
(2001) 12 GAU CK 0001
In the Gauhati High Court
Case No : Criminal Revision No. 461 of 1994

Chandika Sarma

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 10-12-2001

Acts Referred:

Citation : (2001) 3 GLT 498

Hon'ble Judges : R.S. Mongia, C.J

Bench : Single Bench

Advocate : C.R. De and S. Chauhan, for the Appellant; PP, for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, C.J.—The petitioner was tried in FIR No. 66/90 of Dhubri Police Station, district Dhubri dated 17.2.1990 under Sections 143/458, etc. but was acquitted on 5.12.1992 (CR Case No. 200/90). However no order was passed regarding the disposal of the seized property by the learned Magistrate. An application was moved by the petitioner for release of the articles seized during the investigation in the aforesaid case and on 7.7.1993 the following order was passed by the learned Magistrate:

"Perused the case record. A Judgment of acquittal of the accused persons was pronounced by the learned predecessor Magistrate setting the accused persons at liberty on 5.12.1992 in the G.R. case No. 200/90. Learned Advocate G. Ahmed has filed a petition on behalf of the accused persons to release the seized articles seized by the IO in connection with this case since informant - complainant did not put seized articles are exclusively belong to the accused persons. It has been further sated that the period of limitation of appeal is also over. It is seen that police seized certain articles which is exhibited in the seizure list as Ex(I) from the acquitted accused persons. The prayer in the petition is allowed. Although nothing is said in regard to the seized articles as exhibited by the police vide Ex(I). Hence the seized articles be returned to the petitioner. O.C. Dhubri P/S is

directed to release the same in favour of the petitioner after obtaining proper receipt, etc."

2. Pursuant to the aforesaid order, the articles which were seized from the petitioner were released to him on 28.3.1994. It was alleged by the petitioner in the petition dated 11.4.1994 which came up for hearing before the learned Magistrate on 20.4.1994, that just 3 days after the release of the articles to the petitioner, pursuant to the order dated 7.7.1993, the police had forcibly again taken the said articles from him without any sanction of law. The prayer was made that the police be directed to hand over the articles which were again seized on 31.3.1994. On 6.3.1994 the following order was passed by the learned Magistrate:

"In view of the communication made to O/C, Dhubri P.S. dt. 22.4.1994, the O/C Dhubri P.S. submitted a report. Perused the report. It is stated that the order of the predecessor was complied with on 28.3.1994. The subsequent seizure was made in connection with G.D. Entry No. 1587, dt. 31.3.1994, i.e., a fresh dispute. Hence, in my opinion, no direction is to be given in this G.R. Case, Hence the Petition filed on 20.4.1994 by the acquitted-accused petitioner is rejected. The petition filed today also stands rejected in the above light."

3. It is the aforesaid order that has been made the subject-matter of the present revision petition.

4. I have heard the learned counsel for the parties.

5. It is apparent from the order dated 3.6.1994 that this fact is admitted that the articles which were seized earlier from the petitioner in connection with the earlier case in which he was acquitted, had been returned to him on 28.3.1994 pursuant to the order of the learned Magistrate dated 7.7.1993. It is also admitted that the articles were again seized in connection vide G.D. Entry No. 1587 dated 31.3.1994.

6. I have specifically asked the learned State counsel that in connection with which FIR the articles were seized from the petitioner by the GD Entry No. 1587 and further, if any FIR was lodged in connection with which the articles were seized if so what is the fate of the case. The learned counsel for the State has not been able to apprise this court in connection with which FIR the articles were seized from the petitioner on 31.3.1994 by the GD Entry No. 1587. She is also not in a position to apprise this court as to the fate of the FIR, if any, in connection with which the articles may have been seized.

7. The police cannot take into possession any articles unless the same are taken into possession during the course of investigation of the FIR. As observed above, from the record it is not possible to come to conclusion that the articles were seized in connection with some FIR against the petitioner, or any body else. The seizure of the articles, in my considered opinion, seems to be without any authority of law.

8. For the foregoing reasons, I allow this revision petition and direct the Officer-in-Charge, Police Station Dhubri to hand over the articles seized by GD Entry No. 1587 to the petitioner after getting due receipt from him in presence of one or two witnesses.
9. The Judicial Magistrate, 2nd Class, Dhubri is directed to get this order complied with within a fortnight from the date of receipt of a copy of this order from this court or a certified copy thereof, from the petitioner whichever is earlier.
10. A copy of this order be sent to the Judicial Magistrate, 2nd Class, Dhubri by the Registry of this court immediately.
11. The records of the case be sent to the concerned Magistrate.