

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

CRIMINAL REVISION NO. 05 (S-1)/2021

**PRESENT : Sri Chatra Bhukhon Gogoi
Sessions Judge,
Sonitpur, Tezpur.**

1. Ankan Hazarika

..... **Petitioner.**

- Versus -

1. Inspector of Excise,
Rangapara Circle,
District Sonitpur, Assam.

2. State of Assam

..... **Opposite parties**

A P P E A R A N C E

For the Petitioner : Rose Bharali and Sri Chiranjeeb
Ghosh, Advocate.

For the Opposite parties : Sri Munin Baruah, Advocate.

Date of Argument : 05-08-2021

Date of Judgment : 10-08-2021

JUDGMENT

1. This revision petition is directed against the impugned order dated 20-02-2021 passed by Learned Judicial Magistrate 1st Class, Tezpur, Sonitpur in connection with Rangapara Excise Case No. 74/2021 u/s 53 (1)(A) Assam Excise Act.

2. In the petition, it is pleaded that the petitioner is the attorney holder of Sri Baba Borah and said Baba Borah is the actual owner and possessor of vehicle Tata Tigor (VXZ) bearing Chasis No. MAT629305LKH25727 and Engine No. REVTRN08HZXK49288 color of body pearlescent of 2020 make. Since, Baba Borah is an old and feeble person so petitioner was authorized on the strength of special power attorney dated 06-02-2021 executed before Notary in Golaghat District to appear before any court of law anywhere in India on behalf of Baba Borah to release the vehicle and to file any civil or criminal cases on his behalf relating to the vehicle. So, on the basis of the said special power attorney dated 06-02-2021 Serial no. 1118/2021, petitioner applied for zimma of the vehicle in the Court of Judicial Magistrate 1st Class in connection with Rangapara Excise Case no. 74/2021 but, learned Magistrate rejected the zimma prayer of the petitioner.

3. Being highly aggrieved and dissatisfied the present revision petition has been filed on the following grounds:

i) That vehicle was seized from the possession of the driver of the vehicle and the owner came to know about the seizure of the vehicle by Excise Officials of Rangapara Circle belatedly. The owner entrusted the vehicle with the driver in good faith for lawful use. So, the owner is unaware whether the vehicle has been used by the driver for any unlawful activities.

ii) That the vehicle has all the valid documents, however, while deciding the zimma petition, learned Magistrate on 12-02-2021 call for a report regarding the registered owner of the Tata Tigor and on 20-02-2021 a report has been submitted by the authority suggesting the Magistrate how to dispose the zimma petition.

iii) That the vehicle has been lying in open air by Excise officials and there is every likelihood of destroying the vehicle, if the same is not released to the petitioner.

4. Point for determination:

i. Whether the impugned order dated 20-02-2021 passed by learned Judicial Magistrate 1st Class, Tezpur, Sonitpur in Rangapara Excise Case No. 74/2021 is incorrect, illegal and without jurisdiction making it liable to be revised or set aside?

Discussion, Decision and Reasons thereof.

5. I have heard the arduous contention of the learned lawyers appearing for both sides and carefully scanned the impugned order dated 20-02-2021 passed by learned Judicial Magistrate 1st Class, Tezpur, Sonitpur in Rangapara Excise Case No. 74/2021 as well as the other materials available in the case record. By the impugned order dated 20-02-2021 learned Magistrate refused to allow the zimma petition on the ground that petitioner is not the owner of the seized vehicle, observing that the report submitted by the Investigating Officer does not disclose the ownership of the seized vehicle.

6. The brief point to be decided by this court is whether the impugned order dated 20-02-2021 passed by learned Judicial Magistrate 1st Class, Tezpur, Sonitpur in Rangapara Excise Case No. 74/2021 is incorrect, illegal or improper and liable to be set aside.

7. For arriving at a right conclusion in the matter, the original case record in Excise Case No. 74/2021 u/s 53(1-A) Assam Excise Act pending in the court of Magistrate has been called for.

8. Having gone through the said case record, it appears that before passing the impugned order Magistrate called for a report from the Investigating Officer and based on the said report Magistrate refused to allow the zimma prayer of the petitioner on the ground that the petitioner is not the owner of the vehicle.

9. Under Section 451 Cr.P.C. Magistrate has the power to order for custody and disposal of property pending trial if Magistrate thinks it proper

for custody of such property and if the property is subject to speedy or natural decay, or if it is otherwise expedient so to do.

10. In the instant case, perusal of record reveals that on 05-02-2021 Inspector of Excise, Rangapara at around 8.30 PM seized two nos of vehicle without having number plate, one Maruti Suzuki Super carry with 66 (Sixty Six) cartoon of IMFL and one Tata Tigor carrying 04 (Four) cartoon IMFL to be sold in Arunachal.

11. Accordingly, said seized vehicle and IMPL were produced in the court on 05-02-2021 and allowed custody of the vehicle and seized materials to the seizing authority.

12. In the meantime, on 12-02-2021 two zimma petitions were filed u/s 451/457 Cr.P.C. namely petition No. 83/2021 filed by one Ranjan Das seeking zimma of the Maruti Super Carry and another petition No. 84/2021 filed by one Ankan Hazarika on behalf of Baba Bora seeking zimma of Tata Tigor. Thereafter, a report has been called for and based on the report learned Magistrate passed the impugned order refusing zimma to the petitioners.

13. Aggrieved by the said order, the present petition has been filed. Now, on careful consideration of the impugned order passed by the learned Magistrate and report submitted by the Investigating Authority clearly reveals that neither the petitioner Ankan Das nor Mr. Baba Bora were registered owners of Maruti Super Carry and Tata Tigor. Moreover, no documents of the vehicle were submitted along with the said report dated 20-02-2021.

14. In the present revision petition, the revision petitioner has submitted a special power of attorney executed by Sri Baba Bora whereby he has been entrusted by Baba Bora to deal with the vehicle Tata Tigor and to file cases in court on behalf of Baba Bora where necessary. But, not a single document has been furnished by him relating to the vehicle neither in the court below nor before in this court except the photocopy of special power of attorney.

15. Therefore, this court having considered all the facts of the case and the law found no infirmity or illegality or impropriety in the order passed by learned Judicial Magistrate 1st Class as the revision petitioner failed to substantiate any document proving the ownership of Tata Tigor which even do not have any registration certificate. In order to claim ownership of a vehicle, petitioner must establish the registration of the vehicle in the name of the Baba Bora. Mere submitting a special power of attorney is no prove of ownership of a vehicle without the registration certificate in the name of Baba Bora.

16. Section 451 Cr.P.C. empowers the Magistrate to order proper custody of property during enquiry or trial if the same is subject to speedy and natural decay and if it is otherwise expedient so to do.

17. In the instant case, even though the vehicle is subject to decay in due course, if left unattended, in the open air but Magistrate has to satisfy himself before passing appropriate order. Since, the revision petitioner before the learned trial court failed to substantiate his stand with credible document, there is absolutely no infirmity in the impugned order dated 20-02-2021 passed by the Magistrate requiring interference by this court in revision.

18. It is to be noted that in the report submitted by the Investigating Authority, it has been clearly stated that both the vehicle Maruti Super Carry Std. and Tata Tigor have no registered owner but both the vehicles have been used for illegal trading of IMFL. Plying vehicle on the road without registration is itself an offence under law but in the present case it seems the vehicle in question has been used in illegal trade by the owners knowing it fully well that vehicles have no registration.

19. U/s 74 of Assam Excise Act the vehicle used in illegal purpose is subject to confiscation. The only exception is that if the owner proves that he had no knowledge that the vehicle has been used for committing any offence Magistrate can confiscate such vehicle u/s 75 (1) unless the Investigating Officer submit a report that it is not liable to confiscation u/s

74. But, in the present case the Investigating Authority submitted a report stating that the owner of the vehicle have not co-operated (but in fact, there is no owner as the vehicle has not been registered in the name of anyone), therefore, both the vehicle are liable to confiscation. This is an important area which the learned Magistrate overlooked or did not consider while passing the impugned order dated 20-02-2021.

20. In view of the foregoing discussions and reasons, the present revision petition is rejected as of having no merit.

21. Let a copy of this Judgment be sent to the Court of learned Judicial Magistrate 1st Class, Tezpur, Sonitpur along with the case record of Rangapara Excise Case No. 74/2021 for information.

22. Judgment is signed, sealed and delivered in the open court on this **10th day of August, 2021.**

(C.B. Gogoi)
Sessions Judge,
Sonitpur: Tezpur.

Dictated and corrected by me.

(C.B. Gogoi)
Sessions Judge,
Sonitpur, Tezpur.