

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR
CRIMINAL REVISION NO. 03 (S-1) 2020

**PRESENT : Smt. I. Barman,
Sessions Judge,
Sonitpur, Tezpur.**

Sri Dharmeswar Borah **Petitioner.**

- Versus -

1. State of Assam and
2. O/C of Jamuguri Police station **Opposite parties**

APPEARANCE

For the Petitioner : Sri A. Bhuyan, Advocate.

For the Opposite parties : Sri M. C. Baruah, P.P.

Date of Argument : 26-06-2020

Date of Judgment : 03-07-2020

JUDGMENT

1. This revision petition is preferred by Sri Dharmeswar Borah, challenging the legality, propriety and correctness of the order dated 07-01-2020 passed by the learned Judicial Magistrate, 1st class, Sonitpur, Tezpur in GR Case No. 3849/19 arising out of Jamuguri Police station Case No. 183/19 u/s 120-B/506 of the IPC read with section 25(1) (a)/27(2)/35/29(b) of Arms Act whereby the application u/s 457 of Cr.P.C filed by the petitioner praying for seeking zimma of seized 12 bore SBBL gun (Sl. No. of license 1894/01) along with other documents was rejected.

2. The facts which are requisite to be stated for the purpose of adjudication of this proceeding is that an FIR was lodged by Manik Bormudoj, the SI of Police of Jamuguri PS alleging that on 11-11-2019, at around 1.00 midnight, accused Sri Nitumoni Borah and Sri Rupam Hazarika without any reason fired two rounds of bullet at Maranakuri Ghahi gaon from

a single barrel Gun of accused Krishna Baruah license of which was expired as a result the villagers got frightened. On the basis of the FIR, Jamuguri PS Case No. 183/19 u/s 120-B/506 of the IPC read with section 25(1)(a)/27(2)/35/29(b) of the Arms Act was registered and launched investigation of the case. During investigation, the I.O. had seized arms and ammunitions and one motor cycle. Amongst the seized arms one 12 bore SBBL gun vide No. 1555 was also seized of which the present petitioner is the licensee and license of the said gun was valid upto 31-12-2021. The petitioner being the licensee of the said seized gun filed an application u/s 457 Cr.P.C. before the learned Judicial Magistrate, 1st class, Sonitpur, Tezpur praying for zimma of his seized 12 Bore SBBL gun but the learned Judicial Magistrate, 1st class, Sonitpur, Tezpur rejected the prayer of the petitioner vide order dated 07-01-2020.

3. Being highly aggrieved by and dis-satisfied with the impugned order dated 07-01-2020, the petitioner preferred this revision petition on the ground that inspite of the report of the Investigating Officer that the seized gun belonging to the petitioner is not required for further investigation of the case, the learned Magistrate rejected the prayer and as such the learned trial court has erred in law and committed an error in rejecting the prayer of the petitioner.

DECISION AND REASONS THEREOF.

4. I have heard the learned advocate of both sides and also have carefully gone through the case record as well as the impugned order.

5. I have given my opinion and thoughtful consideration as regards to the rival submissions raised by the learned counsel of the parties.

6. Before I proceed further, I find it necessary to reproduce the order dated 07-01-2020 which has been challenged in this proceeding :

"07-01-2020 Today is the date fixed for report.

Engaged counsel for the petitioner Nitumoni Borah
and Dharmeshwar Borah is present.

Seen the report. The I.O. has submitted report that the seized goods are not required for investigation.

Heard both sides. Perused the CR.

On perusal, it transpires that the accused person Nitumoni Borah fired 2 rounds of ammunition thereby causing panic among the villagers. Moreover, the Gun belong to one Krishna Baruah who himself did not possess the requisite license as its validity had already expired.

Considering the nature of offences, involvement of the accused and its requirement during the trial, zimma of

1. Seized 12 Bore SBLG gun and
2. License of an Air Rifle vide SI No. 00506 is rejected at this stage.

As regards the prayer for zimma of motor cycle Bajaj Discover bearing registration No. AS 12 H 8887 is allowed after considering the report of the I.O. and to maintain utility of the vehicle. The concerned I.O. is hereby directed to hand over the zimma of the motor cycle to the petitioner Nitumoni Borah only on the satisfaction that handing over the motor cycle to the petitioner who is also an accused of this case will not hamper in the course of investigation.

If the concerned I.O. is satisfied that the zimma can be granted of the motor cycle, the I.O. will hand over the zimma of the motor cycle to the petitioner, Nitumoni Borah only on execution of zimma bond of Rs. 2,00,000/- pertaining to the petitioner that he will not sell or alter the same with the prior permission of the court and will also produce the same before the court as and when required.

The I.O. is also directed to click photograph of the motor cycle from all sides.

The I.O. is directed to submit a compliance report in this regard.

Thus, the zimma petition is disposed off."

7. In the instant case the alleged offence is that on the day of incident i.e. on 11-11-2019 at 1:00 midnight accused Nitumoni Borah and Rupam Hazarika fired two rounds of bullet without any reason in Maranakuri Ghahi Gaon village from the gun of Krishna Baruah, license of which was expired at the time of incident with intend to create panic amongst the villagers. Record reveals that during investigation besides the gun NO. 1555, one No. SBBL Gun No. 17718/88, one Air Gun serial no. AG 00506, one SBBL Gun License No. 5146/111/Tezpur, two nos. SBBL ammunitions (empty), one no live SBBL ammunition, one SBBL ammunitions post and one Discover motorcycle were seized from the possession of the petitioner Dharmeswar Borah. In the case at hand, so far the allegation is concerned, two number of bullets of SBBL gun was fired which belong to one Krishna Barua of which license was expired at the time of incident. Documents available in the record reveals that 12 Bore SBBL gun No. 1555 belongs to the petitioner Dharmeswar Borah and he possessed valid license which was renewed since 01-01-2013 till 31-12-2021 and it was lying in the malkhana of the police station since 13-11-2019. The said seized 12 Bore SBBL gun was not used in the alleged incident. On calling for a report by the learned Magistrate, the I.O. submitted report that Dharmeswar Borah is the owner of the aforesaid seized gun No. 1555 and it is not required for further investigation in this case. So, evidently the aforesaid seized gun No. 1555 was not used in the alleged offence and it is not required for investigation of this case. Moreover, the petitioner Dharmeswar Borah is the valid license holder of the aforesaid gun and he was not involved in the case but the learned trial Magistrate not considering all aspects rejected the prayer of the petitioner for giving zimma of his gun. In such situation, when the petitioner is the valid license holder of the seized SBBL gun NO. 1555 which is not used in the alleged offence, it is difficult to visualize as to why it should have been retained till completion of trial.

8. In the circumstances noted above, the net result is that the petitioner is entitled to have the seized arm 12 Bore SBBL gun no. 1555 released forthwith. The order rejecting the petition u/s 457 Cr.P.C. filed by the

petitioner requires to be interfered which I accordingly do by setting aside the order dated 07-01-2020 with regard to zimma of the seized 12 Bore SBBL gun NO. 1555. The petitioner is entitled to have the seized arm 12 Bore SBBL gun no. 1555 released forthwith. The case is in the stage of investigation. The Investigating Officer is directed to give zimma of the seized 12 Bore SBBL gun NO. 1555 to the petitioner Dharmeswar Borah after proper verification of the documents subject to execution of a bond of Rs. 50,000/- by the petitioner for production of the same before the Court or any authority as may be required.

9. Send back the LCR along with a copy of the order.
10. Accordingly, the revision petition stands allowed.
11. Given under my hand and seal of this Court on this the **3rd day of July, 2020.**

(I.Barman)
Sessions Judge,
Sonitpur: Tezpur.

Dictated and corrected by me.

(I.Barman)
Sessions Judge,
Sonitpur, Tezpur.