
(2010) 10 AHC CK 0393
In the Allahabad High Court
Case No : Criminal M.W.P. No. 10776 of 2010

Asif and Another	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Cruelty to Animals Act, 1960 — Section 11, 29
Uttar Pradesh Prevention of Cow Slaughter Act, 1955 — Section 5(A), 8

Citation : (2011) 2 ACR 1430

Hon'ble Judges : Kant Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shri Kant Tripathi, J.—This is a writ petition under Article 226 of the Constitution of India for quashing the impugned order dated 29.3.2010, passed by Incharge Special Judicial Magistrate, (C.B.I.), Ghaziabad (Annexure-3) as well as the order dated 17.4.2010, passed by Additional Sessions Judge, Court No. 9, Ghaziabad in Criminal Revision No. 87 of 2010 (Annexure-4).

2. It appears that twelve cows and four calves were seized from the truck No. R.J. 31-L/0272 by the police of police station Masoori, district Ghaziabad, in connection with the Crime No. 149 of 2010 u/s 5A of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (in short "the Act of 1955") and Section 11 of the Prevention of Cruelty to Animals Act, 1960 (in short "the Act of 1960"). The Petitioners Asif and Illiyas claimed ownership of the aforesaid cows and calves and moved an application for their release but the learned Magistrate rejected the release application on the ground that the aforesaid catties were being transported without any valid permit and as such they were liable to be confiscated in accordance with Rule 16 (3) of the Rules framed under the Act of 1955. The Petitioners then preferred Criminal Revision No. 87/2010, Asif and Anr. v. State of U.P. The learned Additional Sessions Judge, Court No. 9, Ghaziabad

found no substance in the revision and dismissed the same vide the judgment and order dated 17.4.2010. The present writ petition has been filed to impugn the aforesaid orders.

3. The learned Counsel for the Petitioners submitted that according to Section 5A of the Act of 1955 no permit was required for transportation of a cow or its progeny from one place to another within the Uttar Pradesh. The permit was required when the transportation was to be made from any place within the State to any place outside the State, therefore, no breach of Section 5A of the Act of 1955 and the aforesaid Rule 16 (3) was committed and as such the question of confiscation of the catties does not arise. In reply thereof the learned A.G.A. submitted that there was even violation of the Act of 1960, therefore, the release is not proper.

4. Section 5A of the Act of 1955 may be reproduced as follows:

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 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 deem fit.

5. For the implementation of the aforesaid provision. Rule 16 of the Uttar Pradesh Govadh Nivaran Niyamavali, 1964 has been framed, which may be reproduced as follows:

Rule 16. (1) Any person intending to transport or to offer for transport or to cause to transport any cow, bull or bullock, the slaughter whereof is punishable under this Act in any place in Uttar Pradesh from any place within the State to any place outside the State shall apply for a permit to the licensing authority on prescribed Form "G".

(2) The licensing authority may grant such permit on payment of fee of Rs. 5 (Rupees five) per cow, bull or bullock to be deposited through Treasury Challan under the receipt head "110-Pashupalan-A-Other receipt (6) Misc." In case the animal so transported is brought back to the State within the period of six months from the date of issue of the permit, the fee Rs. 5.00 shall be refunded to be permit-holder, if the refund is claimed. All animals intended to be transported shall be tattooed in right ear prior to the transportation from the State.

(3) Cow, bull or bullock transported without a valid permit shall be confiscated and shall be auctioned and the sale proceeds will be deposited under the receipt head given in Sub-rule (2) above and such person, who causes unauthorised transport shall be prosecuted u/s 8 of the Act.

(4) The permit referred in Sub-rule (2) shall be in Form "H".

(5) In the event of death of the cow, bull or bullock being so transported prior to its return, the permit-holder shall submit the death certificate for the local Veterinary Surgeon to the licensing authority failing which he shall be liable for prosecution u/s 8 of the Act.

(6) These rules shall also apply to the cows, bulls or bullocks transported to cattle fairs, exhibitions and markets outside the State. The permit-holder shall have to submit a certificate of sale from the manager of such fairs, exhibitions and market to the licensing authority on Form "I" failing which he shall be liable to prosecution u/s 8 of the Act.

(7) In case cows, bulls or bullocks are needed by another State Government or recognised institutions outside the State, such permit for transportation of animal will be granted on deposit of requisite fees by the party concerned under Sub-rule (2), but the application shall have to be routed through the State Government concerned.

6. A perusal of the aforesaid provisions clearly reveals that there is a prohibition of transport of cow, bull or bullock from any place within the State to any place outside the State without any permit issued by the authorised officer. Therefore, the permit is required only when a cow, bull or bullock is transported from Uttar Pradesh to any other State. But no permit is required for transportation of aforesaid type of the catties from one place to another within the Uttar Pradesh. The learned courts below seem to have overlooked the aforesaid provisions and incorrectly held that a permit was required for transportation of the cow and its progeny from one place to another place within the territory of Uttar Pradesh.

Therefore, what was required from the courts below was to see as to whether the cows and calves were being transported without permit from any place within the Uttar Pradesh to any place outside the Uttar Pradesh. For determining this question it was also necessary and expedient to provide an opportunity to the parties to lead evidence. If answer to the aforesaid question is in affirmative, the prayer for release can be rejected on the ground that the cows and calves seized are liable to be confiscated but if the answer is in negative, there would be no justification to reject the prayer for release on the ground of a possibility of their confiscation.

7. It may not be out of context to mention that the Act of 1955 is silent so far as the confiscation of cows, bulls and bullocks is concerned but Rule 16 (3) of the Rules framed under the Act of 1955 provides for confiscation of such animals on the ground of violation of Section 5A of the Act of 1955. Despite the fact that the Act is silent regarding the confiscation of the animals the Petitioners have not challenged the vires of the Rule 16 (3).

8. In regard to the offence u/s 11 of the Act of 1960, the learned Counsel for the Petitioners submitted that there is no provision for confiscation of animals on the ground of violation of Section 11 of the Act of 1960. In this connection, the learned A.G.A. submitted that one calf on each truck was found dead and cows and calves on each truck had been overloaded and had also been tied with the truck, therefore, they had been subjected to cruelty within the meaning of Section 11 of the Act of 1960. The learned A.G.A. further submitted that Section 29 of the Act of 1960 provides for forfeiture of the animals, with respect to which the offence u/s 11 of the Act of 1960 is committed. Hence, release of the animals was not proper.

9. In order to appreciate the aforesaid submissions, it is just and expedient to consider the provisions of Section 29 of the Act of 1960, which reads as follows:

29. Power of Court to deprive person convicted of ownership of animal.--(1) If the owner of any animal is found guilty of any offence under this Act, the Court, upon his conviction thereof, may, if it thinks fit, in addition to any other punishment, make an order that the animal with respect to which the offence was committed shall be forfeited to Government and may, further, make such order as to the disposal of the animal as it thinks fit under the circumstances.

(2) No order under Sub-section (1) shall be made unless it is shown by evidence as to a previous conviction under this Act or as to the character of the owner or otherwise as to the treatment of the animal that the animal, if left with the owner, is likely to be exposed to further cruelty.

(3) Without prejudice to the provisions contained in Sub-section (1), the Court may also order that a person convicted of an offence under this Act shall, either permanently or during such period as is fixed by the order, be prohibited from having the custody of any animal of any kind whatsoever, or, as the Court thinks fit, of any animal of any kind or species specified in the order.

(4) No order under Sub-section (3) shall be made unless--

(a) it is shown by evidence as to a previous conviction or as to the character of the said person or otherwise as to the treatment of the animal in relation to which he has been convicted that an animal in the custody of the said person is likely to be exposed to cruelty ;

(b) it is stated in the complaint upon which the conviction was made that it is the intention of the complainant upon the conviction of the accused to request that an order be made as aforesaid ; and

(c) the offence for which the conviction was made was committed in an area in which under the law for the time being in force a licence is necessary for the keeping of any such animal as that in respect of which the conviction was made.

(5) Notwithstanding anything to the contrary contained in any law for the time being in force, any person in respect of whom an order is made under Sub-section (3) shall have no right to the custody of any animal contrary to the provisions of the order, and if he contravenes the provisions of any order, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

(6) Any Court which has made an order under Sub-section (3) may at any time, either on its own motion or on application made to it in this behalf, rescind or modify such order.

10. A perusal of Section 29 of the Act of 1960 reveals that the question of forfeiture of animals under the aforesaid Section 29 before convicting the owner of the animals, is not permissible. The animals can be forfeited in favour of the Government only on conviction which shall be in addition to the punishment. Apart from forfeiture of the animals the Court has power to pass such order as it considers fit for the disposal of animals. In other words, the Court has power to order even for interim custody of the animals till the disposal of the case. Therefore, in case the Court feels that on conviction the animals are liable to be forfeited, in that eventuality too, the purpose would be served if the animals are given in the interim custody of the owner after taking adequate security, which, of course, shall be subject to final decision of the case.

11. The courts below have passed the impugned orders without giving due consideration of the aforesaid provisions and without providing any opportunity to the parties to adduce evidence in support of their respective allegations, therefore, the impugned orders cannot be sustained.

12. The writ petition is allowed. The order dated 29.3.2010 (Annexure-3) passed by the Incharge Special Judicial Magistrate, (C.B.I.), Ghaziabad and the order dated 17.4.2010 (Annexure-4) passed by the Additional Sessions Judge, Court No. 9, Ghaziabad are quashed. The Special Judicial Magistrate, (C.B.I.), Ghaziabad is directed to reconsider the matter and pass a fresh order in accordance with law.