

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::::::::: DHUBRI

Present :- Shri Biprajit Roy, AJS
Addl. Sessions Judge
Dhubri.

CRIMINAL REVISION NO.15 OF 2020

Revisionist :-Hafiz Uddin
Vs

Respondent :-The State of Assam
Represented by Ld.Addl.P.P.

For the Revisionist:-Shri Islam Uddin Ahmed
Learned Advocate.

For the Respondent:-Shri S.C. Roy
Learned Addl.P.P.

Date of Hearing :- 05.08.2020.

Date of Judgment:-01.09.2020.

J U D G M E N T

(1) This is an application U/s.397 Cr.P.C filed by the revision petitioner Hafiz Uddin challenging the order dated 19.06.20 and 07.07.20 passed by the learned Chief Judicial Magistrate, Dhubri in Dhubri P.S. Case No.710/20 (corresponding to GR No.2322/2020) u/s. 379 I.P.C rejecting the zimma petition dated 09.06.2020 and 29.06.2020 filed by the revision petitioner seeking zimma of 6 numbers of cattle which were seized by the I.O.

(2) The learned Addl.P.P appeared on behalf of the O.P. No.1. The LCR was called and upon receipt of the LCR, I have heard learned counsel of both sides.

(3) The brief facts of the case is that Coy Commander "F" Coy 67 Bn.BSF lodged an FIR to the effect that on 06.06.2020 at about 11.30 A.M., ambush-cum-patrol Party observed suspicious object floating in river channel from India to Bangladesh side. The ACP Party with the help of EFC Boat searched the floating object and found six calves tied with banana stem. The ACP party brought the calves to the bank of river and seized the

same.

(4) After hearing the learned counsel for the petitioner, the learned Chief Judicial Magistrate, Dhubri called for a report from the I.O and upon receipt of the report from the I.O., the impugned orders dated 19.06.2020 and 07.07.2020 rejected the zimma petition.

(5) After taking into consideration the report submitted by the I.O and the other facts and circumstances of the case, the learned C.J.M., Dhubri rejected the zimma petition filed by the revision petitioner on the ground that the seized cattle were recovered in a suspicious and strange circumstance. From perusal of the impugned orders and the materials available in the case record, it appears that the siezed cattle were kept in a govt. pound under proper care.

(6) The learned counsel for the revision petitioner submitted that the learned lower Court committed error in rejecting the zimma petition twice by passing the impugned orders inspite of the fact that the I.O clearly stated that the petitioner is the owner of the said cattle which are not required for the purpose of investigation.

(7) Section 397 Cr.P.C says that the High Court or the Sessions Judge may call for and examine the record of any proceeding before any inferior criminal court situate in his or its local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality and propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior court and may, while calling for such record, direct that the execution of any sentence or order be suspended, if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Section 451 of Cr.P.C says—when any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speed and

natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Section 457(1)(2) Cr.P.C provides as follows:

Section 457 –(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Code during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

(8) From the above provisions of law as discussed above, it is clear that it is the duty of the Revisional Court to examine the correctness, legality and propriety of any order passed by the inferior Criminal Courts within its jurisdiction. As per section 397(2) Cr.P.C, the order must be a final order and not an interlocutory one. An interlocutory order merely decides some points or matter essential to the progress of the suit or colateral to the issues sought but is not final decision or judgment on the matter in issue.

(9) From the facts and circumstances and the relevant provision of law as discussed above, it is clear that while exercising the revisional power u/s.397 Cr.P.C, this Court is to examine the correctness, legality and propriety of any finding, sentence, order, recorded or passed by the lower court.

(10) In the instant case, from the perusal of the FIR, it appears that six

numbers of calves tied with banana tree were found floating in the river Brahmaputra moving towards Bangladesh and the BSF recovered the calves from the river. This fact is sufficient to arrive at a conclusion that those calves were being smuggled to Bangladesh through river Brahmaputra by some miscreants and therefore, the learned lower Court rightly rejected the zimma petition by holding that the circumstances of recovery was suspicious. From the materials available in the case record, it appears that while submitting the report, the I.O. did not investigate into the fact as to how the cattle belonging to the petitioner were being smuggled through river Brahmaputra and who had tied the cattle with banana trees and left them floating in the river moving towards Bangladesh. The report of the I.O is given in a casual and superficial manner without proper investigation. As the calves belong to the petitioner and those were missing from his house, he ought to have lodged an FIR but record does not reveal any such FIR lodged by revision petitioner. He approached the Court only when the calves were recovered by the BSF while being smuggled in a cruel and inhuman manner through Brahmaputra river. The facts and circumstances clearly indicate doubtful role of the owner in the entire matter and prima facie his involvement in the entire matter is evident. Investigation of the case is going on and in the course of investigation the role played by the owner of the seized calves will definitely come out, but as of now, his involvement in the entire matter is evident.

(11) Therefore, I do not find any illegality or impropriety in the impugned orders passed by the learned lower Court and the findings are appreciated properly. The revision petition does not bear any merit and same is rejected and disposed of.

Send back the LCR along with a copy of this judgment and order.

Send a copy of this judgment to SP, Dhubri for information and necessary action.

Given under my hand and seal of this court on this 1st September,
2020 at Dhubri.

Dictated & Corrected by me

Addl.Sessions Judge, Dhubri.

Addl.Sessions Judge
Dhubri