

(2021) 10 GAU CK 0028

In the Gauhati High Court

Case No : Criminal Revision Petition No. 194 Of 2021

Mistu Das

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 21-10-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 401, 451
Indian Penal Code, 1860 — Section 180, 269, 270, 379, 411, 420
Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 — Section (2)
Disaster Management Act, 2005 — Section 51(b)
Food Safety and Standard Act, 2006 — Section 26

Citation : (2021) 10 GAU CK 0028

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : A F N U Mollah

Final Decision : Allowed

Judgement

1. This revision petition, under section 397/401 of the Cr.P.C., is preferred by Smti. Mistu Das, W/o Dhananjay Das of Dinhata Gram, P.O. Boranachina, P.S. Dinhata, District- Konch Bihar, West Bengal, challenging the legality, propriety and correctness of the order dated 04.08.2021, passed by Id. Judicial Magistrate 1st class, Gossaigaon in G. R. Case No. 420/2021, arising out of Gosaigaon P.S. Case No. 362/2021. It is to be mentioned here that vide impugned order, dated 04.08.2021, the Id. Court below has rejected the petition filed by the petitioner seeking custody of the seized 2800 kg of motihar (tobacco) leaves.

2. Heard Mr. A. Ahmed, Id. counsel for the petitioner and also heard Mr. D. Das, learned Addl. P.P. for the respondent No.1 and 2.

3. The factual background, leading to filing of the present revision petition is adumbrated herein below:-

"The petitioner is a businesswoman by profession and running business of jute

and tobacco in the name and style of M/S M.D. Tobacco. She has valid Trade licence No. 726, dated 23.12.2020, issued by Dinhata village-I Gram Panchayat. On 11.07.2021, one Truck, bearing registration No. AS-01-GC-7873, was carrying 2800 KG of loose motihar (tobacco) leaves from M/S. M.D. Tobacco, West Bengal to deliver the same to one Ashadul Hoque, Abdul Matlib and Syed Miah of Nagaon, after paying GST, Road Tax, and other applicable taxes. The authority has also issued one e-way bill in respect of the said Truck. But, on 11.07.2021, the said Truck was apprehended at Srirampur NH-31C, Police Check Post, on the ground of illegally carrying tobacco, as carrying and selling tobacco is banned in Assam. Then the respondent No.2 lodged one FIR to that effect with the Officer-in-Charge, Gossaigaon P.S. and upon the said FIR, Gossaigaon P.S. Case No. 362/2021, under section 420/269/270/379/411/180 IPC, R/W section 7(2) COPTA Act and R/W Section 51(b) Disaster Management Act, has been registered and during investigation the said Truck and the goods carried by it, were seized by police. Thereafter, the owner of the Truck preferred a petition before the Id. Judicial Magistrate, 1st Class, Gossaigaon seeking custody of the Truck and the Id. Court below has, vide order dated 31.07.2021, has allowed the same. The petitioner also filed one petition on 15.07.2021, seeking custody of the seized Tobacco leave. But, the Id. Court below, vide order dated 04.08.2021, after calling a report from the I.O., has dismissed the petition, though the Id. Court below has released similar goods carried by another Truck which was seized in connection with Serfanguri P.S. Case No. 32/2021 on 22.07.2021. Therefore, the petitioner approached this court by filing the present petition."

4. Being highly aggrieved, by the impugned order dated 04.08.2021, the petitioners preferred this revision petition on the following grounds:-

(i) that the Id. Court below has failed to apply its judicial mind while rejecting the petition filed by the petitioner seeking custody of the seized goods;

(ii) that the impugned order is illegal and contrary to the provisions of law;

(iii) that the petitioner is the legal owner of the goods and she purchased the same after paying taxes, as applicable, and as such the petitioner is entitled to take zimma of the vehicle;

(iv) that the Id. Court below has misread the provision of law and rejected the petition filed by the petitioner seeking custody of the goods and that the goods are no longer required for the purpose of investigation;

(v) that the Id. Court below has observed in the impugned order that transportation of tobacco is prohibited in the state of Assam, by Food and Drug Administration, Assam, Commissioner of Food Safety, vide letter No. FSC.12/2013/22 dated 12.01.2021, but the Id. court below has failed to consider that the said Notification and the Act (Prohibition of Advertisement and Regulation of Trade and Commerce, production, Supply and Distribution) Act 2003 relates to tobacco products only, not the tobacco leaves.

(vi) that the Id. Court below has failed to follow the direction of Hon'ble Supreme Court in *Sunderbhai Ambala Desai vs. State of Gujarat*: (2003) 1 SCC 638, while dealing with the petition filed by the petitioner under section 451 Cr.P.C. Therefore, the petitioner contended to set-aside the impugned order and to release the seized good in the custody of the petitioner.

5. Mr. A. Ahmed, the Id. Counsel for the petitioners has submitted that the Id. Court below has rejected the petition filed by the revisionist on the basis of one Notification issued by the Commissioner of Food Safety, vide letter No. FSC.12/2013/22, dated 12.01.2021. But, the Id. court below has failed to consider that the said Notification relates to tobacco products only, not the tobacco leaves. Mr. Ahmed further submitted that in *Dharampal Satyapal vs. State of Assam*:2017 (5) GLT 1, a Division Bench of this court has declared the Assam health (Prohibition of Manufacturing, Advertisement, Trade, Storage, Distribution, Sale and Consumption of Zarda, Gutkha, Panmasala etc. containing Tobacco and/or Nicotine) Act, 2013 as unconstitutional and void. It is further submitted that the petitioner has been seeking only interim custody of the seized goods as the same are lying unattended at Police Station and the same will get destroyed if remained in that state and in the event of releasing it in the custody of the petitioner, she will produce the same before the court as and when directed. Mr. Ahmed also drawn attention of this court to the law laid down by the Hon'ble Supreme Court in *Sunderbhai Ambala Desai vs. State of Gujarat*: (supra), in respect of releasing seized goods and in the light of observation in the said case, Mr. Ahmed contended to allow this petition by setting aside the impugned order.

6. Per contra, Mr. D. Das, the Id. Addl. P.P. has produced before the court a copy of the Notification dated 12.01.2021, issued by the Govt. vide letter No. FSC.12/2013/22, and submitted that the Id. Court below has rejected the petition on the basis of the said Notification. It is further submitted that the Id. Court below has rightly rejected the petition filed by the revisionist vide order dated 04.08.2021, and as such no interference of this court is warranted. Mr. Das, therefore, contended to dismiss the petition.

7. Having heard the submission of Id. Advocates of both sides, I have gone through the impugned order and the documents placed on record and also gone through the case laws referred by the Id. Counsel for the petitioner and I find sufficient force in his submission. The Id. Court below, in the impugned order dated 04.08.2021, has noted that the 'transportation' of tobacco is prohibited in the state of Assam, and therefore, rejected the petition of the petitioner. In holding so the Id. Court below has referred to the Notification dated 12.01.2021, issued by the Govt. vide letter No. FSC.12/2013/22.

8. A cursory perusal of the said Notification reveals that it was issued in pursuance of Regulation 2.3.4, of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation, 2011, read with section 26 of the Food Safety and Standard Act, 2006. But, having gone through the said regulation, i.e.

Regulation 2.3.4, I find that the same provides that tobacco and nicotine shall not be used as ingredients in any food products, which includes Panmasala also. The word 'Transportation' is neither there, nor in the section 26 of the Food Safety and Standard Act, 2006, also. Being so, prohibiting transportation, vide letter No. FSC.12/2013/22, dated 12.01.2021, by the Govt. under the aforementioned provisions of law, de hors legislative mandate. In view of above, the impugned order, by which the Id. Court below has rejected the prayer of the petitioner seeking custody of the seized goods, cannot be said to be justified.

9. The record reveals that tobacco leaves were seized by police on 11.07.2021. Since then police got sufficient time (more than three months) for investigation and the same in the meantime might have been completed. The goods are lying unattended at the Police Station and if the same remained in that state then definitely the value of the same will be diminished. Besides, no useful purpose will be served by keeping the goods at the police station. The Id. court below has already released similar goods seized in connection with Serfanguri P.S. Case No. 32/2021, having relied upon the decision of Hon'ble Supreme Court in *Sunderbhai Ambala Desai vs. State of Gujarat*: (supra).

10. It is worth mentioning here in this context that while dealing with the disposal of seized property Hon'ble Supreme Court in *Sunderbhai Ambala Desai vs. State of Gujarat*: (supra), held as under:-

"In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles."

11. Hon'ble Supreme Court further observed in the said case that:-

"However, these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

12. Thus, having tested the impugned order, on the touchstone of the principle of law laid down by the Hon'ble Supreme Court in the aforementioned case and also considering the facts and circumstances on the record and discussed above, I find that the same failed to withstand the test of legality, propriety and correctness. And as such the same requires interference of this court.

13. In the result, I find sufficient merit in this revision petition and accordingly, the same stands allowed. The impugned order dated 04.08.2021, passed by the Id. Judicial Magistrate 1st Class, stands set aside. It is provided that on furnishing a bond of Rs. 2,00,000/ (Rupees two lacs) and also on furnishing two solvent sureties of like amount, to the satisfaction of the Id. Judicial Magistrate, 1st Class, Gosaigaon, the seized tobacco leaves shall be released in the interim custody of the petitioner. The petitioner has to produce the same before the Id. court below as and when directed and shall not dispose of the same without permission of the Id. Court below. Send down the record of Id. Court below with a copy of this judgment and order. The parties have to bear their own cost.