

**(2023) 06 GAU CK 0001**  
**In the Gauhati High Court**  
**Case No : Criminal Petition No. 1226 Of 2022**

Anil Kumar Yadav

APPELLANT

Vs

State Of Assam

RESPONDENT

**Date of Decision :** 13-06-2023

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 379, 399, 482  
Indian Penal Code, 1860 — Section 34, 120B, 307, 379, 353, 411, 420

**Citation :** (2023) 06 GAU CK 0001

**Hon'ble Judges :** Susmita Phukan Khaund, J

**Bench :** Single Bench

**Advocate :** R.R. Kaush, R.R. Kaushik

**Final Decision :** Disposed Of

## Judgement

1. Heard Mr. M.A. Sheikh, learned counsel appearing on behalf of the petitioner as well as Mr. R.R. Kaushik, learned Addl. P.P. for the State respondent.

2. The petitioner in this case is Anil Kumar Yadav and has filed a petition under Section 482 Cr.P.C challenging the order dated 24.02.2022 passed by the learned Additional Sessions Judge No. 3, at Nagaon in Criminal Revision No. 14(N)/2021 & Criminal Revision No. 15(N)/2021, directing the disposal of the seized areca nuts. The petitioner has submitted that he is a lawful attorney of Smt Priyanka Maurya, the Proprietor of M/S Kumar Traders, a sole proprietorship firm dealing in trading of dried areca nuts (Supari) having its office at Rupahihat in Nagaon district. On 02.09.2021, the petitioner's Firm loaded 118 bags of dried areca nuts (II Quality) weighing about 8260 KGs in a truck bearing registration No. AS-25-AC/5516, to be dispatched from Hojai to Amingaon. The necessary Tax Invoice and e-Way bill issued on 02.09.2021 is marked as Annexure-3 and is appended along with the petition.

3. During transit, the truck bearing registration no. AS-25-AC/5516 loaded with 118 bags of areca nuts were apprehended by the police at Nonoi Petrol Post on

mere suspicion that illegal Burmese Supari was being carried by the said truck. The police seized the truck despite the fact that the police was shown the valid documents. The truck was seized vide Nonoi P.P GDE No. 27 dated 02.09.2021 and Nagaon P.S. Case No. 2078/2021 was registered under Sections 353/307/379/411/420/34/120-B of the IPC. Accordingly, the seized truck along with the 118 bags of areca nuts was re-seized by the Nagaon Sadar P.S. on 03.09.2021. Along with this truck, another truck bearing registration No.AS-02-E-5871 loaded with 200 bags of suspected areca nuts was also seized by the police.

4. It is submitted that the seized dried areca nuts are perishable in nature. The articles are purchased from local farmers of Hojai. In this manner, earlier also areca nuts was purchased from the local farmers of Hojai and the petitioner's have been dealing with the business of areca nuts. A petition was filed in the Court of learned Chief Judicial Magistrate, Nagaon praying for Zimma of the dried areca nuts loaded in truck No. AS-25-AC-5516, but the learned Chief Judicial Magistrate, Nagaon, after perusal of the report of the investigating officer, who was investigating the Nagaon P.S. Case No. 2078/2021 rejected the prayer of the petitioner vide order dated 18.09.2021. The petitioner then preferred a Criminal Revision Petition under Section 397/399 of the Code of Criminal Procedure (Cr.P.C for short) before the learned Sessions Judge at Nagaon, which was registered and numbered as Criminal Revision Case No. 14(N)/2021 and was forwarded to the learned Additional Sessions Judge No. 3, Nagaon, for disposal.

5. Shri. Manoj Shrinath Maurya, the owner filed another revision petition with respect to another truck bearing registration No. AS-02-E-5871 loaded with 200 bags of supari and this revision petition was registered as Criminal Petition No. 59/2021. Vide common judgment dated 29.10.2021 passed in Criminal Revision Petition No. 49/2021, the order of the learned Chief Judicial Magistrate, Nagaon dated 18.09.2021 was set aside with a further direction to the Investigating Officer to hand over the custody of the seized articles after proper verification and after all the required formalities and upon execution of bond of amount twice the present market value of the seized nuts. It is averred that despite the Courts order dated 29.10.2021, the police, more particularly, the I/O of the case did not comply with the order of the Court, which impelled the petitioner to file a petition No. 962/2021 dated 15.12.2021 before the Court of Additional Sessions Judge No. 3 alleging non-compliance of the Order dated 29.10.2021 by the Investigating Officer of the case on the pretext of strict condition of verifications. The learned Sessions Judge No. 3, then issued notice to the Investigating Officer, investigating the Nagaon P.S. Case No. 2078/2021 to show cause of non-compliance of the Order of the Court dated 29.10.2021. During the pendency of those petitions, the I/O (the respondent no. 7), submitted a letter No. DOBK/NG/22/14 dated 07.02.2022 issued by Sr. Food Safety Officer, Nagaon to the Officer-in Charge, Nagaon Police Station wherein it is stated that:-

"1. BKNG/S/SUP-03, Truck No. AS-25-CC-7403: The sample conforms to the

prescribed standards as per Food Safety and Standards Regulations with respect to the tests carried out.

2. BKNG/S/SUP-04 Truck No. AS-02E-5871- The sample is not suitable for human consumption as per Food Safety and Standards Regulations.

3. BKNG/S/SUP-05- Truck No. AS-25-AC-5516 The sample is not suitable for human consumption as per Food Safety and Standards Regulation."

6. It is contended that upon consideration of the aforesaid letter dated 07.02.2022, the learned Additional Sessions Judge No. 3, Nagaon vide Order dated 24.02.2022 was pleased to dispose of petition with a direction to the I/O to dispose of the seized areca nuts within 10 days from the date of receipt of a copy of the order, instructions from the Regional Office of Pollution Control Board of Nagaon district regarding the appropriate manner of disposal of the seized areca nuts.

7. It is contended that the impugned letter No. DOBK/NG/22/14 dated 07.02.2022 issued by Sr. Food Safety Officer, Nagaon to the O/C, Nagaon P.S. is void, illegal and without jurisdiction. Thus, the consequential order passed by the learned Additional Sessions Judge No. 3, Nagaon, Assam directing disposal of the seized areca nuts within a period of 10 (ten) days is also void, illegal, without jurisdiction. It is submitted that both the impugned letter i.e. No. DOBK/NG/22/14 dated 07.02.2022 and the order dated 24.02.2022 are liable to be set aside. The report dated 07.02.2022 was given in a mechanical manner and this report cannot deprive the petitioner from zimma of seized articles. The petitioner has submitted that the seized articles are not only used for human consumption, but the same can be used for preparation of many useable substances, namely various colour etc. which are used in various chemical firms. The petitioner has denied that the seized areca nuts are Burmese supari. The petitioner has claimed that the seized areca nuts are local products of the various districts of Assam. This Court vide order dated 08.03.2022 passed in WP(C) No. 1664/2022 directed the O/C of Nagaon P.S. not to destroy the said supari and the interim order continued upto 29.11.2022. It is averred that the order dated 24.02.2022 is not tenable in the eye of law, as it will result in the abuse of the process of the Court and failure of justice.

8. It is submitted that the petitioner is not liable for offence under Section 353/307/379/411/420/34/120-B IPC. The petitioner has prayed to set aside the impugned order dated 24.02.2022 passed by the learned Additional Sessions Judge No. 3, Nagaon in connection with Criminal Revision No. 14(N)/2021 & Criminal Revision No. 15(N)/2021 and has prayed for release of the seized supari in connection with Nagaon P.S. Case No. 2078/2021 to the zimma of the petitioner.

9. Per contra, the learned Addl. P.P. has submitted that the order passed by the learned Addl. Sessions Judge, and the letter No. DOBK/NG/22/14 dated 07.02.2022 issued by Sr. Food Safety Officer, at Nagaon, clearly reveals that the

supari loaded in truck No. AS-02-E-5871 and AS-25-AC-5516 are not fit for human consumption. It is not an order which can be considered to be a review of an order by the same Court. There is no illegality in this order to the invoke inherent jurisdiction under Section 482 Cr.P.C.

10. I have carefully considered the submissions at the Bar.

11. The petitioner has duly represented the proprietorship Firm of Smt Priyanka Maurya. The general power of attorney is marked as Annexure-1, is appended along with the petition, which clearly reveals that the petitioner has been appointed as the power of attorney to deal with the business of M/S Kumar Traders and Company. There is not even an iota of doubt that the Annexure-2 relates to the GST registration certificate of M/S Kumar traders and company owned by Smt Priyanka Maurya and the Annexure-3 is the Tax invoice relating to transportation of 8260 KGs of dried areca nuts in 118 bags from Hojai to Amingaon through truck no. AS-25-AC-5516. Both the trucks mentioned above are lying in the police station and the areca nuts are perishable goods and are subjected to decay. As the Food Safety Officer issued the letter No. DOBK/NG/22/14 dated 07.02.2022 with the remark that the areca nuts loaded in truck no. 5871 and 5516 are not suitable for human consumption, the order dated 24.02.2022 was passed by the learned Addl. Sessions No. 3, at Nagaon, in connection with Criminal Revision No. 14(N)/2021 & Criminal Revision No. 15(N)/2021.

12. It was held by the learned Sessions Judge that as the supari seized in connection with this case are not fit or suitable for human consumption, allowing the revision petitioner to take zimma of the seized articles would create health hazard to the general public as this may be used for preparation of 'gutka' and other such articles for human consumption. The Court then passed an order to hand over the trucks bearing registration Nos. AS-25-AC-5516 and AS-02-E-5871 to the petitioner after unloading the seized areca nuts. The I/O was directed to obtain instructions from the Regional office of Pollution Control Board of Nagaon district, for an appropriate manner to dispose of the seized areca nuts and thereafter, dispose of the same.

13. The I/O could obtain the report dated 07.02.2022 after the judgment and order dated 29.10.2021 was passed by the learned Addl. Sessions Judge in connection with Criminal Revision No. 14(N)/2021. So the learned Addl. Sessions Judge, had no other option but to pass the order dated 24.02.2022 impugned by the present petitioner.

14. It was held by the learned Sessions Judge that since the date of the seizure of the areca nuts on 02.09.2021, no steps were taken by the I/O of the case to collect the samples and the send the same for analysis and thereafter no steps were taken by the I/O after the order dated 29.10.2021 was passed by the learned Addl. Sessions Judge to collect the samples of the supari and send the same for analysis. The seized trucks along with the bags containing areca nuts

were kept lying in the open space of the police station. Belatedly, these were taken for analysis on 03.02.2022 when the I/O was directed by the learned Addl. Sessions Judge to appear personally and show cause of non-compliance of the order of the Court dated 29.10.2021.

15. In this case, the trucks have been seized and since then the trucks are lying in the police station along with the areca nuts since 02.09.2021. By now the goods may have perished and may not be fit for human consumption, but there are other uses of the areca nuts. The areca nuts can be used for industrial purposes also. At this stage, investigation may have also concluded.

16. Considering all aspects, the order dated 24.02.2022 is not required to be quashed and set aside. As per SOP in Clause-15, for disposal of the seized betel nuts issued by the Addl. Director General of Police CID, Assam, after, verification by the SP, the seized areca nuts can be used as raw materials for manufacturing other products and the same is not required not be used for human consumption.

17. Thereby, the impugned order dated 24.02.2022 relating only to rejection of the prayer of zimma of the seized areca nuts to the custody of the petitioner is set aside. The petitioner is at liberty to submit a petition before the jurisdictional Court with prayer for zimma of the seized areca nuts with an undertaking that the seized areca nuts will not be used for human consumption and the learned Magistrate may pass an order directing the SP to consider the zimma of the seized areca nuts as per SOP for disposal of seized betel nuts (supari) vide No. (CID-XI/SOP/Betel Nut/2021/3571) dated 16.09.2021.

18. In terms of the above observation, this petition is disposed of.