

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 2388 of 2024

Petitioner :- Mohd. Arif

Respondent :- State Of U.P. Thru. Its Prin. Secy. Deptt. Of Home, Lucknow And 2 Others

Counsel for Petitioner :- Ravindra Kumar Dwivedi

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavits filed on behalf of opposite party no.2 as well as on behalf of State are taken on record.

2. Heard Shri Ravindra Kumar Dwivedi, learned counsel for the petitioner as well as learned AGA for the State and perused the record.

2. 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 thereby quashing of the impugned order dated 16.02.2023 passed by opposite party no.2/ District Magistrate, District Amethi, in Case No. RST/833/2021 Computerized Case No. D-202104710000833 "State Vs. Mohd. Arif" under Section 5(A) of Uttar Pradesh Prevention of Cow Slaughter Act, 1955, as contained in Annexure No. to the writ petition, in the interest of justice.

(II) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to release the vehicle no. U.P. 12 T 6286 (Container Truck) in favour of the petitioner, in the interest of justice.

(III) issue any other suitable order or direction which this Hon'ble Court deems fit and proper in the present circumstances of the case, in favour of the petitioner.

(IV) Allow the writ petition with cost, in favour of the petitioner."

3. Learned counsel for the petitioner submits that on 13.5.2021 the vehicle owned by the petitioner bearing Registration No. U.P. 12 T 6286 (Container/ Truck) had loaded vegetables from

Muzaffar Nagar to Sabzimandi Pratapgarh for being delivered at the shop of one Sabir and the vehicle was run by his two drivers, namely, Waseem and Zubair and they after unloading the vehicle, were returning back on 17.05.2021 and on their way near Toll Plaza, Andhi Tehsil Gauriganj, District Amethi the truck got dis-functional and the drivers have gone to search some mechanic and the vehicle was lying on the side of the road and the Police had towed the vehicle considering it to be an unattended vehicle and has falsely implicated the same in the instant case.

4. It is vehemently submitted that the applicant has been arrayed as an accused in this case only on account of him being the registered owner of the vehicle and he is the only person who has been charge sheeted and the above vehicle is in the custody of the police since then.

5. It is further submitted that the story of recovery of some prohibited animals of cow progeny from the container is false, concocted and could not be believed, however on the basis of a report dated 5.7.2021 of Police Station Gauriganj the above mentioned vehicle owned by the petitioner has been confiscated and the said order passed by the District Magistrate, Amethi was challenged by filing a Revision before the Sessions Judge and the same was decided, vide order dated 20.12.2022 passed in Crl. Revision No. 84/2022 and the matter was remitted back to the District Magistrate, Amethi by passing order afresh, however, by passing the impugned order of date 16.2.2023 the District Magistrate, Amethi has again passed an order of confiscation of the above mentioned tanker/ vehicle in favour of the State Government.

6. It is vehemently submitted that at first the petitioner is not connected with the crime and even if the whole story as shown in the first information report is believed as it is Section 5-A of Uttar Pradesh Prevention of Cow Slaughter Act, 1955 may not be invoked against the applicant.

7. Elaborating further, it is submitted that Section 5-A of the Cow Slaughter Act is only regulating the transportation of cow, bull or bullock which are being carried for slaughter thereof from any place outside the State and if the animals of such progeny are being transported out of State from any place within the State the same may only be transported under a permit or license issued by an Authorized Officer of the State Government, while in the instant case the tanker/ vehicle of the applicant is shown to have been apprehended from Gauriganj and by any stretch of imagination there cannot be any presumption that the said animals shown to have been

recovered from the container/ vehicle were being transported for the purpose of slaughter.

8. It is vehemently submitted that since the commission of offence is itself doubtful there was no material available before the District Magistrate to have passed an order for confiscation of the vehicle and the correct course was to let the criminal case decided on merits by the trial court and any order for confiscation may be passed thereafter.

9. It is also submitted that as the petitioner had approached the revision court once, against the earlier order passed by the District Magistrate, Amethi and the matter was remanded and again same order has been passed by the District Magistrate, Amethi, patently in violation of established law the petitioner is challenging the same in the instant writ petition which is not barred. The attention of this Court has been drawn towards the law laid down by the Hon'ble Supreme Court in ***M/S Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer Cum Assessing Authority and others***, wherein it is provided that if there is gross violation of law the provision of alternate remedy would not be hurdle in providing substantial justice to the petitioner.

10. It is also submitted that there is no dispute pertaining to the ownership of the tanker and the petitioner is bearing heavy financial losses as the vehicle is standing in the police station Gauriganj. 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 has also been highlighted in order to show that vehicles are meant to move freely on the roads and their confiscation or seizure is against the public policy.

11. It is vehemently submitted that the order passed by the District Magistrate, Amethi of date 16.2.2023 be quashed and the vehicle/ tanker confiscated vide order dated 24.1.2022 be released in favour of the petitioner.

12. Learned AGA on the other hand submits that at first the writ petition is not maintainable as an alternate remedy of appeal has been provided whereby the impugned order may be challenged and there is no illegality in the confiscation order passed by the District Magistrate as the prohibited animals were seized which were being transported by the use of the vehicle and therefore the District Magistrate, Amethi has acted in accordance with law. Attention of this Court has been drawn towards Section 5 A of the Uttar Pradesh Prevention of Cow Slaughter Amendment Act, 2020, whereby the power has been given to the District Magistrate or the Commissioner as the case

may be to confiscate such vehicle whereby the prohibited animals are being transported.

13. Learned counsel for the petitioner in rebuttal has relied on the law laid down by the Coordinate Benches of this Court in the cases of Lakshman Singh and Kaliya, vide orders dated 02.04.2024 and 6.10.2023 passed in Criminal Misc. Writ Petition Nos. 2543 of 2023 and 6826 of 2023.

14. Having heard learned counsel for the parties and having perused the record, so far as the first objection with regard to the maintainability of instant writ petition is concerned, it is reflected that earlier the petitioner has challenged the first confiscation order passed by the District Magistrate, Amethi, with regard to the confiscation of the vehicle by filing a revision before the Sessions Judge and the revision was allowed and the matter was remanded back for being decided afresh and identical order has again been passed by the District Magistrate, Amethi which is impugned in the instant writ petition. There cannot be any other view than that if the order has been passed in gross violation of established principles of law the availability of alternate or any efficacious remedy may not be placed as a hurdle in doing substantial justice, as highlighted by the Hon'ble Supreme Court in *M/s Godrej Sara Lee Ltd. (supra)* the case law relied on by learned counsel for the petitioner.

15. Thus, in the considered opinion of this Court the instant petition appears to be maintainable before this Court and in this regard the judgment passed by the two Coordinate Benches of this Court referred to above may also be taken into consideration. Therefore the instant writ petition appears to be maintainable.

16. Coming to the merits of the instant case there cannot be any other opinion than the fact that the petitioner is the registered owner of the vehicle. In this regard the copy of the registration certificate of the vehicle which has been placed as Annexure No.2 to the writ petition may be perused. There is no other claimant of the vehicle either before the Police Station or before the trial court. Thus, it may safely be presumed that the petitioner is the only registered owner of the vehicle in question.

17. The impugned order appears to have been passed by the District Magistrate, Amethi 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 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, Amethi that the tanker/ vehicle is being used in violation of Section 5-A of the Act, as the tanker/ vehicle has been apprehended allegedly within the territorial jurisdiction of Police Station Gauriganj, which is not situated at the border of the Uttar Pradesh.

18. Thus, prima facie, it is reflected that for transportation of such animals even if they have been apprehended at Gauriganj no permit was required and in this regard the District Magistrate, Amethi 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. Two Coordinate Benches of this Court in Kalia and in Lakshman 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 applicant 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, Amethi 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 Vs. State of Gujrat**, AIR 2003 SC 638 and **Jai Prakash Vs. State of U.P.**, 1992 AWC 1744 may be recalled.

19. 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, Amethi by passing impugned order.

20. 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."*

21. Thus, having regard to the above factual and legal matrix, I am of the considered view that the impugned order of date 16.2.2023 passed by the District Magistrate, Amethi may not stand the test of law and is liable to be set aside/ quashed.

22. In result, the writ petition is ***allowed*** and impugned order dated 16.2.2023 passed by the District Magistrate, Amethi is hereby ***quashed/ set aside***.

22. The opposite parties are directed to immediately release the tanker/ vehicle No. U.P. 12 T 6286 detained in connection with case Crime No. 186/2021, under Sections 3/5-A/8 of Cow Slaughter Act and Section 11 of Animal Cruelty Act, 1960, Police Station Gauriganj, District Amethi, under the order of District Magistrate, Amethi dated 16.2.2023 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:- 23.4.2024

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