assam Cattle Preservation Act and it is submitted that under Section 11(5) of the said Act the vehicle which carries cattle in inter district without any approval can only be seized by police but here the refrigerator van which was seized by police was carrying only the packaged processed buffalo meat and thus, the case does not come under the purview of the Assam Cattle preservation Act under which the case has been registered against the present accused/petitioner.

16. It is a fact that refrigerator van which was seized in connection with this case was carrying the processed meat which is claim to be buffalo meat but from FSL report of police, it is seen that the samples which were sent for FSL examination gave the positive test for beef and it is opined by the FSL expert that the samples which were sent for examination was beef. Further, as per Section 8 of the Assam Cattle Preservation Act 2021, no person is directly or indirectly can sale or offer or expose for sale or buy beef or beef products in any form except at places permitted to do so by the competent authority. The Section 8 of the said Act is read as under:

"8. No person shall directly or indirectly sale or offer or expose for sale or buy beef or beef products in any form except at places permitted to do so by the competent authority:

Provided that no such permission shall be granted in such area or areas which are predominantly inhabited by Hindu, Jain, Sikh and other non-beef eating communities or within a radius of 5 kms o any temple, satra, or other religious institutions belonging to Hindu Religion o r any other institution or areas as may be prescribed by the competent authority."

17. Thus, from Section 8, it is seen that even the processed meat of beef is also prohibited to sale or exposed in places which are pre-dominantly inhabited by Hindu, Jain, Sikh and other non-beef eating communities. But, herein in the instant case it is seen that as per FSL report the processed meat which is claim to be buffalo meat is the meat of beef which were openly stored and transported to various places from the cold storage of the accused/petitioner. Thus, the offence also attracts under the provision of Assam Cattle preservation Act under which the case has already been registered.

18. From the report of the I.O, it is seen that during the investigation it has came out that the beef was illegally transported in the name of buffalo meat and all

bills were prepared in the name of buffalo meat though beef was transported from source. Further it is reported that the accused has developed a local distribution network of beef needs to be investigated and persons who are also involved in the case are yet to be nabbed. And for which cold storage and documents etc are required for further investigation. It is further reported by the I.O that there is likelihood of repeating of same illegal activities by the accused and there is also possibility of hampering and tampering of investigation in this case, if cold storage is released at this stage.

19. Further in regards to the zimma of mobile handsets, it is reported by the I.O that many important documents may contain in the mobile handsets regarding the transportation of beef to the other States and in local distribution network but till date as the accused did not co-operate with the I.O and he has not provided the password, the mobile handsets could not be examine till date by the FSL expert. And hence, for the purpose of further investigation the mobile handsets will be required and there is every possibility of tampering with the documents with the mobile handsets, if the same is released on zimma to the present petitioner.

20. So, from the report of the I.O, it is seen that both the chamber of the cold storage of the petitioner allegedly beef meat was stored for distribution to other parts of States as well as for local distribution and it will be required for further investigation as some important documents are yet to be verified by police and some of the bills which were prepared in the name of buffalo meat.

21. Further the I.O objected of releasing the mobile handsets of zimma of the petitioner as the mobile handsets could not be examined by the FSL expert due to nondisclosure of password of the accused/petitioner. Thus, from the report of the I.O, it is seen that for the investigation purpose the mobile handsets as well as the sealing of cold storage may be required for further investigation of this case and also for the interest of just and proper investigation.

22. Coming to the issue raised by the learned counsel for the petitioner in respect of Section 102 of Cr.P.C, wherein, it has been submitted that police has no authority to seize any immovable property under Section 102 of Cr.P.C and she also relied on the decision of the Hon'ble Apex Court as stated above.

23. In the above referred judgment of the Hon'ble Apex Court in para 21, it is held that the power of the police officer under Section 102 of the Code to seize any property, which may be found under circumstances that create suspicion of the commission of any offences, would not include the power to attach, seize and seal an immovable property. In para 32 of the said judgment it has been held as under:

"32. If the argument of the appellant and the State of Maharashtra is accepted then there was no need for the legislature to have introduced Chapter VIIA. It would also be pertinent to mention that the power of attachment and forfeiture is given to courts and not to police officer. As pointed out in the judgment of my

learned brother, if a police officer is given the power to seize immovable property it may lead to an absolutely chaotic situation. To give an example, if there is a physical fight between the landlord and the tenant over the rented premises and if the version of the appellant is to be accepted, the police official would be entitled to seize the tenanted property. This would make a mockery of rent laws. To give another example, if a person forges a will and thereby claims property on the basis of the forged will, can the police officer be given the power to seize the entire property, both movable and immovable, that may be mentioned in the will? The answer has to be in the negative. Otherwise it would lead to an absurd situation which would never have been envisaged by the legislature. The power of seizure in Section 102 has to be limited to movable property”

24. Herein, in the instant case also it is the allegation against the accused/petitioner that he used to store beef meat in the name of processed buffalo meat in his cold chamber which were illegally transported to other States as well as for some local distribution. But in view of the order of the Hon’ble Apex Court it is settled position that the police have no authority to seize or attach the immovable property in the name of investigation. Accordingly, I find that sealing of the cold storage of the accused/petitioner is not justified under the provision of law and accordingly, the petitioner may approach the learned Court below with an appropriate application for unsealing the cold storage of the accused/petitioner. Further the I.O also can pay for seizure of any property of the cold storage which may be required for the purpose of further investigation and in that regard the investigating officer may approach the learned Court below with an appropriate application.

25. Further, I find that the release of mobile handsets in the zimma of the accused/petitioner may affect the proper investigation of this case and there may be also possibility of hampering and tampering with the investigation as it is seen from the report of the I.O that the accused/petitioner is not co-operating with the I.O and did not disclose the password for which the mobile handsets could not be examined by the FSL expert. However, the accused/petitioner may approach the learned Court below with a fresh application for release of the vehicle which may be considered by the learned Court below in accordance with the provision of Assam Cattle Preservation Act. However, I do not find any illegality or mistakes committed by the learned Court below while rejecting the prayer for zimma of the mobile handsets and hence, this Court finds no reason to make any interference of the order passed by the learned Court below in regards to the prayer of rejection of the zimma of the mobile handsets. However, the learned Court below may pass an appropriate order in view of the observation made by this Court while dealing with the application for unsealing the cold storage as well as the zimma of seized vehicle.

26. With the above observation, the present criminal revision petition stands disposed of.