

(1989) 02 MP CK 0040
In the Madhya Pradesh High Court

Go Bhachav Samittee

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 28-02-1989

Acts Referred:

Madhya Pradesh Agricultural Cattle Preservation Act, 1959 — Section 12, 4(1)(a), 7

Citation : (1989) CriLJ 1507 : (1989) MPLJ 431

Hon'ble Judges : K.L. Shrivastava, J

Bench : Single Bench

Judgement

K.L. Shrivastava, J.

This revision petition by the Go Bachav Samittee, Nalkheda, District Rajgarh is directed against the order dt. 2-11-1988 passed by the IInd Additional Sessions Judge, Shajapur in Criminal Revision No. 120 of 1988 whereby reversing the order passed by the Magistrate u/s 451 of the Criminal Procedure Code, 1973 (for short "the Code"). Interim custody of the cattle in question has been ordered to be given to the non-applicant Babukhan.

Circumstances giving rise to the revision petition are these. According to the prosecution the cattle including cows which are all claimed by the non-applicant Babukhan as his own, were being taken to Sarangpur, District Rajgarh for being slaughtered there and were seized by the police. The cattle in question are "agricultural cattle" as defined in Section 2(1) of the M. P. Agricultural Cattle Preservation Act, 1959 (for short "the Act") read with the Schedule according to which 5 categories of cattle are designated agricultural cattle. According to the prosecution the offence committed are u/s 4(1)(a) and Section 7 of the Act punishable respectively under Sections 10 and 11 *ibid*. It may be pointed out that the Act has been amended by Act No. 52 of 1984.

The contention of the learned Counsel for the petitioner is that in respect of an offence u/s 7 of the Act, in view of Section 12, the burden of proof that there was no contravention of the provisions of the Act is on the accused and,

therefore, the impugned order directing interim custody of the cattle in favour of non-applicant Babukhan is not at all justified. Reliance has been placed on a decision of the Bombay High Court in Cr, Writ Petition No. 373/87 (reported in 1988 Man LJ 273). It has been urged that the learned Additional Sessions Judge has proceeded only on the wrong footing that the offence involved was one of mere theft.

The contention of the learned Counsel for the non-applicant Babukhan is that initially the case was one of theft and it is subsequently that offences under the Act have been included. It is urged that in the circumstances, assuming that the provision regarding burden of proof is applicable in respect of an order u/s 451 of the Code, the proper order is the one passed by the learned Additional Sessions Judge and no interference is called for. Reliance has been placed on the order dt. 4-10-1988 passed by this Court in Misc. Cri. Case No. 20 of 1988. It is also contended that the petitioner has no locus standi.

The point for consideration is whether the revision petition deserves to be allowed.

It is proper to advert to the provisions in Section 7 and Section 12 of the Act on which much reliance has been placed by the petitioner's learned Counsel. They run thus:

7. Prohibition of sale, purchase or otherwise disposal of cows, calves of cows or calves of she buffaloes - No person shall purchase, sell or otherwise dispose of or offer to purchase, sell or otherwise dispose of or cause to be purchased, sold or otherwise disposed of cows, calves of cows or calves of she-buffaloes for slaughter or knowing or having reason to believe that such cattle shall be slaughtered.

Burden of proof on accused - In any trial for an offence punishable u/s 11 for contravention of the provision of Section 5, 6 or 7 of this Act the burden of proving that the slaughter, transport or sale of agricultural cattle was not in contravention of the provisions of this Act shall be on the accused.

Regarding the contention as to the petitioner's locus standi it may be stated at the out set that the police has placed the cattle in the custody of the appellant through one Devilal. As pointed out in para 12 of the decision in Gayaprasad's case 1988 Jab LJ 595 : (1989 Cri LJ 15) person interested may be noticed. In the instant case, the cattle are in the custody of the applicant under Supratnama. Regulation No. 423(j) of the M.P. Police Regulations lays down that expenses on seized cattle may be paid from permanent advance. As pointed out in para 13 of the aforesaid decision the liability of a person in interim custody has to be determined with reference to Sections 151 and 152 of the Contract Act and the terms of the Supratnama. In the circumstances it is only in the fitness of things that the Samiti is held to have the right to be heard in the matter.

The contention of the learned Counsel for the non-applicant Babukhan is that Art

19 of the Constitution of India guarantees freedom of trade and he has purchased the cattle for purposes of trade and apart from the question of his criminal liability to be determined only after trial, with the undertaking by him as required by the impugned order, there can be no room for any apprehension that in the event of interim custody of the cattle being with him, he might deal with them in contravention of the Act and thereby frustrate the very object with which it has been brought on the statute Book.

On the facts and in the circumstances of the case, I am of the view that the discretionary order which also embodies the necessary precautions regarding the production of the cattle does not call for interference in revision. It is true that Section 12 of the Act casts the burden on the accused but that does not come in the way of an order for interim custody of the cattle. The non-applicant Babukhan as the owner of the cattle is certainly interested in their being properly maintained. The petitioner may, if advised, take steps to ensure identification of the cattle so that they are not disposed of.

In the ultimate analysis the revision petition fails and is dismissed.