

Reserved on 09.10.2023

Delivered on 12.10.2023

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 2288 of 2023

Petitioner :- Rajdev Rai

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Kamal Kumar

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Kamal Kumar, learned counsel for the petitioner and Sri Rajesh Kumar Gupta, learned A.G.A. for the State.

2. The relevant facts related to this petition are as follows:

An F.I.R. Crime No. 3/2021 under section 3/5A/8 of U.P. Prevention of Cow Slaughter Act. 1955, and section 11 of Prevention of Cruelty to Animals Act, 1960 was registered against three persons including the petitioner Rajdev Rai with the allegations that the cattle of cow progeny were being transported by them, for illegal slaughter from U.P. to West Bengal through Bihar.

As per prosecution case, three cows and a calf were found tethered inside a pickup Bolero, stacked therein in a cruel manner. The vehicle was being driven by one of the accused Satyendra. The second accused Veeru Yadav was sitting beside the driver's seat. On interrogation, on the spot, they disclosed, that on instructions from the owner of the four wheeler, they were transporting the cattle to the State of West Bengal, from a route which went through Bihar and they were earning illegal money by this illegal transportation. The cattle and the vehicle were seized on the spot.

3. The District Magistrate, passed an order confiscating the vehicle under section 5-A(7) of Uttar Pradesh Prevention of Cow Slaughter in favour of State. The order of District Magistrate dated 17.05.2022, was challenged before the Sessions Judge. The Sessions Judge in its order dated 28.06.2022 observed that the order of District Magistrate suffers from no legal or factual error of the nature so as to justify interference and dismissed the criminal revision.

4. The main contention of the petitioner is that he is registered owner of the vehicle and he has been falsely implicated in this case. His vehicle was not used and has never been used for illegal transportation of the cattle. There is no evidence at all to substantiate the allegations as contained in the F.I.R. The applicant had been granted anticipatory bail by order of this Court in Anticipatory Bail Application No. 2275 of 2021.

It is argued by the petitioner even if it is found that the vehicle was carrying cows etc., there is no evidence to even remotely suggest that they/he intended to transport them to another State. No offence as defined

under section 5-A(1) of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 is made out. Moreover, there is nothing to suggest that he was involved just because his vehicle was there.

5. I went through the papers on record.

Section 5-A(1) of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 is as below:-

“(1)No person shall transport or offer for transport or cause to be transported any cow, or bull or bullock, the slaughter whereof in any place in Uttar Pradesh is punishable under this Act, from any place within the State to any place outside the State, except under a permit issued by an officer authorised by the State Government in this behalf by notified order and except in accordance with the terms and conditions of such permit.”

The above provisions apply only when a person transports or offers for transport or cause to be transported cow or its progeny, from any place within the State of U.P. to any place outside that place, without a permit. Such act shall constitute an offence and shall be punishable. Section 5-A of the Uttar Pradesh Prevention of Cow Slaughter Act provides a scheme to regulate the transportation of cow etc. Section 5-A(7) of the Uttar Pradesh Prevention of Cow Slaughter Act empowers the District Magistrate/Commissioner of Police to confiscate or to release, as the case may be, any vehicle being used in violation of the provisions of this Act.

6. In my view, this provisions gives no authority to the law enforcing officers or the District Magistrate to seize or to confiscate the vehicle unless they are **satisfied** that the vehicle was involved in illegal transportation of cow and was transporting the cow and its progeny in violation of the provision of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 or Rules made thereunder.

7. In the instant case, two persons were apprehended by the police, who were found on the vehicle having three cows and a calf, tethered in a Bolero vehicle. This is not denied that the applicant was not apprehended on the spot. This is also not denied that the is registered owner of the vehicle, seized on the spot.

The petitioner's contention is that no animal was being carried on his vehicle in violation of law. He has been falsely implicated in this case. This may be noted that there are allegations from the side of the prosecution that the accused persons had no permit for transporting the cow and its progeny to any other State outside. In my opinion, a burden lied on the prosecution to prima facie establish, by producing some material that indeed such was the case. It will be rather preposterous to presume, on the basis of mere allegations that in fact the accused applicant was involved in illegal transportation of the cows outside the boundaries of the State. On the other hand, this is settled that no permit is required where such animals are transported within the State.

The Allahabad High Court in ***Criminal Revision No. 817 of 2022 (Manjeet Tanwar @ Manjeet Tankar vs. State of U.P. and 2 Others)*** delivered on 17.08.2022 has observed in para nos. 12 and 13 as below:-

“12. From perusal of Section 5A Cow Slaughter Act, it is very much clear that there is no contravention of transportation of cow skin leather from outside of the State. In such a matter, the District Magistrate/Commissioner of the Police has no jurisdiction to confiscate such vehicle in the event of seizure of vehicle by law enforcement officer. This Court in Criminal Revision No. 23 of 2005 had held that transport of cow skin leather does not amount any contravention of provisions of Cow Slaughter Act which is followed by this Court in Criminal Misc. Application No.20507 of 2008 (Mohd. Haneef vs. State of UP and others decided on 08.01.2010).

13. In above circumstances, the Judicial Magistrate has jurisdiction to release the Canter DL1GC5909 as being the case property. The ruling of Single Bench of this Court in Yaash Mohammad vs. State of UP (supra) on which learned lower court has relied and held that the lower court has no jurisdiction to release the Canter in question is not applicable in this case because in the aforesaid case the application for the release of vehicle was rejected on the ground that the cow or its progeny was transported in contravention of Section 5A of Uttar Pradesh Cow Slaughter Act regarding which special provisions were prescribed and only District Magistrate/Commissioner of the Police was authorised to pass order for confiscation in the event of seizure of cow or its progeny and transport medium.”

Recently, the Allahabad High Court (Lucknow Bench) in ***Criminal Misc. Writ Petition No. 6826 of 2023 (Kaliya vs. State of U.P. and 3 Others)*** delivered on 06.10.2023, in the facts and circumstances of the case observed in para nos. 9 to 11 as below:-

“9. A perusal of section 5-A(1) of the Act shows that the said provision shall come into place when the cow or its progeny is transported from within the State of U.P. to any other place outside the State and in that case, permit issued by the authorised officer of the State government shall be required.

There is nothing on record to show that the alleged recovered animals, i.e. the cows were being transported from within the State of U.P. to any other State. Therefore, from the plain reading of section 5-A of the Act, the permit is not required in the peculiar facts of this case.

10. The question involved in the case in hand has also come up for consideration before this court in Kailash Yadav and others versus State of U.P. and others 2008(10) ADJ 623 wherein it has been held that no permit is required for transportation of cow or its progeny within the State of U.P.. Section 5-A(6 to 8) provides for confiscation and release of vehicle by which beef or cow and its progeny is transported in violation of the provisions of the Act and relevant rules.

11. From perusal of sub sections (1 to 5) of section 5-A of the Act and the law laid down by this court in Kailash Yadav's case (supra), it is evident that there is no need of permit to transport cow(s) and its progeny within the State of U.P.. Hence, such transportation of cow and its progeny cannot be said to be in violation of the Act. Consequently, it can also not be said that the seized vehicle has been used in violation of Section 5-A or any other provision of the Act.

Therefore, the police has no power or jurisdiction to seize or confiscate the vehicle in question and the District Magistrate also could not have issued notice under section 5-A of the Act when there is nothing to substantiate that the animals were being transported from within the State to some other State. In other words, in case the animals were being transported within the State of U.P., no show cause notice under section 5-A of the Act could have been given.”

8. In my view, the District Magistrate ought to have satisfied himself that there was some good material to substantiate the allegations against him having been involved in illegal transportation of cows etc. The District Magistrate should have gone through all the material collected by the investigating agency and should have drawn its own conclusion before deciding to order for confiscation of the vehicle. The District Magistrate here is exercising quasi judicial powers. While proceeding under section 5-A(7) of U.P. Prevention of Cow Slaughter Act, it was incumbent on the District Magistrate to first take a view as regard the fact whether the vehicle in question was involved in the illegal transportation of the cow and its progeny. This is worth notice that sub-section (7) of Section 5-A is as below:

“(7) The vehicle by which the beef or cow and its progeny is transported in violation of the provisions of this Act and the relevant rules, shall be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner of Police will do all proceedings of confiscation and release, as the case may be.”

The confiscation of the seized vehicle can only be done where violation of the provisions of this Act has been found.

The District Magistrate had the burden on his shoulders to give a finding with regard to violation of the provisions of the Act.

The District Magistrate can not arrive at such a finding in an arbitrary manner. He is not expected to proceed in a mechanical manner and act as a mouth piece for the prosecution. In my view, the transportation of cows within the State is no offence, therefore, no confiscation could have be ordered, hence the impugned orders cannot be sustained in law. This court finds it a fit case to exercise the powers under Article 227 of the Constitution.

9. In view of the above discussion, the order dated 17.05.2022 passed by the District Magistrate, Ballia, and order dated 28.06.2022 passed by the District and Sessions Judge, Ballia are hereby set aside. The confiscation proceeding is hereby dropped.

10. Accordingly, this Matter Under Article 227 of the Constitution of India is **allowed**.

Order Date :- 12.10.2023

Sumit Kumar/Vikram/-