
(1999) 01 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 68 of 1999

Usman alias Chippad

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 20-01-1999

Acts Referred:

Citation : (1999) 2 RCR(Criminal) 457

Hon'ble Judges : R.L.Anand, J

Advocate : R.S. Sihota, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. Usman alias Chippad son of Ramjan and Wahid son of Majid, have filed the present revision and it has been directed against the judgment dated 9.1.1999, passed by the court of Addl. Sessions Judge, Gurgaon, who maintained the conviction of the appellants u/s 4 of the Cow Slaughter Act.

Some facts can be noticed in the following manner :

On 13.5.1993, when the police party headed by HC Risal Singh in connection with patrolling and detection of cows slaughter, was present at Tauru Road, Nuh, an information was received about the appellants, residents of village Ujina, that they were exporting 11 cows in a truck bearing registration No. HYG 281 to Rajasthan through Chuaharpur Valley for slaughtering and if a raid was conducted, they could be caught redhanded. On receipt of this information, a ruqa, Ex. PW3/A, was sent to the police station, on the basis of which formal FIR. Ex. PW3/D was recorded. Thereafter, raid as per information was conducted. When the police party reached on the Rajasthan Border after crossing Chuaharpur valley, accused were seen unloading cows from the truck. On seeing the police party, they escaped towards is Rajasthan and could not be apprehended. The cows and the truck were taken into possession vide recovery memo, Ex. PW1/A. Site plan was also prepared. The cows were ultimately sent to Goshala. Later on, the accused were arrested on 22.6.1993. The learned Magistrate vide judgment and

order dated 27.4.1998 and 29.4.1998, respectively, convicted and sentenced the appellants u/s 4A of the Cow Slaughter Act. Aggrieved by the order of the learned Magistrate, the petitioners filed a revision before the Addl. Sessions Judge, Gurgaon, who for the reasons as set out in para14 of the order, dismissed the appeal and sustained the conviction and sentence of the appellants. Para14 reads as under :

"In the present case the prosecution has come up with a definite case against the appellants that they were exporting the cows for slaughtering them and the cows were so found being unloaded from the truck just near the Border with Rajasthan State. Argument of learned counsel for the appellants is that there is absolutely no evidence that the cows were being exported out of the State of Haryana. Support has been sought from the authority reported as *Leela Singh and others v. State of Punjab and others*, 1993(3) Recent Criminal Reports 374 (P&H) . This is an authority under section 7 of the Essential Commodities Act, 1955, where the Punjab Paddy and Rice (Export and Import Control) JUDGMENT 1981, was alleged to have been violated. Facts of the case in hand are different. The words 'Taken out from the State of Haryana' appearing in the definition of the terms 'export' are very significant. Not only export but even causing cows to be exported is an offence under section 4(A) of the Act. To move ahead this may be direct or even through any other mode. The appellants exporting the cows had left them near the Rajasthan Border from where the cows entering the State of Rajasthan were taken into possession. The cows were very weak and feeble. The appellants had also escaped in the State of Rajasthan. The appellants are slaughterers by profession. Site plan Ex. PW3/B supports the prosecution case that it was just at the nook of the State of Rajasthan that the cows were left. The appellants have also not come out with any other explanation for transporting the cows in such manner. In the totality of the circumstances, there cannot be any other purpose of such transportation of cows except for slaughtering thereof."

2. Still not satisfied with the orders of the courts below, the present revision.

3. I have heard Mr. R.S. Sihota, counsel for the petitioners, and with his assistance have gone through the records of this case.

4. The counsel for the petitioner has vehemently submitted that a legal question in this case is involved which requires thorough scrutiny as the offence u/s 4A of the Act has not been committed or constituted with the alleged act attributed to the petitioners. In support of his contention, counsel for the petitioner has submitted that the petitioners were not arrested at the spot. They were arrested after a period of about 40 days. There is no, prima facie, evidence to show that the petitioners were exporting the cows for the purpose of slaughtering and, in these circumstances, it was highly improper on the part of the appellate Court below to maintain the conviction of the petitioners u/s 4A of the Act. The counsel further submitted that mere attempt is not punishable u/s 4A of the Act. Support has also been taken by the counsel for the petitioner from *Leela Singh and others v. State of Punjab and others*, (supra). Incidentally, this authority was also

relied upon by the petitioners before the first appellate Court.

5. Section 4A of the Cow Slaughter Act, reads as follows :

"4A. Restriction on export of cow. No person shall export or cause to be exported 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 this Act or with the knowledge that it will be or is likely to be slaughtered."

6. A reading of the above would show that the Legislature has put the restriction upon the person that such a person shall export or cause to be exported cows for the purpose of slaughter either directly or indirectly clearly indicates that the Legislature wanted to cover every aspect of the case vide which the cows are going to be exported or cause to be exported for the purposes of slaughtering. The word `export" has again, been defined under the Act, which means to take out from the State of Haryana to any place outside that State. In this regard, the evidence which was led on the record by the prosecution is to be seen. The recovery of the cows has been effected from a distance of about only 1600 meters from HaryanaRajasthan Border. It is the case of the prosecution that on seeing the police party, the petitioners fled away from the spot and they made their entry inside the State of Rajasthan. Further, it has been observed by the learned appellate Court that the cows were feeble in nature. They were weak, they were not yielding milk. Further, it has been observed that the petitioners were slaughterers by profession. As to whether the cows were being exported or caused to be exported for the purpose of slaughter, direct evidence is rarely available. In the present case, there is no evidence at all on the record that the petitioners belong to a village which is near to the RajasthanHaryana border. In these circumstances, a reasonable inference can always be drawn against the petitioners that they were causing the cows to be exported for the purposes of slaughtering.

7. In these circumstances, I do not see any illegality so far as the conviction of the petitioners is concerned.

8. The learned counsel for the petitioners, then, submitted that some leniency should be shown to the petitioners in the matter of sentence.

9. In the opinion of this court, the ends of justice will suffice, if the substantive sentence of the petitioners is reduced to nine months from 11/2 years. JUDGMENTed accordingly.

10. With the above modification in the matter of sentence, the revision stands disposed of.