

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 2989 of 2024

Petitioner :- Om Prakash

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

Counsel for Petitioner :- Manoj Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed on behalf of the State is taken on record.

2. Heard Shri Manoj Kumar Singh, learned counsel for the petitioner as well as learned A.G.A. for the State and perused the record.

3. The instant petition under Article 226 of the Constitution of India has been filed by the petitioner, namely, **Om Prakash** with the following prayers:-

"(i) issue a writ or writs in the nature of certiorari, thereby quashing the impugned judgment and order dated 23.03.2024, passed by learned Commissioner, Devi Patan Mandal, Gonda, in Case No. 431 of 2024 (Om Prakash vs. D.G.C. Criminal and others), Computerized Case No. C202408000000431, under Section 5(A)8 of The U.P. Prevention of Cow Slaughter Act, 1955 and order dated 04.12.2023, passed by learned District Magistrate/Collector, Bahraich in Case No. 170 of 2023 (State vs. Om Prakash), Computerized Case No. D202308150000170, under Section 5A(8) of U.P. Prevention of Cow Slaughter Act, 1955, relating to Case Crime No. 0459 of 2023, under Section 3/5A/8 The U.P. Prevention of Cow Slaughter Act, 1955, Police Station Kotwali Dehat, District Bahraich, contained as Annexure Nos.1 and 2 respectively to this writ petition,

(ii) issue a writ, order or direction.....

(iii) issue any other other.....

(iv) allow the writ petition....."

4. Learned counsel for the petitioner submits that petitioner is the owner of a PICUP vehicle bearing Registration No.

UP46T4675 and the said vehicle is shown to have been apprehended by the police with the allegations of transporting three animals of cow progeny and in this regard a Case Crime No. 459 of 2023, under Section 3/5A/8 The U.P. Prevention of Cow Slaughter Act was registered at Police Station Kotwali Dehat, District Bahraich and thereafter the confiscation proceeding under Section 5-A of The Cow Slaughter Act, were initiated against the petitioner and vehicle owned by the petitioner has been confiscated.

5. It is vehemently submitted that the District Magistrate, Bahraich as well as the Commissioner, Devi Patan Mandal, Gonda have not considered the issue in right perspective and appears to have been under an impression that for transportation of the animals of cow progeny within the State of Uttar Pradesh also a permit, as required under Section 5-A of The Cow Slaughter Act, is required.

6. It is further submitted that in whole of the Cow Slaughter Act, there is no provision to obtain any permission or a permit or any licence for the purpose of transporting any kind of animal within the State and the necessity of obtaining a permit/license is only when the animals of cow progeny is being transported from within the State of U.P. to the outside of the State of U.P. In this regard, the provisions contained under Section 5-A of the Cow Slaughter Act has been highlighted.

7. It is next submitted that when the offence under Section 5-A of The Cow Slaughter Act is not emerging even prima facie no confiscation should have been made and only on this score, both the orders passed by the District Magistrate, Bahraich and Commissioner, Devi Patan Mandal, Gonda are required to be set-aside and the vehicle bearing Registration No. UP46T4675 be released in favour of the petitioner.

8. Learned A.G.A. on the other hand submits that having regard to Section 5-A (7 & 8) of the amended Section 5-A of The Cow Slaughter Act has bestowed on the District Magistrate the power to confiscate such vehicles which have been used in transportation of the animals of cow progeny for the purpose of slaughtering and since the petitioner's vehicle has been found involved in transporting the animals of cow progeny for the purpose of slaughtering, no illegality has been committed either by the District Magistrate, Bahraich or by the Commissioner, Devi Patan Mandal, Gonda. Thus, there is no interference required in the impugned orders.

9. Perusal of the record would reveal that the allegations against the petitioner are in terms that his PICUP vehicle bearing

Registration No. UP46T4675 has been apprehended while transporting the animals of cow progeny within the territorial jurisdiction of Kotwali Dehat, District Bahraich and three animals of cow progeny are shown to have been recovered from the same.

10. It is evident that Section 5-A(1) of the Cow Slaughter Act provides that, no person shall transport or offer for transportation any cow, bull or bullock, the slaughter whereof is punishable under the Cow Slaughter Act from any place within the State to any place outside the State except on a permit issued by the State Government.

11. Newly amended Sub-Section 7 of above Section 5-A(1) of the Cow Slaughter Act bestows power to the district magistrate concern or the Commissioner of Police, as the case may be, to confiscate such vehicle, which was found involved in transportation of animals for the said purpose.

12. Thus, Section 5-A of the Cow Slaughter Act would evidently reveal that it is applicable only when the animals of cow progeny being are transported within the State of Uttar Pradesh to the outside of Uttar Pradesh and not otherwise.

13. Even if the case of the prosecution is taken on its face, the PICUP vehicle owned by the petitioner is shown to have been detained from Bahraich and by any stretch of imagination it may not be presumed that the animals were being taken out of the State and for the purpose of slaughter. Therefore, *prima facie* the attraction of Section 5-A of the Cow Slaughter Act appears to be doubtful so far as the facts of the instant case is concerned.

14. It is to be recalled that there is no restriction so far as the transportation of the bull, bullock or the other animals of his progeny is concerned within the State of Uttar Pradesh and no permit or license in this regard is required from any authority.

15. Thus, having regard to all the facts and circumstances of the case, in the considered opinion of this Court, the impugned orders dated 23.03.2024, passed by learned Commissioner, Devi Patan Mandal, Gonda, in Case No. 431 of 2024 (Om Prakash vs. D.G.C. Criminal and others), Computerized Case No. C20240800000431, under Section 5(A)8 of The U.P. Prevention of Cow Slaughter Act, 1955 and order dated 04.12.2023, passed by learned District Magistrate/Collector, Bahraich in Case No. 170 of 2023 (State vs. Om Prakash), Computerized Case No. D202308150000170, under Section 5A(8) of U.P. Prevention of Cow Slaughter Act, 1955, relating

to Case Crime No. 0459 of 2023, under Section 3/5A/8 The U.P. Prevention of Cow Slaughter Act, 1955, Police Station Kotwali Dehat, District Bahraich, may sustain the scrutiny of law and appears to have been passed without acknowledging the crux of Section 5-A of the Cow Slaughter Act and are, hereby, **set-aside/quashed**.

16. In result, the petition succeeds and is **allowed**.

17. The opposite parties are directed to immediately release the PICUP vehicle bearing Registration No. UP46T4675 detained in connection with Case No. 431 of 2024, under Section 5A(8) of U.P. Prevention of Cow Slaughter Act, 1955, relating to Case Crime No. 0459 of 2023, under Section 3/5A/8 The U.P. Prevention of Cow Slaughter Act, 1955, Police Station Kotwali Dehat, District Bahraich, under the order of District Magistrate, Bahraich dated 04.12.2023 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 and will also submit colour photographs of the vehicle, taken from the four direction, before the trial court, for the purpose of keeping the same on record of the case pending before it.

Order Date :- 16.5.2024/Praveen