

(2023) 02 GAU CK 0003

In the Gauhati High Court

Case No : I.A. (Crl.) No. 625 Of 2022, Criminal Revision Petition No. 453 Of 2022

Vivek Singh

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 01-02-2023

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 379, 406, 411
Code Of Criminal Procedure, 1973 — Section 102, 451, 452, 457
Essential Commodities Act, 1955 — Section 7

Citation : (2023) 02 GAU CK 0003

Hon'ble Judges : Susmita Phukan Khound, J

Bench : Single Bench

Advocate : B.D. Konwar, K.K. Das

Final Decision : Dismissed

Judgement

1. Heard Mr. B.D. Konwar, learned Senior Counsel appearing for the petitioner/applicant, Mr. Vivek Singh as well as Mr. K.K. Das, learned Addl. P.P. appearing for the opposite party.

2. The respondent/applicant Sri. Vivek Singh has filed an application in connection with Criminal Revision Petition no. 453/2022 for vacation/modification of the interim order dated 12.09.2022 passed by a Co-ordinate Bench of this Court in the aforementioned Criminal Revision Petition No. 453/2022. It is also prayed that the aforementioned interim order may not be further extended. It is submitted that the applicant is the respondent in the Criminal Revision Petition no. 453/2022. He is the authorised Signatory and representative of M/s Continental Milkose (India) Ltd., which is a registered company under the Companies Act, 1956 (as amended) with its registered office in the State of Assam at Flat No. 5-D, Priyanka Apartment, Panbazar. Earlier the registered office was in Delhi.

3. It is submitted that the company is a well-established and well-reputed business house with manufacturing facilities at Greater Noida and is engaged in

manufacturing and supply of Rice and Pulse based Micronutrient Fortified Energy Dense Food. The company also from time to time supplies and distributes food products in response to Government tenders.

4. The company purchases rice from various dealers and after processing the same, repackages it under the brand name 'East Sunrise' and supplies the same to Assam Rifles. The company had taken on rent a warehouse and utilities owned by one M/S Maruti Quality Products Pvt. Ltd. of Guwahati, which is situated at Industrial Growth Centre, (Chatabari Industrial Area) Chatabari, Chaygaon, in the district Kamrup. Rent agreement was executed on 13.01.2020 between M/S Maruti Quality Products Pvt. Ltd. (owner) and the company (Tenant), whereby the company has accepted and occupied the said warehouse for the purpose of storage and other activities related to food products, agreeing to pay a monthly rent of Rs. 8,00,000/- as well as agreeing to pay the cost of electricity, water supply, etc. That apart, the company has a subsisting independent agreement with the Social Welfare Department, Government of Meghalaya, under the Wheat Based Nutrition Program (WBNP) as well as the National Food Security Act, 2013 of the Social Welfare Department, Government of Meghalaya, Shillong for supply of Rice and Pulse based Micronutrient Fortified Energy Dense Food. The same is a subsisting contract having been extended vide Extension Contract No.W/ SNP.5/2013/PLI/8973-77 dated 1st October, 2020.

5. The process of allocation is that every quarter, the Government of Meghalaya is allocated Rice by the Ministry of Women and Child Development under the Wheat Based Nutrition Programme (WBNP) and the National Food Security Act, 2013 by the Government of India, through the Food Corporation of India. A release order is issued in favour of the Company authorizing the company to lift the allocated quantity of rice from Food Corporation of India with a delivery/release date, failing which the allocated quantity would be forfeited/cancelled. The company is then required to lift the entire quantity of allocated rice within the stipulated period and transport the same to the final destination i.e., Greater Noida, at its own cost and use the same for manufacture of Rice and Pulse based Micronutrients Fortified energy Dense Food.

6. In the present case, the due process was scrupulously followed and the Government of Meghalaya issued a quarterly order/indent on March 23, 2021, for supply of Micronutrient Fortified Energy Dense Food. The Ministry of Women and Child Development issued an allocation of State-wise rice quota on May 06, 2021. The Government of Meghalaya allocated 3098 MTs of rice. On 20-05-2021, Government of Meghalaya authorized the Company's representative Mr. Vivek Singh (applicant) to lift the rice and FCI issued the delivery/release orders bearing No. 392/39119 dated 19.05.2021 and release order 392/39126 dated 25.05.2021. The entire quantity of the allocated rice was to be lifted by the company on or before 31.05.2021, i.e., in about less than 6-12 days. However, due to the existing pandemic condition no trucks were readily available due to shortage of drivers to carry the rice from FCI Go-down at Khanapara to the

company's facility at Khanapara and to the Company's facility at Greater Noida and even if available they were demanding exorbitant charges.

7. The company decided to utilize the aforesaid rented warehouse at Chaygaon as a transit go-down for storing the said allocated rice till such arrangement could be made for onward transportation to Greater Noida (Uttar Pradesh). Then 13 truck-loads of rice lifted from FCI go-down at Khanapara were sent to the rented ware house of the company at Chhaygaon (transit go-down). The trucks were loaded between 21.05.2021 to 31.05.2021 and arrived on 02.06.2021. As the company was trying to arrange for space in the godown, on the same day, the company dispatched one truck containing 800 bags of 50 Kgs each to CMIL, Dimapur for onward transmission to Assam Rifles which was loaded in Truck bearing no. NO7AA/0493 and the truck was on its way to the designated depot of Assam Rifles at Mantripukhri (Manipur). During the loading and unloading of such trucks, the police personnel of Boko Police Station visited the premises and under a mistaken belief that pilferage and black marketing of FCI rice was going on, lodged the FIR dated 03.06.2021 with the Office-in-Charge, at Boko Police Station alleging that one truck bearing Registration No. NL07AA-0493 was detained at Nadiapara by the local public and on inspection 800 bags of polished rice marked as 'East Sunrise' along with markings of "for Assam Rifles only" MKD by Continental Milkose (India) Ltd., Kher Mahal, Notun Basti, Dimapur, Nagaland FSSAI Lic No. 10020077000030 were found and seized as per seizure list. The police then visited the go-down in question at Chatabari Industrial Area Chaygaon and allegedly found huge numbers of unaccounted FCI/PDS/FSA rice packed in gunny/jute bags and also found 325 bags of polished rice marked similarly as the bags of rice seized from the aforesaid truck and also found one machine for polishing rice and 11 (eleven) numbers of loaded trucks containing FCI rice, one empty truck which had just unloaded FCI rice and was inside the factory campus, one empty truck which was outside the factory, was also found. It was also further alleged in the FIR that no valid documents have been produced in respect of the rice and it is suspected that the owner, business partner, managers and others had entered into a criminal conspiracy to pilferage and misappropriate rice from Govt./FCI facilities and sell the same in the black market at higher rates. The FIR was registered as Boko P.S. Case no. 457/2021, under Section 120B/406/379/411 IPC, R/W Section 7 of Essential Commodities Act, 1955 and investigation commenced. The police seized the aforementioned truck loaded with bags of rice and two empty trucks which tantamounts to 43,212 bags of rice which was stored in the rented warehouse. However, subsequently, the aforesaid quantities of rice as well as the vehicles were released by order of the Judicial Magistrate, First Class, Boko dated 12.07.2021 to the custody of the applicant.

8. The police also seized 5378 numbers of empty jute bags 6225 numbers of empty bags with markings "for Assam Rifles Only" MKD by Continental Milkose (India) Ltd. one digital weighing machine (ESSAE) and one machine vibro separator. The aforementioned empty bags and machinery are presently lying

inside the rented warehouse/go-down of the company at Chaygaon. The warehouse itself is presently in the possession and custody of the Boko Police who have locked the gate of the premises and have placed police guards.

9. Several months have elapsed since the aforesaid seizure by the police and registration of the case. The investigation is still going on and is yet to be completed. On 04.05.2022, the company filed an application before the learned Judicial Magistrate, First Class, Boko under Section 451 read with Section 457 of the Code of Criminal Procedure, 1973 for release of the said empty bags mentioned in the aforesaid seizure list at serial nos. 4 and 5 into the zimma of the company through its representative Sri Vivek Singh. A further prayer was made to direct the Boko Police authorities to hand over possession of the warehouse situated at Chaygaon through the applicant. The applicant states that the aforesaid items belong to the company and the warehouse is also a rented property of the Company by virtue of a subsisting Rent Agreement. The learned Magistrate called for a report from the Officer-in-Charge, Boko P.S. regarding the seized items and the warehouse in question. Accordingly, the Officer-in-charge, Boko P.S. submitted his "Reply regarding zimma of articles" dated 03.06.2022 to the learned Magistrate. In the said reply it was stated, inter-alia, as follows:-

" That Sir, the seized jute bags with marking of for Assam Rifles will be tendered as evidence to show that PDS rice meant for Govt. Scheme was being pilfered / misused/misappropriated and was being diverted to Assam Rifles. Further, the machine was being used for polishing rice, but Maruti Quality products Pvt. Ltd., Chatabari Industrial Area did not have permission to operate the said machine. Besides, no genuine documents have been produced in support of the zimma claim. It may be brought to notice of your Hon'ble Court that petition u/s 482 Cr.P.C filed by the accused before the Hon'ble Gauhati High Court vide Case No. CrI. Pet. 350/2021 for quashing the FIR/investigation etc., has already been rejected by the Hon'ble Gauhati High Court. Hence, giving the articles in zimma would have an adverse impact on investigation and as such the application may kindly be rejected.

That Sir, the allegations regarding the warehouse/go-down being in the possession of Boko P.S. is totally false. It is however, clarified that the warehouse/go-down is the PO (place of occurrence) of this instant case where the crime was committed. As such, in the interest of investigation of the case the crime scene is being preserved and no one has been allowed to enter the warehouse/go-down of Maruti Quality Products Pvt. Ltd., Chatabari Industrial Area. This is submitted for favour of your kind perusal."

10. After receiving the reply the Judicial Magistrate, First Class, Boko, on 03.06.2022 rejected the prayer of the company for zimma of the seized articles mentioned in the aforesaid application with an observation that the I/O has denied that the warehouse/Go-down of M/s Continental Milkose (India) Pvt. Ltd. is under possession of Boko P.S."

11. The Criminal revision Petition was filed against the order dated 03.06.2022 which was registered as Criminal Revision Petition no. 306/2022 and vide order dated 21.06.2022, this Court disposed of the petition holding that the impugned order of the learned Magistrate dated 03.06.2022 is bad in law and the same is set aside and the matter was remanded to be decided afresh.

12. Thereafter, the company represented by the applicant, filed the petition no. 322/2022 before the learned Trial Court placing the order dated 21.06.2022. The trial Court vide order dated 30.06.2022 allowed the petition directing the I/O to hand over the custody of the warehouse/go-down of M/s Maruti Quality Products Pvt. Ltd., situated at Chatabari Industrial area to its tenant Vivek Singh with immediate effect by removing the guard engaged. However, the I/O did not comply with the order and submit a compliance report on the fixed i.e. on 14.07.2022 and vide another order dated 18.07.2022, learned trial Court called for the compliance report on 06.08.2022. A report was submitted to the trial Court that the I/O has preferred a petition before this Court with respect to the order of the trial Court dated 30.06.2022. The I/O sought for time for furnishing the compliance report, as the I/O has approached this Court against the order of learned trial Court, being Criminal Revision Petition No. 453/2022. On 12.09.2022, this Court directed to issue notice and then interim order was passed with a direction that "till returnable date, the investigating Officer shall not hand over the custody/possession of the warehouse/godown of M/s Maruti Quality Products Pvt. Ltd., to its tenant i.e. Vivek Singh. It is submitted that the law has laid down by the Hon'ble Supreme Court in the case of Nevada Properties Private Limited Vs. State Of Maharashtra And Another reported in (2019) 20 SCC 119, regarding seizure of immovable property by the police.

13. The applicant has submitted that the aforesaid materials, machinery and warehouse premises are in police custody since 03.06.2021 for nearly 17 months. Investigation is ongoing and the applicant has cooperated with the investigation. The company is suffering due to the failure of police to complete the enquiry which has been procrastinating for 17 months. It is submitted that the revision petition has been preferred by the I/O with malafide. Law is well settled and Section 102 does not empower a police officer to seize immovable property, land, residential houses, streets or similar properties. The I/O has acted in defiance of order of the Hon'ble Supreme Court in the case of Nevada Properties Private Limited Vs. State Of Maharashtra And Another reported in (2019) 20 SCC 119. During past 16 months, the applicant has paid of Rs. 1,28,00,000/- (8,00,000/-) as rent for the warehouse without any commercial benefit therefrom. The company is facing huge financial loss for every month during which the premises in question continues to be in the custody of the police. The same requires regular servicing and maintenance. It is submitted by the applicant that huge number of seized empty bags are lying heaped up in the Warehouse which are prone to deterioration and total damage by rodents and insects. It is submitted that neither the warehouse and its utilities, nor the machinery and empty bags are in fact any longer required for completion of the

investigation. It is submitted that no case has been made out against the company, so prosecution is unable to file charge-sheet. The applicant has submitted that it is a fit case to modify the interim order dated 12.09.2022 passed in criminal revision petition no. 453/2022.

14. I have given my anxious consideration to the submissions at the Bar. It has been held by the Hon'ble Supreme Court in the lead case of Nevada Properties Pvt. Ltd. (supra) that:-

"10. 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 Criminal Appeal arising out of 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 could never have been envisaged by the Legislature. The power of seizure in Section 102 has to be limited to movable property.

11. As far as the meaning of property in Section 452 of the Cr.P.C. is concerned, that is not a question referred to the larger Bench and therefore, I would refrain from saying anything about that.

12. In view of the above, I would answer the reference by holding that the phrase 'any property' in Section 102 will only cover moveable property and not immovable property."

15. The legality of the order dated 30.06.2022 passed by the JMFC at Boko, Kamrup (M) directing the I/O to hand over the custody of the warehouse/go-down of M/s Maruti Quality Products Pvt. Ltd., situated at Chatabari Industrial area to its tenant Vivek Singh with immediate effect has been challenged by the State of Assam. It is true that the police has no authority to seize an immovable property. The Court can seize any kind of property like movable or immovable property but the police is not empowered to seize any kind of immovable property. It is also submitted that the petitioner has taken the seized immovable property on rent of Rs. 8,00,000/- per month and the petitioner had to dole out an exorbitant amount as rent of the seized premises. The petitioner is eagerly waiting to vacate the rented premises for which he is paying an enormous amount as monthly rent to the tune of Rs. 8,00,000/-. It is also submitted that the investigation agency had sufficient time to conduct the investigation and the

articles which are more relevant as evidence had already been handed over to the custody of the petitioner.

16. It is also submitted that the retention of the warehouse as the crime scene will serve no purpose. It is not such a case that fingerprints have to be lifted or forensic examination has to be carried out to preserve the crime scene.

17. It is true that the petitioner will suffer immensely if he will have to pay for the entire period of investigation which has been procrastinating since the inception of this case being Boko P.S. Case No. 457/2021. In compliance of the order of this Court in Criminal Petition no. 306/2022, the trial Court has passed the impugned order dated 30.06.2022 and against the order dated 30.06.2022, the State of Assam has preferred the Criminal Revision petition No. 453/2022, which has been impugned by the petitioner stating that the investigation agency has acted beyond its power by taking into custody a warehouse, which is an immovable property. The impugned order depicts that "till returnable date", the investigation agency was not to hand over the possession of the warehouse of the M/s Maruti Quality Products Pvt. Ltd., situated at Chatabari Industrial area to the petitioner Vivek Singh, who is also a respondent in the case i.e. Criminal Revision Petition No. 453/2022.

18. It has been held by the Hon'ble Supreme Court in Nevada Properties Private Limited (supra) that the police is not empowered to seize any immovable property. It is apparent from "Reply regarding zimma of articles" dated 03.06.2022 to the Magistrate by the police in connection with Boko P.S. Case No. 457/2021 that the warehouse has not been seized by the police. The warehouse of Maruti Quality Products Pvt. Ltd. is the place of occurrence and the evidence is being preserved at the place of occurrence and entry is being prohibited.

19. Now, the petitioner has come against an order passed by a Court. At this stage, no irregularity during investigation is discernible so far as the possession of the warehouse is considered. The immovable property has not been seized by the police. The property is however kept under lock and key to the disadvantage of the petitioners. The order not directing the investigating officer to hand over the custody of the aforesaid warehouse to its tenant is passed by a Court. As the order is passed by a Court, I am hereby constrained to reject the petition for modification of the order of the Court.

20. I have scrutinized the seizure list marked as Annexure-13. The seized articles are described as description of seizure and the place of seizure is the warehouse. The seized articles described under the description of seizure consist of (1) 325 nos. bags, (2) 41,586/- jute bags consisting of FSI/PDS/FAC rice, (3) 1301 plastic bags consisting of same quality of rice. (4) 5378/- jute bags of rice. (5) 6225/- jute bags of Rice meant for Assam Rifles only, (6) one machine of polishing rice, one digital weighing machine. Thus, it is apparent that the warehouse was not seized but the warehouse is the place of occurrence in connection with the corresponding case being Criminal Revision Petition No.

453/2022, and this Court has passed an order directing the I/O not to hand over the possession of the warehouse only till the returnable date, and thereby, I am constrained not to modify or vacate the order impugned. Accordingly, petition is hereby rejected. This I.A. (Crl.) 625/2022 stands dismissed.