

(2001) 07 AHC CK 0013

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No's. 1569, 1608, 3088, 4159, 4160, 4161 and 4176 of 2001

Raju Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Cow Slaughter Act, 1955 — Section 18, 3, 5A, 8
Criminal Procedure Code, 1973 (CrPC) — Section 379, 401
Essential Commodities Act, 1955 — Section 3, 7
Prevention of Cruelty to Animals Act, 1960 — Section 11D

Citation : (2002) CriLJ 124

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Satish Trivedi and Anil Kumar Singh, for the Appellant; A.G.A., for the Respondent

Judgement

R.B. Misra, J.—The above mentioned Criminal Misc, Application, Writ Petition and Criminal Misc. Revision involve the common question relating to the order of learned Judicial Magistrate as well as learned Sessions Judge, rejecting the applications for release of cattle alleged to have been involved under Sections 3/5-A/8 Cow Slaughter Act, 1955 and Section 11D of Prevention of Cruelty to Animals Act, 1960.

2. I have heard learned Counsel for the petitioners/applicants, learned Counsel for the revisionist and Sri Satish Trivedi, learned Senior Counsel with Anil Kumar Singh as well as learned A.G.A. for the State. The date of incident, case crime number, Police station in respect of the criminal case number, date of impugned orders passed by the respective Judicial Magistrate/Sessions Judge are given herein as under :

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No. Date of Case Crime Police Station Dt. of im- Name of the incident No.

District pugged order Authority Passing of the impugned order. CrI. App. 21-5-2001 133 of 2001 Maharaj 11-6-2001 A.C.J.M., No. 3088 of Ganj. Tehsil Azamgarh. 2001 Raju Sagdi, Singh and Azamgarh others v. State of U.P. and Ors.. CrI. Revi. 27-5-2001 202 of 2001 Phulpur, 2-6-2001 A.C.J. M., No. 1569 of Azamgarh Azamgarh. 2001 Rajesh Gupta v. State of U. P. and Ors.. CrI. Revision 12-6-2001 97,98,99 Tarwa, 16-6-2001 A. C. J. M., No. 1608 of and 100 of Azamgarh Azamgarh. 2001 Ram 2001 Gopal v. State of U.P. CrI M. W. P. 28-4-2001 102 of 2001 Ekdil, Etawah 19-5-2001 IIIrd Addl. No. 4176 of D. &S. J., 2001 Nisar Etawah. Ahmad v. Illrd A. D. J. Etawah and Anr. Cr.W.P. 4-10-2000 217/2000 Banda, 30-4-2001 Addl. D. & No. 4159 of Rev. 20/ Shahjahnpur S. J., Shah- 2001 Zahir v. 2001 jahanpur. A.D.J., Shahjahanpur. CrI.M.W.P. 4-10-2000 217/2000 Banda, 30-4-2001 Addl. 4160 of 2001 Rev. 19/ Shahjahanpur D. & S. J., Zahir v. A.D.J. 2001 Shah- Shahjahanpur. jahanpur. CrI.M.W.P. 4-10-2000 217/2000 Banda, 30-4-2001 Addl. No. 4161 of Rev. 18/ Shahjahanpur D. & S. J., 2001 Wasim 2001 Shah- Khan v. jahanpur. A.D.J., Shahjahanpur.

3. The Miscellaneous Criminal Application No. 3088 of 2001 has been filed by five applicants stating that they are the owners of two bullocks each, total numbering 10 bullocks which they have purchased from Zilla Panchayat Karyalaya, Basti for their agricultural purposes, after obtaining receipt of purchase showing the address of the seller and purchaser as well as price of the bullocks. When they reached in the circle of the Police Station Maharajganj, Tehsil Sigdi, District Azamgarh, they were intercepted by the Police and the First Information Report dated 21-5-2001 was lodged in respect of the alleged offences having been committed under Sections 3/5-A/8 Cow Slaughter Act, 1955 and Section 11-D of Prevention of Cruelty to Animals Act, 1960. It has been contended by learned Counsel for the applicants that they were taking these bullocks to their home and not for slaughtering. It has been submitted on behalf of the applicants that these bullocks were healthy who are getting sufficient fodder and straw and now they apprehended that in lack of adequate fodder and straw available in the police station the health of these cattle would be deteriorated therefore, they prayed for release/Supurdagi of these bullocks through an application dated 8-6-2001 filed before the C.J.M., Azamgarh. The applicants have also asserted that the place of interception of these cattle lies at a distance of 200 km. within the boundary of neighbouring State. They also asserted that these bullocks were being carried on foot and there is nothing on record to show that they were doing any cruelty towards these cattle. The Additional Chief Judicial Magistrate, Azamgarh in his order dated 11-6-2001 has referred that no permit or licence in respect of transportation of these bullocks were produced before him and learned A.C.J.M. has expressed apprehension if the Supurdagi of these bullocks /cattle's are given to the applicants, the possibility of their being slaughtered could not be ruled out. Therefore, the application for release or Supurdagi of these bullocks were rejected.

4. The Criminal Revision No. 1569 of 2001 has been preferred u/s 379, r/w

Section 401, Criminal Procedure Code on behalf of Sri Rajesh Gupta the applicant herein who claimed that he is involved in trading business of cattle and when 15 bullocks in number were being transported from Mohammadpur for sale after purchasing these bullocks from Akbarpur market, these bullocks were intercepted on 27-5-2001 by the police of police station Phoolpur, district Azamgarh. Various receipts dated 24-5-2001 and challans dated 26-5-2001 show the purchase of these bullocks from Ram Rahim Nagar Pashughat, Shahjahanpur Akbarpur (Ambedkar Nagar) being transported by Truck No. U.P. 78-H-5867, as such the seizure of these cattle by the local police was bad in law. The applicant has filed for re-lease/Supurdagi of these cattle on the apprehension that these bullocks when intercepted were being treated with cruelty and the possibility of these bullocks being slaughtered could not be ruled out after they are being released. The application of re-lease/Supurdagi of bullocks/cattle was therefore rejected by Additional Chief Judicial Magistrate, Azamgarh by his order dated 2-6-2001.

5. The Criminal Revision No. 1608 of 2001 has been filed by the revisionist claiming to be owner and purchaser of one hundred thirty eight (138) calves/small bullocks/cattles of different descriptions from the Cattle Fare Jhunjuwa-Bazar, District Etawah on 7-6-2001 and 8-6-2001 and these calves numbering 37,23,39 and 39 were being transported bona fide for sale to Cattle Fare at Tadawa-Bazar, Ghazipur through four respective trucks bearing Nos. U. P. 50C/0594, U.P. 75A/7527, U.P. 83/ 9193 and U.P. 78-B/2478 for alleged involvement in case Crime No. 97,98,99 and 100 of 2001 committed under Sections 3/5-A/8 of Prevention of Cow Slaughter Act. These trucks were intercepted by the police of Police Station, Tadawa. Whereas the purchase of these cattle were supported by receipts dated 7-6-2001 and 8-6-2001 in respect of these calves/small bullocks obtained from Cattle Fare Jhunjuwa-Bazar, District Etawah on challans and ability of Khan Transport Company, Oria Road Bakewar, District Etawah on the contrary, the police had indicated that these calves/small bullocks were being transported to Bihar/Bengal for slaughtering. The application for the release/supurdagi of these calves/small bullocks, was made on behalf of the revisionist with the submission that if these cattle are not properly fed and looked after their health and value would be deteriorated, however, such contentions of the revisionist have not been accepted by the Addl. Chief Judicial Magistrate, Azamgarh by his order dated 16-6-2001 on the apprehension that at the time of interception of these calves/ small bullocks, no receipt in respect of transportation and permit/licence were produced and on release the possibility of slaughtering of these catties could not be ruled out. On these assumptions, the application of the revisionist for release has been rejected.

6. In the Writ Petition No. 4176 of 2001, the petitioner claiming to be engaged in the cattle business had purchased on 29-4-2001 35 bullocks from Firozpur-Bazar, District Gurgaon, State Haryana and was transporting these bullocks in two trucks bearing Truck Nos. U.P.-B/8156 and H.R. 29G/2515 to Madhya Pradesh for

sale to be used for the agricultural purposes. The purchase receipt in respect of bullocks has also been submitted by the petitioner. The local police has intercepted and seized these bullocks on the allegations that the age of this bullocks are false and these are being transported for slaughtering whereas these were in between 7 to 9 years of age. The applicant presented the release application before the Addl. Chief Judicial Magistrate, Etawah who had directed by his order dated 5-5-2001 to release these bullocks furnishing security of Rs. 1,50,000/- (one lacks fifty thousand) and on an usual undertaking that these released bullocks shall be kept under protection and shall be produced before the authority/Court whenever required. Being aggrieved by the order dated 5-5-2001 of learned Addl. Chief Judicial Magistrate, the State has preferred the Criminal Revision No. 134 of 2001 (State v. Vijay Chaudhary and Ors.) whereon the Additional District and Sessions Judge, Etawah by its order dated 19-5-2001 has kept in abeyance, the release/supurdagi for these catties as such the criminal revision is still pending.

7. In Writ Petition No. 4159 of 2001, W.P. No. 4160/2001 and W.P. No. 4161/2001 the petitioner claimed owner of bullocks had purchased bullocks from Bazar Mavesi Behazam District Khiri for the agricultural purposes. These bullocks were intercepted and seized by local police on the allegations that these bullocks were subjected to cruelty and were being taken for slaughtering. The application for release/supurdagi, in respect of these catties was rejected by the Additional Chief Judicial Magistrate, Shahjahanpur by his three orders dated 6-11 -2000. Against the above order Criminal Revision No. 20 of 2001, C.R. No. 19/2001 and C.R. No. 18/2001 filed before the Additional District and Sessions Judge, Shahjahanpur were also rejected. Being aggrieved the present Criminal Misc. Writ Petitions have been filed. The petitioner has also submitted the original receipts in respect of purchase of the bullocks. By three separate orders dated 30-4-2001 passed by Addl. Chief Judicial Magistrate the respective three orders dated 6-11-2000 have been affirmed. Against these three orders the above writ petitions have been preferred.

8. The strong reliance has been made on behalf of learned Counsel for the applicants, revisionist, petitioners on paragraphs numbers 3, 4 and 5 of 1977 JIC 864 (All) Ashoo v. State of U.P. are quoted herein as below :--

Para 3 : Learned Counsel for the applicants urged that the Courts below have not approached the release application filed by the applicants in their true perspective and rejected the same on insufficient and untenable ground. It was urged that even if the allegations against the applicants are accepted to be true, it would, at best, be a case of preparation to commit the crime and since preparation of crime is not punishable, the criminal case has been wrongly registered against the applicants.

Para 4: In the instant case, the cattle market in district Padrauna was about 100-110 kms. away from the place where the cattle were seized and the distance of the Bihar border from the place of seizure is about 190 kms. In Nasu Sheikh

and Others Vs. The State of Bihar, which was a case under Sections 3/7 of the Essential Commodities Act, certain cultivators of village of Bihar were intercepted by police at a distance of about 175 kms. from the border of West Bengal while carrying paddy without permit. When asked, the cultivators gave out that they were taking the paddy to another village in Bihar. Hon"ble Supreme Court held that in such cases, the question of distance assumes much importance as there is possibility of accused persons changing their mind at any time between the place of seizure and the State boundary. Therefore, the accused persons have not contravened Clause (3) of Bihar Foodgrains Control Movement Order, 1957. In another case Malkiat Singh Vs. The State of Punjab, it was held that preparation to commit an offence is not punishable. Similar view has been taken by this Court in the case of Jagmohan alias Manohar Lal v. State of U.P. (XXXIV) 1997 ACC 111 : 1997 ALJ 397. A reference may also be made to a decision of this Court in Lal Bahadur v. State of U.P. since reported in 1994 JIC 117 (All) para 3 (Revision Application No. 1957 of 1983). This case was decided on 9th December, 1993. It was observed thus :

...Rule 17(1) of U.P. Prevention of Cow Slaughter Rules, 1984 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." It also provides that cow, bull or bullock transported without a valid permit shall be confiscated and shall be auctioned and the sale proceeds will be deposited and such person who caused unauthorised transport shall be prosecuted u/s 18 of the Act.

In that case, 21 cattle were seized from village Bhaishaha situate within the jurisdiction of police station Kasia, District Deoria. There was no material on record to show as to what was the precise distance of the place the cattle were apprehended from the border of the U.P. and Bihar. It was also stated in the judgment of the aforesaid case that if it was found that the cattle apprehended from a place which was very close to the border, some presumption could be raised in favour of the prosecution. In the facts and circumstances the Court, in that case, came to the conclusion that it cannot be said that the cattle were being transported to a place outside the State of U.P. and, therefore, neither any permit was required nor the cattle were liable to be confiscated. It was also said that it is possible that before a person has actually crossed an inter-State border, he may change his mind.

Para 5 : "In the instant case, the cattle were seized as said above, at a distance of about 190 kms from the U.P. border. Thus, there was every possibility of applicants" changing their mind. It cannot, therefore, be said that the cattle were being transported to Bihar, i.e., beyond the border of U.P. for slaughtering purpose. In Babu v. State of U.P. 1991 ACC 110 : 1990 (2) JIC 1204 (All) it was held that there is nothing in the Act prohibiting preparation for cow slaughters. It

should not be forgotten that transportation of the bullocks could lonely be an isolate offence not punishable under the Act.

9. Learned Counsel for the applicants, revisionists, petitioners, have also placed reliance on the decision of this Court 1999 (2) JIC 287 (All) *Mustakeem v. State of U.P.* specifically on paras 9, 10, 11 and 12. The relevant paragraphs of *Mustakeem v. State of U.P.* (supra) are quoted hereinbelow :

Para 9 : At this stage, it is also relevant to note that there are so many relevant factors to be taken into consideration before making decision in the matter in question which reads as under :--

(i) the nature and gravity of the offence alleged against the owner whether, it is the first offence alleged or he has been found guilty of offence under the Act earlier.

(ii) 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 animal during the prosecution.

(iii) the condition in which the animal was found at the time of inspection and seizure.

(iv) the possibility of the animals being again subject to cruelty.

Para 10 : "In the instant case, since it is the case of interim custody, it cannot be said that the alleged owners were found guilty of offence under the Act. However, it has to be seen whether earlier they had been found guilty of the offences or not? When the hearing in the instant cases was concluded charge-sheet was not filed in any of the cases.

Para 11 : "In view of the discussion made above, these criminal revision except Criminal Revision No. 1519 of 1998 and writ petition are finally disposed of with the following directions to the learned Judicial Magistrate concerned as under :

Para 12 : "The learned Judicial Magistrate concerned will see whether the alleged offence in question is the first offence of the owner of the cattle or he has been found guilty of the offences under the relevant Acts earlier.

The owner of the cattle/animals shall be directed to file an affidavit stating therein specifically whether the alleged offence is the first offence or not. The owner of the cattle will have to give undertaking that in case, the animals /cattle are released in his favour, the same will be kept properly and will not be subjected to cruelty during the custody.

In case, an affidavit containing the aforesaid statement is filed by the owner, the cattle/animals shall be released in his favour with the following conditions :

(i) Because releasing the animals the learned Court below shall get identification marks affixed on each of the animals through Station House Officer of concerned police station at the expenses of the owner and details of the same shall be kept

on the record of the police station as well as of the Court.

(ii) In case of death of any animal the owner/applicant shall intimate the Police Station concerned as well as the Court and shall be produced before the Station House Officer of concerned police station or the Court if required and only then the animals shall be buried or disposed of.

(iii) The animals/cattle shall be produced as and when required by the Court.

10. The applicants/petitioners/revisionist have harmoniously contended before the Courts below that the animals/cattles/bullocks/calves were being transported bona fide either for the sale in the Cattle Market or for use in the agriculture and no cruelty was being made over them and none else other than the present applicants/petitioners/revisionist have/has come forward for release with the submission that if the release/supurdagi are not made the health and value of these cattle shall be reduced. The allegations made on behalf of the prosecution that cattle are being taken out of the State for the purpose of slaughtering are not supported by evidence or documents.

11. Learned Counsel for the applicants, revisionist, petitioners have also placed reliance on the following judgments.

(i) 1988 ACC 29 Ram Nath v. State of U.P.

(ii) 1997 JIC 542 (All) Samsad v. State of U.P.

(iii) 1997 JIC 667 (All) Ajmeri v. State of U.P.

(iv) 1997 JIC 203 Samsad v. State of U.P.

(v) 1997 ACC 439 Irfan v. State of U.P. (vi) 1991 ACC 110 Babu v. State of U.P.

(vii) 1997 JIC 1149 (All) Saddish v. State of U.P.

(viii) 1997 JIC 507 : 1997 ALJ 1674 (All) Ram Nath v. State of U.P.

(ix) 1997 JIC 508 (All) Irfan v. State of U.P.

(x) 1997 JIC 780 (All) Sharif v. State of U.P.

(xi) Manager, Pinjrapole Deudar and Anr Vs. Chakram Moraji Nat and Ors,

(xii) 1994 JIC 117 Lal Bahadur v. State of U.P. 1997 JIC 936 : 1996 ALJ 1527 (All) Ram Karan v. State of U.P.

Whereas, learned Counsel for the State has placed reliance on the following judgments.

(a) In Criminal Misc. Writ Petition No. 116 of 2001 Sat Paul Passy and Ors. v. State of U.P. and Ors. passed the judgment dated 22-1-2001 of this Court by Hon"ble G. P. Mathur and Hon"ble S. K. Jain, JJ.

(b) In Criminal Revision No. 73 of 2000 Mohd. Sattar v. State of U.P. the

judgment dated 17-1 -2000 passed by Hon"ble Krishna Kumar, J.

(c) In Criminal Revision No. 1091 of 1999 Chhotey Lal Chaudhary and Ors. v. State of U.P. the judgment dated 14-10-1999 passed by Hon"ble Krishna Kumar, J.

(d) In Criminal Revision No. 1610 of 1994 Mustakeem v. State of U.P. and Ors. the judgment dated 25-10-1994 passed by Hon"ble K. L. Sharma, J.

(e) In Criminal Revision Nos. 431 of 1999, 432 of 1999 and 433 of 1999; Jaggan, Anwar and Shabbir Ahmad v. State of U.P. the judgment dated 24-3-1999 passed by Hon"ble B. K. Rathi, J.

(f) In Criminal Revision No. 979 of 1999 Rahman and Ors. v. State of U.P., the judgment dated 26-5-1999 passed by Hon"ble B. K. Rathi, J.

12. The cases referred and relied by the applicants/petitioners/revisionist have legal force and on the contrary those relied on by the State/opposite parties are distinguishable in the present facts and circumstances.

13. In the present case since the question is of interim custody of the catties, therefore, in the interest of justice these cattles/bullocks/calves are necessarily to be released in favour of the applicants/petitioners/revisionist. The learned Judicial Magistrate concerned will see whether the alleged offence in question is the first offence of the owner of the cattle or he has been found guilty of the offences under the relevant Acts earlier.

14. In view of the above discussions made above Criminal Misc. Application No. 3088 of 2001, Criminal Revision No. 1569 of 2001, Criminal Revision No. 1608 of 2001, Criminal Misc. Writ Petition No. 4176 of 2001, Criminal Misc. Writ Petition No. 4159 of 2001, Criminal Misc. Writ Petition No. 4160 of 2001, and Criminal Misc. Writ Petition No. 4161 of 2001 are allowed and respective impugned orders challenged therein are set aside with the following directions to the respective learned Judicial Magistrate concerned as under :--

The owner of the catties/animals shall be directed to file an affidavit stating therein specifically whether the alleged offence is the first offence or not. The owner of the cattle will have to give undertaking that in case, the animals/catties are released in his favour, the same will be kept properly and will not be subjected to cruelty during the custody.

In case, an affidavit containing the aforesaid statement is filed by the owner, the catties/animals shall be released in his favour with the following conditions :

(i) Before releasing the animals the learned Court below shall get identification marks affixed on each of the animals through Station House Officer of concerned police station at the expenses of the owner and details of the same shall be kept on the record of the police station as well as of the Court.

(ii) In case of death of any animal the owner/applicant shall intimate the Police

Station concerned as well as the Court and shall be produced before the Station House Officer of concerned police station or the Court if required and only then the animal shall be buried or disposed of.

(iii) The animals/cattle shall be produced as and when required by the Court.

In case of any default committed by the owner/applicant, it will be open for the concerned police station or the learned Courts below to seize the animals and keep the same in the Court custody and take action in accordance with law. The applicants/petitioners/revisionist shall furnish adequate security other than cash and bank guarantee and deposit a reasonable lump sum amount commensurate to the actual amount spent towards the expenses incurred by police on their maintenance at the satisfaction of concerned Judicial Magistrate after verification whether these catties have been kept properly by or under the police station.

It is further directed that if the investigation has not been concluded as yet, the Investigating Officer (I.O.) shall conclude the"-same and submit his report before the learned Magistrate concerned within one month from the date of presentation of a certified copy of this order before the learned Magistrate and in this respect, the learned Magistrate concerned shall communicate this order to the Investigating Officer. In case, charge-sheet has already been filed or the charge-sheet is filed within the time specified above, the learned Judicial Magistrate concerned shall conclude the trial expeditiously preferably within a period of two months from the date of filing of the charge-sheet and on the date of pronouncement of judgment, it will be open for him to direct the owner of the catties under whose custody the catties/animals are released to produce the catties/animals before the Court.