

District :- Hailakandi.

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
HAILAKANDI.**

(Criminal Revisional Jurisdiction)

**Present :- Md. M. H. Barbhuiya,
A.J.S., Ph.D.-in-Law,
Additional Sessions Judge,
Hailakandi.**

Saturday, the 7th day of January, 2023.

Criminal Revision No.88 of 2022

From the zimma order dated 20-09-2022, passed
by the Learned Judicial Magistrate, First Class, Hailakandi, in Lala
P.S. Case No.190/2022, U/S 120(B)/420/379/411 of the I.P.C.

1) **The State of Assam**
(to be represented by Addl. P.P., Hailakandi.)

2) **S.I. Mr. Biplab Nath**, Lala P.S.
..... Revisionists.

-Versus-

Md. Taj Uddin Laskar,
Son of Late Azizur Rahman Laskar,
Vill.-Nizvernarpur Part-I,
P.S.: Lala, District- Hailakandi, Assam

..... Opposite Party (O.P.).


Addl. Sessions Judge
Hailakandi

This Revision coming for final hearing on this day [or having been heard] on 05-01-2023.

In presence of:-

For the Revisionists: Mr. P. K. Das, Learned Addl. P.P.

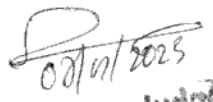
For the O.P.: Mr. A. H. Laskar, Learned Counsel.

And having stood for consideration to this, the 7th day of January, 2023 the Court delivered the following Judgment:-

J U D G M E N T

1. In the instant revision petition, the order dated 20-09-2022 passed by the Learned Judicial Magistrate, First Class, Hailakandi (Learned Trial Court, in short) in Lala P.S. Case No.190/2022, registered under Sections 120-B/420/379/411 of the I.P.C. has been challenged.

1.1 By the impugned order, the learned trial court allowed zimma of the seized betel-nuts in favour of its actual owner Taj Uddin Laskar, arrayed as respondent/Opp. Party in the instant revision.


08/01/2023
Addl. Sessions Judge
Hailakandi

2. The main ground taken in the revision petition is that the learned trial Court failed to take cognizance of the fact that Charge-sheet is yet to be submitted

and the investigation of the case is going on, but, the learned trial court failed to take note of those aspects in allowing the zimma petition.

- 2.1 I have heard the learned Counsel for the parties. Also perused the records. Thereupon, the following points for determination are framed :

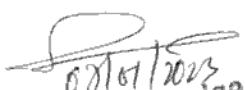
POINTS FOR DETERMINATION :-

i) Whether the Learned Trial Court failed to appreciate the materials on record in its proper perspective and arrived at an erroneous finding thereby issuing the order of custody in favour of the owner of the seized betel-nuts ?

ii) Whether the impugned order requires interference by this Court ?

3. Discussion, Decision and Reasons therefor:-

On perusal of the materials available on record and hearing the Ld. Counsel for the parties, let me evaluate as to whether there is anything to interfere with the impugned order or not.

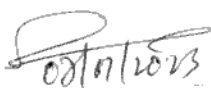

08/07/2023
Addl. Sessions Judge
Hallakandi

4. Section-397 Cr.P.C. as well as Section-399 Cr.P.C. can be exercised by a Court of Revision when the correctness, legality or propriety of any finding,

sentence or order, recorded or passed by a court below is under challenge.

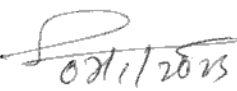
5. In the case in hand, from the record which is received in original from the Id. trial court, it appears that when on 06-07-2022 the zimma petition was filed by the petitioner before the learned trial Court, the learned trial Court called for a report from the Superintendent of Taxes, Hailakandi, to ascertain whether the petitioner had paid the required taxes in purchasing the betel nuts. On receipt of the requisitions, the Superintendent of Taxes, Hailakandi reported that the petitioner had already paid all the required taxes in this regard and accordingly, only after receipt of the said report, vide order dated 20.09.2022 the learned trial court allowed the zimma of the seized betel-nuts in favour of its actual owner.

6. From the case dairy produced by the Investigating Officer, it reflects that during investigation of the case, he has seized all the relevant appears such as trade licence, GST registration, GST returns, income tax returns, vouchers etc. purchasing the betel nuts from the petty trader. The Investigating Officer did not find any anomalies so far. However, the


Addl. Sessions Judge
Hailakandi

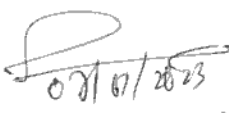
Investigating Officer of the case is challenging that order and his such activities has shocked the conscience of this Court.

7. Perusal of the record further reflects that the seized supari (betel nuts) were sent to the District Agriculture Officer, Hailakandi for giving expert opinion about its origin. Then the office of the District Agriculture Officer reported that the sample of supari are found 'the sample seems to be mixture of non-local and local origin'. The Development Officer from the office who appeared before the court personally has informed this court that their office has no laboratory or expertise, rather, on presumption they usually give such report.
8. It is an established fact that betel nuts are perishable items. By sealing the godown/storehouse of the perishable goods since last 23.06.2022 through a learned Executive Magistrate, the Investigating Officer has committed gross illegality violating the legal principles prevailing in this Country. The Investigating Officer cannot take the law in his own hand on the pretext of further investigation. Considering the perishable nature of the seized items the Id. trial court allowed zimma of


02/11/2023
Addl. Sessions Judge
Hailakandi

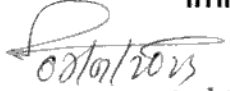
the same to the petitioner/respondent in this case. Zimma does not mean declaration of ownership. If in future, the prosecution could prove that the seized betel nuts were stolen and claimed by any other person having better title, the bond that was directed to be executed by the Id. trial court would be forfeited and other legal procedures can be invoked.

9. The submission of the learned Counsel for the respondent is put on record to the effect that as a result of such seal of the storehouse/godown of the perishable betel-nuts, the respondent/ Opp. Party has suffered a huge loss and the source of income of the Respondent/Opp. Party has been stopped. The Respondent/Opp. Party has been suffering pecuniary problem for last 6/7 months and that has happened only because of the fault of the Investigating Officer. Besides, when a perishable item is kept confined without its marketing, there is every apprehension that the same would be damaged, and, if the same is sent to any expert body after a lapse of some time, it would become inconsumable and the expert body may not be able to give proper report thereon. There is no law as on today, that the investigating agency would


08/07/2023
Addl. Sessions Judge
Hallakandi

compensate the loss to the respondent/owner of the betel-nut in the event of such a damage or in the event when it would be found that the present responder is having better title in respect of the seized property, otherwise the matter could have been dealt to that direction.

10. From what has been stated above, I find that the learned trial court passed the impugned order in compliance to the law laid down in chapter- XXXIV of Cr.P.C.. He did not commit any wrong on law or facts. By passing the impugned order he did not commit any impropriety in any manner.
11. I do not find any merit in the instant revision petition. There is nothing to interfere with the impugned order. Situated thus, the revision petition stands **dismissed**.
12. The impugned order dated 20.09.2022 passed by the learned trial court is hereby upheld. The Investigating Officer, who is the petitioner No.2 of the instant case, is present in the Court today and he undertakes to release the seized articles immediately in favour of the Opp. Party.

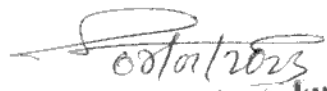

Addl. Sessions Judge
Hallakandi

- 13.** With the above directions, the instant revision petition stands disposed of.
- 14.** Return the LCR along with a copy of this Judgment and Order to the learned Elaka Magistrate for information and necessary action.

Given under my hand and seal of this Court
on this the **7th day of January, 2023, at**
Hailakandi.


(Md. M.H. Barbhuiya)
Additional Sessions Judge,
Hailakandi

Dictated and corrected by me.


Additional Sessions Judge,
Hailakandi

Transcribed by :- B. Choudhury, Stenographer.