

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.351 of 2021

Nem Singh Sahu, S/o Late Chatur Ram Sahu, Aged about 38 years, R/o Village Kharthuli, Post Potiyadih, P.S. Arjuni, Tehsil and District Dhamtari (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, through Station House Officer, P.S. Balod, District Balod (C.G.)

---- Respondent

 For Petitioner: Mr. Prasoon Agrawal, Advocate.
 For Respondent: Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/03/2021

1. The petitioner is registered owner of Mahendra Bolero Maxi Truck bearing registration No.CG-05/AJ-7512. His vehicle was found involved in the commission of Crime No.339/2020 under Sections 4, 6 and 10 of the Chhattisgarh Agricultural Cattle Preservation Act, 2004 and Section 11 of the Prevention of Cruelty to Animals Act, 1960 on 31-10-2020 and offence has been registered against four accused persons including Rupesh Yadav and Himesh Vishwakarma. The accused persons have been charge-sheeted for those offences and the same is pending consideration before the jurisdictional Court. Meanwhile, the petitioner herein, being registered owner of the vehicle, filed application for grant of interim custody of the said vehicle under Section 457 of the CrPC before the said Court which has been rejected by the order of the learned Magistrate dated 9-11-2020 on the ground that under Section 6(1) of the Chhattisgarh Agricultural Cattle

Preservation Act, 2004 (for short, 'the Act of 2004'), there is total prohibition on the transport of agricultural cattle for slaughtering and the vehicle in question was found in transporting agricultural cattle for the purpose of slaughter and thus the same was seized, as the vehicle or conveyance so seized under sub-section (2) shall not be released by the order of the court on bond or surety before the expiry of six months from the date of such seizure or till the final judgment of the court, whichever is earlier by virtue of sub-section (3) of Section 6 of the Act of 2004 and such vehicle shall also be liable for confiscation at the end of the trial.

2. The petitioner called in question legality and validity of the order passed by the learned Magistrate before the revisional Court, but remained unsuccessful leading to filing of this petition under Section 482 of the CrPC principally on the ground that Section 6(1) of the Act of 2004 would attract when cattle are transported for the purpose of slaughter in contravention of the provisions of the Act of 2004 or with the knowledge that it will be likely to be slaughtered and if there is no allegation of slaughter and the cattle are being transported for a valid purpose, then Section 6(3) of the Act of 2004 would not apply and interim custody can be granted immediately based on the merits of the matter. In this case, there is no allegation of transporting the agricultural cattle for the purpose of slaughter, therefore, bar under Section 6(3) of the Act of 2004 would not apply and the petitioner is entitled for interim custody of the vehicle.
3. Mr. Prasoon Agrawal, learned counsel appearing for the petitioner, would submit that though charge-sheet has been filed against the accused persons, but there is no allegation that the cattle in question i.e. 7 bullocks were being transported for the purpose of slaughter in

contravention of the provisions contained in the Act of 2004 and therefore Section 6(3) of the said Act would not apply. He would rely upon the decision of the Gujarat High Court in the matter of Ravidasbhai Segjibhai Vasava v. State of Gujarat¹ and also the order dated 10-3-2021 passed by this Court in Cr.M.P.No.234/2021 (Narayan Sahu v. State of Chhattisgarh) wherein the co-accused has been granted the privilege of Section 482 of the CrPC by giving interim custody of vehicle after imposing reasonable conditions.

4. Mr. Ravi Kumar Bhagat, learned State counsel, would support the impugned order.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. The Act of 2004 has been enacted in the interest of the general public and to maintain communal harmony and peace, for prohibition of slaughter of agricultural cattle. Section 6 of the Act of 2004 provides prohibition on transport of agricultural cattle for slaughter. At this stage, it would be appropriate to notice the provisions contained in Section 6 of the Act of 2004 which reads as under: -

“6. Prohibition on transport of Agricultural cattle for slaughter.—(1) No person shall sell, or transport or offer to transport or cause to be transported any Agricultural cattle from any place within the state to any place within the state or outside the State, for the purpose of its slaughter in contravention of the provision of this Act or with the knowledge that it will be or is likely to be, so slaughtered.

(2) Whenever any person transports or causes to be transported in contravention of provisions of sub-section (1) any agricultural cattle as specified in the Schedule, such vehicle or any conveyance used in transporting such animal alongwith such agricultural cattle shall be liable to

1 2014 SCC OnLine Guj 14545

be seized by such authority or officer as the State Government may appoint in this behalf.

(3) The vehicle or conveyance so seized under sub-section (2) shall not be released by the order of the court on bond or surety before the expiry of six months from the date of such seizure or till the final judgment of the court, whichever is earlier and such vehicle shall also be liable for confiscation at the end of the trial.”

7. A focused perusal of Section 6(1) of the Act of 2004, would show that the provision bars transport, possession and sale of cattle for the purpose of slaughter or with the knowledge that the same may be slaughtered. Mere transport of cattle from one place to another for the purpose other than slaughter is not barred under the Act and in that case the provision under Section 6(3) of the Act of 2004 would not be applicable.

8. It is well settled law that penal statutes are to be strictly construed. When a specific word has been inserted by the legislature, the provision cannot be given a different meaning. In the matter of W.H. King v. Republic of India and another², their Lordships of the Supreme Court pertinently observed as under:-

“10. As the statute creates an offence and imposes a penalty of fine and imprisonment, the words of the section must be strictly construed in favour of the subject. We are not concerned so much with what might possibly have been intended as with what has been actually said in and by the language employed.”

9. Similarly, in the matter of State of West Bengal and others v. Swapan Kumar Guha and others³, the Supreme Court held as under: -

“15. ... when it is said that penal statutes must be construed strictly, what is meant is that the court must see that the thing charged is an offence within the plain meaning of the words used and it must not strain the words : “To put it in other words, the rule of strict construction

² AIR 1952 SC 156

³ (1982) 1 SCC 561

requires that the language of a statute should be so construed that no case shall be held to fall within it which does not come within the reasonable interpretation of the statute”, and that in case of doubt, the construction favourable to the subject should be preferred. But I do not think that this rule of strict interpretation of penal statutes in any way affects the fundamental principle of interpretation, that the primary test which can safely be applied is the language used in the Act and, therefore, when the words are clear and plain, the court must accept the expressed intention of the legislature. ...”

10. The *pari materia* provision contained in clause (4) of Section 6(A) of the Bombay Animal Preservation Act, 1954 came up for consideration before the Gujarat High Court in Ravidasbhai Segjibhai Vasava (supra) in which the Gujarat High Court considering the issue identical as involved in the present case held that clause (4) of Section 6(A) would apply only in a case where the animals are being transported for the purpose of slaughter. It has been observed in paragraphs 10, 11, 12 and 13 of the report as under: -

“10. The plain reading of section 6(A) clause (1) would indicate that the same is applicable in a case where it is found that the animals were being transported from any place within the State to any other place within the State for the purpose of slaughter in contravention of the provisions of the Act or with the knowledge that they were likely to be slaughtered. There is a proviso to section 6(A) clause (1) which provides that a person shall be deemed to be transporting such animal for the purpose of slaughter unless contrary is proved thereto to the satisfaction of the concerned authority or officer by such person or he has obtained a permission under sub-section (2) for transporting the animal for bona fide agricultural or animal husbandry purpose.

11. Clause (4) to section 6(A) puts a restriction so far as the release of the vehicle is concerned for a period of six months.

12. It is, therefore, manifest that section 6(A) clause (4) would apply only in a case where the animals are being transported for the purpose of slaughter.

13. It is not in dispute so far as the present case is concerned that no permit was obtained by the petitioner herein as the registered owner of the vehicle for the purpose of transport. However, at the same time, the prosecution has to, prima facie, show something that the transport of the cattle was for the purpose of slaughter. For such purpose, I inquired with Mr. Dabhi, the learned APP, regarding the materials collected by the police in the course of investigation. Mr. Dabhi has fairly submitted that there is nothing to show that the cattle were being transported for the purpose of slaughter. It appears that there is no investigation in that direction. If it is the case of the prosecution that the cattle were being transported for the purpose of slaughter, then at least, it is expected from the investigating officer to investigate at which place they were being taken and were to be handed over to whom for the purpose of slaughter. There is nothing in that regard. In the absence of such material, in my view, the prosecution cannot straight way take recourse to the deeming fiction as provided under section 6(A)(1). In such circumstances, I am of the view that there should not be any legal impediment in releasing the vehicle before the expiry of the statutory time period i.e six months.”

11. Reverting to the facts of the present case in the light of the aforesaid legal position and the principle of law flowing from the judgment of the Gujarat High Court in Ravidasbhai Segjibhai Vasava (supra), it is established legal position that if the agricultural cattle is being transported for the purpose of slaughter in contravention of the Act of 2004, bar under Section 6(3) would apply and vehicle cannot be released on interim custody for a period of six months or till the judgment is pronounced whichever is earlier, but mere transportation of agricultural cattle from one place to another for the purpose other than slaughter is not an offence under the said Act and in case Section 6(1) of the Act of 2004 is not attracted, bar contained in Section 6(3) of the Act would not attract and interim custody can be granted without waiting for the period of six months as provided.

12. A careful perusal of the order impugned and other documents

annexed with the petition would show that the prosecution or the investigating agency at no place has alleged that the petitioner's vehicle was being used to transport the cattle for the purpose of slaughter in contravention of the provisions of the Act, specifically Section 6(1) of the Act of 2004. Case of the prosecution in sum and substance is that the petitioner's vehicle was being used to carry the cattle from one place to another and it was not in contravention of Section 6(1) of the Act of 2004. This Court in Narayan Sahu (supra) has extended the benefit of Section 482 of the CrPC to the co-accused and he has been given the interim custody of vehicle after imposing certain reasonable conditions.

13. In that view of the matter, the impugned order passed by the trial Magistrate and affirmed by the learned revisional Court are hereby set aside. It is held that bar under Section 6(3) of the Act of 2004 is not at all attracted and in the light of the decision of the Supreme Court in the matter of Sunderbhai Ambalal Desai v. State of Gujarat⁴, the petitioner would be entitled for the custody of the vehicle till the conclusion of trial. Accordingly, the trial Court is directed to give the interim custody of the vehicle to the petitioner by imposing reasonable conditions. The vehicle shall be released within seven days from the date of complying with the conditions imposed by the trial Court.

14. The petition is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

⁴ (2002) 10 SCC 283