

Court No. - 91

Case :- APPLICATION U/S 482 No. - 38455 of 2023

Applicant :- Mohd Adil

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Ashok Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The present 482 Cr.P.C. application has been filed to quash the impugned order dated 04.04.2023 in Criminal Revision No.98 of 2023 (Mohd. Adil Vs. State of U.P.) as well as impugned order dated 08.02.2023 in Case No.8016 of 2022 Computerized Case No.D202202030008016 (State of U.P. Vs. Mohd. Adil), under Section 5(A) of U.P. Prevention of Cow Slaughter Act and Section 11(1)d,e,k of Prevention of Cruelty to Animals Act, Police Station- Soraon, District- Prayagraj, passed by Addl. Sessions Judge, Court No.18 Allahabad further to direct the opposite party Nos.2 and 3 to release the vehicle No.UP 80 BT 1936 in favour of applicant (vehicle owner).

3. Learned counsel for the applicant submitted that applicant is owner of the vehicle in dispute bearing No.UP 80 BT 1936 which was seized under the aforesaid case crime. The aforesaid vehicle was engaged in transportation of cow progeny. On search, 16 cow progeny were recovered from the alleged vehicle. Applicant's vehicle was intercepted in Case Crime No.268 of 2022, under Sections 5(A) of U.P. Prevention of Cow Slaughter Act and Section 11(1)d,e,k of Prevention of Cruelty to Animals Act. He

further submitted that DM, Prayagraj, vide order dated 08.02.2023 rejected the release application and confiscated the vehicle of the applicant, thereafter applicant moved revision before Revisional Court, the Revisional Court vide order dated 04.04.2023 dismissed the revision of the applicant. Orders passed on 08.02.2023 and 04.04.2023 are without application of judicial mind and without considering the legal position, hence, the present application has been filed challenging the orders dated 08.02.2023 and 04.04.2023. Applicant's vehicle is standing in the police station in an open area without any protection which may lead to deteriorate the condition of the vehicle. The applicant is owner of the vehicle, which is clear from his Registration Certificate. Applicant has placed reliance over the judgment of Hon'ble The Apex Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 (10) SCC 283.**

4. It is argued that both the impugned orders are illegal and liable to be set aside. It is further argued that the vehicle in question was seized without following the procedure prescribed in law. It is further argued that the vehicle in question is not involved in any criminal activity.

5. In view of the aforesaid, it is argued that the orders impugned be set aside and the vehicle of the applicant be directed to release.

6. On the other hand it is argued by the learned AGA that since the vehicle in question was involved in malpractice and since cow progeny were found in the aforesaid vehicle, the same was rightly confiscated by the District Magistrate.

7. From perusal of the record, it transpires that vehicle of the applicant was seized in view of the fact that cow progeny were being transported with a malice intention. The criminal

proceedings in this regard is still going on. It is settled law that there is no use to keep seized vehicles at the police station for the long period. Police authorities are to return the vehicle after taking appropriate bond and guarantees as well as security for the return of the vehicle. The Supreme Court in the case of **Sunder Bhai Amba Lal Desai vs. State of Gujarat reported in 2002 (10) SCC 283** has held that it is of no use to keep such seized vehicle at the police stations for a long period. Paragraph 17 of the aforesaid judgment is reproduced below:-

"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."

8. A coordinate Bench of this Court vide judgment and order dated 25.8.2022 passed in **Mohd. Shakib versus State of U.P.** Application under section 482 CrPC No.23143 of 2021 has held that no permit is required to transport cow and its progeny within the State of U.P. and therefore, it cannot be said that the seized vehicle in question was used in violation of section 5A(1) to (11) or any provisions of the Cow Slaughter Act. Relevant paras 12 and 13 of the judgment in **Mohd. Shakib's case (supra)** is reproduced as below :

"12. Now, it is to be considered whether permit is required for transportation of the cow or its progeny within the State of Uttar Pradesh. This question came up for consideration before this Court in Criminal Revision No. 131 of 2005 (Kailash Yadav and Others vs. State of U.P. & others, 2008(10) ADJ 623), wherein it is held that no permit is required for transportation of cow or its progeny within the State of Uttar Pradesh. Sub-section 5A (6 to 8) provides for confiscation and release of vehicle by which beef or cow and its progeny is transported in violation of the provision of this Act and the relevant rules. Sub-section 5A (6 to 8) reads as follows:-

(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.

13. From the perusal of sub-section (1 to 5) of Section 5A of this Act and the law laid down by this Court in Kailash Yadav and Others vs. State of U.P. & Others (supra), it is abundantly clear that there is no need of permit to transport cow and its progeny within the state of Uttar Pradesh. Therefore, transportation of a cow and its progeny within the state of Uttar Pradesh is not a violation of any of the provisions of the Cow Slaughter Act. Therefore, it cannot be said that the seized vehicle in question was used in violation of Section 5A (1) to (11) or any provisions of the Cow Slaughter Act, and therefore, police has no power or jurisdiction to seize or confiscate the vehicle in question. The District Magistrate, Varanasi has passed the impugned confiscation order dated 18.08.2021 in contravention of the law, as no permit is required to transport cow and its progeny within the state of Uttar Pradesh. In above circumstances, the impugned order dated 18.08.2021 passed by District Magistrate, Varanasi is without jurisdiction and the same is liable to be set-aside. Likewise, the revisional court has not considered the relevant provisions of Section 5A of Cow Slaughter Act while dismissing the criminal revision of the applicant, therefore, the impugned order dated 13.10.2021 passed by Special Judge (SC/ST Act), Chandauli is also against the provisions of law and is liable to be set-aside. "

9. In the case in hand, it is evident that the cow and its progeny were not being transported from within the State to outside State, therefore, the provisions of section 5-A of the Act are not attracted. Consequently, the order passed by the District Magistrate for rejecting the application for release and confiscation by the one and the same order and the impugned order passed by the revisional court are bad in the eyes of law, and liable to be set-aside and are thus set-aside.

10. The opposite parties are directed to release the vehicle forthwith in accordance with law on such terms which are deemed appropriate.

11. The petition is **allowed** in above terms.

Order Date :- 3.11.2023

Shiv