
(2017) 01 P&H CK 0184
In the Punjab And Haryana At Chandigarh
Case No : CWP-20529 of 2013 (O&M)

Renuka Chopra

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 190, Section 200
Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 — Section 15

Citation : (2017) CriLJ 1283 : (2017) 2 RCRCriminal 991

Hon'ble Judges : Mr. S.S. Saron and Mr. Darshan Singh, JJ.

Bench : Division Bench

Advocate : Ms. Divya Sharma, Advocate, Mr. Randhir Singh, Addl. A.G. Haryana. (Amicus Curiae), for the Appearing Parties; Ms. Deepali Puri, Advocate, for the Respondent-MC, Chandigarh

Final Decision : Disposed Off

Judgement

S.S. Saron, J.—The petitioner by way of the present petition under Article 226 of the Constitution of India has made the following substantive prayers:-

(i) a writ, in the nature of mandamus directing the respondents to stop illegal transportation of animals in one State other (sic. - to another) State for slaughtering and further directing the respondents to take legal action against erring officers who in collusion with the beneficiaries illegally allow to transport the animals, which is not permissible under the law.

(ii) Any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. The petitioner submitted that she wanted to show some facts regarding the condition of speechless innocent animals and how the Haryana Government was involved in cow slaughtering and earning huge amounts of bribe from slaughter houses and thereby breaking the law. Some facts that have been stated are as to

what is this Court doing regarding the cow slaughtering act. A reference is made to Section 429 of the Indian Penal Code. Besides, other facts are mentioned like present situation of cow smuggling crimes; cruelty done by those smuggling cows to the animals; no proper legal action being taken on those smuggling cows; deficits in law implementation in cases of cow slaughters; no proper action being taken in cases of buffaloes; deficits in implementation of law in cases of buffaloes and Haryana State Government involved in "Gau Taskari".

3. The petitioner has levelled allegations of smuggling of animals, illegal and improper slaughtering of animals, ill-treatment of animals and non-implementation of law relating to animals; besides, has prayed for taking legal action against erring officers who in collusion with the beneficiaries illegally allow transportation of animals, stating the same to be impermissible in law. The allegations as made, however, are general in nature and no specific instances or places where the same are being carried out have been mentioned.

The petitioner was earlier appearing in person and had been appearing from time to time. During the pendency of the petition, a letter was received from the petitioner by a co-ordinate bench of this Court. In view of the said letter, this Court passed the following order on 18.11.2015:-

"We have received a letter from the petitioner stating therein that she is not interested to pursue this petition. In this view of the matter, Ms. Divya Sharma, Advocate, who is present in the Court, is appointed as amicus curiae to assist this Court on behalf of the petitioner. Registry is directed to supply complete copy of the paper-book to Ms. Divya Sharma, Advocate, amicus curiae. Adjourned to January 18, 2016."

4. The petitioner had stated that she was not interested in pursuing this petition. In view of the aforesaid position, Ms. Divya Sharma, Advocate was appointed as amicus curiae to assist the Court on behalf of the petitioner. Complete copy of the paper-book was ordered to be supplied by the Registry to her.

5. Ms. Divya Sharma, Advocate has submitted that the petitioner has been harassing her by sending indecent and improper messages. The manner in which the petitioner after she had withdrawn from the case and thereafter harassing the learned counsel who has been appointed as amicus curiae by this Court is improper and reprehensible. She has further submitted that "The Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 ("Act" - for short) has been enacted by the Haryana Legislature which was notified on 19.11.2015 and the said Act deals with the issue of illtreatment and slaughter of cows. However, it is submitted that its effective and meaningful implementation in true spirit of the directive principles of the State policy would be required so that the Constitutional goals can be achieved. It is submitted that mechanism may be provided for effective implementation of the Act.

6. The questions involved in the petition relate to directions being issued to the respondents to stop illegal transportation of animals from one State to the other

for slaughtering and further directing the respondents to take legal action against the erring officers who in collusion with the beneficiaries were illegally allowing to transport the animals. As already noticed, there are no particulars as to who are the erring officers committing the illegal acts and neither has any particular instance been mentioned.

7. Mr. Randhir Singh, Additional Advocate General, Haryana appearing for the State submits that after the filing of the petition, the State of Haryana has indeed enacted the Act, which provides for Gauvansh (i.e. cows or its progeny in terms of Section 2 (g) of the Act) Sanrakshan and Gausamvardhan (i.e. conservation and development of indigenous breeds of cow in terms of Section 2 (h) of the Act) and to establish institutions to accept, keep, maintain and care the infirm, injured, stray and uneconomic cows in the State of Haryana. It is submitted that the prohibition of cow slaughtering has been banned in the State of Haryana under Section 3 of the Act. The sale of beef has been prohibited under Section 8 of the Act. Punishment for those contravening or attempting to contravene or abetting the contravention of Sections 3 and 4 of the Act has been made more stringent. Besides, in terms of Section 15 the offences have been made cognisable and non-bailable and in terms of Section 17 confiscation of vehicles has also been provided for. Besides, the Punjab Prohibition of Cow Slaughter Act, 1955 as applicable in the State of Haryana has been repealed. Therefore, according to learned counsel for the State nothing survives in the present case in view of the enactment of the said Act and the same may be disposed of. However, he has no serious objection to provide for effective implementation of the Act.

8. We have given our thoughtful consideration of the matter. The enactment of the Act to provide for Gauvansh Sanrakshan and Gausamvardhan so as to establish institutions to accept, keep, maintain and care the infirm, injured, stray and uneconomic cows in the State of Haryana is in consonance with the provisions of Article 48 of the Constitution. Article 48 relates to organization of agriculture and animal husbandry. It is provided that the State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cow and calf and other milch and draught cattle. Besides, Article 51-A of the Constitution provides for fundamental duties and Clause (g) envisages it as a duty to have compassion for living creatures.

9. The provisions of the Act, which seek to fulfil the aforesaid objects, may be noticed. Section 3 of the Act provides for prohibition of cow slaughter. No person notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary is to slaughter or cause to be slaughtered or offer or cause to be offered for slaughter any cow in any place in the State. Section 4 provides for exceptions. Section 5 provides for restriction on export of cow 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 the

Act or with the knowledge that it shall be or is likely to be slaughtered. Section 6 provides for permit and Section 7 for special permit which are for the purpose of transportation of the cows and not for slaughtering. Section 8 provides for prohibition of sale of beef and no person notwithstanding anything contained in any other law for the time being in force is to directly or indirectly sell, keep, store, transport or offer for sale or cause to be sold beef or beef products except for such medicinal purposes and in such form as may be prescribed. Section 13 provides for offences and whoever contravenes or attempts to contravene or abets the provisions of Section 3 or 4 is to be guilty of an offence punishable with rigorous imprisonment for a term which is not to be less than three years and may extend to ten years and fine which is not to be less than Rs.30,000/- and may extend to Rs.1,00,000/-. In case of default in payment of fine, additional imprisonment, which may extend to one year may be imposed in lieu of the fine. Section 14 of the Act relates to burden of proof and it is provided that in a trial of an offence punishable under Section 13, the burden of proving that the slaughtered cow belonged to the class specified in clause (a), (b) or (c) of sub Section (1) of Section 4 i.e. relating to exceptions, is on the accused. Section 15 envisages that notwithstanding anything contained in the Code of Criminal Procedure 1973 ("CrPC" - for short) an offence punishable under Section 13 is cognisable and nonbailable. Section 16 provides for powers of a Police Officer not below the rank of Sub-Inspector or any person authorised in this behalf by the Government to enter and seize etc. for satisfying himself that the provisions of the Act have been complied. Section 17 provides for confiscation of vehicles whenever an offence punishable under the Act is committed. In terms of Section 20 the Punjab Prohibition of Cow Slaughter Act, 1955 as applicable in the State of Haryana has been repealed.

10. A perusal of the above enactment shows that measures have been taken by the Haryana State to take steps for preventing and prohibiting the slaughter of cows which in Section 2 (c) has been defined to mean and include a bull, bullock, ox, heifer or calf and a disabled diseased or barren cow as well. Besides, "Gauvansh" in Section 2 (g) has been defined to mean a cow or its progeny and "Gausamvardhan" has been defined in Section 2 (h) to mean conservation and development of indigenous breeds of cow. Section 2 (m) defines "slaughter" to mean killing by any method whatsoever and includes maiming and inflicting of physical injury which in the ordinary course may cause death.

11. The petitioner as already noticed has made general allegations of animals being ill-treated and slaughtered and no specific instance or instances or places where such activities are being carried out have been mentioned. In case, the petitioner has any information of any illegal or criminal act relating to animals being committed, which now constitute a cognisable offence or offences in terms of Section 15 of the Act, she is liable to inform the Police Station concerned so that a proper case/First Information Report is registered and the case is investigated in accordance with law. The offences under the Act in terms of Section 15 thereof are cognisable and non-bailable.

12. The investigation of cognisable offences is the domain of the police and the Courts seldom interfere in the domain of investigation. In *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604 the Hon'ble Supreme Court held that investigation of a cognisable offence is the field exclusively reserved for the police officers whose powers in that field are unfitted so long as the powers to investigate into the cognisable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII CrPC and the Courts are not justified in obliterating the track of investigation when investigating agencies are well within their legal bounds as was mentioned therein. It was observed that a noticeable feature in the CrPC is that a Magistrate is kept in the picture at all stages of police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provisions causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of the Constitution.

13. It is indeed an accepted position that the High Court is normally not to launch any prosecution. The position has been delineated by the Supreme Court in the case of *Sakiri Vasu v. State of U.P. and others*, 2008 (1) RCR (Crl.) 392 (SC) wherein a caution was laid down so as to discourage the High Court to entertain writ petitions or petitions under Section 482 CrPC where alternative remedies for registration of a criminal case/FIR were there. It was held that if a person has a grievance that the Police Station was not registering his FIR under Section 154 CrPC, then he could approach the Superintendent of Police under Section 154 (3) CrPC by an application in writing. Even if that did not yield any satisfactory result in the sense that the FIR was still not registered or that even after registering it, no proper investigation was held, it was open to the aggrieved person to file an application under Section 156 (3) CrPC before the learned Magistrate concerned. If such an application under Section 156 (3) CrPC was filed before the Magistrate, the Magistrate could direct the FIR to be registered and also direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate, it is held, could also under the same provision monitor the investigation to ensure a proper investigation. It was also observed that it was often found that someone had a grievance that his FIR had not been registered at the Police Station and/or a proper investigation was not being done by the Police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. It was held that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matter and relegate the petitioner to his alternate remedy, first under Section 154 (3) CrPC and Section 36 CrPC before the Police Officers concerned, and if that is of no avail, by approaching the

Magistrate concerned under Section 156 (3) CrPC. Besides, the complainant also had a remedy of filing a private complaint under Section 200 CrPC.

14. In *Aleque Padamse v. Union of India*, (2007) 6 SCC 171 it was held that there was no dispute on the score that whenever any information is received by the Police about the alleged commission of offence which is a cognisable one, there was a duty to register a FIR. The question that was considered was whether a writ could be issued to the Police authorities to register the same. The basis question, it was observed, was as to what course was to be adopted if the police did not do so. The correct position in law after referring to several earlier judgments it was held was that the Police officials ought to register the FIR whenever facts brought to their notice show that cognisable offence had been made out. In case the police officials failed to do so, the modalities to be adopted it was held were set out in Section 190 read with Section 200 CrPC. Therefore, a writ petition for registering cognisable offences is not to be normally entertained.

15. Keeping in view the aforesaid position the further continuation of the writ petition regarding taking action against erring officials, in the absence of any material, would not serve any purpose. However, we are of the view that the Act needs to be implemented in an effective manner. The malpractices of cow slaughtering by any means which has been prohibited indeed needs to be effectively implemented. Therefore, the Court initiates suo motu proceedings so as to ensure the effective and proper implementation of the Act. The Registry shall on the basis of this order entertain a fresh Public Interest petition titled "Court on its own motion v. State of Haryana", which shall be numbered and listed before an appropriate Bench.

16. In the meantime, a meeting shall be held between the police department, the Department of Animal and Husbandry and the Department of Rural Development of Panchayat of the State of Haryana so as to take a decision for effective implementation of the Act in letter and spirit. The result and outcome of the meeting that is to be held shall be submitted in the fresh writ petition.

Copy of the order be given to Sh. Randhir Singh, Addl. A.G. Haryana under the signatures of the Bench Secretary for necessary compliance.

17. Accordingly, the present petition is disposed of.

18. The fresh writ petition be listed for hearing on 1.2.2017 with title as "Court of its own motion v. State of Haryana" so as to ensure effective implementation of the Act. Ms. Divya Sharma, Advocate shall continue to assist the Court as *amicus curiae*.