

Court No. - 67

Case :- MATTERS UNDER ARTICLE 227 No. - 4067 of 2021

Petitioner :- Mohd. Tahir

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

Counsel for Petitioner :- Sudarshan Singh

Counsel for Respondent :- G.A.

Hon'ble Rahul Chaturvedi,J.

Heard Sri Sudarshan Singh, learned counsel for the petitioner, Sri Satyendra Tiwari, learned A.G.A. for the State and perused the record.

Counter affidavit filed by learned A.G.A. today in the Court is taken on record.

Learned counsel for the petitioner does not want to file rejoinder affidavit and insisted to argue the case on merit.

By means of the present petition, the petitioner is invoking the power of this Court under Article 227 of the Constitution of India and sought following prayer :-

(i) To set-aside the order dated 08.07.2021 passed by the Special Judge, SC/ST Act, Chandauli in Criminal Revision No.30 of 2021 and order dated 22.10.2020 passed by the District Magistrate, Chandauli in case no.00383 of 2020 under section 5(A) of the Cow Slaughter Act in case crime no.128 of 2020 under section 3/5A/8, 5B and 6W of the Cow Slaughter Act and under section 11 of the Animal Cruelty Act, Police Station-Saiyad Raza, District-Chandauli.

(ii) Issue an order or direction directing the respondent no.4 to release the vehicle i.e truck having no.UP 70 FT 5004 in favour of the petitioner.

Presently, learned counsel for the petitioner is only pressing prayer no.(ii) seeking direction to respondent no.4 to release the vehicle no.UP 70 FT 5004 in favour of the petitioner.

Before coming to the merit of the case, contention raised by learned counsel for the petitioner is that on 21.07.2021, an FIR was got lodged by respondent no.3 in which it is alleged that respondent no.3 has nabbed the aforesaid truck on the same day and has recovered 15 cows and bull while transporting those cattles and four persons were said to have been arrested on the spot. It is alleged in the FIR that all these cattles were transported for the purpose of slaughter. Though, the petitioner was not present on the spot but his name was included in the FIR. It is contended by learned counsel for the petitioner that the petitioner is named in the FIR but he was not arrested from the spot and his name has figured up during the course of investigation.

It is contended by learned counsel for the petitioner that petitioner has applied for anticipatory bail before this Court and on 30.09.2020, bench of this Court while

deciding the anticipatory bail no.5608 of 2020, petitioner was set at liberty. It is next contended by learned counsel for the petitioner that the truck in question belongs to the petitioner. He is the owner of the truck but he has got no concern nor is claiming any ownership right over the cattles allegedly recovered from his truck. The Registration Certificate of the vehicle in question is annexed as Annexure-3 to the petition. In paragraph no.7 of the petition, it has been mentioned that it is the mischief of the driver and the cleaner who in order to earn profit, unauthorizedly and without any information to the owner(petitioner), have loaded those cattles in the truck.

Since, the vehicle in question was caught hold while transporting those cattles for slaughtering, proceedings under section 5A/7 of the Cow Slaughter Act were initiated on the report of S.P. Chandauli after seizing the vehicle, against which petitioner has moved his objections and has prayed his vehicle to be released in favour of the petitioner. Learned District Magistrate, Chandauli on 22.10.2020, in most mechanical manner and without applying his judicial mind, have mentioned that the objections filed by the petitioner are not satisfactory and there was no reason or occasion to discard the report given by the S.I. Sanjay Kumar, P.S Saiyad Raza dated 29.07.2020 and therefore, the prayer for release of vehicle was refused by the District Magistrate, Chandauli.

It is contended by learned counsel for the petitioner that the order in question was in a most mechanical and perfunctory way and does not contain any good judicial reason and thus, petitioner has preferred Criminal Revision No.30 of 2021 before the Special Judge, SC/ST Act, Chandauli. The said revision too was turned down by the Special Judge on 08.07.2021.

Aggrieved by both the orders, present petition under Article 227 of the Constitution of India was preferred by the petitioner. It has been next contended by learned counsel for the petitioner that the petitioner has purchased the vehicle in question on loan and except this vehicle, there is no source of income available to the petitioner. The said vehicle is still lying at P.S. Saiyad Raza at District-Chandaul and deteriorating day by day.

On this factual matrix of the case, learned counsel for the petitioner has relied upon the celebrated judgment of Hon'ble the Apex Court in the case of **Sundarbhai Ambalal Desai Vs. State of Gujrat** decided on 01.10.2022 reported in **2002(10) SCC 283**, part of which are quoted hereinbelow :-

"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.

However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under [Section 451](#)

Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

This Court while deciding the case in **Jai Prakash Vs State of U.P. 1992 AWC 1744** has opined that it is not disputed that the power under Section 451 Cr.P.C. is not properly and widely used by the court below while passing the orders. The power conferred under section 451 and 457 of Cr.P.C. be exercised by the court below with judicious mind and without any unnecessarily delay, so that the litigant may not suffer, merely keeping the article in the custody of the police in the open yard will not fulfill any purpose and ultimately it result the damage of the said property. The owner of the property be allowed to enjoy the fruits of the said property for the remaining period for which the property is being made.

Further in the opinion of this Court, procedure as contemplated under section 457 Cr.P.C., be also followed promptly, so that the concerned Magistrate may take prompt decision for the disposal of such properties and be released in favour of the entitled person of the said property, keeping the said property in the custody of the police, will not solve any purpose or achieve target, it rather gives mental and financial torture to the owner of the property which is also against the law and against the principles of natural justice.

Keeping in view the aforesaid legal proposition mentioned above, and the fact that the petitioner is undisputedly registered owner of the seized truck having no.UP 70 FT 5004 and his ownership is not disputed by any person or authority, thus, there is no useful purpose would be served to keep the vehicle in police station in open yard for a long period.

In view of the above, under the facts and circumstances of the case, the impugned order are not sustainable in the eye of law and requires interference by this Court and are hereby quashed.

Under the circumstances, the District Magistrate, Chandauli, the Superintendent of Police, Chandauli and the S.H.O. P.S. Saiyad Raza, Chandauli are hereby directed to release the truck in question bearing no. UP 70 FT 5004 in favour of the petitioner after imposing such reasonable conditions in the release of the vehicle which is permissible in the eye of law within next 45 days from today.

Accordingly, the present petition stands allowed. Order dated 08.07.2021 passed by the Special Judge, SC/ST Act, Chandauli and order dated 22.10.2020 passed by the District Magistrate, Chandauli are hereby quashed. It is incumbent upon the petitioner to strictly adhere with the conditions and shall not dispose the property in the shape of truck in question during the pendency of the case.

Order Date :- 13.10.2023