

RESERVED ON 28.10.2023

DELIVERED ON 1.11.2023

Court No. - 13

Case :- CRIMINAL MISC. WRIT PETITION No. - 7604 of 2023

Petitioner :- Manish Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko. And 3 Others

Counsel for Petitioner :- Toshendra Kumar, Firoz Ahmad Khan

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar, J.

1. Supplementary Affidavit filed by learned counsel for the petitioner is taken on record.

2. Heard learned counsel for the petitioner and learned A.G.A. for the State.

3. Through this petition the petitioner has prayed for following main relief(s):-

"(i) issue a writ, order or direction in the nature of Certiorari quashing the impugned judgment and order dated 08.06.2023 passed by the learned District Magistrate Sultanpur, District- Sultanpur passed in Case No. 66 of 2023 (Computerized No. D2023046800000066) State Vs. Manish Kumar" arising out of Case Crime No. 14/2022, Under Sections 3/5A/5B/8 of the Uttar Pradesh Prevention Of Cow Slaughter Act, 1955 & section 11 of the Prevention of Cruelty to Animals Act pertaining to Police Station- Shivgarh, District- Sultanpur as well as order dated 28.06.2023 passed by the learned Sessions Judge, Sultanpur passed in Criminal Revision No. Nil/2023 "Manish Kumar Vs. State of U.P.", as contained in Annexure No. 1 to this Writ petition.

(ii) issue a writ, order or direction in the nature of mandamus to stay operation and implementation of the impugned judgment and order dated 08.06.2023 passed by the learned District Magistrate Sultanpur, District- Sultanpur passed in Case No. 66 of 2023 (Computerized No. D2023046800000066) State Vs. Manish Kumar" arising out of Case Crime No. 14/2022, Under Sections 3/5A/5B/8 of the Uttar Pradesh Prevention Of Cow Slaughter Act, 1955 & section 11 of the Prevention of Cruelty to Animals Act pertaining to Police Station- Shivgarh, District- Sultanpur as well as order dated 28.06.2023 passed by the learned Sessions Judge, Sultanpur passed in Criminal Revision No. Nil/2023 "Manish Kumar Vs. State of U.P.". And further the vehicle in question may be released forthwith, in the interest of justice."

4.Learned counsel for the petitioner submits that in connection with Crime No.14 of 2022, under Section 3/5A/5B/8 of U.P.Prevention of Cow Slaughter Act, 1955 and section 11 of the Prevention of Cruelty to Animals Act, Police Station Shivgarh, District Sultanpur, vehicle No. UP65KT5466 was confiscated by the police. He submits that the petitioner is owner of the vehicle and he is not accused in the aforesaid case. As a matter of fact, the petitioner had taken a consignment on 9.12.2022 from Amar Molding House, Lakhanpur, Bhullanpur, Varanasi to be shipped at RO Police Line, Sultanpur on his vehicle and under the circumstances, it is quite infeasible to use it in commission of offence on 10.12.2022. The police has seized the vehicle by concocting a false recovery.

Learned counsel for the petitioner further submits that the petitioner was not arrested by the police at the spot. The applicant has been released on bail by the District Court vide order dated 31.1.2023 contained in Annexure No.4 to the petition.

It is submitted that the police has wrongly seized the vehicle by showing alleged recovery of prohibited animals. The petitioner has moved an application for release of the vehicle, which has been rejected by the District Magistrate, Sultanpur vide impugned order dated 8.6.2023. Assailing the order dated 8.6.2023 passed by the District Magistrate, the petitioner preferred a revision before the Sessions Court, which too has been rejected vide order dated 28.6.2023 (Annexure-2) for lack of jurisdiction. It is submitted that the learned Sessions Judge has rejected the release application of the petitioner

by adopting a hyper technical view.

He further submits that the vehicle is presently lying at police station in an open area and is getting damaged. Only on the basis of the forged recovery the vehicle has been confiscated. He submits that no useful purpose will be served by keeping the vehicle at Police Station. There is no independent witness of the recovery.

5. Learned A.G.A. has opposed the petition.

6. I have come across a notification no. U.O.-14/CHH:P-9-2023 dated 14.2.2023 issued by Government of U.P. G.O. (Police) Anubhag-9 in exercise of the powers conferred under section 5-A(1) of U.P. Prevention of Cow Slaughter Act, 1955, read with section 21 of the General Clauses Act, 1904 wherein the Governor has authorised the Divisional Commissioner to satisfy himself at any time as to the legality or propriety of the action taken under section 5-A of Prevention of Cow Slaughter Act, 1955 and can examine the record of any case and pass such order. Thus, in view of the said notification, District Magistrate has the power of confiscating the vehicle and against the order passed by the District Magistrate, appeal lies before the Commissioner.

7. Having heard learned counsel for the parties and perused the record as also considering the fact that appeal lies against the order passed by the District Magistrate under Section 5-A of the U.P. Cow Slaughter Act, the petition fails and is dismissed on the ground of availability of alternative remedy.

The petitioner is at liberty to file an appeal within ten days from the date of receipt of certified copy

of this order before the concerned Commissioner. In case, such appeal is filed, the same shall be decided expeditiously within a further period of one month from the date of filing of appeal.

Order Date :- 1.11.2023

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