
(1993) 12 AHC CK 0014
In the Allahabad High Court
Case No : Criminal Revision No 1957 of 1993

Lal Bahadur and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 09-12-1993

Acts Referred:

Uttar Pradesh Prevention of Cow Slaughter Rules, 1964 — Rule 16(J)

Citation : (1993) 12 AHC CK 0014

Hon'ble Judges : G.P.Mathur, J

Final Decision : Allowed

Judgement

G. P. Matbnr, J.—This revision has been filed on 26111993, against the judgment and order dated 9111993 of Addl. Chief Judicial Magistrate, Kasia, District Deoria passed in Case Crime No. 449 of 1993.

2. Sri Girjesh Misra, SubInspector of Police Station Kasia while on patrol duty apprehended some persons along with 31 cattle at about 5 p. m. on 5111993 on the patari of Cana in village Bhaisaha. It was suspected that the cattle were being taken to the State of Bihar for the purpose of slaughter. An F. I. R. under Section 5/8 of U. P. Prevention of Cow Slaughter Act was lodged on the basis of which a case was registered as Crime No. 449 of 1993 at Police Station Kasia. The applicants, Lal Bahadur and others, moved an application for release of the cattle, but it was rejected by the learned Magistrate on the ground that the cattle were liable to be confiscated under Rule 16 (3) of U. P. Prevention of Cow Slaughter Rules, 1964 and if the cattle were released, the object of the Act will be defeated. It is this order which has been impugned in the present revision.

3. On 1121993 time was granted to the learned State Counsel to file counteraffidavit and the same has been filed on 8121993. Rule 16(i) of the Rules provides that any person intending to transport or to offer for transport or to cause to transport any cow, bull or bullocks, the slaughter whereof is punishable under this Act in any place in U. P. 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". Subrule (3) provides that cow, bull or bullock transport without a valid permit shall be confiscated and shall be auctioned and the sale proceeds will be deposited and such person who cause unauthorised transport shall be prosecuted under Section 8 of the Act. A perusal of the Rule shows that a permit in Form "G" is required if cow, bull or bullock, the slaughter where of is punishable under the Act, is transported from any place within the State of U. P. to any place outside the State. The power to confiscate under subrule (3) of Rule 16 is only with regard to such cow, bull or bullock which has been so transported without any valid permit. The condition precedent for the application of the rule is that the cattle described in the rule should have been transported from any place in the State of U. P. to any place outside the State.

4. It is not in dispute that the 31 cattle were seized from a village which is situated within the jurisdiction of Police Station Kasia, District Deoria namely, from within the State of U.P. There is no material on record to show as to what is the precise distance of the place, from where the cattle were apprehended from the border of the State of U. P. and Bihar. In fact, I had given time for filing counteraffidavit to the State to ascertain the aforesaid distance. However, counteraffidavit is silent about this point. If it was found that (the cattle were apprehended from a place which was very close to the border, some presumption could be raised in favour of the prosecution. However, on the material as it stands today, there is nothing to indicate as to what is the distance of the spot (place where the cattle were apprehended) from the border. The fact remains that the cattle were apprehended from within the State of U. P. and therefore, it cannot be said that they were transported to a place outside the State of U. P. A permit is required only when such a transport takes place. Since the cattle have not been transported outside the State of U. P. no permit was required and the provisions of subrules (3) of Rule 16 will not come into play, I am, therefore, of the opinion that the cattle are not liable to be confiscated. It is possible that before a person has actually crossed an interState border, he may change his mind. Therefore, till the border is actually crossed, it cannot be said that the necessary conditions for exercise of power under subrule (3) of Rule 16 have come into existence. The question of distance of the spot from the border becomes of paramount importance in such cases as held by Supreme Court in *Nasu Shaikh v. State of Bihar*, AIR 1972 SC 1610 and *Malkiyat Singh v. State of Punjab*, AIR 1970 SC 713. The prosecution having not given the details about the distance in the counteraffidavit I have no option but to allow the revision and direct release of the cattle.

5. In the result, the revision is allowed. The impugned order dated 9/11/1993 of the A.C.J.M. Kasia, is set aside. The cattle seized in case Crime No. 449 of 1993 shall be released in favour of the applicants.

Revision allowed.