

Court No. - 86

Case :- CRIMINAL REVISION No. - 6703 of 2023

Revisionist :- Kamare Alam

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Narendra Deo Shukla, Vivek Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

Heard Sri Narendra Deo Shukla, learned counsel for the revisionist, learned A.G.A. for the State and perused the record.

The challenge in the present revision is the confiscation order dated 18.10.2023 passed by the Zila Magistrate, Bhadohi in respect of vehicle DCM bearing Registration No.UP1580 6847, which was seized by police team Police Station Gopiganj, District Bhadohi (U.P.) on 22.01.2021 at 07:45 hours on charge of transporting three number of bulls, seven number of cows, one calf and one dead bull total twenty one live and one dead progeny of cow for slaughter from West Bengal and vehicle was coming through Prayagraj. Two persons were sitting in the vehicle fled away from the spot on noticing the police team.

During investigation this fact emerged the Bhure Khan was the registered owner of the vehicle, who had executed a power of attorney in favour of his son Kamare Alam due to age related ailments for upkeep and management of the vehicle Canter Eisher Registration No.UP1580 6847. This fact emerged that Bhure Khan is the registered owner of the vehicle and his son Kamare Alam, the power of attorney holder was driver and defacto owner of the vehicle, chargesheet was filed against Kamare Alam after conclusion of investigation. The accused was arrested by police on 20.09.2021 and was lodged in jail. Confiscation proceedings were initiated under Section 5A(7) of U.P. Prevention of Cow Slaughter Act, before the District Magistrate on report of Station House Officer concerned, in which the accused Kamare Alam had filed an objection cum released application on 04.01.2022, in which he stated that his father had executed a power of attorney in his favour, regarding the said DCM carriage vehicle. The vehicle is lying at police station in unattended condition, due to which its

endanger of being mechanical badness.

Apart from present case only one case is registered against him at P.S. Gopiganj. No independent witness has been enjoined in alleged recovery. The vehicle is liable to be released in favour of the applicant and registered owner in the light of catena of decisions of this Court as well as other High Courts.

The applicant undertakes ensure upkeep of the vehicle, he will not change its structure or colour and undertakes to produce the same before the court as and when required.

Learned District Magistrate, after hearing submissions of counsel for the applicant- accused and senior prosecution of Bhadohi rejected the objection of the accused, in which it is stated that no cow or progeny of cow were seized from the vehicle and it was seized by police, on account of non fulfillment of their illegal monetary demand. Learned Magistrate observed that the progeny of cow seized from the vehicle are entrusted to the custody of Sugar Mill Auraiya, this shows that the progeny of cow were recovered from the vehicle. The accused- opposite party failed to produce any evidence in support of his contention that the vehicle was involved in the alleged offence on the basis of material available. It is obvious that said vehicle was used in smuggling of progeny of cow, learned District Magistrate directed confiscation of vehicle in favour of the State Government vide impugned order. Copy of order was directed to be dispatched to Superintendent of Police, Bhadohi and Station House Officer concerned for necessary action.

Learned counsel for the revisionist submitted that learned District Magistrate has passed the impugned confiscation order in illegal and arbitrary manner and without considering the fact that the First Information Report in the case was lodged against unknown persons under Section 3/5A/8 of the U.P. Prevention of Cow Slaughter Act, 1955 and Section 11 of the U.P. Prevention of Cruelty to Animals Act, 1960, Police Station Gopiganj, District Bhadohi.

No postmortem report regarding death of bull is placed on record in support of the version at the time of seizure one cattle was found dead. He also submitted that there is no embargo on release of the vehicle in favour of its registered owner under the provisions of newly amended Section 5A(7) of the U.P. Prevention of Cow Slaughter Act. The District Magistrate concerned is only the competent authority to pass release order with regard to vehicle

seized under the Act.

The confiscation order goes against right to property of its registered owner, which is a constitutional right under Article 300A and in view of confiscation order the applicant is deprived of his right to occupation as the vehicle is the means of livelihood of its registered owner and his family.

Per contra, learned A.G.A. submitted that the vehicle confiscated is involved in illegal transportation of cow for the purposes of slaughter without any valid permit to another State, which is in violation of Cow Slaughter Act. Learned A.G.A. further contended that proceedings towards confiscation of the offending vehicle and also criminal prosecution against the accused are parallelly maintainable.

Heard learned counsels for the parties and perused the record. Confiscation order dated 18.10.2023 has been passed by the District Magistrate, Bhadohi, in exercise of powers under Section 5A(7) of the Cow Slaughter Act.

The Uttar Pradesh Prevention of Cow Slaughter Act was enacted to prohibit and prevent the slaughter of cow and its progeny in Uttar Pradesh. Slaughter has been defined in Section 2(d) of the Cow Slaughter Act, which reads thus:-

"Slaughter means killing by any method whatsoever and includes maiming and inflicting of physical injury which in the ordinary course will cause death."

Section 3 of the Cow Slaughter Act lays down that "no person shall slaughter or cause to be slaughtered, or offer or cause to be offered for slaughter, a cow, bull or bullock in any place in Uttar Pradesh, anything contained in any other law for the time being in force or any usage or custom, to the contrary notwithstanding.

Section 5A of the said Act, which is useful for the adjudication provides for the regulation on transport of cow. Section 5A is quoted below:-

"Section 5A. Regulation on transport of cow, etc.- (1) No person shall transport or offer for transport or cause to be transported any cow, or bull or bullock, the slaughter whereof in any place in Uttar Pradesh is punishable under this Act, from any place within the State to any place outside the State, except under a permit issued by an officer authorised by the State Government in this

behalf by notified order and except in accordance with the terms and conditions of such permit.

(2) Such officer shall issue the permit on payment of such fee not exceeding five rupees for every cow, bull or bullock as may be prescribed :

Provided that no fee shall be chargeable where the permit is for transport of the cow, bull or bullock for a limited period not exceeding six months as may be specified in the permit.

(3) Where the person transporting a cow, bull or bullock on a permit for a limited period does not bring back such cow, bull or bullock into the State within the period specified in the permit, he shall be deemed to have contravened the provision of sub-section (1).

(4) The form of permit, the form of application therefor and the procedure for disposal of such application shall be such as may be prescribed.

(5) The State Government or any officer authorized by it in this behalf by general or special notified order, may, at any time, for the purpose of satisfying itself, or himself, as to the legality or propriety of the action taken under this section, call for and examine the record of any case and pass such orders thereon as it or he may deem fit].

[(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.

(9) The expenditure on the maintenance of the seized cows and its progeny shall be recovered from the accused for a period of one year or till the release of the cow and its progeny in favour of the owner thereof whichever is earlier.

(10) Where a person is prosecuted for committing, abetting, or attempting to an offense under Sections 3, 5 and 8 of this Act and the beef or cow-remains in the possession of accused has been proved by the prosecution and transported things are confirmed to be beef by the competent authority or authorized laboratory, then the court shall presume that such person has committed such offence or attempt or abetment of such offence, as the case may be, unless the contrary is proved.

(11) Where the provisions of this Act or the related rules in context of search, acquisition, disposal and seizure are silent, the relevant provisions of the Code of Criminal Procedure, 1973 shall be effective thereto.]"

Thus, transportation of cow etc. is regulated by Section 5A and Section 5A(7) confers power upon the District Magistrate/Commissioner of Police to confiscate 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. A perusal of the F.I.R. indicates that none of the cow were maimed nor physically injured. Further, the allegation that they were being transported to West Bengal from Prayagraj for slaughtering requires no consideration as the condition precedent for the application of the section is that the cattle described in the Act should have been transported from any place in the State of U.P. to any place outside the State.

Even if the story of seizure of cattle is believed, then also 21 cattle are said to have been seized within the jurisdiction of Police Station Gopiganj, District Bhadohi namely within the State of Uttar Pradesh and admittedly, the border is far away. The fact remains that cattle were apprehended from within the State of U.P. and, therefore, it cannot be said that they were transported to a place outside the State of U.P.

Admittedly, the criminal proceedings initiated in terms of the F.I.R. have not culminated, thus, the allegations of the F.I.R. are yet to be established. Commission of offence is one of the requisite

ingredients for passing an order of confiscation and an order of confiscation should not be passed automatically. Thus, there is no material, as exists on record, to justify the exercise of powers under Sub Section 7 of Section 5A. The same is clearly contrary to the mandates and powers conferred upon the District Magistrate.

The confiscation by its very connotation implies depriving a person of his property to which he is entitled to retain. Article 300A of the Constitution of India provides that no person shall be deprived of his property save by authority of law. Arbitrary confiscation of the property which he might be using for his trade, profession or occupation is a serious encroachment on the fundamental right of a citizen under Article 19(1)(g) of the Constitution of India to carry on his trade, occupation or business. The procedure prescribed by law for confiscating the property, as contained in Section 5A(7) of the Cow Slaughter Act, empowers the District Magistrate/Commissioner of Police to confiscate/seize the vehicle only if the conditions so prescribed under Sub Section 7 of Section 5A are fulfilled.

The provisions of Section 5A manifest that no permit is required for transportation of progeny of cow within State of U.P. from one place to another, and there is no material in support of the allegation that the cattle were being transported from State of U.P. to Westbengal in violation of relevant statutory provisions.

In view of the foregoing discussion the confiscation order of the District Magistrate dated 18.10.2023 cannot be sustained and is, accordingly, set aside. The District Magistrate is directed to pass an appropriate release order in regard to vehicle after taking personal bonds and surety each in the like amount from the registered owner of the vehicle to his/her satisfaction within a period of one week on production of a certified copy of this order.

The revision succeeds and is **allowed**.

Order Date :- 23.10.2024

Ashish/-