

(2004) 09 CHH CK 0002
In the Chhattisgarh High Court
Case No : Criminal Revision No. 250 of 2004

Gomukhi Sewa Dham

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 01-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451
Madhya Pradesh Goseva Ayog Adhiniyam, 1995 — Section 10, 11, 2, 3
Madhya Pradesh Krishik Pashu Parirakshan Adhiniyam, 1959 — Section 10, 4, 6A, 6B, 9(3)

Citation : (2005) 1 CGLJ 67 : (2005) 1 MPHT 1

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : V.G. Tamaskar, for the Appellant; Anand Kumar Tiwari, Panel Lawyer Respondent No. 1 and Dharendra Mishra, for the Respondent Nos. 2 to 4, for the Respondent

Judgement

L.C. Bhadoo, J.—The petitioner has preferred this criminal revision being aggrieved by the order dated 25-3-2004 passed by the Special Judge (Atrocities), Bilaspur, in Criminal Revision No. 111/2004, whereby the learned Special Judge allowed the revision of respondent Nos. 2 to 4 and reversed the order of the Judicial Magistrate, First Class, Katghora, passed in Criminal Case No. 225 of 2004 on 1-3-2004, directed that the cattle in question be handed over to the revisionists as they are the owners of the cattle and further directed that each of the revisionists should execute Supurdginama to the tune of Rs. 2 lakhs to the satisfaction of the Judicial Magistrate and they were further directed that during the disposal of the criminal case without the permission of the Court they will not transfer or sale or otherwise dispose of the cattle which are 270 in number.

2. Brie facts leading to filing of this criminal revision, necessary for its disposal are that on 22-12-2003 at about 1.10 p.m. at Village Vilmata when respondent Nos. 2 to 4 along with other six persons were taking 146 bulls, 110 cows, 10 she-

calves and 4 calves, they were stopped by certain persons and cattle was taken to Village Deopahari. G.R. Dewan, Station House Officer, Police Station, Katghora was informed over telephone that some cattle have been stopped in Village Deopahari. On receiving this information he reached the spot along with the police staff where the petitioner herein namely, Ravindra Kumar Chourasia gave a report that Vakil Khan and nine others were taking the cattle illegally for the purpose of slaughtering them. In the complaint, it was mentioned that a worker of Gomukhi Seva Dham namely, Mithilesh Dubey was in Village Vilmata, there he saw a herd of cattle and some dispute between the villagers and the persons who were taking the cattle. When the persons who were taking the cattle were asked to show the documents regarding purchase of the cattle, they showed some reluctance in showing the papers. In the meantime, some of them ran away, however, some of them were caught. Running away of some persons made it known that the cattle in question was being taken to the State of Bihar for the purpose of slaughtering. Therefore, with the help of the villagers, the cattle were brought to Gomukhi Seva Dham, Deopahari, which is a registered society, registration certificate is Annexure P-2 and memo of registration is Annexure P-3. The persons who were taking the cattle were Vakil Khan, Tuglaq Khan, Masood Khan, Majhar Khan and Iqbal Khan. Other persons who ran away were Firoz Khan, Musihuddin Khan, Aflatoon Khan and Ikram Khan. These persons were working along with Ismail Khan of Village Jatgaa, District Korba. Since these persons were taking the cattle through the forest area, it further strengthened their plea that the cattle were being taken for slaughtering. Ravindra Kumar Chourasia gave report on 23rd December, 2003. On the basis of this report, the case was registered on 24th of December, 2003, for the commission of offence under Sections 4, 6-A, 6-B and 10 of the Madhya Pradesh Krishik Pashu Parirakshan Adhiniyam, 1959 (for short "the Adhiniyam, 1959"). The cattle were taken into possession by the Station House Officer. He handed over the same to Ravindra Kumar Chourasia of Gomukhi Seva Dham, Deopahari. After completion of the investigation, charge-sheet has been filed against ten accused persons for the commission of the aforementioned offences and out of the ten accused persons, seven are residents of State of Jharkhand and three are residents of State of Chhattisgarh.

3. Respondent Nos. 2 to 4 herein filed an application before the Judicial Magistrate, Katghora, for handing over the cattle to them on Supurdginama during the pendency of the criminal case. However, it was rejected by the Judicial Magistrate against which respondent Nos. 2 to 4 had preferred a criminal revision as mentioned above, which was allowed, vide the impugned order.

4. I have heard learned Counsel for the parties.

5. Learned Counsel for the petitioner argued that it is evident from the evidence recorded by the Investigating Officer during the investigation and from the charge-sheet that the cattle in question was being taken to the State of Bihar for the purpose of slaughtering. He further argued that during the pendency of this

criminal case the cattle in question was rightly handed over by the Station House Officer to Gomukhi Seva Dham which is a part of Goseva Ayog as per the provisions of Madhya Pradesh Goseva Ayog Adhiniyam, 1995. In view of the provisions contained in clauses (n) and (p) of Section 11 of the Madhya Pradesh Goseva Ayog Adhiniyam, 1995 (for short "the Adhiniyam 1995"), the petitioner is entitled to have the custody of these animals till the disposal of the case, as the Goseva Ayog has been constituted for the purpose of administering and implementation the Madhya Pradesh Krishik Pashu Parirakshan Adhiniyam, 1959. As per clause (p) of Section 11 of the Adhiniyam, 1995, the petitioner is entitled to take custody of the agricultural cattle seized and to entrust them to the nearest Goshala, Gosadan or any Cattle Protection Institution, and that is why the cattle have been entrusted to go to Gomukhi Seva Dham, which is a part of Goseva Ayog, Chhattisgarh. Learned Counsel further argued that in view of the judgment of the Madhya Pradesh High Court in the matter of Hiralal v. M.P. State, reported in 1990 (1) MPWN 81, the petitioner is entitled for the custody of the cattle in question. He further argued that if the cattle in question, which was being taken to Bihar for the purpose of slaughtering, is handed over to respondent Nos. 2 to 4, there is every chance that the cattle will be taken to Bihar and will be slaughtered.

6. On the other hand, learned Counsel for respondent Nos. 2 to 4 argued that as far as the question of bullocks are concerned, as per the decision of the Hon'ble Apex Court in the matter of Hasmattullah Vs. State of Madhya Pradesh and others, provisions of Section 4 (1) of the Madhya Pradesh Agricultural Cattle Preservation Act, 1959, regarding bullocks have been declared ultra vires. Relying on the decision of the Hon'ble Apex Court in the matter of Manager, Pinjrapole Deudar and Anr Vs. Chakram Moraji Nat and Ors, learned Counsel argued that respondent Nos. 2 to 4, being the owners of the cattle, are entitled for the custody of the cattle in preference to the petitioner herein. He further argued that the petitioner is not entitled to file this revision as the State is the party and he is not the party to the case.

7. In this connection, if we look into the provisions of the Adhiniyam, 1959, Section 4 prohibits slaughtering of agricultural cattle. Section 4 (1) (a) categorizes the agricultural cattle as cow, calf or cow, calf or she-buffalo, bull or bullock. As per the provisions of clause (b) of Sub-section (1) of Section 4, without obtaining a certificate in writing from the competent authority, the agricultural cattle can not be slaughtered. Further, provisions of Section 4 envisages that how the certificate will be issued. Section 5 lays down that after issuance of the certificate cattle can not be slaughtered in any place other than the place fixed for the purpose. Section 6 of the Adhiniyam, 1959, prohibits transportation of agricultural cattle for the purpose of slaughtering, which lays down that-

"no person shall transport or offer for transport or cause to be transported any (agricultural cattle other than cow or calf of cow) from any place within the State

to any place outside the State, for the purpose of its slaughter in contravention of the provision of this Act or with the knowledge that it will be or is likely to be so slaughtered".

Section 6-A puts restriction on export of cow for the purpose of slaughtering, which lays down that-

"no person shall export or cause to be exported (cow, calf of a cow, calf of she-buffalo, bull or bullock) for the purpose of slaughter either directly or through his agent or servant or any other person acting on his behalf in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be slaughtered".

Section 6-B provides for issuance of permit and Section 6-C deals with special permits. Section 7 prohibits purchase, sale or any other manner of disposal of cow, calf of cow, calf of she buffalo, bull or bullock for the purpose of slaughtering or knowing or having reason to believe that such cattle shall be slaughtered. Section 10 prescribes penalty in which it is mentioned that sentence can be extended to three years and with fine which may be up to Rs. 5,000/-. Section 12 deals with burden of proof, which lays down that-

"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".

As per Section 13 of the Adhiniyam, 1959, all the offences are cognizable.

8. Now, coming to the question whether the petitioner namely, Gomukhi Seva Dham is entitled to file this revision through Ravindra Kumar Chourasia is concerned, the Adhiniyam, 1995, was enacted by the State of Madhya Pradesh, which has been adopted by the State of Chhattisgarh. The Adhiniyam, 1995, was enacted with the objective to establish a Goseva Ayog for the preservation and welfare of cattle. Section 3 of Adhiniyam, 1995, envisages that-

"the State Government shall constitute a body to be known as the Madhya Pradesh Goseva Ayog to exercise the powers conferred on and to perform the functions assigned to it under this Act".

As per the provisions of Sub-section (d) of Section 2 of the Adhiniyam, 1995,-

"Institution" means any Charitable Institution engaged in cattle welfare and established for the purpose of keeping, breeding, rearing and maintaining cattle or for the purpose of reception, protection, care, management and treatment of infirm, aged and diseased cattle and includes Gosadan, Goshala, Pinjrapole, Gorakshan Sanstha and their Federation or Union registered under any enactment for the time being in force or otherwise.

Therefore, Gomukhi Seva Dham is an Institution as per the provisions of Section 2, which is engaged in welfare of cattle and is entitled to perform the functions

assigned under the Act, which has been registered u/s 10 of the Act with the Goseva Ayog. Sub-section (n) of Section 11 envisages one of the functions, to administer and implement the M.P. Krishik Pashu Parirakshan Adhiniyam, 1959. Sub-section (p) of Section 11, lays down that-

"to take custody of the agricultural cattle seized and to entrust them to the nearest Goshala, Gosadan or any Cattle Protection Institution".

Therefore, in view of the above provisions of the Adhiniyam, 1995, petitioner Gomukhi Seva Dham is entitled to implement the provisions of M.P. Krishik Pashu Parirakshan Adhiniyam, 1959 and also entitled to seize and take the custody of the agricultural cattle. As such, the petitioner has right and interest in the matter. Therefore, the petitioner is entitled to file this revision.

9. As far as the decision of the Supreme Court declaring the provisions of Section 4 (1) of the Adhiniyam, 1959, as ultra vires is concerned, it is true that by the said decision, the Hon'ble Apex Court has declared the provisions of Section 4 (1) ultra vires in respect of bulls or bullocks, but it has further been held in the judgment itself that these animals can be slaughtered only after taking the certificate as per Sub-clause (b) of Section 4 (1) and in this case, no such permit/certificate has been obtained by the respondents.

10. Now, the question for consideration of this Court is who has the preferential right to take the custody of cattle, i.e., either respondent Nos. 2 to 4 in whose favour the learned Special Judge has passed the order, being owners of the cattle, or the Gomukhi Seva Dham which is engaged in welfare of the cattle.

11. In the Adhiniyam, 1959, no provision has been made regarding the safe custody of cattle, which has been seized, in respect of which offence has been committed under this Act. Sub-clause (b) of Sub-section (3) of Section 9 prescribes that the cattle in respect of which officer suspects any provision of Section 6-A or Section 6-B has been, is being or is about to be contravened along with the vehicles in which such (cow, calf of cow, calf of she-buffalo, bull or bullock) are found and thereafter take or authorize the taking of all measures necessary for securing the production of such cattle and vehicles so seized, in a Court for their safe custody pending production. No further provision has been made in this Act as to whom custody of the cattle will be handed over during the pendency of the investigation or trial. Therefore, general provisions of Section 451 of the Cr.PC are to be taken into consideration about the custody of the cattle. Section 451 of the Cr.PC envisages that-

"When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending, the conclusion of the inquiry or trial".

Similarly, the Adhiniyam, 1995, authorize the Goseva Ayog or the institution registered by it for implementation of the provisions of the Adhiniyam, 1959, or to take custody of the agricultural cattle seized and to entrust them to the

nearest Goshala, Gosadan or any Cattle Protection Institution or to any person pending the disposal of the prosecution proceedings. Therefore, ever the M.P. Goseva Ayog Adhiniyam, 1995, does not lay down preferential right in favour of the petitioner to take the custody of the cattle during the pendency of the trial. Section 451 of the Cr.PC leaves to the discretion of the Court to ensure proper custody of the property seized.

12. While interpreting the provisions of Sub-section (2) of Section 35 of the Prevention of Cruelty to Animals Act, 1960, which lays down that if the animal is not be sent to infirmaries for treatment then the Magistrate shall send them to Pinjrapole. Even though there is a special provision in the Prevention of Cruelty to Animals Act, 1960, for sending the cattle to Pinjrapole, the Hon"ble Apex Court in the matter of Manager, Pinjrapole Deudar (supra), decided, "in a case where the owner is claiming the custody of the animal, Pinjrapole has no preferential right". It has further been held that-

"In deciding whether the interim custody of the animal be given to the owner who is facing prosecution, or to the Pinjrapole, the following facts will be relevant: (1) the nature and gravity of the offence alleged against the owner; (2) whether it is the first offence alleged or he has been found guilty of offences under the Act earlier; (3) if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution; (4) the condition in which the animal was found at the time of inspection and seizure; (5) the possibility of the animal being again subjected to cruelty".

13. In the application filed by respondent Nos. 2 to 4 for vacating the stay order passed by this Court on 28-4-2004 it has been mentioned that after passing the order by the Special Judge, the cattle were not handed over to them. In Para 14 of the said application it has been mentioned that the cattle have been misappropriated/disposed of and they arc now in the custody of various villagers of Villages : Bagguda, Banjari, Dandh, Thadpakhna, Dila Sarai, Garh Sonari, Lemru, Katadubari, Tendubhata, Nakia, Bilamata, Jilda and Larla. In reply to the above application for vacating stay by respondent Nos. 2 to 4, the petitioner herein has denied the above allegations made in Para 14.

14. Therefore, looking to the decision of the Hon"ble Apex Court in the matter of Manager, Pinjrapole (supra), and general provisions of the Cr.PC, there arc no allegations against respondent Nos. 2 to 4 herein that in past they were convicted under the Adhiniyam, 1959, or they are facing similar trial for any offence committed earlier, they are residents of the State of Chhattisgarh.

15. Therefore, having regard to the facts of the case, totality of the circumstances and the above judgment of the Hon"ble Apex Court, I am of the opinion that respondent Nos. 2 to 4 have preferential right to have the custody of the cattle in question, during the pendency of the trial. However, it is to be ensured that while handing over the custody of the cattle to respondent Nos. 2 to

4 some stringent conditions are required to be imposed on them in order to ensure proper and safe custody of cattle so that the cattle are produced before the Court as and when required and they shall not dispose of or transfer the cattle during the pendency of the trial and also that no offence shall be committed against the cattle.

16. In view of the above Hon''ble Apex Court's judgment in the matter of Manager Pinjrapole Deudar (supra), and facts and circumstances of the present case, I am of the opinion that the judgment cited by the learned Counsel for the petitioner, i.c. Hiralal (supra), is of no help to the petitioner.

17. In reply to the application of respondent Nos. 2 to 4 for vacating stay submitted by the petitioner, the petitioner has mentioned that respondent Nos. 2 to 4 are not the owners of the cattle, therefore, they are not entitled to take the custody. During the course of the argument, learned Counsel for the petitioner has not argued on this point. Even otherwise, before the Revisional Court or the Magistrate Court such an objection was not raised by the State and during the course of the arguments before this Court also such an objection has also not been raised by the State.

18. In the circumstances, in addition to the conditions already imposed by the Revisional Court for execution of Supurdginama by respondent Nos. 2 to 4 before handing over the cattle to them by the Magistrate, he should ensure that the following conditions are also satisfied by respondent Nos. 2 to 4 :--

(a) in order to secure compliance of the Court's order, learned Magistrate, while accepting the Supurdginama shall also ask respondent Nos. 2 to 4 to show sufficient immovable property in their names and put that property as security for implementation of the Court's order, so that in case they fail to abide by the conditions of the Supurdginama, the Court shall have right to recover that amount of Supurdginama from the said property;

(b) identification marks of each and every cattle in question, shall be noted before handing over the cattle to respondent Nos. 2 to 4.

(c) respondent Nos. 2 to 4 shall specify the area as per the Court's satisfaction where the cattle are to be kept during the pendency of the trial and they shall not move/take the cattle out of the area to be prescribed by the learned Magistrate without his prior permission;

(d) respondent Nos. 2 to 4 shall not commit any offence against the cattle as envisaged in the Adhiniyam, 1959;

(e) respondent Nos. 2 to 4 shall produce the cattle before the Court as and when required by the Court;

(f) if during the pendency of trial any of the cattle falls seriously ill and dies, then the body of the same shall be photographed and body of such animal shall not be disposed of without information to Police Station, Katghora and information to

the Magistrate of the same shall be submitted at the earliest.

19. With the above observations and directions, the revision petition. stands disposed of.