

A.F.R.

Reserved on : 07.04.2022

Delivered on : 17.08.2022

Court No. - 72

Case :- CRIMINAL REVISION No. - 817 of 2022

Revisionist :- Manjeet Tanwar @ Manjeet Tankar

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

Counsel for Revisionist :- Irfan Raza Khan, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Aslam, J.

1. Heard Sri Irfan Raza Khan, learned counsel for revisionist, Sri L.D. Rahbhar, learned A.G.A. for the State and perused the record.

2. The instant revision has been preferred against the impugned order dated 11.11.2021 passed by learned Special Chief Judicial Magistrate, Agra by which the application of the revisionist/applicant for release of Vehicle No. Eicher Canter DL 1 GC 5909 in Case Crime No. 36 of 2021, under Sections 3/5A/8 Prevention of Cow Slaughter Act, Police Station- Saiyan, District- Agra was rejected.

3. The brief facts necessary for disposal of this case are that on 24.03.2021 Sub-Inspector Virendra Kumar along with his companion Constables Lalit Kumar, Ravi Kant Yadav and Saurabh Kumar and Driver Brij Kumar proceeded from Police Station Sainya vide entry in general diary report no. 27 at about 14:10 hours and were busy in patrolling duty and when they reached at Saiyan crossing they were informed by the informer that a red colour Tata Eicher Canter loaded with banned cow skin was coming from the side of Dhaulpur, Rajasthan to Agra. On the information, Sub-Inspector Virendra Kumar started checking the vehicles by putting barrier near Saiyan Toll for apprehending the aforesaid Canter and tried to take public witnesses, but none agreed to testify, under that compulsion the police party searched each other and no incriminating articles was found from any members of the police party. As soon as the

informer saw the red colour Tata Eicher Canter bearing Registration No. DL 1 GC 5909, he pointed out the police party and left from the place, thereafter, the policemen signalled the driver of the aforesaid Canter to stop the vehicle. On seeing the police party, the driver stopped the aforesaid vehicle some distance ahead and started turning back the Canter in a hurry, then the police party convinced that there were definitely some illegal goods in the Canter and they apprehended the driver who told his name as Akash son of Man Singh, resident of Mohalla- Maha Talee Lane, Police Station- Shikohabad, District- Firozabad and present address Tyagi Chaupal near Chhatarpur Temple, Police Station- Mehrauli, New Delhi and he also told that his permanent address is village Jarar, Police Station- Wah, District- Agra and told that he is aged about 24 years. On his personal search, a mobile phone of OPPO company was recovered from the right pocket of his trousers. The IMEI numbers of the phone was obtained as (1) 863885033196312 (2) 863885033196304 and Rs. 3100/-and an Aadhar Card in the name of Akash Pratiman Singh resident of Mohalla- Mahteli Gali, Shikohabad, District Firozabad were also recovered from him. On being asked about the reason for turning the vehicle back, he told that the vehicle was loaded with cow skin on which the policemen removed the Tripal and found 145 bundles of cow skin from which smell of rotten meat was coming out and Dr. Mahendra Verma, Veterinary Medical Officer, Saiyan, Agra was asked to come at the spot over phone who came there in no time and after closely checking he told that the bundles of the skin loaded in the Canter is the skin of cow and took three pieces of skin from different bundles for sample which were separately kept in three jars and sealed and sample seal was prepared. The accused Akash could not produce the papers of the vehicle, therefore, the aforesaid vehicle was seized under Section 207 of Motor Vehicle Act and the accused was arrested after informing him that his act is punishable under Sections 3/5Ka/8 of Uttar Pradesh Cow Slaughter (Prevention) Act. The recovery memo was prepared on the spot by Sub-Inspector Virendra Singh and companion police constables and Dr. Mahendra Verma. On the basis of recovery memo, Case Crime No.0036 of 2021, under Sections 3/5Ka/8

was registered against the accused/Driver Akash, later on who was released by the coordinate Bench of this Court vide order dated 31.08.2021 passed in Criminal Misc. Bail Application No. 24517 of 2021 (Akash vs. State of UP).

4. The revisionist is owner of the aforesaid Vehicle No. Eicher DL 1 GC 5909 who moved an application for the release of aforesaid Canter which was rejected by learned Special Chief Judicial Magistrate, Agra vide impugned order dated 11.11.2021.

5. Feeling aggrieved by the aforesaid impugned order, the revisionist has preferred this revision and has filed the photocopy of e-Way Bill System as Annexure No.3, Registration Certificate of Canter DL1GC5905, Fitness Certificate, Permit, Insurance Certificate, Motor Insurance Certificate Cum GCCV- Public Carriers Other Than Three Wheelers Package Policy-Zone A (Annexure No.4), Bill of Supply in favour of Maaz Traders, Mohalla- Peer Khan Soldpur Road, Gulaathi (BSR) Uttar Pradesh issued by Maharashtra Leather Merchant dated 22.03.2021 (annexure no.5), Extract of Uttar Pradesh Prevention of Cow Slaughter Act (annexure no.6), copy of NPPA document (annexure no.7), photocopy of certified copy of impugned order dated 11.11.2021 passed by Special Chief Judicial Magistrate, Agra in Case Crime No. 36 of 2021, under Sections 3/5A/8 Prevention of Cow Slaughter Act, P.S. Saiyan, District- Agra.

6. Learned counsel for the revisionist has submitted that the lower court has illegally held that in view of the law laid down by this Court in ***“Yaash Mohammad vs. State of Uttar Pradesh and Others, reported in 2021 SCC Online Allahabad 608”*** that the Canter was seized under special criminal act and it has no jurisdiction to release the Canter under Sections 451, 452, 457 of Code of Criminal Procedure and has rejected his release application. It is further submitted that the facts of the aforesaid case referred by learned lower court while rejecting the application do not apply in this case. Learned counsel has submitted that this Court in Criminal Misc. Application No. 20507 of 2008 (Mohd. Haneef vs. State of UP and Others) decided on 08.01.2010 relying upon

the order passed by this Court dated 06.01.2005 in Criminal Revision No. 23 of 2005, the skin to be released in favour of the accused-revisionist wherein it is also held that “A perusal of above order passed in Criminal Revision goes to show that 456 pieces of leather were recovered from possession of one Babu and a case under Section 3/5/8 of Cow Slaughter Act was registered. The applicant/revisionist who is the owner of above leather, approached the lower court for release of the above leather pieces, which was rejected by the court below. The submission was made by the learned counsel for the revisionist in that case that no offence under section 3/5/8 of Cow Slaughter Act was made out as the leather pieces were recovered and the recovery of said leather pieces was not an offence under the Act and only slaughtering and keeping the beef is an offence under the Cow Slaughter Act. Considering the facts and circumstances of the case and without going into the merits of the same, this Court allowed the said revision and directed the Magistrate to release 456 pieces of leather in favour of the revisionist.”

7. In view of above analogy, this Court had allowed the application under Section 482 Cr.P.C. in *Mohd. Haneef vs. State of UP and others (supra)*. Learned counsel for revisionist has submitted that on the above analogy and the above law laid down by this Court, the impugned order dated 11.11.2021 passed by learned Special Chief Judicial Magistrate, Agra in in Case Crime No. 36 of 2021 (State vs. Manjeet Tanwar) is liable to be quashed and the lower court may be directed to release the aforesaid Eicher Canter bearing Registration No. DL 1 GC 5909 in favour of revisionist/applicant.

8. It has been further submitted by learned counsel for revisionist that Section 2 (a) which deals definition read as follows:-

Section 2 – Definitions

“In this act, unless there is anything repugnant in the subject to context- (a) ‘Beef’ means flesh of cow but does not include such flesh contained in sealed containers and imported as such in Uttar Pradesh.”

9. It is further submitted that leather does not fall within the definition of ‘Beef’, therefore, Canter cannot be seized under Prevention

of Cow Slaughter Act. It is further submitted that the aforesaid Canter was transporting the leather skins of cow which is not prohibited by the provisions of Cow Slaughter Act. In above circumstances, learned lower court has illegally held that it was contravention of cow slaughter and it has no jurisdiction to release the Canter.

10. Learned A.G.A. has opposed the release of the vehicle Eicher Canter bearing Registration No. DL 1 GC 5909 and submitted that learned lower court has rightly held that it has no jurisdiction to decide the release application of the revisionist/applicant and rejected the release application according to law vide impugned order dated 11.11.2021 which requires no interference by this Court.

11. I have given thoughtful consideration to the contentions raised by learned counsel for the applicant as well as learned A.G.A. In this case, it is admitted to the parties that the Eicher Canter DL 1 GC 5909 is seized in Crime No. 36 of 2021, under Section 3/5A/8 of Uttar Pradesh Cow Slaughter Act. It is also admitted to the parties that the revisionist is the registered owner of the aforesaid vehicle. Now, the question arose whether transportation of leather skin outside the State is contravening the provisions of Cow Slaughter Act as amended from time to time:-

“Section 3. Prohibition of Cow Slaughter.- 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.

5. Prohibition on sale of beef.- Except as herein excepted and notwithstanding anything contained in any other law for the time being in force, no person shall sell or transport or offer for sale or transport or cause to be sold or transported beef or beef-products in any form except for such medicinal purposes as may be prescribed.

Exception.- A person may sell and serve or cause to be sold and served beef or beef products for consumption by a bona fide passenger in an air-craft or railway train.

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 therefor 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, 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 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 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 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.

5B- Insertion of Section 5B- *Whoever causes any physical injury to any cow or its progeny so as to endanger the life thereof such as to mutilate its body or to transport it in any situation whereby endangering the life thereof or with the intention of endangering the life thereof does not provide with food or water shall be punished with imprisonment for a term which shall not be less than one year and which may extend to seven years and with fine which shall not be less than one Lakh rupees and which may extend to three Lakh rupees.*

8. Amendment of section 8- (1) *Whoever contravenes or attempts to contravene or abets the contravention of the provisions of Section 3, Section 5 or Section 5-A shall be guilty of an offence punishable with rigorous imprisonment for a term which shall not be less than three years and which may be extend to ten years and with fine which shall not be less than three Lakh rupees and which may extend to five Lakh rupees.*

(2) Whoever after conviction of an offence under this Act is again guilty of an offence under this Act, shall be punished with double the punishment provided for the said offence for the second conviction.

(3) The names and the photograph of the person accused of the contravention of the provision of Section 5-A shall be published at some prominent place in locality where the accused ordinarily resides or to a public place, if he conceals himself from the law enforcement officers.”

12. From perusal of Section 5A Cow Slaughter Act, it is very much clear that there is no contravention of transportation of cow skin leather from outside of the State. In such a matter, the District Magistrate/Commissioner of the Police has no jurisdiction to confiscate such vehicle in the event of seizure of vehicle by law enforcement officer. This Court in Criminal Revision No. 23 of 2005 had held that transport of cow skin leather does not amount any contravention of provisions of Cow Slaughter Act which is followed by this Court in ***Criminal Misc. Application No.20507 of 2008 (Mohd. Haneef vs. State of UP and others decided on 08.01.2010).***

13. In above circumstances, the Judicial Magistrate has jurisdiction to release the Canter DL1GC5909 as being the case property. The ruling of Single Bench of this Court in *Yaash Mohammad vs. State of UP (supra)* on which learned lower court has relied and held that the lower court has no jurisdiction to release the Canter in question is not applicable in this case because in the aforesaid case the application for the release of vehicle was rejected on the ground that the cow or its progeny was transported in contravention of Section 5A of Uttar Pradesh Cow Slaughter Act regarding which special provisions were prescribed and only District Magistrate/Commissioner of the Police was authorised to pass order for confiscation in the event of seizure of cow or its progeny and transport medium.

14. It is further provided that in case where the provisions of this Act or the related rules in context of such, acquisition, disposal and seizure are silent, the provision of Criminal Procedure Code, 1973 shall be affected thereto.

Section 5A (11) of Cow Slaughter Act reads as follows:-

“5A(11). Where the provision of this Act or the related rules in context of such, acquisition, disposal and seizure are silent, the provision of the Code of Criminal Procedure, 1973 shall be effective thereto.”

15. From above discussion, it is, *prima facie*, established that the skin leather of cow was not transported in contravention of the provisions of Cow Slaughter Act or rule of Uttar Pradesh Cow Slaughter Rules. In above circumstances, the Special Magistrate, Agra has jurisdiction to decide the release of the vehicle in question by which the skin leather of cow or its progeny was transported. Learned Magistrate has jurisdiction to decide the release application of the revisionist/applicant and learned lower court has illegally held that he has no jurisdiction to hear on the release application of Canter DL1GC5909, hence, the revision is liable to be allowed and order of the lower court is liable to be set-aside.

16. Accordingly, the criminal revision is *allowed*. The impugned order dated 11.11.2021 passed by Special Chief Judicial Magistrate,

Agra is set-aside and learned Special Chief Judicial Magistrate, Agra is directed to decide the release application of applicant within a period of one month from the date of production of the certified copy of this order.

Order Date :- 17.8.2022

Vikas

[Mohd. Aslam, J.]