
(1997) 09 AHC CK 0155
In the Allahabad High Court
Case No : Criminal Revision No. 1146 of 1997

Rafiq	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 09-09-1997

Acts Referred:

Uttar Pradesh Prevention of Cow Slaughter Rules, 1964 — Rule 16(3)

Citation : (1997) 09 AHC CK 0155

Hon'ble Judges : P.K.Jain, J

Final Decision : Allowed

Judgement

P.K. Jain, J.—Heard Sri I.M. Khan, learned Counsel for the revisionist and learned A.G.A.

2. Some questions of law and facts are involved in all the four revisions. Hence, the same are being finally disposed of by a common judgment and order with the consent of the parties at the admission stage.

3. Brief facts giving rise to these revisions are that on an information dated 15/3/97 given by one Rakesh Pratap Singh, police of P.S. G.R.P., district Siddhartha Nagar checked Goods Train's wagons in which 157 bullocks were being transported from the State of Uttar Pradesh to the State of Bihar. The police seized the bullocks and arrested seventeen persons against whom cases under Section 3/5/A/8 of the Uttar Pradesh Prevention of Cow Slaughter Act and Section 11 of the Prevention of Cruelty against Animals Act were registered. Abdul Salam, revisionist in Criminal Revision No. 1142 of 1997 moved an application for release of 32 bullocks claiming to be the owner of the same. Revisionist, Shamim alias Shahid in Criminal Revision No. 1144 of 1997 claimed Supurdigi of 16 cattle, Chhoteylal revisionist in criminal revision No. 1145 of 1997 claimed 16 cattle and Rafiq Revisionist in criminal revision No. 1146 of 1997 claimed release of 32 cattle. The revisionist had contended that they had purchased the cattle and they were possessed of the papers in this regard. Besides the present revisionists, two others had also moved similar applications.

The learned Magistrate by an order passed earlier released the said cattle in favour of the respective applicants on fulfilling certain conditions. The informer Sri Rakesh Pratap Singh preferred a revision against the said orders and the learned Additional Sessions Judge, Siddhartha Nagar by judgment and order dated 14897 allowed the revision so far as the order of the learned Magistrate related to release of the cattle in favour of the present revisionists.

4. The learned revisional Court directed that the District Magistrate, Siddhartha Nagar or the officer appointed by him shall auction the cattle under Rule 16(3) of the U.P. Prevention of Cow Slaughter Rules, 1964, hereinafter called "the Rules" and further directed that the auction money shall be deposited in Government Treasury after payment of maintenance expenses to the Supurdgar at the rate of Rs. 37 per cattle per day.

5. In the present revisions the order dated 14897 passed by the learned Sessions Judge is being challenged on the grounds that the powers under Rule 16(3) can be exercised by the trial Court on conclusion of the trial only after an order of confiscation is passed.

Rule 16(1) and (3) reads as follows:

"(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).

(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 subrule (2) above and such person, who causes authorised transport shall be prosecuted under Section 8 of the Act,"

6. From bare perusal of subrule (3) it would appear that cow, bull or bullock transported without a valid permit as required by subrule (1) of Rule 16 shall be confiscated. The revisionists have stated that they were having valid permits. The question whether the permit was valid or not can be disposed of by the trial Court only after evidence of the parties is adduced. The Additional Sessions Judge had no jurisdiction to decide such a question of fact and he could not have directed confiscation of the cattle. Although the Rule does not specifically provide as to at what stage an order of confiscation can be passed or by whom such order shall be passed, but since subrule (3) of Rule 16 provides for prosecution of the person who causes transportation of the cattle without a valid permit, it would be necessary consequence that the order of confiscation may be passed by the trial Court on a finding that the transportation of the cattle was being made without a valid permit. In the instant case the learned Additional Sessions Judge has usurped the jurisdiction of the trial Court which is not permissible under law.

Therefore, the order of the learned Additonal Sessions Judge cannot be sustained.

7. The revision is allowed and the impugned order passed by the learned Addl. Sessions Judge is set aside. No auction shall be held in pursuance of the order of learned Sessions Judge after passing of this order in the present revision. In case any auction has taken place prior to the present order, the revisionist may have their remedy in accordance with law as they may be advised.

Revision allowed