

GAHC010123712022



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

**Case No. : CrI.Pet./601/2022**

1. MOFIJUL HOQUE

VERSUS

1. THE STATE OF ASSAM AND ANR  
REPRESENTED BY THE P.P., ASSAM

2: AJIT KIRTONIA

**Advocate for the Petitioner : MR. M KHAN**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**JUDGMENT**

**Date : 19-05-2023**

Heard Mr. M. Khan, learned counsel for the petitioner and Mr. P.S. Lahkar, learned Addl. P.P. for the State of Assam.

**2.** In this petition, under section 482 of the Cr.P.C., the petitioner Mofijul Hoque has put to challenge the order, dated 06.05.2022 passed by the learned Sessions Judge, Dhubri, in Sessions Case No. 47/2022. It is to be noted here

that vide impugned order, dated 06.05.2022, the learned court below has framed charge against the petitioner under sections 379/411 of the IPC read with section 13[1] of the Assam Cattle Preservation Act, 2021.

**3.** The background facts, leading to filing of the present petition under section 482 Cr.P.C., is briefly stated as under :-

“On 12.04.2022, one Sri Ajit Kirtonia, ASI of police lodged one FIR with the Officer In-Charge of Golakganj Police Station alleging inter-alia amongst others that on 11.04.2022, at about 5.30 pm, while he was conducting Naka checking at NH 31, intercepted one vehicle bearing registration No. AS-01-AB-2394, which was coming from Kherbari Border area of Assam towards Golakganj side, and on checking the same he found 2 nos. of buffalo calf which were kept concealed in the ‘*dickey*’ of the vehicle, in a cruel manner fastening their legs with rope. Thereafter, he seized the same preparing seizure list in presence of the petitioner and one Kasham Ali. As per his information the buffalo calf were stolen from border area and supposed to smuggle to Bangladesh.

Upon the said FIR the Officer In-Charge of Golakganj Police Station registered Golakganj PS Case No. 131/2022, under sections 379/411 of the IPC, read with section 13[1] of the Assam Cattle Preservation [Amendment] Act, 2021 and entrusted ASI, Sonauddin Mollick to investigate the same. Accordingly, the investigation was carried out and on completion of the investigation the IO laid charge sheet against the present petitioner to stand trial under the said sections of law, before the learned court below.”

**4.** The learned court below has taken cognizance of the offences under sections 379/411 of the IPC, read with section 13[1] of the Assam Cattle Preservation [Amendment] Act, 2021 and thereafter, hearing the learned

counsel for both the parties, had framed charges against the petitioner under section 379/411 of the IPC, read with section 13[1] of the Assam Cattle Preservation Act, 2021.

**5.** Being highly aggrieved, the petitioner has approached this court by filing the present petition on the ground that framing of charge against him under section 13[1] of the Assam Cattle Preservation Act, 2021, is manifestly illegal as nowhere in the Assam Cattle Preservation Act, 2021 and its Schedule 'buffalo' is incorporated, and that the learned court below has given extended meaning to the word 'Calves' so as to incorporate 'buffalo' therein.

**6.** Mr. M. Khan, learned counsel for the petitioner submits that the impugned order, so far relates to framing of charge against the petitioner under section 13[1] of the Assam Cattle Preservation Act, 2021, suffers from manifest illegality as nowhere in the Assam Cattle Preservation Act, 2021 and its Schedule 'buffalo' is incorporated. Mr. Khan further submits that the same was pointed out to the learned court below, at the relevant time of hearing, despite, the learned court below chooses to proceed with the case and framed charge against the petitioner under section 13[1] of the Assam Cattle Preservation Act, 2021. Mr. Khan also submits that as the Schedule of the Assam Cattle Preservation Act, 2021 does not include buffalo, the impugned order of framing charge against the petitioner failed to withstand the test of legality, propriety and correctness. Referring to the earlier Act i.e. Assam Cattle Preservation Act, 1950, Mr. Khan also submits that the Schedule of the said Act includes buffalo calf. But, the said Act has already been repealed by the present Act i.e. Assam Cattle Preservation Act, 2021 and as such, giving of wide interpretation to the word calves so as to includes buffalo calves therein and framing of charge against the petitioner under section 13[1] of the Assam Cattle Preservation Act, 2021 is ex-facie illegal

and without any jurisdiction, and therefore, it is contended to allow the petition.

**7.** On the other hand, Mr. P.S. Lahkar, learned Addl. P.P. for the State, fairly submits that there is no mention of the word 'buffalo' in the Schedule of the Assam Cattle Preservation Act, 2021 though the same was included in the Schedule of the earlier Act i.e. Assam Cattle Preservation Act, 1950 and as such, he has no objection in the event of setting aside the impugned order so far it relates to framing of charge under section 13[1] of the Assam Cattle Preservation Act, 2021, against the present petitioner.

**8.** Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the relevant provision of Assam Cattle Preservation Act, 2021 and the earlier Act, i.e. Assam Cattle Preservation Act, 1950.

**9.** It appears that section 2 of the Assam Cattle Preservation Act, 2021 provides for application of the Act which states that the Act shall apply to the cattle specified in the Schedule of the Act. Section 3[c] of the said Act provides that 'Cattle' means an animal, specified in the Schedule of the Act. And perusal of the Schedule of the Act 'Cattle' includes:-

- [i] Bulls;
- [ii] Bullocks;
- [iii] Cows;
- [iv] Heifer and
- [v] Calves;

But, nowhere in the Schedule Buffalo is incorporated.

**10.** Whereas, perusal of section 2 of the Assam Cattle Preservation Act, 1950, reveals that the Act shall apply to the 'Cattle' specified in the Schedule of the Act. Section 3[i] of the said Act provides that 'Cattle' means an animal, to which

the Act applies. And perusal of the Schedule of the said Act reveals that 'Cattle' includes:-

- [i] Bulls;
- [ii] Bullocks;
- [iii] Cows;
- [iv] Calves;
- [v] Male and female buffaloes; and
- [vi] Buffalo calves.

**11.** The learned court below, vide impugned order, while framing charge against the petitioner under section 13[1] of the Assam Cattle Preservation Act, 2021 held that - though the word 'Buffalo' is missing in the Schedule, but 'Calves' is there in the Schedule. If we consider the intent and purpose of this Act, which is to provide for the preservation of cattle by regulating their slaughter, consumption, illegal transportation and matters connected and incidental therewith, then it is clear that in broader perspective, 'Buffalo' being a milking animal, its calf can said to be covered by the word 'Calves' mentioned in the Schedule of the Assam Cattle Preservation Act, 2021 and therefore, it has decided to frame charge under section 13[1] of the Assam Cattle Preservation Act, 2021.

**12.** The reasoning, so assigned by the learned court below for framing charge against the petitioner under section 13[1] of the Assam Cattle Preservation Act, 2021, in spite of the word 'Buffalo' not being therein the Schedule of the Act left this court unimpressed. It is to be mentioned here that an extended meaning cannot be given to the word 'Calves' while the word 'Buffalo' finds no mention therein. Indisputably, the Assam Cattle Preservation Act, 2021, is a penal statute. A statute enacting an offence or imposing a penalty is to be construed

strictly. Clear language is now needed to create a crime. In a criminal statute one must be quite sure that the offence charged is within the letter of the law. In the case of **Tolaram vs. State of Bombay**, reported in AIR 1954 SC 496; it has been held that "If two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature." It is also well settled that an enactment is a penal provision, is in itself a reason for hesitating before ascribing to phrases used in its meaning broader than that they would ordinarily bear. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Bijoya Kumar Agarwala vs. State of Orissa**, reported in (1996) 5 SCC 1.

**13.** Since herein this case, 'Buffalo' is not incorporated in the Schedule, this court is of the view that an extended meaning cannot be given to the word 'Calves' so as to incorporate 'Buffalo' calves therein, while strict construction is required being the Act a penal statute. As held in the case of **Tolaram (supra)** the court has to lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty.

**14.** In view of the discussions and finding so arrived at herein above, the impugned order dated 06.05.2022, so far it relates to framing of charge under section 13[1] of the Assam Cattle Preservation Act, 2021, failed to withstand the legal scrutiny and as such it is illegal and accordingly, the same stands set aside and quashed.

**15.** However, it is made clear that setting aside of the impugned order, so far it relates to framing of charge under section 13[1] of the Assam Cattle

Preservation Act, 2021 against the present petitioner, will not stand in the way of proceeding against him under section 379/411 of the IPC.

**16.** In terms of above, this criminal petition stands disposed of. The parties have to bear their own costs.

**JUDGE**

**Comparing Assistant**