

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

202-CRM-M-34557-2020

Date of Decision: 07.02.2023

STATE OF HARYANA

...Petitioner

VS.

AKBAR

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Gagandeep S. Chhina, AAG Haryana for petitioner

Sandeep Moudgil, J. (Oral)

The petitioner-State of Haryana seeks quashing of the orders dated 22.07.2019 and 18.09.2020 (Annexures P2 & P4) passed by JMIC, Mewat and Additional Sessions Judge, Nuh, respectively, vide which application for *superdari* of 31 cows, 10 calves, 20 female calves and 2 bulls has been allowed and the revision petition filed by the petitioner-State has been dismissed in case FIR No.67 dated 17.04.2019 under Sections 5/13(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015, registered at Police Station Rojka Meo, District Nuh.

Notice of motion in this case was issued on 02.11.2020 and the operation of the impugned orders (Annexures P2 & P4) were stayed. However, respondent opted not to appear despite service.

Learned counsel for the petitioner-State submits that the courts below have failed to consider the fact that the respondent is facing trial in the instant FIR and as such, it was not justifiable to hand over cows/cattles, as mentioned in the application, to the respondent. Reliance is placed on the Hon'ble Supreme Court decision in **State of UP vs. Mustakeem & Ors., 2002**

(sup) ACrC 272 vide which the order passed by the High Court for releasing the animals in favour of the owner/accused, has been set aside.

It is further contended that there is nothing on record to shows that the respondent had obtained any permit for the export of cows, as required under Section 6 of the 2015 Act. Moreover, he did not even examine anyone from Rajasthan to prove that the animals were brought from Rajasthan for grazing purposes.

Having heard learned counsel for the petitioner-State and after going through the record, this Court is of the considered opinion that this petition ought to succeed. I say so for the reason that the cows/cattles were recovered from the spot from the possession of the respondent as they were not domesticated and were being taken for slaughtering purpose. The courts below lost sight of the fact that since the respondent himself is facing trial under the 2015 Act and challan under Section 13(2) stood filed against him and there was recovery of axe and knives from the possession of the respondent at the spot, the cows/cattles could not have been released in favour of the respondent on *superdari*, moreso, when it has come on record that the respondent is an accused in another FIR No.140 dated 30.04.2009 under the CS Act, registered at Police Station Hathin, Palwal.

In *State of UP vs. Mustakeem & Ors.*, the Hon'ble Supreme Court dealt with the issue of release of animals and observed that:-

“The State of Uttar Pradesh is in appeal against the direction of the Court directing release of the animals in favour of the owner. It is alleged that while those animals were transported for the purpose being slaughtered, an FIR was registered for

alleged violation of the provisions of Prevention of Cruelty to Animals Act, 1960 and the specific allegation in the FIR was that the animals were transported for being slaughtered, and the animals were tied very tightly to each other. The criminal case is still pending. On an appeal for getting the custody of the animals was filed the impugned order has been passed. We are shocked as to how such an order could be passed by the learned Judge of the High Court in view of the very allegations and in view of the charges, which the accused may face in the criminal trial. We, therefore, set aside the impugned order and direct that these animals be kept in the Goshala and the State Government undertakes to take the entire responsibility of the preservation of those animals so long as the matter is under trial.”

Taking into consideration the judgment in **State of UP vs. Mustakeem & Ors.** and also the fact that there had been recovery of axe and knives from the respondent coupled with the fact that the cows were being transported without any permit and the respondent is also accused in another FIR of similar nature, this Court is of the firm view that orders dated 22.07.2019 (Annexure P2) and 18.09.2020 (Annexure P4) cannot be allowed to sustain.

Accordingly, this petition is allowed and the orders dated 22.07.2019 (Annexure P2) and 18.09.2020 (Annexure P4) are quashed. In case the order has been executed, animals in question shall be handed over back to the Goshala along with recovery memo with due intimation and after taking support of the SHO of the concerned Police Station.

Ordered accordingly.

07.02.2023

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No