

**IN THE COURT OF THE ADDL. SESSIONS JUDGE-  
2 (FTC) :: :: TINSUKIA, ASSAM**

District: Tinsukia

Present: **Shri B. Sutradhar,**  
Addl. Sessions Judge-2 (FTC),  
Tinsukia.

**Criminal Revision Case No. 10 (2) of 2021**

**Sri Chow Sonjit Pomong,**

S/o. Lt. Chow Chali Pomong

R/o. Lathao Village, P.O. Lathao,

P.S. and Dist.- Namsai,

Arunachal Pradesh,

----- Petitioner

**-Versus-**

**1. The State of Assam,**

Represented by the P.P., Tinsukia

**2. Rinku Moni Borah,**

Range Forest Officer, Protection Range,

Doomdooma

**3. Sri Amrit Phukan,**

Forester-I, Doomdooma Range,

Doomdooma, Tinsukia

**4. Officer-In-Charge,**

Makum P.S.,

Makum, Tinsukia,

**5. Divisional Forest Officer,**

Doomdooma Division,

Tinsukia, Assam,

**6. Divisional Forest Officer,**

Namsai Forest Division,

Namsai, Arunachal Pradesh,

**7. G. Kumar,**

Principal Chief Conservator of Forest

(Wildlife and Biodiversity) &

Chief Wildlife Warden,

Government of Arunachal Pradesh,

Itanager,

----- Respondents/Opp. Parties

Appearance:-

Naresh Prasad,

Advocate

----- For the petitioner

A.K. Choubey,

Public Prosecutor

----- For the State

R. Bora,

Advocate

----- For the O.P. 2 & 5

None appeared for other O.Ps.

Date of Argument : 04/06/2021, 17/06/2021

Date of Judgment : 24/06/2021

### **JUDGMENT and ORDER**

1. This revision is directed against the order dated 29/04/2021, passed in C.R. Case no. 22<sup>C</sup> of 2021, in Petition No. 556/2021, whereby the Ld. Chief Judicial Magistrate, Tinsukia rejected the prayer for giving zimma of elephants namely 1. Lakhi Prasad, micro chip No. 961001000004417 and 2. Sri Hari Prasad, micro chip no. 961001000004990, in favour of the petitioner.

### **CASE OF THE PETITIONER**

2. The case of the petitioner is that the petitioner Sri Chow Sonjit Pomong is the owner of the aforesaid two elephants, which were carried in vehicle no. BR-01-GH-0435, with all valid documents from Lathao to Orissa. On production of the valid documents, the DFO, Doomdooma, forwarded letter dated 12/04/2021, with truck driver Sri Meghan Kumar and authorized person Sri Barun Kumar, who was authorized to carry it from Lathao, Namsai, Arunachal Pradesh to Orissa, by the petitioner to DFO, Namsai, for document verification. The DFO, Namsai duly verified the documents and submitted the letter No.AND/11/2021/STORE/215-17 dated 13/04/2021, certifying the genuinity of the documents with valid transit pass of domestic elephants, as aforesaid. The copy of the said letter was also delivered to the

petitioner on 13/04/2021 itself, However, the opposite party no. 2- I.O. illegally arrested the aforesaid persons and also seized the elephants.

3. Accordingly, the petitioner approached before the Court Ld. Chief judicial Magistrate, Tinsukia, Assam, seeking zimma of the aforesaid two elephants with a petition no. 556/2021, but the Id. C.J.M., Tinsukia vide order dated 29/04/2021, rejected the petition.

### **POINT FOR DETERMINATION**

4. The only point for determination in this revision petition is as to whether the impugned order dated 29/04/2021, passed by the Ld. Chief Judicial Magistrate, Tinsukia in petition no. 556/2021 regarding custody of two elephants is liable to be set aside and needs interference of this Court?

### **DISCUSSION, DECISION & REASONS THEREOF**

5. The LCR was called for and the same has been submitted. I have gone through the order dated 29/04/2021, passed by the Ld. C.J.M., Tinsukia, vide which the prayer of the petitioner for zimma of the aforesaid two elephants were rejected, giving various grounds of law, which I am not going to discuss here in his order for convenience.

6. I have already heard both sides at length in the matter of this revision petition and perused the case

record along all the relevant documents available with the case record.

7. The Id. counsel for the petitioner submitted that the impugned order is neither maintainable in law nor in fact and the same was passed without following the provisions of law and as such the same is liable to be set aside and zimma of the elephants may be given in favour of the petitioner. The Id. counsel for the petitioner also submitted that the Id. court below failed to take into consideration that the elephants booked from Lathao, Arunachal Pradesh to Orissa were only for religious purpose and also failed to take into consideration that the case law cited by him in the impugned order was infact in favour of the petitioner.

8. On receipt of the criminal revision, notices were issued to the respondents and LCR was also called for. Accordingly, LCR has been submitted by the Ld. C.J.M., Tinsukia. The respondent no. 6 & 7 submitted some documents on receipt of the notices and also submitted affidavit before the Court. The Ld. Advocate for the opposite party no.2 & 5 also appeared before the Court and raised objection, in respect of the prayer of the petitioner. It is stated that the provision of the Rules has not been followed in transportation of the said elephants and as such the revision petitioner is not entitled to get the custody of the elephants.

9. It is submitted by the Ld. Advocate for the petitioner that the Government of Arunachal Pradesh allowed the petitioner to transport his domestic elephants to Orissa and also issued necessary documents and as such the revision petitioner used the route of Assam and followed the guidelines in accordance with law and as such the D.F.O., Doomdooma has no jurisdiction to scrutinize the legality of the officials of the Government of Arunachal Pradesh and made the petitioner as victim by seizing the elephants. Referring to a judgment of PIL no. 39/2019, the Id. counsel for the petitioner submitted that there is no prohibition for transportation of elephants for religious purpose. Furthermore, there is no allegation that the elephants were treated in cruelty and any allegation of which constitutes offences within the meaning of the provisions of Prevention of Cruelty to Animal Act, 1960. The Id. counsel for the petitioner also submitted that there is no law that if guidelines for transportation of elephants are not followed in its entirety, then the elephants were forfeited and the owner of the domestic elephants are deprived of from its custody.

10. The Id. advocate for the opposite party nos. 2 and 5 also submitted that the O.P. no. 5, D.F.O, Doomdooma sought for a report from D.F.O., Namsai, Arunachal Pradesh and later on verification report

revealed that there was no authorization of the vehicle involved in the transportation of the elephants and the O.P. No. 2 and 5 came to know that the PCCF (WL) & CWLW, Govt. of Arunachal Pradesh, issued permission to transfer the said elephants namely Lakhi Prasad and Hari Prasad in Form No. VII under the Sub Rule 5 of Rule 8 of Wildlife (Transaction and taxidermy) Rule 1973, which extends to the other States. It is also submitted that ownership certificate, which was produced before the O.P. No. 2 by the petitioner also violated the guidelines of ownership certificate and mentioning other grounds prayed for rejection of the petition.

11. On the other hand, the Ld. Advocate for the petitioner submitted that the affidavit submitted by the O.P. 6 and 7 in Para no.7 elaborately stated that there were several rounds of communication with PCCF (Wildlife) and CWLW, Govt. of Orissa, seeking permission for transportation of the elephants and submitted Annexure K. It is also submitted that neither in the complaint nor in the forwarding report, it is agitated by the O.P. No.2 and 5 that there was violation of the aforesaid guidelines. It is only agitated that there was no transit pass, but the said fact is not corroborated. In respect of the submission that one truck shall not be used to carry more than two weaned calves, it is highlighted therein that after taking temporary custody of the said elephants, they were

transported in a vehicle no. AS-06-BC-0180. The medical reports of the elephants also reflect that they were found healthy at the time of seizure and transportation from Doomdooma to Kaziranga. That the elephants are domestic elephants and as such there was no violation of section 43 and 40 (2) of the Act. That the Government of Arunachal Pradesh allowed the petitioner to transport the domestic elephants to Orissa and for that, issued necessary documents. The petitioner has used the route of Assam and followed the guidelines in accordance with law. The report of the O.C., reflects that there were six persons in the truck at the time of its detention, but there was no explanation as to why the other four persons were not arrested or mentioned in the complaint or record of the Court. Two Mahouts of domestic elephants were among them. That the elephants were transported with valid documents and there is no allegation of any lapse regarding feeding and watering of the elephants. That the documents have been issued by the PCCF, Govt. of Arunachal Pradesh and the D.F.O., Doomdooma has no jurisdiction to scrutinize the legality of the official acts of the Govt. of Arunachal Pradesh and has made the petitioner victim, by seizing the elephants.

12. In the affidavit, the D.F.O., Namsai, Govt. of Arunachal Pradesh stated that after demise of Lt.

Chow Chali Pomong, a succession certificate was issued in favour of Sri Chow Sonjit Pomong by the D.C., Namsai, Arunachal Pradesh vide no. NJ-81/SC-1/2015 dated 16/11/2015, wherein three numbers of elephants namely Lakhi Prasad (male) registration no. 34/BK/14 of 88-89, micro chip no. 961001000004417, implanted on 10/01/2003, Hari Prasad (male), registration no. 35/BK/14 of 88-89, micro chip no. 961001000004990 implanted on 10/01/2003 and Laxmi (female), micro chip no. 961001000004645, implanted on 10/01/2003 were inherited by Chow Sonjit Pomong, through a succession certificate from his deceased father Chow Chali Pomong.

13. That after obtaining succession certificate from the Deputy Commissioner, Namsai, Chow Sonjit Pomong submitted an application before the D.F.O., Namsai Forest Division, for transfer of ownership of elephants and registration of a new born calf on 18/11/2015. The said application of the petitioner herein was forwarded to the Chief Conservator of Forests, Eastern Arunachal Circle, Tezu by the D.F.O., Namsai on 15/11/2016, which was again forwarded to the Principal Chief Conservator of Forest (Wildlife & Biodiversity) Dept. of Environment & Forest, Govt. of Arunachal Pradesh, Itanagar by the Chief Conservator of Forest, Eastern, Arunachal Circle, Tezu on 21/12/2016. In pursuance to the forwarding letter

issued by the Chief Conservator of Forest Eastern, Arunachal Pradesh Circle, Tezu, the transfer of ownership was duly approved by the competent authority on 23/02/2018 and the same was shown in the statement showing ownership of elephant issued by the D.F.O., Namsai.

14. The objection raised by the Opp. Party No. 2 and Opp.party No. 5 is not found sustainable in the present scenario of the case being here the present matter is relates to custody and not merit of the case.

15. On 17/04/2019, the petitioner herein filed an application, seeking permission from Principal Chief Conservator of Forests (Wild Life) & Chief Wild Life Warden, Govt. of Arunachal Pradesh, for transportation of the two male elephants from Arunachal Pradesh to Odhisa and permission was granted to Chow Sonjit Pomong, after conducting all the necessary formalities, including NOC from PCCF (WL) & CWLW, Odhisa and physical fitness of the two elephants.

16. In nutshell, it is stated by the D.F.O., Namsai that the elephants were carrying with due permission from the Government of Arunachal Pradesh and were required to be shifted to Orissa for religious purpose. The annexure "K" dtd 30.12.20 is submitted which is issued by the Principal CCF (WL)&CWLW, Odisha is NOC for allowing of entry of domestic elephants from

Arunachal Pradesh to Odisha addressed to PCCF (Wildlife & Bio-diversity)&CWLW Arunachal Pradesh.

17. The order dated 29/04/2021, passed by the Ld. C.J.M., Tinsukia is not only relating to the custody of the elephants, but is also with some other matters. But this Court is only concerned with the interim custody of the matter of the elephants and as such this order is not going to interfere with any other matters, which were in issue of the order dated 29/04/2021, passed by the Ld. C.J.M., Tinsukia.

18. The matter before this appellate Court is relating to custody of the elephants. So, this Court is only going to decide the matter whether the order dated 29/04/2021 passed by the Ld. C.J.M., Tinsukia regarding custody of the elephants needs any interference of this appellate Court, which will not carry any interference, regarding the merit of the case. It is apparently clear from the order of the Ld. C.J.M., Tinsukia that while passing the order, the Ld. C.J.M., Tinsukia made it clear "that the petition no. 556/2021 is lack of merit at this stage to give zimma of the elephants to the petitioner." At this stage, "in revision" it is seen that the vital authority relating to the matter is the Forest Department of Arunachal Pradesh and the said O.P. No.6, D.F.O., Namsai, Arunachal Pradesh and the O.P. No.7, PCCF (Wild and Biodiversity) and Chief Wildlife Warden, Govt. of Arunachal Pradesh submitted

their affidavits along with some other documents, which were relevant for taken into consideration.

19. The Id. advocate for the petitioner in his argument submitted that the Ld. C.J.M., Tinsukia while passing the order has mentioned the ruling of the Hon'ble Supreme Court in WP(C) No. 743/2014, being Wildlife Rescue and Rehabilitation Center and Others Vs. Union of India, reported in 2016 SCC 478 and he further submitted that this matter was related to only State of Kerala and not applicable to this State. It is also submitted that the present petitioner is the lawful owner of the elephants and any violation of provisions regarding transportation cannot debar him from his ownership. He also submitted that in this petition, the petitioner has only prayed for custody of the elephants and the same has been supported by documents and authenticated by the Forest Department of Arunachal Pradesh and in that situation, there is no bar in any law to grant custody of the elephants, in the interim to the petitioner.

20. The Ld. C.J.M., Tinsukia while rejecting the prayer of custody, without going through the merit of the petition, on some technical points the petition was rejected. On careful scrutiny of the documents submitted by the revision petitioner and the documents submitted by the D.F.O., Namsai, Arunachal Pradesh, it is apparently clear that the revision

petitioner is the owner of the said elephants and the technical defects cannot debar the owner of the said elephants to get custody of the same. Keeping in view, the entire facts and circumstances of the case and careful scrutiny, it appears that the impugned order dated 29/04/2021, passed by the Ld. C.J.M., Tinsukia, in petition No. 556/21 regarding custody of the elephants needs interference, and accordingly set aside.

21. In result, the revision petition is allowed without any cost.

22. It appears that the revision petitioner is entitled to get the custody of the said elephants.

### **ORDER**

23. Accordingly, the prayer of the petitioner is allowed. Let the elephants seized in this case be given to the custody of the revision petitioner, on execution of a bond of Rs. 30,00,000/- (Rupees Thirty Lakh) only, (Rs. 15,00,000/- each for two elephants), with a direction to the petitioner to produce the said 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 said elephants and the same is to be countersigned by the petitioner. The I.O./ the Range Forest Officer, Protection Range, Doomdooma is

further directed to furnish the compliance report forthwith to the trial court.

24. Send back the original LCR along with a copy of this judgment and order to the Court of the Ld. C.J.M., Tinsukia.

25. The revision petition is disposed of on contest.

Given under my hand and seal of this Court on this 24<sup>th</sup> day of June, 2021.

Addl. Sessions Judge, (FTC-2)

Tinsukia.

Dictated & corrected by me.

Addl. Sessions Judge, (FTC-2)

Tinsukia.

Transcribed by:

*H. Baruah,*

Stenographer II.

Addl. Sessions Judge, (FTC-2)

Tinsukia.