

**A.F.R.**

**RESERVED ON 3.10.2023**

**DELIVERED ON 6.10.2023**

**Court No. - 13**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 6826 of 2023

**Petitioner :-** Kaliya

**Respondent :-** State Of U.P. Thru. Prin.Secy. Deptt. Of Home Lko And 3 Others

**Counsel for Petitioner :-** Farhan Alam Osmany,Abdl Muqet Khan

**Counsel for Respondent :-** G.A.

**Hon'ble Karunesh Singh Pawar,J.**

1.The petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari quashing order dated 14.3.2023 passed by District Magistrate, Hardoi whereby the petitioner's vehicle UP16H/9922 has been confiscated and the order dated 15.6.2023, passed by the Commissioner, Lucknow Mandal, Lucknow by which the appeal filed by him against the order dated 14.3.2023 (Supra) has been rejected.

A further prayer for release of the said vehicle has also been made.

2.Heard Mr. Farhan Alam Osmany, learned counsel for the petitioner and Mr. Alok Tiwari, learned A.G.A. for the State.

3.The facts relevant for disposal of the case are that a first information report No.508 of 2022 under sections 3, 5 and 8 of U.P. Prevention of Cow Slaughter Act, 1955 (in short, Act) was registered on 2.11.2022 at police station Kachhauna, district Hardoi against named

accused persons stating that seven persons were caught red handed while carrying cow and its progeny. Certain incriminating articles such as two motorcycles, two 12 bore pistols, mobile phones etc were also recovered from the named accused persons. DCM truck No.UP16H9922 is registered in the name of the petitioner. Relevant documents relating to ownership of the vehicle in question, such as registration certificate, certificate of fitness, insurance paper etc are on record and in the name of the petitioner.

Since the date of seizure, i.e. 2.11.2022, the DCM vehicle is standing at the police station Kachhauna, district Hardoi. On the basis of the first information report No.508 of 2022, proceedings under section 5-A(7) of the Act against the petitioner were initiated and show cause notice dated 13.12.2022 calling for the reply was served on the petitioner. The petitioner submitted his reply dated 17.2.2023 to the show cause notice denying the incident and the allegations levelled against him. In the reply, it has been stated that he is not named accused in the case nor charge sheet has been filed against him. The vehicle in question has not been used for transportation of the cows and its progeny. No beef has been recovered from the vehicle. He is the registered owner of the vehicle and has been falsely implicated as he opposed the illegal extortion committed by the police and thus it is prayed that the vehicle be released.

The District Magistrate vide impugned order dated 14.3.2023 (supra) in exercise of powers under section 5-A(7) has confiscated the vehicle in favour of the State Government while recording a finding that the aforesaid vehicle was

being used for slaughtering the cows and its progeny and were being transported for the aforesaid purpose, hence, provisions of the Act have been violated. The appellate court did not find any illegality in the impugned order and upheld the order passed by the District Magistrate.

4. Admitted facts according to prosecution case are that the petitioner is the owner of the vehicle No. UP16H9922. The petitioner is not accused in the first information report No. 508 of 2022. No charge sheet has been filed against the petitioner and the alleged cows were being transported within the State of U.P.

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated. Nothing has been recovered from the vehicle. The impugned orders have been passed without application of mind. The provisions of Section 5-A of the Act are not applicable in the facts of the present case.

6. Learned A.G.A., on the other hand, opposed the submission and contended that the impugned orders have been passed strictly in accordance with Section 5-A(7) of the Act. The vehicle was involved in inter-State transportation of cows and its progeny and thus, provisions of Section 5-A of the Act have been violated and therefore, the vehicle has rightly been seized. It is submitted that the cows or its progeny cannot be transported inter state, for the purpose of slaughtering without grant of permit as per section 5-A of the Act.

7. Having heard learned counsel for the petitioner, learned A.G.A. and going through the record as

well as provisions of the Act, I find that the moot question involved in this case is whether the present petitioner has violated any provision of law in transportation of cows and its progeny by the aforesaid vehicle and whether the impugned orders have been passed confiscating the said vehicle in accordance with law.

8. Before proceeding further, it would be appropriate to extract Section 5-A of the Act which is reproduced below :

*"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.]”*

9.A perusal of section 5-A(1) of the Act shows that the said provision shall come into place when the cow or its progeny is transported from within the State of U.P. to any other place outside the State and in that case, permit issued by the authorised officer of the State government shall be required.

There is nothing on record to show that the alleged recovered animals, i.e. the cows were being transported from within the State of U.P. to any other State. Therefore, from the plain reading of section 5-A of the Act, the permit is not required in the peculiar facts of this case.

10. The question involved in the case in hand has also come up for consideration before this court in **Kailash Yadav and others** versus **State of U.P. and others** 2008(10) ADJ 623 wherein it has been held that no permit is required for transportation of cow or its progeny within the State of U.P.. Section 5-A(6 to 8) provides for confiscation and release of vehicle by which beef or cow and its progeny is transported in violation of the provisions of the Act and relevant rules.

11.From perusal of sub sections (1 to 5) of section 5-A of the Act and the law laid down by this court in Kailash Yadav's case (supra), it is

evident that there is no need of permit to transport cow(s) and its progeny within the State of U.P.. Hence, such transportation of cow and its progeny cannot be said to be in violation of the Act. Consequently, it can also not be said that the seized vehicle has been used in violation of Section 5-A or any other provision of the Act. Therefore, the police has no power or jurisdiction to seize or confiscate the vehicle in question and the District Magistrate also could not have issued notice under section 5-A of the Act when there is nothing to substantiate that the animals were being transported from within the State to some other State. In other words, in case the animals were being transported within the State of U.P., no show cause notice under section 5-A of the Act could have been given.

12.A coordinate Bench of this Court vide judgment and order dated 25.8.2022 passed in **Mohd. Shakib** versus **State of U.P.** Application under section 482 CrPC No.23143 of 2021 has held that no permit is required to transport cow and its progeny within the State of U.P. and 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. Relevant paras 12 and 13 of the judgment in Mohd. Shakib's case (supra) is reproduced as below :

*"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. "*

**Supreme Court in Sunderbhai Ambalal Desai and C.M. Mudaliar versus State of Gujarat [AIR 2003 SC 638] has deprecated the practice of police authorities by keeping the seized vehicles at the police station and has set out time limit for release of such vehicles within a maximum period of one month. It is said that the articles are not kept for a long time at the police station, in any case for not more than fifteen days to one month.**

**13. In the case in hand, it is evident that the cow and its progeny were not being transported from within the State to outside State, therefore, the provisions of section 5-A of the Act are not attracted. Consequently, the show cause notice dated 13.12.2022 (supra) issued by the District Magistrate, confiscation order dated 14.3.2023**

(supra) and the appellate order dated 15.6.2023 (supra) are bad in law, and liable to be and are set aside.

The opposite parties are directed to release the vehicle forthwith in accordance with law on such terms which are deemed appropriate.

14.The petition is allowed in above terms.

**Order Date :- 6.10.2023**

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