

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 897 of 2024

Petitioner :- Mohammad Ashhad

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

Counsel for Petitioner :- Firoz Ahmad Khan

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Rejoinder affidavit filed by the petitioner is taken on record.
2. Heard Shri Firoz Ahmad Khan, learned counsel for the petitioner as well as learned A.G.A. for the State and perused the record.
3. The instant petition has been filed by the petitioner for grant of the following prayers:-

"(i) issue a writ, order or direction in the nature of Certiorari quashing of the impugned order dated 4.10.2023 passed by opposite party no.3 i.e. District Magistrate, Gonda in Case No.451/2023, Computerized Case No.D202308300000451 (State Versus Mohammad Ashhad) under Section 5-A of Uttar Pradesh Prevention of Cow Slaughter Act, 1955 as well as order dated 8.11.2023 passed by the opposite party no.2 i.e. Commissioner Devipatan Mandal, Gonda in Appeal/Case No.1547/2023, Computerized Case No.C202308000001547 (Mohammad Ashhad Versus State of U.P.), as contained in Annexure No.1 and 2 to this writ petition.

(ii) issue a writ, order or direction in the nature of Mandamus directing the opposite parties particularly opposite party no.2 District Magistrate, Gonda to immediately release the confiscate vehicle/Truck of the petitioner bearing Registration No.UP50AT4791 as mentioned in the impugned order dated 4.10.2023, as contained in Annexure No.1 to this Writ petition.

(iii) Issue a writ, order or direction in any nature which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(iv) award the cost of the writ petition in favour of the petitioner."

4. Learned counsel for the petitioner while drawing attention of this Court towards the impugned orders of date 04.10.2023 passed by the District Magistrate, Gonda as well as order dated 08.11.2023 passed by the Commissioner, Devipatan Mandal, Gonda whereby vehicle bearing Registration No.UP50AT4791 owned by the petitioner has been confiscated and the revision preferred against the same has been rejected, vehemently submits that the vehicle owned by the petitioner has been falsely involved in the instant case while neither the petitioner nor the vehicle owned by him is involved in the offence.

5. It is vehemently submitted that the case of the prosecution is in terms that the vehicle of the petitioner was found involved in transporting prohibited animal of cow progeny and with regard to the same an F.I.R. bearing Case Crime No.12 of 2023, under Section 3/5A/8 of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 and Section 11 of the Prevention of Cruelty to Animal Act was lodged at Police Station Karnailganj, District Gonda and co-accused namely Raghvendra Tiwari is shown to have been arrested and after thorough investigation, charge sheet has been filed and the involvement of the petitioner has been found on the confessional statement of co-accused persons including driver of the petitioner.

6. It is vehemently submitted that the vehicle/truck owned by the petitioner was being driven by driver Rohit Yadav and the petitioner has never allowed him to involve his truck in any illegal activity as he has given clear instructions to only transport permissible goods and as the petitioner was not having any connivance or conspiracy, the confiscation of the truck owned by the petitioner is patently illegal.

7. It is further submitted that both the courts below have not considered this aspect of the matter and even if the case of the prosecution is believed as it is, Section 5A of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 could not be applicable. In this regard, learned counsel for the petitioner has drawn attention of this Court towards Section 5A of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 as amended by Act No.20/2020 w.e.f. 11.06.2020, whereby sub section 6 to 11 have been added.

8. It is vehemently submitted that the power of confiscation has been given to the District Magistrate/Commissioner of Police in sub section 7 of Section 5A of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 and the precondition of the same is that the vehicle by which the cow and its progeny is transported in violation of the provisions of this Act, the said vehicle would be confiscated while as per Section 5A of the Uttar Pradesh

Prevention of Cow Slaughter Act, 1955 as it is applicable in the State of U.P., licence or permit is required only in the case if the animals of cow progeny are being transported from any place within the State (State of U.P.) to any place outside the State and thus both the courts below appears to have acted on the presumption that even for transportation of animals of cow progeny within the State, a licence or permit is required while no such permit as per Section 5A of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 is required for transportation of prohibited animals within the State.

9. It is also highlighted that the vehicle, which is shown to have been apprehended, has not been allegedly detained from any border area of the State, therefore, there is no presumption that the animals even if they are being transported by the use of the vehicle, were being transported outside of the State from inside Uttar Pradesh. Reliance in this regard has been placed on the law laid down by the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujrat***, AIR 2003 SC 638 as well as on the law laid down by Hon'ble Single Judge of this Court in ***Omprakash vs. State of U.P.***; Criminal Misc. Writ Petition No.293 of 2024 dated 06.03.2024 and ***Nitin Singh vs. State of U.P.***; Criminal Misc. Writ Petition No.28598 of 2021 dated 03.04.2024 in order to show that when Section 5A of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 is not applicable, the confiscation proceedings undertaken by the District Magistrate and as confirmed by the Commissioner, Devipatan Mandal, Gonda is itself an abuse of process of law and has been passed in utter disregard to the settled principles of law.

10. Learned A.G.A. on the other hand submits that there is no illegality so far as the passing of both the impugned orders is concerned as the vehicle owned by the petitioner is found to be involved in transportation of the prohibited animals of cow progeny and as the same were being found to be slaughtered, the vehicle has been rightly confiscated.

11. Having heard learned counsel for the parties and having perused the record, it is evident that it appears to be an admitted situation that the vehicle/truck bearing Registration No.UP50AT4791 is owned by the petitioner. In this regard a copy of the registration certificate of the vehicle has been placed on record, which shows the name of the petitioner as its owner. The ownership of the petitioner has also not been denied by the State in its counter affidavit. It also appears that the vehicle owned by the petitioner has been detained and apprehended in the territorial jurisdiction of the Police Station Karnailganj, District Gonda and animals of cow progeny are

shown to have been found being transported by the use of the vehicle.

12. The impugned order appears to have been passed by the District Magistrate, Gonda under Section 5-A (7) of the Cow Slaughter Act and in the whole of the Cow Slaughter Act no provision of appeal or revision has been provided with regard to any order passed under Section 5-A (7) of the Act, which has been amended vide Amendment Act, 2020 (Act No. 20 of 2020). A perusal of Section 5-A of the Act would evidently reveal that the same Section would be applicable when the cow or its progeny is being transported from within the State of U.P. to any other place outside the State and it is only in that scenario a permit is required to be taken for such transportation from an appropriate/authorized officer. Prima facie, there appears nothing on record specifically in the First Information Report which may justify a presumption which appears to have been drawn by the District Magistrate, Gonda that the truck/vehicle is being used in violation of Section 5-A of the Act, as the truck/vehicle has been apprehended allegedly within the territorial jurisdiction of Police Station Karnailganj, which is not situated at the border of the Uttar Pradesh.

13. Thus, prima facie, it is reflected that for transportation of such animals even if they have been apprehended at Karnailganj no permit was required and in this regard the District Magistrate, Gonda appears to be in some confusion or misconception that a permit is required for transportation of animals of cow progeny even within the State of U.P. A coordinate Bench of this Court in **Omprakash**(supra) and **Nitin Singh** (supra) have dealt this issue in depth and have found that there is absolutely no necessity of obtaining any permit in transportation of prohibited animals within the State of Uttar Pradesh. Thus the invocation of Section 5-A of the Act against the petitioner appears to be prima facie not sustainable subject to final outcome of the trial which may be pending before the trial court. Therefore, in the considered opinion of this Court the District Magistrate, Gonda should have waited for the outcome of the trial court after conclusion of the trial and in the meantime the impugned vehicle should have been released in favour of the petitioner as the confiscation made even before the conviction of the petitioner would render the vehicle useless for a considerable period of time as has occurred in the instant case. In this regard the law laid down by the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai and C.M. Mudaliar** (supra) and **Jai Prakash Vs. State of U.P., 1992 AWC 1744** may be recalled.

14. Thus, having regard to the above, legal and factual matrix

and keeping in view the fact that there is no doubt pertaining to the ownership of the petitioner, in the considered opinion of this Court no useful purpose would be served by keeping the vehicle stationed at the Police Station where it is standing after being confiscated by the District Magistrate, Gonda by passing impugned order.

15. At this juncture, it is also worthwhile to recall the observations of another Coordinate Bench of this Court in ***Shakib Vs. State of U.P.*** (App. U/S 482 Cr.P.C. No. 23143 of 2021 decided on 25.8.2022 which are being reproduced as under:-

"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 authorized 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."

16. Thus, having regard to the above factual and legal matrix, I am of the considered view that the impugned order of date 04.10.2023 passed by the District Magistrate, Gonda in Case No.451/2023, Computerized Case No.D202308300000451 (State Versus Mohammad Ashhad) and order dated 8.11.2023 passed by the opposite party no.2 i.e. Commissioner Devipatan Mandal, Gonda in Appeal/Case No.1547/2023, Computerized Case No.C202308000001547 (Mohammad Ashhad Versus State of U.P.) may not stand the test of law and is liable to be set aside/quashed.

17. In result, the writ petition is **allowed** and the impugned order of date 04.10.2023 passed by the District Magistrate, Gonda in Case No.451/2023, Computerized Case No.D202308300000451 (State Versus Mohammad Ashhad) and order dated 8.11.2023 passed by the opposite party no.2 i.e. Commissioner Devipatan Mandal, Gonda in Appeal/Case No.1547/2023, Computerized Case No.C202308000001547 (Mohammad Ashhad Versus State of U.P.) are hereby **quashed/set aside**.

18. The opposite parties are directed to immediately release the vehicle/truck bearing Registration No.UP50AT4791 detained in connection with case Crime No.12 of 2023, under Section 3/5A/8 of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 and Section 11 of the Prevention of Cruelty to Animal Act, Police Station Karnailganj, District Gonda, under the order of District Magistrate, Gonda dated 04.10.2023 in favour of registered owner/petitioner, immediately after obtaining a personal bond and one surety of Rs. 2,00,000/- from the petitioner subject to the condition that petitioner during the pendency of the case before the trial court shall keep the vehicle in his safe custody and produce the same before trial court as and when required.

Order Date :- 2.5.2024

Anupam S/-