



GAHC010100442021

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**THE GAUHATI HIGH COURT AT GUWAHATI**  
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

**PRINCIPAL SEAT AT GUWAHATI**

**Criminal Petition No.368/2021**

1. THE STATE OF ASSAM AND OTHERS.

..... PETITIONERS.

-Versus

1. SRI CHOW SONJIT POMONG AND ANOTHER.

..... RESPONDENTS.

Advocates for the petitioners : Mr. P.N. Goswami, Addl. Advocate  
General, Assam.  
Mr. K.P. Pathak.

Advocates for the respondent(s): Mr. N. Prasad and  
Mr. A.K. Gupta.

**:: BEFORE ::**

**HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN**

Dates of hearing : 03.08.2021, 05.08.2021  
and 06.08.2021.

Date of judgment : 25.08.2021.

## **JUDGEMENT AND ORDER**

Heard Mr. P.N. Goswami, learned Addl. Advocate General, Assam, representing the State of Assam and other petitioners. Also heard Mr. N. Prasad, learned counsel appearing for the respondents.

**2.** By filing this application under Section 482 of the CrPC, read with Article 227 of the Constitution of India, the State of Assam, as petitioner No.1 and two of its officers have sought for quashing of the judgment and order dated 24.06.2021, passed by the learned Addl. Sessions Judge, No.2 (FTC), Tinsukia in CrI. Revision No.10(2) of 2021, whereby the custody of two seized elephants, in connection with C.R. Case No.22<sup>C</sup>/2021, pending before the Hon'ble CJM, Tinsukia have been granted to respondents *de hors* the provisions of the Wild Life (Protection) Act, 1972 and the Assam Forest Regulations, 1891.

**3.** Brief case of respondent Sri Chow Sonjit Pomong is that he is the owner of two elephants, which were carried in the vehicle bearing Regn. No.BR-01-GH-0435, with all valid documents from Lathao, Arunachal Pradesh to Odisha. On production of the documents, the DFO, Doomdooma forwarded the letter dated 12.04.2021, with the truck driver Meghan Kumar and authorized person Barun Kumar Singh to carry it from Lathao, Namsai in Arunachal Pradesh to Odisha. The DFO, Namsai duly verified the documents and submitted the letter No.AND/11/2021/STORE/215-17, dated 13.04.2021, certifying the genuineness of the documents and valid transit pass of domestic elephants, as aforesaid. The copy of the said letter was also delivered to the respondent(s) on 13.04.2021 itself. However, the opposite party no.2, the Range Forest Officer illegally arrested the aforesaid two persons and also seized the elephants. The present respondent no.1 (petitioner) approached the Court of learned CJM, Tinsukia, Assam, seeking zimma of the aforesaid two elephants claiming himself to be the owner of seized elephants but the learned CJM, Tinsukia vide order dated

29.04.2021, rejected the petition.

**4.** Being aggrieved by the aforesaid order dated 29.04.2021, the respondent no.1 approached the revisional Court by filing the Criminal Revision No.10(2)/2021 and after hearing both the parties, by the order dated 24.06.2021, the learned Addl. Sessions Judge, No.2 (FTC), Tinsukia allowed the revision. Accordingly the seized elephants were given in the custody of the respondent, on execution of a bond of Rs.30,00,000/- (rupees thirty lacs) only, (Rs.15,00,000/- for each elephant), with further direction to produce the elephants before the Court, if required in future. The I.O./the Range Forest Officer, Protection Range, Doomdooma is directed to take colour photographs of the elephants and countersigned by the petitioner, with a compliance report of the Court's order, to the trial Court.

**5.** Challenging the said order of the revisional court, the State of Assam and its officials, as the petitioners are before this Court contending that the learned revisional court has failed to exercise its jurisdiction in proper perspective of law as well as other aspect and as such is liable to be interfered with. Grounds of challenge particularly relates to violation of various provisions of the Wildlife Protection Act such as— the elephants were illegally transported without any valid documents; there was no transit permit for transporting the elephants outside the State; no copy of agreement of the recipient organization to whom the elephants were transported and there was no intimation from the concerned authorities of Arunachal Pradesh to the concerned authorities of Assam regarding inter-State movement of elephants. It contends that although the respondent's side has submitted two certificates of ownership dated 23.02.2018 of the two elephants and a letter of communication between CCF and Principal Chief Conservator of Forests dated 19.06.2019 indicating that the aforesaid elephants were transported for religious purpose but surprisingly the elephants which were shown to be transported to one Rabindra Kumar Singh at Odisha, but there is no whisper about the gift made for religious purpose and only on 04.02.2021 and 17.03.2021 permissions were issued by PCCF (Wildlife & Biodiversity) & Chief Wildlife Warden, Govt. of Arunachal Pradesh to transport the elephants for religious purpose. The zimma petition so preferred before the learned CJM held that transportation of the two elephants *prima facie*

was not according to guidelines dated 08.01.2008 issued by the Ministry of Environment & Forest, Government of India, for care and management of captive elephants. Accordingly, it is contended that while rejecting the prayer for zimma, the learned CJM has addressed the issue in proper perspective of law, but however, the learned revisional court has set aside the aforesaid order which, *per se* is illegal and has resulted in miscarriage of justice and hence liable to set aside.

**6.** The learned counsel for the petitioners further contended that during the course of investigation conducted under Section 50(8) of the Wildlife (Protection) Act, 1972, the respondent no.1/accused made certain confessional statement which is admissible under Section 50(9) of the Act, where he has stated that the elephants were born in his house and he obtained succession certificate in the year 2016 and ownership certificate in 2018, after death of his father in the year 2006. The respondent no.1/accused in his statement has also stated that one Barun Kumar Singh informed that the elephants will be used for religious purpose and neither he has received any documents from any temple nor he could disclose about the religious organization to whom the elephants will be transported. More importantly, the respondent no.1/accused further confessed about the transaction of money for transfer of the elephants in his bank account from Barun Kumar Singh's account. In view of such confessional statement made by respondent no.1/accused on 07.06.2021, it is apparent that the elephants were transported on commercial consideration in violation of Section 43 of the Act.

**7.** The respondent no.1/accused has vehemently opposed the prayer of the petitioners by filing affidavit contending *inter alia* that the State of Assam has no *locus standi* to file the petition as he is a resident of Arunachal Pradesh as well as owner of the seized elephants and they have only used the route of Assam for sending the elephants for religious purpose with valid documents issued by the appropriate authority. He also contends that there is no requirement under law that the State of Arunachal Pradesh is required to send intimation letter to the concerned authority of Assam regarding inter-State movement of elephants, whereas they have issued transit pass for transportation of elephants (issued by PCCF),

Arunachal Pradesh. It is stated that the seizure of the elephants and the arrest of respondents, is illegal inasmuch as they have all the valid documents. The petitioners have no authority to scrutinize the official documents issued by the competent authority i.e. the State of Arunachal Pradesh. Further, they contend that there is no illegality of the order passed by the learned revisional court and there is no violation of relevant section, Section 40(2), Section 43(1) of the Wildlife Act, as there is no absolute prohibition for transfer by way of gift. It is further stated that the contention of the petitioners is that there is total ban of transfer of elephant, which is not sustainable in law. The Parliament amended the statute by incorporating sub-sections (2A) & (2B) in Section 40 of the Act by imposing a ban on acquisition of any captive animal except by way of inheritance and by virtue of proviso to the aforesaid sections, the restriction on acquisition, otherwise than by way of inheritance has been made applicable in case of acquisition of live elephant.

**8.** The respondents denied to have made any statement in the form of confession that there was any, commercial transaction for sending the elephants as projected by the petitioners' side. According to the respondents, they never made any confession before the authority and as the same aspect was not raised before the trial court as well as the revisional court and as such said plea taken for the first time, cannot be taken into consideration as both the courts below have no occasion to go through the same.

**9.** Further, it has been contended that there is no instance of informing all the concerned States about transportation of elephants and whereas according to the report received under RTI reveals that PCCF (Wildlife) and Wildlife Warden, Assam has allowed transportation of an elephant from Tinsukia to Ahmedabad for engaging in religious purpose. Referring to certain other provisions under Section 50(4), 50(3A) as well as the Section 40(2)/proviso of the Act read with Section 451 CrPC, it is contended that there is no illegality in the order passed by the learned revisional court while setting aside the order of the learned CJM and has submitted that the instant petition is liable to be dismissed.

**10.** A serious debate about the violation of provision of law has taken place in course of

argument. Mr. P.N. Goswami highlighted the various provisions of the Wildlife Protection Act in support of his contention raised in the petition that the State of Assam have the jurisdiction to examine any such transportation of animals through the territory of Assam and the rigor of Section 43 after amendment in 2003, mandates that no person having possession of captive animal although may have certificate of ownership can transfer by way of sale or any other mode of consideration of commercial nature. Mr. Goswami further contends that the object clause of Wildlife Protection Bill clearly provides that the captive animal and the wild animal in Schedule I and Part-II of the Schedule can be acquired only by way of inheritance. Prior to such 2003 amendment, animal specified in schedule I and Part-II of schedule 2 could be sold or transferred by way of gift or otherwise even by a person who does not possess the certificate of ownership, with permission of CCF or authorized officer but the said provision was completely substituted by Amendment Act of 2003 and now even a certificate holder cannot transfer by way of sale or any mode of commercial consideration. That being so, it is contended that as in the present case the petitioner have no document (except verbal submission) that such a transportation was only for religious purpose, for which claim is unsustainable even though he has shown certain other documents regarding ownership and permission for transportation etc.

**11.** It has been vehemently contended that in view of the lack of proper documents coupled with the statement of the accused, it is apparent that in the process of transferring and transporting the elephants in question, there was commercial consideration and the same is absolutely prohibited under Section 43 of the Act. But the learned Additional Sessions Judge, Tinsukia, did not bother to look into all these aspects while granting custody to the accused. In fact, by the impugned Judgment the learned Court below allowed transfer and transport of elephants to Odisha in gross violation of Section 42 and 43 of the Act of 1972.

**Further, it is contended that the revisional court failed to appreciate that –**

- There is power for forfeiture of any captive animal to the State Government and as such giving custody prior to conclusion of trial makes the power of forfeiture

redundant. It is a settled proposition of law that where any animal, vehicle, property is seized for committing a wild life offence, the same shall not normally be returned to a party till the culmination of all proceedings in respect of such offence, including confiscation proceedings. Since there is a special provision of forfeiture under Section 51(2), the general power of granting custody under Section 451 of Cr.P.C. is absolutely inapplicable, the learned court failed to appreciate the above proposition of law and exceeded jurisdiction not vested by law.

- That the guidelines for care and management of captive animal were flagrantly violated besides failing to issue any transport permit. In fact, the authorities of Arunachal Pradesh purportedly issued permission to transfer under Wild Life (Transactions and Taxidermy) Rules, 1973, which in fact is not applicable for the State of Arunachal Pradesh. Further, the permission to transfer did not indicate the registration number of the vehicle that was seized along with the elephants. In fact, till date, no documents showing either of gift of the elephants or for religious purpose could be produced by the respondents.
  
- As per Section 50 of the Act of 1972 (that deals with prevention and detection of offences), any forest officer amongst other is empowered to make inspection, search, seize any captive animal, wild animal, animal article, vehicle etc. notwithstanding anything contained in any other law for the time being in force. As such, power of prevention and detection of offences is irrespective of origin and illegal transfer and transport done is in violation of Section 43.

**12.** In support of the contention, the learned counsel for the petitioners has relied upon the decision of Hon'ble Supreme Court (2000) 7 SCC 80, wherein in respect of special act (Forest Act) it has been held that provision of the Act are required to be strictly complied with and followed for the purpose of achieving the object for which the act was enacted. Liberal approach in such matter with respect of property seized, which is liable to be confiscation, is

uncalled for as the same is likely to frustrate the provision of the Act. Generally, therefore, any forest produce that is etc. used in commission of the forest offence which are liable to forfeiture should not be released. The police cannot shut their eyes and ignore their obligations indicated in the Act for the purpose of protecting and safeguarding the object of the Act. Any such easy release would tempt the offenders to repeat the commission of such offence. The casual approach by the High Court and its order contrary to law under Section 482 CrPC in respect of such offences is deprecated.

**13.** *Per contra*, the learned counsel for the respondents Mr. N. Prasad, assisted by Mr. A.K. Gupta relying upon the various documents issued by the Forest Department as well as the Wildlife Department, it has been contended that as there is no denial as to the ownership of the elephants by the respondent no.1 and whereas they have been permitted by the concerned authority for such transportation of animals, the objection raised by the petitioners is not at all sustainable. It has been vehemently contended that there is no any violation of the provision of law as has been projected by the petitioners and the so-called confession that has been referred by the petitioners have no bearing at this point of time, as the same was not produced before the court below and the same cannot be the basis for rejection of the prayer for zimma of elephants made by the respondents' side. It has been further contended that this Court can only look into the order of the revisional court, which is under challenge in the present petition.

**14.** Various documents that has been annexed by the petitioners as well as the other documents placed by the respondents has been pressed into. Referring to the affidavit filed by the respondent nos.6 and 7 [DFO, Namsai Forest Division and PCCF (WB & CWW, Government of Arunachal Pradesh) in Criminal Revision Case No.10(2) of 2021, it has been submitted that in their affidavit they have admitted that the father of respondent no.1 was in possession of the two seized elephants namely "Lakhi Prasad" and "Hari Prasad" as on 24.01.1989 and it was implanted with microchip and after demise of his father, succession/ownership certificate was issued in favour of his son/respondent no.1. They have also submitted that the prayer made by the respondent no.1 for transporting the aforesaid



two animals for religious purpose, was allowed after examination of document and physical fitness and NOC was also issued.

**15.** The learned counsel for the respondent, moreover, has contended that only for the fact that the provision for forfeiture which can be made only at the conclusion of the trial, there is no any bar to consider the matter of zimma of seized articles and has relied upon the decision in AIR 2012 SC 61 (Principal Chief Conservator of Forest and Anr v. J.K. Johnson and Ors, where it has been held that the forfeiture and seizure have different meaning and connotation in law. Forfeiture denotes divestiture of specific property without compensation in consequence of some default act or forbidden by law. Seizure on the other hand is generally understood a forcible possession. Seizure of property under legal process is a temporary interference, the right to hold the property followed by confiscation or forfeiture or disposal in accordance with the provisions under which seizure has been made or property is returned to the person.

**16.** The learned counsel for the petitioners, however submits that leaving apart from the ownership certificate, the crucial point to be decided as to whether the transportation of the animals were made in compliance of the provision of Section 43 of the Wildlife Protection Act and whether the elephants were transported for religious purpose as has been contended by the respondent no.1 and supported by the forest officials of the respondent Arunachal Pradesh. The other contention of the learned counsel for the petitioners are that as the statement of accused/respondent no.1 that has been recorded by a competent official as per due procedure of law and in course of the investigation could be taken into consideration by this Court and which of course subsequently recorded on 04.06.2021. It is to be noted that the respondent no.1 has however denied such giving of statement.

**17.** Due consideration has been given to the rival submission of learned counsel of both the parties and gone through the documents produced before this Court.

**18.** The prime contention raised by the respondents that they being the lawful owner of the

elephants and has relevant permission of the proper authority for transportation of the animals, so they have not violated any of the provision of the Wildlife Act and the petitioners/State of Assam has no authority to examine the documents issued by the Arunachal Pradesh Government and hence seizure of animals at the time of transportation is bad in law. The respondents has submitted that transportation of elephants was made in due compliance of Section 40(2A) and 40(2B) and by virtue of Section 43 of the Act they can transfer such animals for religious purpose and they have already been given such permission by the proper authority of the Forest Department of the Arunachal Pradesh Government.

**19.** The petitioners' side, however, without disputing the ownership certificates has challenged the ground for transporting the animals. Having regard to the debate to the legal provision, let the aforesaid provision be discussed.

**20.** As per Section 40(2A) and 40(2B), the person having ownership certificate of animals, by way of inheritance can keep such animal in his possession specified in the Schedule I or Part-II of Schedule. The respondent no.1 herein stated to have ownership certificates issued by the competent authority and therefore, there cannot be any dispute so far as the custody and possession of the elephants. On the other hand, as per Section 42 of the Act, such a certificate of ownership is issued only for the purpose of identification.

**21.** The main crux of the matter is lying in the provision of Section 43 of the Act, which provides that no person who has a certificate of ownership can transfer such animals by way of sale or offer to sale or by any mode of consideration of commercial measure. The plea of the respondent that seized elephants has neither transferred by way of sale or any other mode of consideration or gift etc. but transported for religious purpose. The certificates issued by the PCCF, Arunachal Pradesh also mentioned that (vide Annexure- K) for religious purpose. In NOC (vide Annexure-J) address and destination has been mentioned as Shri Rabindra Kumar Singh, S/o Lt Ram Dev Singh, Vill- Shastri Nagar, Semiliguda, District- Koraput, Odisha. The accused/respondent no.1 at the time of seizure failed to furnish the data as to which place the elephants were to be transported. No any name of religious

institution has been mentioned and for such reasons the animals (elephants) were seized. It is evident unless the reason for transportation is specifically made out by the respondent, the operation of Section 43 of the Act will come into play to raise the contention that it has been transferred in the camouflage. Section 43 is more stringent inasmuch as it regulates/prohibits transfer of animal for any commercial purpose/sale etc. Perhaps in the present case, the issuing authority was not apprised about the real intention of the respondents and as such they have written in the certificates whatever may have been disclosed by them. That apart, there is no other specific data as regards the fact that the father of the respondent no.1 was the lawful owner of the said elephants.

**22.** The learned counsel for the petitioners has produced the copy of statement given by the accused Chow Sonjit Pomong during the course of investigation recorded under Section 50(8) of the Wildlife Protection Act by Assistant Conservator of Forests and has submitted that as the same has been recorded by the competent authority under the law and in the course of investigation, there is no bar to consider the same, although same was not recorded at the initial stage of arrest. The evidentiary value of the same has been described under Section 50(8) and (9) of the Act. As per Section 50(8), any officer not below the rank of Assistant Conservator of Forests or Assistant Director of Wildlife shall have the power for the purpose of making investigation into any offence and to receive and record evidence. Section 50(8) and (9) has been reproduced hereinbelow:-

“ 50(8) Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf shall have the powers, for purposes of making investigation into any offence against any provision of this Act, -

- (a) to issue a search warrant;
- (b) to enforce the attendance of witnesses;
- (c) to compel the discovery and production of documents and material objects; and
- (d) to receive and record evidence.

50(9) Any evidence recorded under clause (d) of sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person.”

**23.** The statement of accused recorded under the above provision has been now produced before this Court, the same cannot be discarded only because that has been produced before this Court at the stage of hearing of this case and same was not produced before the court below earlier. It is to be noted that the investigation of the case is still continuing and not concluded. The accused were arrested and elephants were seized on 12.04.2021 and thereafter zimma of the elephants was made before the trial court and the same was heard and disposed of on 29.04.2021 rejecting the prayer for zimma. The revision preferred against the order of the learned trial court was disposed of on 24.06.2021 and during that period the statements of accused person/respondent no.1 was recorded on 04.06.2021 and 07.06.2021 and further communication was made to the other person named in the certificate for transportation. The statement of accused was recorded after giving sufficient time for reflection and detailed query has been made in the form of question- answer and the same is looked into. Certain relevant reply of the accused has been highlighted by the learned counsel for the petitioners where the accused has revealed that his father died in the year 2006 and succession certificate was received after his death. But no any legal heir certificate is available. There is also nothing to reflect that mother of these two elephants Bhugali, was owned by his father. He applied for the ownership certificate in the year 2015 and the same was issued in 2018. In view of the above, it reflects that there is gross violation of Section 40(2B) of the Act. For proper appreciation, Section 40 is reproduced which reads as follows:-

**“40. Declarations.—**(1) Every person having at the commencement of this Act the control, custody or possession of any captive animal specified in Schedule I or Part II of Schedule II, 2 [or animal article, trophy or uncured trophy] derived from such animal or salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, shall, within thirty days from the commencement of this Act, declare to the Chief Wild Life Warden or the authorised officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept.

(2) No person shall, after the commencement of this Act, acquire, receive, keep



in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any animal specified in Schedule I or Part II of Schedule II or any uncured trophy or meat derived from such animal, or the salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, except with the previous permission in writing of the Chief Wild Life Warden or the authorised officer.

[(2A) No person other than a person having a certificate of ownership, shall, after the commencement of the Wild Life (Protection) Amendment Act, 2002 acquire, receive, keep in his control, custody or possession any captive animal, animal article, trophy or uncured trophy specified in Schedule I or Part II of Schedule II, except by way of inheritance.

(2B) Every person inheriting any captive animal, animal article, trophy or uncured trophy under sub-section (2A) shall, within ninety days of such inheritance make a declaration to the Chief Wild Life Warden or the authorised officer and the provisions of sections 41 and 42 shall apply as if the declaration had been made under sub-section (1) of section 40:

Provided that nothing in sub-sections (2A) and (2B) shall apply to the live elephant.]”

(3) x x x x x x x x x x

(4) x x x x x x x x x x

**24.** Admittedly, father of accused/respondent no.1 Chow Sonjit Pomong died in 2006 but he has not made any declaration as per law. Further, the statement of accused bears much impact inasmuch as he said that he has no information of the religious institution to whom the elephants were being transported, nor he has talked/contacted with Rabindra Kumar Singh to whom it was transported. He has submitted that as per communication with Barun Kumar Singh, he has applied for ownership certificate and transportation certificate and the said Barun Kumar Singh procured all the documents for him and Barun Kumar has also transferred an amount of Rs.9 lakh for Lakhi Prasad and Rs.17 lakh for Hari Prasad (two elephants) in his account by way of bank transfer. In the month of April, where Barun Kumar Singh approached the accused/respondent no.1 in search of the elephants and prepared documents on his behalf and initially he deposited Rs.4 lakh, in his bank account. He has



specifically stated that the process to sell the elephants started in the year 2017 when he met Barun Kumar Singh and he used to provide money in cash to the family of his late brother Chow Moloy Pomong for the sale of elephants.

**25.** In view of such statement of the respondent/accused which is already on record, *prima facie* it has come up that such transportation of elephants was not for any religious purpose but for sale on commercial transaction. As has been revealed that all the documents were procured by said Barun Kumar Singh against monetary transaction with the respondent and all these matter will now come under the ambit of investigation which is carrying out by the Forest Department. The power under Section 482 CrPC is wide enough to consider various facet of the case to ensure complete justice and can explore the possibility of false representation, suppression, falsification of documents etc. while examining a case before this Court. A Court of law cannot shut its eyes to the lawful aspect of a matter and has to appreciate submission on both the sides of the parties.

**26.** At the time of hearing, the learned counsel for petitioners has submitted that during the investigation, the Department has enquired about the matter whether the seized elephants were transported to Rabindra Kumar Singh as mentioned in the documents/certificates and a notice was also issued to the said person and he has replied that he is in no way involved in such matter of elephant as enquired and his reply has been produced to take judicial notice which I have gone through to take note of.

**27.** The learned counsel for the respondent no.1 resisted such submission of the petitioners' side and stated that the statement of respondent no.2 cannot be considered at this stage and whereas the revisional court has already gave a reasonable order while granting zimma on the basis of document and this court has limited power only to examine the legality of the order of the revisional court.

**28.** One further submission has been made that the trial court has the power under Section 451 CrPC to release the seized article and the provision of Section 39(1)(d) and 50(3A) and



the amendments made thereunder, do not affect Magistrate's power to direct release during pendency of the trial. The Section 39 (1)(d) of the Act confiscating of articles seized, Government property does not come into play till the accusation is found true by the competent Court. The following decisions have been referred and relied upon in support of the above contention.

- (1) AIR 2012 SC 61 (Princl. Chief Conservator of Forest and Anr. v. J.K. Johnson and Ors.);
- (2) 2008 AIR SCW 787 (State of M.P. and Ors v. Madhukar Rao);
- (3) (2016) 6 GLR 88 (Divisional Forest Officer v. Bimal Tumung);
- (4) Crl. Revn. Pet. No.288 of 2013 (Md. Miraz Ali vs. the State of Assam);
- (5) Criminal Misc. Writ Petition No. – 10095 of 2013 (Shaukat Ali vs. State of U.P. & 3 Ors) and
- (6) WP(C) No. 22682 of 2010 (S) (V.K. Venkitachalam vs. State of Kerala).

**29.** The aforesaid decisions relate to the seizure of vehicles which were found to be not associated with the offence nor accused found involved in the commission of the offence and the learned trial court released the vehicles seized on certain conditions.

**30.** In a case of *State of M.P. and Ors v. Madhukar Rao* (supra), it was held that provision of Section 39(1)(d) of the Act would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of the offence and further held that the Magistrate has the power to release seized vehicle under Section 451 CrPC. Similar view was also followed in *Divisional Forest Officer v. Bimal Tumung* (supra), where it was held that the Magistrate has the power to pass necessary order with regard to the custody of seized vehicle during the pendency of the trial and no confiscation proceeding

can be initiated during the pendency of the trial and forfeiture of seized vehicle etc. can be made on conviction of a person in an offence under the Act. The subsequent decision in Crl. Revn. Pet. No.288 of 2013 same view was reiterated. Fact situations that has been discussed in the other decision i.e. *V.K. Venkitachalam vs. State of Kerala* (supra), does not tally with the present facts of the case.

**31.** After going through the entirety of the matter, there cannot be any dispute that the forfeiture of seized article can be done only at the conclusion of the trial by the trial court and in the present matter in hand, some crucial aspect has to be ascertained as has been challenged in the present petition as to the mode of transfer, ownership etc. The investigation is on full swing and certain serious lapses and deformity in the contents of the documents/certificates issued to the respondent(s) has been raised before this Court, and the same, can equally be raised before the trial court. Solely on the ground that this petition has been preferred challenging order of the revisional court, this Court has no power to go beyond the order under challenge, is not sustainable. The power vested under Section 482 CrPC is of wide plentitude and it can take care of almost all the situations including subsequent event, where the interference by the High Court became necessary, if judiciously and consciously exercised. While exercising inherent power of quashing under Section 482 CrPC, High Court can take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to interfere into the order of a court of law. The main object of the provision of Section 42 is to provide supervisory to the High Court so that it can give effect to any order under the court or to prevent misuse of process of any court.

**32.** In view of the above discussions and observations, the impugned order of the learned Addl. Sessions Judge No.2 (FTC), Tinsukia passed on 24.06.2021 in Crl. Revision No.10(2) of 2021 is hereby quashed and set aside. The respondent(s) is at liberty to prefer a zimma petition before the trial court afresh, at a later stage in view of the new facts that has emerged during the course of investigation and the learned trial court will decide and dispose of the same after hearing both the parties as per law.





Petition stands disposed accordingly.

**JUDGE**

**Comparing Assistant**