

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

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

CRIMINAL REVISION NO.17 OF 2020

Revisionist :-Nurzamal Hoque & others.

Vs

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

For the Revisionist:-Islam Uddin Ahmed
Learned Advocate.

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

Date of Hearing :- 19.08.2020.

Date of Judgment:- 01.09.2020.

J U D G M E N T

(1) This is a petition U/s.397 Cr.P.C challenging the orders dated 22.06.20 and 07.07.20 passed by the learned CJM, Dhubri in connection with Dhubri P.S. Case No.745/20 (corresponding G.R. No. 2430/2020) U/s. 379/34 IPC by which the learned lower court rejected zimma petitions dated 15.06.20 and 17.06.20 filed by the petitioners i) Nurzamal Hoque, ii) Mosa Ali, iii) Sofqul Islam, iv) Rupchan Ali, v) Rofikul Islam, vi) Nur Hussain, vii) Hossain Ali, viii) Majom Ali, ix) Afzalur Rahman seeking zimma of 26 Nos. of cattle which were seized by the I.O. in connection with the above referred by above mentioned case.

(2) Heard learned counsel of both sides and I have perused the case record.

(3) The brief facts of the case is that the informant Shah Alom Azad ASI of B.N. College TOP under Dhubri P.S. lodged an FIR on 13.06.20 to the effect that on 13.06.20 at about 2:00 am informantion was received that some

people were moving smuggled cattle from the side of Rowagaon to Adabari village. On getting information, the informant along with the other police personnel went to the place of occurrence and asked to show the actual documents of the 26 cattle. But they failed to produce any documents. Suspecting the cattle to be ownerless and stolen, the same were seized and kept in a govt. pound at Adabari and Sagaldhara after examining them medically. From perusal of the case record of GR Case No. 2430/20 (corresponding to Dhubri P.S. Case No.745/20) it appears that the seizure list was shown to the learned CJM, Dhubri on 17.06.20 by the I.O. thereafter the zimma petitions were filed by the petitioners seeking zimma of the 26 cattle and the learned lower court vide orders dated 22.06.20 and 07.07.20 rejected the zimma petitions filed by the petitioners.

(4) From perusal of the case record it appears that before passing the order dated 22.06.20 report was called from the I.O. to ascertain the real owners of the cattle and whether the seized cattle are required for further investigation and accordingly the I.O. submitted his report on 22.06.20. The I.O. reported that the cows were seized from the possession of the petitioners and these are the actual owners of the said cattle. This I.O. further stated that the seized cattle were not required for further investigation.

(5) The I.O. in the said report clearly stated that the seized cattle were purchased from cow market and the challans produced by them were verified by him and according to the I.O. the petitioners are the actual owners of the seized cattle. The I.O. further stated that the seized cattle are not required for the purpose of further investigation.

(6) It is pertinent to note that govt. pound is not a place of keeping cattle permanently for a long period, that to, when the actual owners are before the Court seeking zimma of the cattle and they cannot also be compelled to pay charges of the pound without any fault on their part.

(7) From the FIR itself it appears that I.O. suspected the cattle to be smuggled/ stolen and that is why he seized those cattle and subsequently

the I.O. himself submitted report that the petitioners are the actual owners of the said cattle. So from his report itself, it is clear that those cattle were neither stolen nor smuggled. The cattle were found within the Indian territory while being taken by the road and therefore it cannot be said that those were on the process of being smuggled through Indo-Bangla International border. The place of occurrence is at a distance of about 10 kilometres from the police station. From perusal of the case record it also appears that no FIR was lodged regarding theft of the cattle.

(8) From perusal of the order dated 07.07.20 it appears that the petitioners submitted zimma petitions stating that the cattle were not properly looked after in the pound and prayed before the learned lower Court the custody of the seized cattle in their favour. The learned CJM rejected the subsequent zimma petition on the basis of another report submitted by the I.O. stating that proper care was taken by the pound owner and there was no danger to the seized cattle but subsequently on 24.07.20 the I.O. submitted post mortem report that two cow have died in the govt. pound. From perusal of the case record it has also come to the notice of this Court that on 24.07.20 the I.O. submitted two post- mortem examination reports before the learned CJM, Dhubri stating that out of the 26 cattle, two have died in the pound.

(9) From perusal of the post-mortem examination report dated 20.07.20 it appears that the cows died due to pneumonia & animea. The post mortem report is sufficient to arrive at a conclusion that the cattle were not given proper food and medicine in the pound and that is why two of them died due to pneumonia and resulting from fascioliasis. Generally fascioliasis is a infection with the liver which is acquired by consuming contaminated and other water plants. The post mortem examination report makes it clear that in the govt. pound proper food and medicine was not provided to the cattle.

(10) From perusal of the order dated 07.07.20 it appears that the learned CJM, Dhubri in the last part of the order directed the I.O. to monitor that the

cattle were taken care properly.

(11) From the discussion of the facts and circumstances of the case it is clear that the orders dated 22.06.20 and 07.07.20 are erroneous and accordingly, the same are set aside. The learned CJM, Dhubri is directed to give interim zimma of the seized cattle to the actual owners imposing conditions as the learned CJM, Dhubri deems fit and proper.

Accordingly, the revision petition is allowed.

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

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.