

A.F.R.

Reserved on: 29.03.2022

Delivered on: 25.08.2022

Court No. - 88

Case :- APPLICATION U/S 482 No. - 23143 of 2021

Applicant :- Mohd.Shakib

Opposite Party :- State of U.P.

Counsel for Applicant :- Mani Shanker Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Aslam,J.

1. Heard Shri Mani Shanker Pandey, learned counsel for the applicant, Shri L.D. Rajbhar, learned A.G.A. for the State-opposite party no.1 and perused the record.
2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the impugned order dated 18.08.2021 passed by District Magistrate, Varanasi in Case No. 00054 of 2021 (State vs. Mohammad Shakib), under Section 5A U.P. Cow Slaughter Act, 1955, as well as order dated 13.10.2021 passed by Special Judge (SC/ST Act), Chandauli in Criminal Revision No. 54 of 2021 (Shakib vs. State of U.P.).
3. Brief facts of the case are that applicant is registered owner of vehicle no. UP-70ET/2667 which is duly registered in the Transport Department, U.P, the photostat copy of registration certificate has been annexed as Annexure No.2 to the affidavit. The aforesaid vehicle was insured with Oriental Insurance Company Ltd. for the period of 15.07.2020 to midnight 14.07.2021, photostat copy whereof has been annexed as Annexure No.3 to the affidavit. The aforesaid vehicle was purchased by the applicant with the financial assistance of MAGMA Fincrop Ltd., 11 MG Habibullah Estate, Hazratganj, Lucknow w.e.f. 21.10.2019 which is endorsed in the registration paper of aforesaid vehicle itself. The vehicle is used to run on the road in transport business

by the applicant and monthly installment of the financier of Rs.35,000/- is being paid by the applicant. During the course of business on 12.12.2020 the vehicle was caught by the police of police station Sayaidaraja, District Chandauli at about 20:50 P.M. and was seized in favour of government for illegally carrying the transport business of cow without any legal authority and first information report was lodged under Sections 3/5A/8, 5B of Cow Slaughter Act and Section 11 Prevention of Animal Cruelty Act.

4. As per the first information report, it was informed by the informer that the alleged Truck bearing registration No. UP-70ET/2667 is carrying animals for the purpose of cow slaughtering without valid permission and on that information the concerned police caught the aforesaid vehicle and recovered 16 bullocks, whereas, the driver of the vehicle had ran away. Thereafter, the aforesaid vehicle was taken to police station and first information report was lodged on 12.12.2020 at 22:48 hrs. as Case Crime No. 235 of 2020, under Sections 3/5A/8, 5B Cow Slaughter Act and Section 11 Prevention of Cruelty to Animals Act and seized the aforesaid vehicle in favour of government. The aforesaid vehicle is a heavy vehicle and national permit has also been issued by Transport Department, UP, Allahabad and authorized certificate to national permit is also issued, copies whereof have been annexed as Annexure No.4 to the affidavit. The Pollution Under Control Certificate is also issued by Transport Department, UP, Allahabad till 05.01.2021, copy of the same has been annexed as Annexure No.5 to the affidavit. The aforesaid vehicle is in custody of police authority of Police Station Saiyadraja since 12.12.2020. The concerned police informed the applicant at the time of seizing of the Truck that driver of the Truck had ran away from the spot. Thereafter, applicant produced the driver before the court below who was released on bail by the court below. The applicant was granted anticipatory bail by this Court vide order dated 18.03.2021 passed in Criminal Misc. Anticipatory Bail Application No. 1854 of 2021, the copy of the order has been annexed as Annexure No.6 to the affidavit. The applicant had purchased the aforesaid Truck in the

year, 2015 and since then there was no complaint regarding carrying of cow or its progeny. Prior two days of the incident, the driver of the aforesaid Truck had gone to carry paddy in district Chandauli without giving information to the applicant, and thereupon, the aforesaid Truck was caught by the police of police station Saiyadraja who informed the applicant about the seizure of Truck. The aforesaid offence was committed by the driver of Truck without knowledge of the applicant and applicant has no role in this regard. The applicant was unaware about committing of offence by the driver of the Truck. Due to seizure of Truck, the parts and tools of it are damaging and the aforesaid Truck is standing in the open place at concerned police station. In case, the aforesaid Truck is released by this Court, the applicant undertakes not to transfer the Truck to third-party. The applicant had also moved an application for release of the Truck in question before District Magistrate, Varanasi which was rejected vide impugned order dated 18.08.2021 without considering the release application of the applicant, copy of the impugned order has been annexed as Annexure No.7 to the affidavit. Thereafter, the applicant filed a criminal revision against the impugned order dated 18.08.2021 before District and Sessions Judge, Chandauli on the aforesaid ground which was registered as Criminal Revision No. 54 of 2021, copy of the memo of revision has been annexed as Annexure No.8 to the affidavit. The aforesaid revision was transferred to the court of Special Judge (SC/ST Act), Chandauli and the revisional court also without considering the record of the case in a routine manner rejected the revision vide order dated 13.10.2021, copy whereof has been annexed as Annexure No.9 to the affidavit.

5. In this case no counter affidavit has been filed on behalf of the State-opposite party no.1.

6. Learned counsel for the applicant submits that the applicant has moved release application before the District Magistrate, Varanasi stating therein that applicant is a registered owner of the vehicle in question which is duly registered at Transport Department, UP and is involved in transport business. When the alleged incident took place, the

said vehicle was being driven by the driver who was carrying cow and its progeny without the knowledge of applicant. It is further submitted that applicant has no concern with the recovered cow progeny. The release application of the applicant has been rejected by District Magistrate vide order dated 18.08.2021 only on the ground that applicant has not taken reasonable care for the use of vehicle by which cow progeny were being illegally transported and has illegally confiscated the Truck under the proceeding of Section 5A UP Prevention of Cow Slaughter Act, 1955. The revision of the applicant has illegally been rejected vide order dated 13.10.2021. It is further submitted that the impugned orders of District Magistrate as well as of revisional court are illegal and liable to be set-aside and he has placed reliance on the law laid down by the Hon'ble Apex Court in *Sunderbhai Ambalal Desai and C.M. Mudaliar vs. State of Gujarat [AIR 2003 SC 638]*. Learned counsel of the applicant has also drawn the attention of the Court regarding the provisions of Sections 451 and 457 of Cr.P.C. He has also submitted that the applicant is ready to comply with all the conditions imposed upon him while releasing the vehicle.

7. Learned A.G.A. has vehemently opposed the prayer for release of the vehicle and submitted that before confiscation proceedings applicant has not taken plea that the transport medium (the Truck in question) was used in the commission of crime despite all its precaution and without its knowledge by the driver of the Truck. For the first time, in the present application it has been stated that the Truck was used for transportation of cow and its progeny without his knowledge. It is further submitted by learned A.G.A. that in objection before District Magistrate applicant had denied involvement of his vehicle in transporting of cow and its progeny and had taken the stand that his vehicle was falsely implicated in transportation of cow and its progeny. He had pleaded before District Magistrate that transportation of cow and its progeny within the State of UP requires no permit and it does not amount to an offence. He had further pleaded that he is a registered owner of the vehicle and all papers relating to vehicle are valid and he has no concern with the recovered

cow and its progeny from his vehicle, thus, if the vehicle is not released it will get damaged as it is kept in the open space at the concerned police station. Learned A.G.A. has further submitted that cow and its progeny cannot be transported within the State of UP without permit as per Section 5A of Cow Slaughter Act which regulates transport of the cow etc. It is further submitted that by UP Act the sub-clauses (6), (7), (8), (9), (10) and (11) were inserted after sub-clause 5 to Section 5A which deal with the seizure of the cow and transport medium 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 law enforcement officers. The District Magistrate/or Commissioner of the police will do all proceedings of confiscation and release, as the case may be, unless it is not proved that the transport medium used in crime, despite all its precaution and without its knowledge, has been used by some other person for causing the offence.

8. Learned A.G.A. has further submitted that it cannot be alleged by the applicant under the confiscation proceedings before the District Magistrate that despite of all his precaution and without his knowledge, the said vehicle was used by some other person for causing the offence. In above circumstances, the impugned orders passed by the District Magistrate, Varanasi as well as revisional court are according to law, which warrant no interference by this Court.

9. I have given thoughtful consideration to the contentions raised by the counsel of the applicant as well as learned A.G.A. and gone through the file, relevant provisions of Cow Slaughter Act and the provisions of Code of Criminal Procedure.

10. Here the question involved in this case is that whether the applicant has violated any provisions of law in transporting cow and its progeny by the vehicle in question and the impugned orders of the District Magistrate, Varanasi dated 18.08.2021, confiscating the said vehicle and the impugned order passed by Special Judge (SC/ST Act), Chandauli dated 13.10.2021, dismissing the revision of the applicant, are according to law or not.

11. For deciding the instant application under Section 482 Cr.P.C., it is necessary to go through the relevant provisions of UP Cow Slaughter Act. Section 5-A of the Act provides for regulation on transport of cow, etc., which reads as under:-

"5-A. 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 hundred 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 therefore and the procedure for disposal of such application shall be such as may be prescribed.

(5) The State Government or any officer authorised 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, called for and examine the record of any case and pass such orders thereon as it or he may deemed fit.

[(6) Where the said conveyance has been confirmed to be related to beef by the competent authority or authorised 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 offence 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 authorised 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.]”

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 authorised 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.

14. Accordingly, the instant application under Section 482 Cr.P.C. is allowed. The impugned orders dated 18.08.2021 passed by District Magistrate, Varanasi and the order dated 13.10.2021 passed by Special Judge (SC/ST Act) are, hereby, set-aside, consequently, the concerned court below is directed to release the vehicle in question forthwith, in accordance with law.

15. Let a copy of this order be transmitted to the concerned court below for necessary compliance forthwith.

Order Date :- 25.08.2022

Vikas