

Court No. - 44

Case :- CRIMINAL REVISION No. - 4956 of 2023

Revisionist :- Vaseem Ahmad

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Pradeep Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia,J.

1. The present revision has been filed challenging the order dated 12.12.2022, whereby, the motorcycle of the revisionist bearing No. UP 71 AQ 4187 has been confiscated in exercise of powers under section 5A(7) of the UP Prevention of Cow Slaughter Act, 1955 (hereinafter referred to as the Cow Slaughter Act).

2. The facts in brief are, that an FIR was registered as Case Crime No. 0042 of 2021 under Section 8/5/3 of the Cow Slaughter Act in terms of the FIR which is contained as Annexure No. 1. It was alleged that four persons who were on two motorcycles were apprehended on being challenged, the said persons fled leaving behind the motorcycles and on the inspection of the motorcycle and the bags kept thereupon, one quintal 200 grams of beef was allegedly recovered from the bags. Subsequently, the ownership of the motorcycle was traced to the revisionist and based upon the said, the revisionist was charged of commission of an offence under Section 3/5A/8 of the Cow Slaughter Act.

3. The revisionist claiming to be the owner of the seized motorcycle, moved an application for release of the vehicle during the pendency of the case vide application dated 6.4.2021 on which a report was called. The Superintendent of Police, Fatehpur submitted his report dated 18.10.2022 stating that the revisionist was chargesheeted for commission of an offence under Section 3/5A/8 of the Cow Slaughter Act and as he was transporting the beef on the motorcycle in question, the motorcycle in question was made a case property and is liable to be confiscated.

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4. The District Magistrate empowered by virtue of section 5A(7), proceeded to pass an order of confiscation (impugned), recording that in terms of the report dated 18.10.2022 given by the Superintendent of Police, Fatehpur regarding involvement of the vehicle in question in transportation of beef for which an offence was registered under Section 3/5A/8 of the Cow Slaughter Act, and as the revisionist could not produce any credible evidence to the contrary to the effect that the vehicle was not used for transportation as such, the same was liable for confiscation under section 5A(7) of the Cow Slaughter Act.

5. Counsel for the revisionist argues that the confiscation is contrary to the mandate of the Act and also violates the rights enshrined under Article 300(A) of the Constitution of India as the confiscation is not a proper exercise of power, the order deserves to be quashed.

6. The learned A.G.A., on the other hand, justifies the order by arguing that in terms of the report, the vehicle in question was used for transportation of beef as is clear from the perusal of the FIR which itself records that the beef was being transported from Ajua to be sold at Afoi (both within the State of Uttar Pradesh), as such the power of confiscation was rightly exercised by the District Magistrate, who is duly empowered to do so.

7. To appreciate the issue at hand, it is essential to look into the provisions of the Cow Slaughter Act. Section 2(a) of the Cow Slaughter Act defines beef. Section 2a of the Cow Slaughter Act is being reproduced hereinunder:-

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[(a) "beef" means flesh of cow but does not include such flesh contained in sealed containers and imported as such into Uttar Pradesh;]

8. Section 3 of the said Act restrains the slaughter of cow, bull or bullock in any place in Uttar Pradesh. Section 5A(1) of the Act provides that no person shall transport or offer for transporting or cause to be transported any cow or bull or Bullock, the slaughter whereof is punishable under the Act from any place within the State to any place outside the State except on a permit issued by the State Government. Section 5A(7) of the Act states that the vehicle by which the beef or cow and its progeny is transported in

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violation of the provisions of this Act and the relevant rules shall be confiscated and seized by the law enforcement officers and the District Magistrate/Commissioner of Police is empowered to take proceedings of confiscation and release in respect of the said seized vehicle.

9. Section 5A(11) of the Cow Slaughter Act provides that the provisions of the Act or the related rules in the context of search, acquisition, disposal and seizure shall follow the Cr.P.C., where the rules in respect to the said are silent.

Section 5A is quoted herein below:-

"...5-A. Regulation on transport of cow, etc.-(1) No person shall transport or offer for transport or cause to be transported any cow, bull or bullock, the slaughter whereof in any place in Uttar Pradesh punishable under this Act, from any place within the State to any place outside the State, except under a permit issued by an officer authorised by the State Government in this behalf by notified order and except in accordance with the terms and conditions of such permit.

(7) The vehicle by which the beef or cow and its progeny is transported in violation of the provisions of this Act and the relevant rules, shall be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner of Police will do all proceedings of confiscation and release, as the case may be.

(11) Where the provisions of this Act or the related rules in context of search, acquisition, disposal and seizure are silent, the relevant provisions of the Code of Criminal Procedure, 1973 shall be effective thereto."

Section 8 of the said Act provides for penalty in respect of a person who contravenes Section 3, 5 or 5A.

10. In terms of the powers conferred by virtue of section 10 of the said Act, rules have been framed known as the Uttar Pradesh Prevention of Cow Slaughter Rules, 1964. Rule 16 of the said rules provide for the manner of grant of permit for transportation of any cow, bull or bullock, the slaughter whereof is punishable under the Act and provides that any cow, bull or bullock transported without a valid permit shall be confiscated and auctioned. Rule 16 is quoted hereinbelow:-

....16 (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

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licensing authority on prescribed Form "G".

11. On the plain reading of the provisions of the Act and the rules framed thereunder, it is clear that the vehicle on which the beef is alleged to be transported can be confiscated only in terms of the mandate of Rule 7 of section 5A.

12. To attract the power of confiscation conferred by virtue of Rule 7 of Section 5A, it is essential to allege and establish that the vehicle on which beef is being transported is done in violation of the provisions of this Act and the relevant rules. It is essential to note that for transportation of cow, bull or bullock specific rules for issuance of permit are prescribed under Rule 16, however, the transportation of the cow, bull or bullock, within the State of Uttar Pradesh (as is in the present case) does not require any permit as has also been held by this Court in the case of ***Ashfaq Ahmad Vs. State of UP & another 9 (1) ACR 233.***

13. Article 300-A of the Constitution of India prescribes that no one shall be deprived of his property except in accordance with law. The 'law', it is fairly well settled, should be a law framed by the Legislature. Thus, to deprive a person of his property (in the present case the motorcycle), it is essential that the Act framed by the Legislature prescribes for power of confiscation and subject to any limitations prescribed therein.

14. The only power traceable for confiscation of a vehicle alleged to be transporting beef is traceable to Section 5A(7) which applies only when the *beef or the cow is being transported in violation of the provisions of this Act.* The restrictions on transportation in terms of the Act and the Rules framed thereunder is only applicable in respect of transportation of *cow, bull or bullock* that too *in any place in Uttar Pradesh from any place outside the State.* In the entire Act or the rules there exists no provision barring transportation of beef . The restriction placed under Section 5A of the Cow Slaughter Act is only in respect of transportation of cow, bull or bullock that too only *from a place outside the State to any place within the State.* There is no bar or restriction of transport of *beef* even from any place outside the State to any place inside the State, In the present case the allegation being alleged transportation of beef on a vehicle (motorcycle) within two places in state, is neither prohibited nor even regulated thus, the foundation for

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confiscation on charge of transportation in violation of the provision of this Act is prima facie not established.

15. The reference to section 5A(11) with regard to the applicability of Cr.P.C. ,where the Act and the Rules are silent, applies only in respect of *search, acquisition, disposal and seizure* and not to the power of confiscation. Even otherwise, the power to confiscate vests in terms of the mandate of Cr.P.C. by virtue of Section 452 of the Cr.P.C. that too in respect of any property which is in the custody of the Criminal Court and that too after the enquiry or trial is concluded. In the present case admittedly, the trial is continuing the allegation on the revisionist is of transporting beef on the motorcycle within the State of Uttar Pradesh which is neither prohibited nor restrained even on a plain reading of section 5A(1) of the Cow Slaughter Act, as such, I have no hesitation in holding that the power of confiscation has been exercised without any authority of law and on a misreading of section 5A(7) of the Cow Slaughter Act and for the said reasons the confiscation order cannot be sustained and is liable to be quashed.

16. The court concerned with which the property bearing vehicle No. UP 71 AQ 4187 is made a case property is directed to release the same on the revisionist establishing his ownership and on furnishing a bond of Rs. 5000.

17. The revision is ***allowed*** in terms of the said order.

Order Date :- 20.11.2023

S.A.