

IN THE COURT OF SESSIONS JUDGE, GOALPARA

Crl. Revision (C.M.) Case No. 36 of 2017

Branch Manager, SBI Bazar Branch, Goalpara

.....Petitioner

-Versus-

**1. The State of Assam,
2. Mrs. Nazia Hasan**

..... O.P.

Present: **Sri T.K.Bhattacharjee., A.J.S**
Sessions Judge, Goalpara.

Appearance:

For the Revisionist: Mr. Rupraj Ghatak, Ld. Advocate.

For the O.Ps: Sri B.K. Das, Ld. P.P.

Date of Hearing: 29.03.19; 20.04.19.

Date of Judgment: 03-06-2019.

J U D G M E N T

1. This revision is directed against the order dated 12/04/2017 passed by the Ld. Lower court, Goalpara in connection with Goalpara P.S Case No. 119/2017 u/s 406 of the IPC, vide which the seized vehicle was directed to be given in interim-zimma to the registered owner.

2. The brief facts of the case is that the revisionist Branch Manager, SBI Bazar Branch, Goalpara filed a complaint petition at Goalpara P.S. with respect to Ashok Leyland Truck No. AS01-FC-7393 stating that the said truck was purchased by Nazia Hasan (O.P. no. 2) on loan but thereafter, the said borrower failed to make the due payments in time and accordingly, Goalpara P.S Case No. 119/2017 (corresponding to G.R. Case No. 517/17) was registered and during the investigation the said truck was seized and thereafter, on 06-04-17 the O.P. Nazia Hasan filed a petition before the Ld. Court below with a prayer for taking zimma of his vehicle no. AS01-FC-7393 that was seized by the police in connection with the said case and thereafter, after calling for a police report from the concerned I.O. the matter was taken up by the Ld. Lower court, Goalpara on 12/04/2017 and, the Ld. Lower court, Goalpara allowed the prayer of the petitioner (O.P. no. 2) for zimma as mentioned above.

3. Being highly aggrieved and dissatisfied with the aforesaid order dtd. 12/04/2017 the revisionist preferred the instant revision petition on the grounds set forth in the Memo of revision.

4. The connected LCR had been called for from the Ld. Court below. I have heard the Ld. Counsel for the revisionist and perused the memo of revision as well as the LCR and the connected documents. However, the Ld. Counsel for the O.P. No. 2 remained absent without any steps at the time of the hearing but nevertheless, this case proceeded in view of sec. 403 of the Cr.P.C. which provides that no party has any right to be heard either personally or by pleader before any court exercising his power of revision. On perusal of the impugned order dated 12/04/2017, it is found that the Ld. Court below was pleased to call for a police report with regard to the matter at hand and thereafter the I.O. was directed to hand over the seized vehicle to the actual registered owner after making necessary verification and upon furnishing indemnity bond of Rs. 10 lakhs.

5. On perusal of the copy of the complaint it is found that the accused Nazia Hasan had availed a loan for purchasing the seized truck from the SBI, Golapara Bazar Branch but thereafter, the borrower has failed to make due payments towards the payment even though the vehicle was hypothecated and could be seized and also sold under auction process in order to recover the loan amount in the event of default. From the documents available in the LCR, it appears that the O.P. no. 2 is the registered owner of the truck bearing registration no. AS01-FC-7393 but apparently the truck was seized at the instance of the revisionist who had disbursed the loan in favour of the registered owner who had eventually defaulted in repayment of the loan amount. The impugned order shows that the revisionist was not given any opportunity of hearing by the Ld. Court below when the Zimma petition in favour of the petitioner was allowed and the revisionist side was completely in the dark in this context. But however, the LCR reveals that the investigation of the connected case was already completed in the meantime pending this revision petition and the same has ended in a final report and as such the final custody of the seized truck will have to be determined by the Ld. Court below in due course of time. It may also be mentioned in this context that though the revision petition was filed on 20-05-17 but thereafter, the revisionist took numerous dates for hearing and dragged the matter for a prolonged period and considering all the facts and circumstances I am of the opinion that it would not be justified to interfere with the impugned order granting interim-custody of the vehicle to the O.P. no. 2 at this juncture. In the result the revision petition stands dismissed with liberty to the revisionist to approach the Ld. Court below with his grievance if any, in which event the Ld. Lower court shall afford him a reasonable opportunity of hearing and thereafter, pass necessary orders in accordance with law.

6. In view of the above, the revision stands dismissed but without any costs.

7. Send back the LCR with a copy of this judgment to the Ld. Court below.

Given under my hand and the seal of this Court on this the 3rd day of June/2019.

(T.K.Bhattacharjee)
Sessions Judge,
Goalpara.

Dictated & corrected by me:

Sessions Judge,
Goalpara.