

(2024) 10 GAU CK 1180
In the Gauhati High Court
Case No : Crl.Pet. Of 448 Of 2024

Rokongulie

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 22-10-2024

Acts Referred:

Constitution Of India, 1950 — Article 227
Code of Criminal Procedure, 1973 — Section 101, 102, 451, 457, 482
Indian Penal Code, 1860 — Section 379, 420
Assam Excise Act, 2000 — Section 53(1)(A)

Citation : (2024) 10 GAU CK 1180

Hon'ble Judges : Susmita Phukan Khaund, J

Bench : Single Bench

Advocate : N K Murry, K Baishya

Final Decision : Dismissed

Judgement

Susmita Phukan Khaund, J

1. Heard N K Murry, learned counsel for the petitioner. Also heard Mr K Baishya, learned Additional Public Prosecutor for the respondent/State.
2. The petitioner, Mr Rokongulie, has filed this application under Section 482 of the Code of Criminal Procedure, 1973, (CrPC, for short), read with Article 227 of the Constitution of India.
3. It is submitted on behalf of the petitioner that he is the owner of the vehicle of Toyota Innova make, bearing Registration No. 124 CD 4 (Old)/NL07 CC-1321 (New), Engine No. 2KD9773818 (Old)/73818 (New), Chassis No. MBJ11JV4007064265-1106, seized in connection with Khatkhathi PS Case No. 231/2021, under Section 379 of the Indian Penal Code, 1860 (IPC, for short), read with Section 53 (1) (a) of the Assam Excise Act (GR Case No. 632/2021).
4. It is submitted that charge sheet has already been submitted on 30.03.2022 and the case is registered as PRC Case No. 200/2022, pending in the Court of

learned Judicial Magistrate First Class, Bokajan, Karbi Anglong, Assam (JMFC, for short).

5. The petitioner filed a Zimma Petition No. 2797/2023, along with supporting documents to establish his right. Vide impugned order dated 10.10.2023, passed by the learned JMFC, Bokajan, this zimma petition was rejected by the Court. The petitioner then preferred a criminal revision petition before the learned Sessions Judge, Karbi Anglong, but the same was also dismissed vide impugned order dated 22.02.2024, passed by the learned Additional Sessions Judge, Karbi Anglong, Diphu. The petitioner has prayed to quash the impugned order dated 10.10.2023, passed by the learned JMFC, in PRC Case No. 200/2022, corresponding to GR Case No. 632/2021, as well as the impugned order dated 22.02.2024, passed by the learned Additional Sessions Judge, Karbi Anglong, Diphu, in Criminal Revision Petition No. 22/2023.

6. It is submitted by the petitioner that he is the rightful owner of the seized Toyota Innova Vehicle bearing Registration No. 124CD4 and the photocopy of the Registration Certificate dated 21.03.2023 is marked as Annexure-A of the petition. He purchased the vehicle from Mrs. Taramattee Sabrina Chitram, the First Secretary of the High Commission of the Cooperative Republic of Guyana in New Delhi. When the vehicle was put up for auction, he paid a consideration of Rs. 1,50,000/- and the vehicle was handed over to him on 10.11.2021, after completion of all the documentations.

7. It is further submitted that on 11.11.2021, the petitioner booked a trailer truck from the transporting agency, namely, Rattan Road Carriers, for transporting the vehicle from New Delshi to Dimapur, Nagaland and the same was received by the petitioner, at Dimapur, on 27.11.2021.

8. It is further submitted that on 29.11.2021, the petitioner approached the concerned DTO for change of ownership of the vehicle into his name, but it was informed to him that the office of the DTO was not functioning due to the COVID-19 pandemic and office works would resume in the first week of January, 2022. The other reason of the office being closed was that the Hornbill Festival was also in the pipeline. The Hornbill Festival is held in Kohima from 1st of December to 10th of December every year. This prevented the petitioner from transferring the vehicle to his name.

9. Meanwhile, on 18.12.2021, one person, namely, Ohad Ali of Dimapur requested the petitioner to provide his vehicle. The petitioner being a friend of Ohad Ali, allowed him to use the aforementioned vehicle on good faith, but unfortunately, while Ohad Ali was returning from Khatkhathi towards Nagaland, he was stopped by the Police. As soon as the vehicle was stopped, Ohad Ali fled the scene and then the vehicle was seized by the Police with allegations that the vehicle is a stolen vehicle.

10. It is submitted on behalf of the petitioner that the petitioner was not at all aware that Ohad Ali was transporting liquor through his vehicle. The liquor was

being transported by Ohad Ali without his consent and his knowledge. On the date of the incident, i.e., on 18.12.2021, the petitioner was in Imphal and thus, he was not at all involved in transportation of the liquor/alcohol in his vehicle. The petitioner uses his vehicle for his work and he is in urgent need of his vehicle. The petitioner filed three Zimma Petitions, being Zimma Petition Nos. 249/2021, 82/2022 and 1862/2021, before the learned JMFC, under Sections 451/457 of the CrPC, but vide orders dated 28.12.2021, 19.05.2022 and 28.12.2022, respectively, his zimma petitions have been dismissed. Then, the petitioner filed the revision petition numbered as Criminal Revision Petition No. 4/2023, which was also dismissed.

11. It is further submitted that at the time of the pendency of Criminal Revision Petition No. 4/2023, the learned Sessions Judge, Karbi Anglong, advised the petitioner to apply for registration of the seized vehicle before the concerned DTO, for change of ownership, and accordingly, the petitioner had applied for Registration Certificate before the concerned DTO, Dimapur, by submitting the original auction documents and accordingly, the DTO, Dimapur, had issued the Registration Certificate, dated 21.03.2023, in the name of the petitioner. This Registration Certificate was submitted before the learned Sessions Judge, Karbi Anglong in connection with Criminal Revision Petition No. 4/2023, but the revision petition was dismissed and the learned Sessions Judge was pleased to pass an order directing the petitioner to file a fresh zimma petition before the learned trial Court for releasing the vehicle on zimma. Accordingly, the petitioner filed a fresh zimma petition, numbered as Petition No. 2797 before the learned trial Court, but the JMFC, Bokajan, Karbi Anglong, rejected the zimma petition vide the impugned order dated 10.10.2023. This has impelled the petitioner to file a criminal revision petition before the learned Sessions Judge, registered as Criminal Revision Petition No. 22/2023, which was transferred to the learned Additional Session Judge, Diphu, Karbi Anglong and vide order dated 22.02.2024, Criminal Revision No. 22/2023 was dismissed by the Additional Sessions Judge.

12. It is further contended that the Police Officer before seizure of the alcohol, ought to have accorded an opportunity to the petitioner, to enable him to explain about the transportation of the alcohol in his vehicle. In terms of Section 102 of the CrPC, power is vested on the Police Officer to seize certain properties, suspected to be stolen or found under suspicious circumstances and further report has to be submitted to the superior officer in case of such seizure made by a subordinate officer. Under Sub-Clause- (3) of Section 102 CrPC, every Police Officer shall forthwith report the seizure to the Magistrate having jurisdiction, where the property has been seized, and where continued retention of the property in Police custody may not be considered necessary for the purpose of investigation, he may give custody to any person on his executing a bond, undertaking to produce the property before the Court as and when required and to give effect to further orders of the Court as to the disposal of the seized property. In the present case, the concerned Police Officer failed to exercise his

power rightfully, to the prejudice of the petitioner in contravention to the mandate of the CrPC. The Police Officers did not act in a fair and justified manner, but failed to negate the documents produced and submitted before them in connection with the seized vehicle. Section 101 of the CrPC was not complied with. The petitioner has thus prayed before this Court to invoke the inherent jurisdiction under Section 482 CrPC and also under Article 227 of the Constitution of India and set aside the impugned orders and hand over the vehicle, of which the petitioner is a bonafide purchaser.

13. It is submitted that the vehicle is getting damaged as it is lying in the open for a considerable period of time and the market value of the vehicle is also diminishing by the day.

14. It is submitted that charge sheet has already been submitted and there is no further requirement in keeping the seized vehicle under custody. It is submitted that the impugned orders are bad in law and are liable to be set aside and quashed.

15. It is submitted that the learned Courts below did not properly appreciate the requirements of Sections 451/457 of the CrPC. The Court is required to ascertain or determine the ownership of the property seized, without going into the aspect of the case, because under this section, question is about the seized property and not about the trial of the case.

16. It is submitted that the petitioner has made out a prima facie case and the balance of convenience tilts in his favour for setting aside the impugned order dated 10.10.2023, passed by the learned JMFC and impugned order dated 22.02.2024, passed by the learned Additional Sessions Judge.

17. The learned Additional Public Prosecutor has raised serious objection, stating that the vehicle was registered in 2023, but was seized in the year 2021. It is submitted that this case is at the stage of evidence.

18. I have considered the submissions at the Bar with circumspection.

19. Trial has commenced and the Trial Court Record reveals that 3 witnesses have already been examined. By now, I believe the other witnesses may also have been examined. While deciding the Criminal Revision Petition No. 22/2023, it was observed by the learned Additional Sessions Judge that the learned trial Court had rejected the zimma petition by considering the fact that the Registration Certificate produced by the petitioner pertains to 21.03.2023, but the case record reveals that during this time, the vehicle was in the custody of the Police and was lying in the Police Station. The learned Additional Sessions Judge has also concurred with the decision of the learned trial Court that earlier zimma petition was filed and one of the documents issued by the Ministry of External Affairs, New Delhi, vide letter dated 22.10.2021, reveals that the vehicle has a registration number issued to the Ambassador of Guyana and one of the conditions stated in the documents was that the number plate was to be

surrendered to the Licencing Officer, South Zone, Sarai Kale Khan, New Delhi, which was not complied with. It was observed by the learned Additional Sessions Judge that the order dated 10.10.2023 was not required to be interfered with, as a judicious order was passed, ascribing sufficient reasons.

20. As a revision petition was preferred, the Court could not delve into the merits of the case and had to examine the legality and propriety of the findings of the learned trial Court and thus, could not entertain the petition filed by the petitioner along with an affidavit stating that the seized vehicle was registered in the name of the petitioner, thereby, the impugned order dated 10.10.2023, passed by the learned JMFC, Bokajan, Karbi Anglong was upheld by the learned Additional Sessions Judge, FTC.

21. The learned Additional Public Prosecutor, Mr K Baishya has raised serious objection stating that this case is at the stage of trial, which may be concluded soon and at this stage, the issue of custody of the vehicle is not required to be taken into consideration. Earlier, two petitions were already rejected and now, the involvement of the vehicle in transporting liquor illegally will be decided finally. Any order at this stage relating to zimma of the vehicle may cause a hurdle when the question of disposal of the vehicle in relation to the offence has to be considered by the learned trial Court after conclusion of trial.

22. I have considered the submissions at the Bar with circumspection.

23. It is true that the vehicle was purchased in the year 2021 through an auction sale, but the vehicle was registered in the petitioner's name in the year 2023, i.e., after the vehicle was seized in connection with PRC Case No. 200/2022 corresponding to GR Case No. 632/2021, arising out of Khatkhathi PS Case No. 231 of 2021. The scanned copies of the Trial Court Record clearly reveals that the petitioner and not Ohad Ali is the accused, who is facing trial in connection with PRC Case No. 200/2022.

24. The submissions of the petitioner that he was not aware that Ohad Ali was transporting the liquor through his vehicle, can be ignored. The record reveals that charge sheet has been laid against the petitioner and he is the person who is facing trial for offence under Section 420 of the Indian Penal Code, 1860, read with Section 53 (1) (a) of the Assam Excise Act, 2000. Three witnesses have already been examined. Five witnesses have been enlisted in the charge sheet as cited witnesses. Two witnesses are yet to be examined. It appears that there is every possibility that the trial will be concluded soon. Indeed an order deciding the ownership of the vehicle at this stage may affect the final zimma of the vehicle. However, at this stage, it cannot be conclusively held that the petitioner was using a diplomatic vehicle fraudulently to transport liquor illegally. The evidence has to be assessed and scrutinized to hold the petitioner guilty of the offence under the aforesaid Sections of law.

25. It appears that the case is at the fag end of trial. When the petitioner earlier filed the petition for zimma of the vehicle before the learned trial Court, the

vehicle was plying with the Registration No. 124 CD-4. The petitioner had not transferred the vehicle to his name and thus, vide impugned order dated 10.10.2023, in PRC Case No. 200/2022, the learned trial Court rejected the petition with prayer for zimma of the Innova Vehicle, bearing Registration No. 124 CD 4. Later, when the vehicle was still under custody of the Police, the petitioner had applied for transfer of the vehicle and thereafter, his vehicle was registered in his name, vide Registration No. NL-07 CC-1321, vide order dated 21.03.2023. It was held by the learned trial Court that the registration certificate produced by the petitioner pertains to date 21.03.2023, but the record reveals that during this time, the vehicle was in the custody of the Police and was lying in the Police Station. The petitioner did not comply with the direction to hand over the diplomatic number plate to the Licencing Officer, South Zone, Sarai Kale Khan, New Delhi.

26. Against this order, the petitioner preferred a criminal revision petition registered as Criminal Revision Petition No. 22/2023. The learned Additional Sessions Judge, FTC, observed that the impugned order dated 10.10.2023 was correctly passed by the trial Court and dismissed the revision petition against the impugned order dated 10.10.2023.

27. It is true that the records and the Judgment and Order reveals that the petitioner got his name registered as the owner of the vehicle, which was purchased through auction. At the same time, it is also true that the petitioner was supposed to hand over the number plate in Delhi itself, but he got the vehicle transported to Assam and he was using the diplomatic number plate. The Trial Court Record reveals that a huge cache of alcohol was found in the vehicle, which are described below:-

- 1) 45000 ml of Mc Dowell Rum in 60 bottles,
- 2) 39000 ml of Kingfisher Beer in 60 bottles,
- 3) 48000 ml of Kingfisher Strong Canned Beer in 96 cans,
- 4) 17280 ml of Magic Moments Vodka in 96 bottles.

28. No explanation could be offered by the petitioner, except for the fact that the petitioner stated that his friend Ohad Ali had borrowed the vehicle from him to transport the liquor in an illegal manner, but he was not aware that that his friend was transporting liquor through his vehicle illegally. This explanation of the petitioner is not taken into consideration at this stage, as charge sheet has been laid against the petitioner and not Ohad Ali.

29. Without delving into the evidence and scrutinizing the same, it cannot be ascertained that the petitioner is innocent. However, the custody of the vehicle can be considered at any stage of trial, but in the instant case, it appears that trial must have been concluded by now, and at this stage, this Court is hesitant to pass an order relating to zimma of the vehicle without properly ascertaining the ownership of the vehicle.

30. The petition is hereby dismissed with a liberty to the petitioner to apply for zimma of the vehicle afresh during the pendency of the trial or after the conclusion of the trial. The trial Court is directed to expedite the trial for speedy disposal of the case.

31. No order as to cost(s).