

Neutral Citation No. - 2024:AHC-LKO:20201

A.F.R.

Reserved on 19.02.2024

Delivered on 06.03.2024

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 293 of 2024

Petitioner :- Omprakash

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lko. And
Another

Counsel for Petitioner :- Anil Kumar Tiwari

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Heard Sri Anil Kumar Tiwari, learned counsel for the petitioner and Sri Ashok Kumar Singh, learned A.G.A.-I for the State and perused the record.

2. This petition under Article 227 of the Constitution of India has been filed with the following relief (s):

(i) Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 04.12.2023 passed by Commissioner Ayodhya, in Case No. 2243 of 2023, "Omprakash Vs. State of U.P. through District Magistrate", Computerized Case No. C20230400002243, under Section 5-A(8) Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (contained as annexure No. 6) as well as order dated 17.03.2023 passed by learned District Magistrate, Ayodhya, in Case No. 4705/2022 "State Vs. Omprakash" Computerized No. D202204230004705 under Section 5-A Uttar Pradesh Prevention of Cow Slaughter Act, 1955 as well as order dated 25.4.2023 passed by learned Session Judge, Faizabad in Criminal Revision No. 49/2023 related to Crime No. 322/2022, under Section 3/5ka/5kha/8 of Uttar Pradesh Prevention of Cow Slaughter Act, 1955, pertaining to Police Station-Raunahi, District-Ayodhya/Faizabad as contained as Annexure no. 2 and 3 to this writ petition.

(ii) Issue a writ, order or direction in the nature of mandamus to stay the operation and implementation of the impugned judgment and order dated 04.12.2023 passed by Commissioner Ayodhya, in Case No. 2243 of 2023, "Omprakash Vs. State of U.P. through District Magistrate", Computerized Case No. C20230400002243, under Section 5-A(8) Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (contained as annexure No. 6) as well as order dated 17.03.2023 passed by learned District Magistrate, Ayodhya, in Case No. 4705/2022 "State Vs. Omprakash" Computerized No. D202204230004705 under Section 5-A Uttar Pradesh Prevention of Cow Slaughter Act, 1955 as well as order dated 25.4.2023 passed by learned Session Judge, Faizabad in Criminal Revision No. 49/2023 related to Crime No. 322/2022, under Section 3/5ka/5kha/8 of Uttar Pradesh Prevention of Cow Slaughter Act, 1955, pertaining to Police Station-Raunahi, District-Ayodhya/Faizabad as contained as Annexure no. 2 and 3 and further the Hon'ble Court may kindly be pleased to release the confiscated vehicle bearing Registration No. U.P. 33 AT 3743 in favour of the petitioner, in the interest of justice."

3. Learned A.G.A. has already filed counter affidavit and in reply thereto learned counsel for the petitioner has already filed the rejoinder affidavit, the same are available on record.

4. Learned counsel for the petitioner submits that on 13.09.2022 police of Police Station Raunhai lodged an F.I.R. bearing Case Crime No. 322/2022 under Section 3/5/5kha/8 of Uttar Pradesh Prevention of Cow Slaughter Act, 1955, Police Station Raunahi, District Faizabad/Ayodhya against two accused persons. As per prosecution case 01 calf was recovered from the vehicle of the petitioner i.e. UP33AT3743. The accused persons were carrying the said calf for the purpose to sell and they could not show the papers of the vehicles.

5. Learned counsel for the petitioner further submits that the petitioner is the registered owner of the vehicle number UP 33 AT

3743 and the petitioner is plying his business by the said vehicle as a hire purchase, the same was seized by the police.

6. Learned counsel for the petitioner further submits that the petitioner moved release application before the District Magistrate, Ayodhya and the learned Magistrate rejected the application of the petitioner vide order dated 17.03.2023 on the basis of the report submitted by the police and further directed to the police authorities to make the public auction of the confiscated vehicle in an arbitrary manner. Thereafter, the petitioner filed Criminal Revision No. 49/2023 against the order dated 17.03.2023 before the learned District and Session Judge, Faizabad, who vide order dated 25.04.2023 dismissed the said revision affirming the order dated 17.03.2023 passed by the District Magistrate, Ayodhya.

7. Learned counsel for the petitioner further submits that against the impugned orders dated 17.03.2023 passed by learned District Magistrate, Ayodhya as well as order dated 25.4.2023 passed by learned Session Judge, Faizabad, the petitioner had filed Criminal Misc. Writ Petition No. 4425 of 2023: Omprakash Vs. State of U.P. before this Hon'ble Court and this Hon'ble Court vide order dated 18.09.2023 dismissed the petition of the petitioner with liberty to file appeal before the Commissioner. The order dated 18.9.2023 is being quoted herein below:

“Heard learned counsel for the petitioner and learned A.G.A. for the State.

By this petition, the petitioner has prayed for quashing of the impugned order dated 17.03.2023 passed by the learned District Magistrate Ayodhya in case crime No. 4705/2022 "State Vs. Omprakash", under Section 5-A of Uttar Pradesh Prevention of Cow Slaughter Act, 1955 and

consequential judgment and order dated 25.04.2023 passed by the Sessions Judge, Faizabad (Ayodhya) in criminal revision No. 49/2023 related to crime No. 322/2022, under Sections 3/5ka/5kha/8 of Uttar Pradesh Prevention of Cow Slaughter Act, 1955, P.S. Raunahi, District Ayodhya/Faizabad.

Learned A.G.A., at the outset, has submitted that against the impugned order dated 17.03.2023, the appeal lies before the Commissionerate in view of the government order dated 14.02.2021.

Learned counsel for the petitioner does not dispute the fact that against the impugned order dated 17.03.2023, the appeal lies before the Commissionerate.

In view of the above, the petition is dismissed on the ground of availability of alternative remedy.

In case, the appeal is filed within a period of 15 days from today, the same shall be decided on merits by the Commissioner within a further period of one month.

Learned counsel for the petitioner undertakes that he will not seek any adjournment before the Appellate Court. ”

8. Learned counsel for the petitioner further submits that thereafter the petitioner against the order dated 17.03.2023 passed by learned District Magistrate, Ayodhya moved an appeal before the Commissioner Mandal Ayodhya, which has been registered as Case No. 2243 of 2023: Omprakash Vs. State of U.P. through District

Magistrate”, Computerized Case No. C202304000002243, under Section 5-A(8) Uttar Pradesh Prevention of Cow Slaughter Act, 1955, but the same has been rejected vide order dated 04.12.2023.

9. Learned counsel for the petitioner further submits that the impugned order dated 17.03.2023 passed by the District Magistrate, Ayodhya is totally illegal. He further submits that the learned Magistrate by exceeding its jurisdiction has passed the impugned order on a wrong finding that the confiscated vehicle was used in cow slaughtering or in transportation of cow or its progeny which is totally perverse and the learned Magistrate has not considered the evidence adduced by the petitioner.

10. Learned counsel for the petitioner further submits that no such activities of transportation of the aforesaid cow species were done as per the allegations made by the prosecution but the vehicle in question of the petitioner has been seized in an arbitrary manner.

11. Learned counsel for the petitioner further submits that the petitioner is facing great jeopardy due to confiscation of vehicle by learned District Magistrate, Ayodhya and his livelihood is dependent upon the said vehicle and the petitioner was not able to give the installments of the said vehicle because that was purchased on loan and the said vehicle is the main source of earning and now his family has come at the verge of starvation.

12. Learned counsel for the petitioner further submits that the vehicle is standing in open yard in the police station for more than nine months and with the passage of time ultimately it will become junk and after sometime it is not useful for any purpose. Reliance has been placed on the law laid down by the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujrat, AIR 2003 SC 638**.

13. Learned counsel for the petitioner has further drawn the attention of the Court regarding the provisions of Sections 451 and 457 of Cr.P.C., which is quoted as under:-

"451. Order for custody and disposal of property pending trial in certain cases.-When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.- For the purposes of this section," property" includes-

- (a) property of any kind or document which is produced before the Court or which is in its custody,
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. Procedure by police upon seizure of property.-(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

14. Learned counsel for the petitioner further submits that the petitioner is ready to comply with all the conditions, which the lower court will impose while releasing the vehicle. Undisputedly, petitioner is the rightful owner of the vehicle, therefore, the vehicle be released in his favour and the impugned order be quashed.

15. Per contra, learned A.G.A. submits that the vehicle in question was being used for transportation of bulls illegally at the time of alleged offence and the vehicle in question was correctly seized by the District Magistrate, Ayodhya, vide its impugned order dated 17.03.2023. Thus, the District Magistrate, Ayodhya has rightly passed the impugned order dated 17.03.2023 and there is no illegality and the appeal was rightly dismissed, no interference is required.

16. I have heard the learned counsel for the parties and carefully gone through the relevant legal provisions and the judgments rendered by the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai (supra)** and the judgment passed by this court in various cases.

17. The Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai, AIR 2003 SC 638 (supra)** in para 17 and 21 has been pleased to held as under:-

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of application for return of such vehicles.

21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Cr.P.C. Are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This Object can also be

achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

18. In **Nand Vs. State of U.P., 1996 Law Suit (All) 423** this Court has observed that pendency of the confiscation proceedings under Section 72 of the U. P. Excise Act is not a bar for release of the vehicle which is required for the trial under Section 60 of the U.P. Excise Act. It has been clearly observed by this Court in para 7 that:-

"I think it is not proper to allow the truck to be damaged by remaining stationed at police station. Admittedly, the ownership of the truck is not disputed. The State of Uttar Pradesh does not claim its ownership. Therefore, I think it will be proper and in the larger interest of public as well as the revisionist that the revisionist gives a Bank guarantee of Rs. 2 lakhs before the C.J.M., Kanpur Dehat and files a bond that he shall be producing the truck as and when needed by the criminal courts or the District Magistrate, Kanpur Dehat, and he shall not make any changes nor any variation in the truck."

19. This Court further has held in the case of **Jai Prakash Vs. State of U.P., 1992 AWC 1744** that mere pendency of confiscation proceedings before the Collector is no bar to release the vehicle.

20. In **Kamaljeet Singh Vs. State of U.P., 1986 U.P. Cri. Ruling 50 (All)**, the same view was taken by this court that pendency of confiscation proceedings shall not operate as bar against the release of vehicle seized u/s 60 of Excise Act.

21. In the opinion of this Court, it is not disputed that the power under Section 451 of Cr.P.C. is not properly and widely used by the court below while passing the orders. The power conferred under Section 451 of Cr.P.C. be exercised by the court below with judicious mind and without any unnecessarily delay. So that the litigant may not

suffer, merely keeping the article in the custody of the police in the open yard will not fulfil any purpose and ultimately it result the damage of the said property. The owner of the property be allowed to enjoy the fruits of the said property for the remaining period for which the property is being made.

22. Further in the opinion of this Court, the procedure as contemplated under Section 457 of Cr.P.C. be also followed promptly, so that the concerned Magistrate may take prompt decision for disposal of such properties and be released in favour of the entitled person of the said property, keeping the said property in the custody will not solve any purpose and that gives a mental and financial torture to the owner of the said property which is also against the law and against the principles of natural justice.

23. As per the legal propositions mentioned above and keeping in view this fact that undisputedly the petitioner is the registered owner of the seized vehicle and the ownership of the vehicle is not in dispute neither the State or any other person has claimed their ownership over the vehicle, therefore, no useful purpose will be served in keeping the vehicle stationed at the police station in the open yard for a long period allowing it to be damaged with the passage of time.

24. In view of the above facts and circumstances of the case, the impugned orders is not sustainable in the eye of law and requires interference by this court.

25. Accordingly, the present petition under Article 227 of the Constitution of India is **allowed** and the impugned order dated 04.12.2023 passed by Commissioner Ayodhya, in Case No. 2243 of 2023, “Omprakash Vs. State of U.P. through District Magistrate”, Computerized Case No. C20230400002243, under Section 5-A(8) Uttar Pradesh Prevention of Cow Slaughter Act, 1955 as well as order dated 17.03.2023 passed by learned District Magistrate, Ayodhya, in

Case No. 4705/2022 “State Vs. Omprakash” Computerized No. D202204230004705 under Section 5-A Uttar Pradesh Prevention of Cow Slaughter Act, 1955 as well as order dated 25.4.2023 passed by learned Session Judge, Faizabad in Criminal Revision No. 49/2023 related to Crime No. 322/2022, under Section 3/5ka/5kha/8 of Uttar Pradesh Prevention of Cow Slaughter Act, 1955, pertaining to Police Station-Raunahi, District-Ayodhya/Faizabad are set aside and reversed.

26. The District Magistrate, Ayodhya is directed to release the vehicle in question forthwith in favour of the petitioner. The petitioner is directed to give a bank guarantee of Rs. 50,000/- before the Chief Judicial Magistrate, Ayodhya and file a bond that he shall be producing the vehicle as and when needed by the criminal courts or the District Magistrate, Ayodhya, and he shall not make any changes nor any variation in the vehicle.

27. No order as to costs.

28. Let the copy of this order be sent to the court concerned for its compliance.

Order Date :- 06.03.2024

Arvind

(Shamim Ahmed,J.)