

Court No. - 79

Case :- CRIMINAL REVISION No. - 1906 of 2023

Revisionist :- Chandan Singh

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Narendra Deo Shukla, Vivek Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Vipin Chandra Dixit, J.

1. This criminal revision has been filed by the revisionist against the order dated 8.2.2023 passed by District Magistrate, Chandauli in Criminal Case No. 838 of 2022, Computerized No. D2002214180000838 (State Vs. Kamal Narayan Mishra and others) arising out of Case Crime No.172 of 2022, under Sections 3/5A/5B/8 of U.P. Prevention of Cow Slaughter Act, 1955, P.S. Saiyadraja, District Chandauli, by which the vehicle of revisionist bearing no. UP72/AT7413 Pickup was confiscated and was directed to be auctioned.

2. Heard Sri N.D. Shukla, learned counsel for the revisionist, learned A.G.A. for the State and perused the record.

3. The brief facts of the case are that on the information received from informer that Pickup vehicle is carrying animals for the purpose of cow slaughtering without any valid permit and on that information the Sub Inspector of Police Station Saiyadraja, District Chandauli along with other constables on 29.7.2022 caught the vehicle of revisionist and recovered two cows from the vehicle. The case was registered as Case Crime No.0172 of 2022 in P.S. Saiyadraja, District Chandauli under Sections 3, 5, 5A & 8 of U.P. Prevention of Cow Slaughter Act, 1955 (hereinafter referred to as 'Cow Slaughter Act'). The revisionist who is registered owner of Pickup bearing No. UP72/AT7413 had moved an application for release of vehicle which was dismissed by the District Magistrate and vehicle of revisionist was confiscated vide order dated 8.2.2023, which is impugned in the present revision.

4. It is submitted by learned counsel for the revisionist that the revisionist is registered owner of Pickup vehicle bearing No.- UP72/AT7413. The copy of registration certificate has been filed as Annexure-4 to the affidavit filed in support of revision. The vehicle of the revisionist was never used for carrying any animal for slaughtering and it has been detained by concerned police station, as the illegal demand of police personnel was not fulfilled by the driver of the revisionist. The vehicle of the revisionist was never used for transportation of animal from one place of Uttar Pradesh to another State and the revisionist has not committed any offence under the provisions of Cow Slaughter Act. The vehicle of the revisionist is lying in an open yard of police station since 29.7.2022 and its condition is deteriorating day by day. There is no dispute regarding ownership of the Pickup

vehicle. Lastly, it is submitted that the vehicle of the revisionist was never used for transportation of animals and it has wrongly been mentioned in the objection filed by local counsel of revisionist before the District Magistrate that two cows were transported to Bihar. The revisionist has filed supplementary affidavit denying this fact and it has specifically stated in paras 4 and 5 that the vehicle was not carrying cows at the time of seizer but without there being any instruction, this fact has wrongly been mentioned by his counsel in the objection filed on behalf of revisionist. The copy of supplementary affidavit was served to Government Advocate on 13.10.2023 but no supplementary counter affidavit has been filed by learned A.G.A. to rebut the facts mentioned in paras 4 and 5 of supplementary affidavit.

5. On the other hand learned A.G.A. has submitted that the vehicle of the revisionist was used for transportation of cow to the State of Bihar and the District Magistrate after found that the vehicle was used in violation of provisions of Cow Slaughter Act, has rightly confiscated the vehicle. Learned A.G.A. has not disputed the fact that the Pickup vehicle of the revisionist is still lying in police station and has not been auctioned till date.

6. Having Considered the rival submissions of learned counsel appearing for the revisionist as well as learned A.G.A. and perused the record.

7. For deciding the present controversy it is necessary to consider the relevant provisions of Cow Slaughter Act.

8. The word 'slaughter' is defined in Section 2(d) of Cow Slaughter Act, which is reproduced hereinbelow:-

"2(d)- 'slaughter' means killing by any method whatsoever and includes maiming and inflicting of physical injury which in the ordinary course will cause death;"

9. The cow slaughter is prohibited in the State of Uttar Pradesh. Section 3 of Cow Slaughter Act is reproduced hereinbelow:-

"3. No person shall slaughter or cause to be slaughtered, or offer or cause to be offered for slaughter, a cow, bull or bullock in any place in Uttar Pradesh, anything contained in any other law for the time being in force or any usage or custom, to the contrary notwithstanding."

10. Section 5(A) of Cow Slaughter Act provides for regulation on transport of Cow, etc., which is reproduced hereinbelow:-

"5-A(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."

(2) Such officer shall issue the permit on payment of such fee not exceeding [five hundred rupees] for every cow, bull or bullock as may be prescribed:

Provided that no fee shall be chargeable where the permit is for transport of the cow, bull or bullock for a limited period not exceeding six months as may be specified in the permit.

(3) Where the person transporting a cow, bull or bullock on a permit for a limited period does not bring back such cow, bull or bullock into the State within the period specified in the permit, he shall be deemed to have contravened the provision of sub-section (1).

(4) The form of permit, the form of application, therefore, and the procedure for disposal of such application shall be such as may be prescribed.

(5) The State Government or any officer authorised by it in this behalf by general or special notified order, may, at any time, for the purpose of satisfying itself, or himself, as to the legality or propriety of the action taken under this section, called for and examine the record of any case and pass such orders thereon as it or he may deemed fit.

[(6) Where the said conveyance has been confirmed to be related to beef by the competent authority or authorised laboratory under this Act, the driver, operator and owner related to transport, shall be charged with the offence under this Act, unless it is not proved that the transport medium used in crime, despite all its precautions and without its knowledge, has been used by some other person for causing the offence.

(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.

(8) The cow and its progeny or the beef transported by the seized vehicle shall also be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner will do all proceedings of the confiscation and release, as the case may be.

(9) The expenditure on the maintenance of the seized cows and its progeny shall be recovered from the accused for a period of one year or till the release of the cow and its progeny in favour of the owner thereof whichever is earlier.

(10) Where a person is prosecuted for committing, abetting, or attempting to an offence under Sections 3, 5 and 8 of this Act and the beef or cow-remains in the possession of accused has been proved by the prosecution and transported things are confirmed to be beef by the competent authority or authorised laboratory, then the court shall presume that such person has committed such offence or attempt or abetment of such offence, as the case may be, unless the contrary is proved.

(11) Where the provisions of this Act or the related rules in context of search, acquisition, disposal and seizure are silent, the relevant provisions of the Code of Criminal Procedure, 1973 shall be effective thereto.]"

11. From the bare perusal of aforesaid provisions of Cow Slaughter Act, it is apparent that no permit is required for transportation of cow within the State of U.P. There is no evidence or material before the District Magistrate that the cows were transported to State of Bihar except confessional statement of driver before the police as well as the objection filed on behalf of revisionist before the District Magistrate. The statement in supplementary affidavit has not been denied by the State counsel.

12. This court in the case of ***Kailash Yadav and other Vs. State of U.P. and another*** reported in **2009(64) ACC 6** has held that mere transporting the cow, bull or bullock or carrying them from one place to another place within the State of Uttar Pradesh cannot be said to be any offence under the Cow Slaughter Act.

13. The Hon'ble Apex Court has also laid down certain guide lines for the release of vehicle in the Case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat*** reported in ***AIR 2003 Supreme Court 638***, relevant paragraph no. 17 is quoted hereinbelow:-

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

14. In the present case there is no evidence or material before the District Magistrate, Chandauli to the effect that the cows were transported from State of Uttar Pradesh to Bihar. The cows were healthy and alive and no injury was caused to any of them. There is nothing on record to show that the cows were offered to any person for slaughtering. No cow in the vehicle was found killed. There is nothing in the F.I.R. as well as counter affidavit filed on behalf of State to show that the owner/revisionist had made any attempt to slaughter any cow. Thus there was no contravention of Section 3 or Section 5(A) of Cow Slaughter Act and no offence punishable under Section 8 of Cow Slaughter Act would be made out. The District Magistrate, had erred in refusing to release the vehicle and to confiscate the same in contravention of Cow Slaughter Act, whereas, there was no sufficient evidence that the cows were transported for slaughtering to any other State.

15. In view of above, the criminal revision is allowed and the order dated 8.2.2023 passed by District Magistrate, Chandauli is set aside. The District Magistrate, Chandauli is directed to release the vehicle of the revisionist bearing No.-UP72/AT7413 (Pickup) in favour of revisionist forthwith.

Order Date :- 27.10.2023

Kpy