



GAHC010179152022

Page No.# 1/5



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.Rev.P./453/2022

THE STATE OF ASSAM
REP. BY THE PUBLIC PROSECUTOR, ASSAM

VERSUS

VIVEK SINGH
S/O MITHLESH SINGH
R/O 5D, PRINYANKA APARTMENT, A.C. GOSWAMI ROAD, PANBAZAR,
GUWAHATI, PIN-781001, P.S. PANBAZAR, KAMRUP (M), ASSAM

Advocate for the Petitioner : PP, ASSAM

Advocate for the Respondent : MR. B D KONWAR SR. ADV.



BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner :Mr. R. J. Baruah.
Public Prosecutor, State of Assam.

For the Respondent : Mr.B. D. Konwar, Sr. Advocate
Assisted by Mr. H. Agarwal, Adv.

Date of Hearing : 21.09.2023

Date of Judgement : 21.09.2023

JUDGEMENT & ORDER (ORAL)

1. Heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State of Assam representing the petitioner. Also heard Mr. B. D. Konwar, learned Senior Counsel assisted by Mr. H. Agarwal, learned counsel for the respondent.
2. This present criminal revision petition is filed by the State under Section 397 and 401 of the Code of Criminal Procedure, 1973 read with Section 482 of the said Code assailing an order dated 30.06.2022 passed by the learned Court of Judicial Magistrate First Class, Boko, Kamrup in Boko PS Case No. 457/2021 by which the learned Court below directed to release the articles seized in connection with aforesaid police station case as well as the direction to the investigating authority, to handover the warehouse/

godown belonging to M/S Maruti Quality Products Pvt. Ltd to the custody of the sole respondent.

3. The background facts of the seizure is that on 03.05.2021, one FIR was lodged by one Amir Hussain, police personal of Boko Police Station inter alia alleging that one truck bearing registration No. NL 07AA/0493 of M/S Maruti Quality Products was detained at Nadiapara, Agiya by the local public and on inspection, 800 bags of polished rice, each bag containing 50 kgs marked as "East Sunrise" for "Assam Rifles" only were seized.
4. The FIR further discloses that as per the statement of the driver, the said rice bags were loaded at M/S Maruti Quality Private Ltd at Chatabari Industrial area under Boko Police Station. Accordingly, the police personal of Boko Police Station visited the godown of the Maruti Quality Private Ltd and found huge numbers of unaccounted FCI/PDS/FSA rice packed in gunny/jute bags and also found 325 numbers of bags of polished rice marked as "East Sunrise" along with markings of "for Assam Rifles only" marketed by Continental Milkose (India) Limited, Her Mahal, Natun Bosti, Dimapur. According to averment made in the FIR, as no valid documents have been produced in respect of the rice, the police suspected that the owner, business partner, managers and others had entered into a criminal conspiracy to pilferage and misappropriate rice from Govt./FCI facilities and sell the same in the black market at high rates/ profit thereby depriving the genuine beneficiaries. Accordingly, as many as 11 vehicles loaded with rice were seized and two empty vehicles were also seized, list of which were also given in the FIR. The godown was also sealed by the investigating authority.



5. Being aggrieved the respondent herein preferred an application being Petition No. 322/2022 praying for zimma of the certain articles and to de-seal the godown of M/S Maruti Quality Products Private Ltd.
6. The learned JMFC, Boko called for a police report from the I.O., and considered the I.O.s report, to the effect that the warehouse/godown is required to be preserved as crime scene and as such nobody can be allowed to enter into the warehouse/godown. The learned JMFC, Boko, after considering the matter and taking note of the decision rendered by the Hon'ble Apex Court in the case of ***Nevada Properties Private Limited –Vs- State of Maharashtra and Another*** reported in **(2019) 20 SCC 119** allowed the prayer of the respondent herein and directed the I.O. to handover the custody/possession of the warehouse/godown of M/S Maruti Quality Products Private Ltd. situated at Satabari Industrial Area to its tenant i.e. petitioner/respondent herein Vivek Singh with immediate effect by removing lock and guard engaged there. The I.O. was further directed to furnish compliance report in that regard on or before the next date fixed.
7. Being aggrieved by the aforesaid order, the present criminal revision petition is filed by the State.
8. There is no dispute has been raised that the sole respondent is the tenant of the godown in question.
9. In the case of ***Nevada Properties Private Limited*** (supra), the Hon'ble Apex Court dealing with a similar issue while answering a reference whether the expression "any property used in Sub-Section 1 of Section 102



of Cr.P.C., includes immovable property, after dealing with different previous judgments and provisions of Cr.P.C, at paragraph 34 answered the reference holding that the power of police officer under Section 102 of the code to seize any property, which may be found under circumstances that create suspicion of the commission of offence, would not include the power to attach, seize and seal an immovable property.

10. In view of the settled aforesaid propositions of law and in the factual backdrop of the present as discussed hereinabove, in the considered opinion of this Court, the learned JMFC, Boko, has rightly exercised its jurisdiction by passing the order impugned by the State and on the basis of settled proposition of law. Accordingly, this Court find no merit in the present criminal revision petition. Accordingly, same stands dismissed.
11. The interim order dated 12.09.2022 stands vacated.
12. The investigating officer will strictly comply with the order dated 30.06.2022 and give a compliance report in terms of the aforesaid order not only to the learned Magistrate, who passed this order but also to the Registry of this Court who shall list this matter after receipt of the aforesaid report, though the present criminal revision petition is disposed of.
13. List this matter on 09.10.2023.

JUDGE

Comparing Assistant