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Md Ibrar Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : Oct-05-2017

Appellant : Md Ibrar

Respondent : The State of Jharkhand

Advocate for Pet/Ap. : Mr. Shailesh Kr. Singh

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(Cr.) No. 112 of 2016 --------- Md. Ibrar, S/o Md. Usman, R/o Village Madanpur, P.O. & P.S. Madanpur, Dist. Aurangabad (Bihar). ... Petitioner Versus 1. The State of Jharkhand 2. Swami Gadhar Maharaj, S/o Swami Anantachari, New Area, Israi Gali, Asha Cottage, Sadguru Niwas, P.S. Sadar Hazaribagh. ... Respondents --------- CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --------- For the Petitioner : Mr. Shailesh Kr. Singh, Advocate For the Respondent-State : Mr. Binod Singh, S.C. (L&C) For the Respondent No. 2 : Mr. Sunil Kumar, Advocate --------- 10/05.10.2017 Heard Mr. Shailesh Kr. Singh, learned counsel for the petitioner and Mr. Binod Singh, learned S.C. (L&C) for the respondent-State as well as Mr. Sunil Kumar, learned counsel appearing for the respondent no.

2. In this writ application, the petitioner has prayed for quashing of the entire criminal proceeding in connection with Hazaribagh Sadar P.S. Case No. 472/2013, corresponding to G.R. No. 2352/2013 instituted for the offences punishable u/s 414/429 of the Indian Penal Code and Section 4(d)/ 4([k)/5 of the Jharkhand

Bovine Animal (Prohibition of Slaughter) Act 2005. A further prayer has been made with respect to the quashing of the letter dated 04.09.2013 pursuant to which Confiscation Case No. 01/2013 has been initiated for confiscating truck bearing registration no. HR-38H-5093. The petitioner has also prayed for quashing of the order dated 14.09.2013 passed by the learned C.J.M., Hazaribagh by which the application preferred by the petitioner for release of the truck bearing registration no. HR-38H-5093 has been rejected. It has been submitted by the learned counsel for the petitioner that the petitioner is the owner of the truck bearing registration no. HR-38H-5093 which was transporting some bovine animals purchased by one Md. Zafar Ali from Keshav Virat Pasu Mela, Barun, Aurangabad (Bihar). Learned counsel for the petitioner submits that proper receipt had also been issued with respect to transportation of bovine animals in the -2- vehicle belonging to the petitioner. It has been submitted that the respondent no. 2 did not have the necessary authority to conduct a search and seizure or to confiscate the vehicle as the power vests upon the appropriate authority in terms of Section 10 and 2(j) of the Jharkhand Bovine Animal Prohibition of Slaughter Act 2005. Learned counsel thus has submitted that since the search and seizure itself is illegal the same vitiates the entire criminal proceedings as against the petitioner which deserves to be quashed and set aside. Mr. Binod Singh, learned S.C.(L&C) for the respondent- State has opposed the prayer made by the petitioner and has submitted that the respondent no. 2 had merely apprehended the vehicle and had informed the Police pursuant to which a search and seizure was made by a person competent to do so and therefore it cannot be by any stretch of imagination assumed that the search and seizure was not made by a competent person in terms of Section 10 of the Act. Learned S.C.(L&C) submits that the truck of the petitioner was being used for transportation of bovine animals for the purposes of slaughtering and it was within the rights of the respondent no. 2 to have apprehended the vehicle and inform the Police regarding such illegal transportation which led to the subsequent act of search and seizure and instituting a First Information Report by the respondent no.

2. Learned counsel also submits that charge sheet has already submitted on finding the allegation to be true. Mr. Sunil Kumar, learned counsel appearing for the respondent no. 2 apart from echoing what has been stated by the learned

S.C.(L&C) for the respondent-State has further submitted that the respondent no. 2 had merely informed the appropriate authorities and infact the respondent no. 2 had set the criminal law into motion which led to the subsequent search and seizure of the vehicle along with the bovine animals being transported and therefore Section 10 of the Act has clearly been complied with. Learned counsel further submits that the respondent no. 2 is one of the trustees of a registered trust executed to run the Goshla and infact it was at the -3- instance of the respondent no. 2 that the bovine animals were prevented from being slaughtered and therefore the present application is liable to be dismissed. The prayer made by the writ petitioner is two fold. The first is related to quashing of the entire criminal proceedings whereas the second relates to release of the vehicle for which a confiscation proceeding had already been initiated. The main thrust of argument of the learned counsel for the petitioner with respect to the first issue is that the respondent no. 2 was not empowered by the State Government to be an appropriate authority in terms of Section 2(j) of the Act in order to carry out a raid or a search and seizure in terms of Section 10 of the Act and therefore being incompetent to do so which strikes at the very foundation of the case the criminal proceedings instituted against the petitioner deserves to be quashed and set aside. In order to appreciate the contention advanced by the learned counsel for the respective parties it would be apt to refer to Section 2(j) and Section 10 of the Act which reads as under:- 2.(j) competent authority means any officer not below the rank of Sub-divisional Magistrate who may be authorized by the State Government by notification in the Official Gazette for the purpose of this Act;

10. Power of entry, search and seizure.-(1) For the purpose of enforcing the provisions of this Act the competent authority or the veterinary officer or any person authorized by the competent authority or the veterinary officer in writing in this behalf, shall have power to enter and inspect any premises within the local limits of his jurisdiction, where he has reason to believe that an offence under this Act has been, or is being or is likely to be committed. (2) Every such person in occupation of any such premises as is specified in sub-section (1) shall obtain the permission as the case may be for the previous purpose as he may require and shall respond to any question that may be posed to him by the competent -4- authority, veterinary officer or the authorised person as per his best knowledge

and belief. (3) Any police officer not below the rank of sub- inspector or any person authorized in this behalf by the State Government may with a view to securing compliance with the provision of the Section 4(a) and Section 4(b) or for satisfying himself that the provision of the said Section has been complied with- (a) Enter, stop and search or authorize any person to enter, stop and search any vehicle used or intended to be used in the export of bovine animals. (b) Seize or authorize the seizure of bovine animals in respect of which he suspects that any provisions of Section 4(a) or 4(b) has been, is being or is about to be contravened, along with the vehicle in which such animals are found and thereafter take or authorise the taking of all necessary measures for securing the production of the animals and vehicle so seized, in a Court and for their safe custody pending production. (c) The provisions of Section 100 of the Code of Criminal Procedure, 1973 (No. 2 of 1974) relating to search and seizure shall, so far as may be, apply to search and seizures under this Section: Provided further that the State Government may, by notification in the Official Gazette confer the power under this Act upon any person or group of persons considered to be acting in public interest. Section 10 of the Act categorically reveals that any competent authority or the veterinary officer or any person authorized by the competent authority or the veterinary officer in writing shall have the power to enter and inspect any premises if he has reason to believe that an offence under the act has been committed or is likely to be committed. -5- The power of search and seizure also vests upon Police Officer not below the rank of Sub-Inspector or any person authorized in this behalf by the State Government. The First Information Report reveals that on suspicion the truck bearing registration no. HR-38H-5093 was apprehended by the villagers. The First Information Report was instituted by the respondent no. 2 on 17.07.2013 at 2:50 p.m. The search and seizure list reveals that the bovine animals as also the truck were seized by the Assistant Sub Inspector of Police, Sadar P.S. Hazaribagh on 17.07.2013 at 2:30 p.m. The seizure list also reveals that the seized articles were produced by the respondent no.

2. Thus it appears that the respondent no. 2 had conducted the search and seizure pursuant to the truck being apprehended by the villagers and thereafter the matter was informed to the Police wherein a search and seizure list was prepared by the Assistant Sub Inspector of Police, Sadar P.S., Hazaribagh.

Nothing has been brought on record by the learned S.C.(L&C) for the respondent-State as also by the learned counsel for the respondent no. 2 that the respondent no. 2 was competent to conduct search and seizure. Even assuming that the search and seizure was conducted pursuant to the intimation given by the respondent no. 2 but the same also seems to be contrary to the provisions of Section 10 of the Act which delegates a Police Officer not below the rank of Sub Inspector or any person authorized by the State Government to conduct search and seizure for compliance with the provisions of Section 4(aa) and 4(b) of the Act. As has been stated above the Assistant Sub Inspector of Police as has been referred to in the seizure list has been denoted as the seizing authority but the provisions of the Act do not empower the Assistant Sub Inspector of Police to conduct search and seizure in absence of any specific authorization for carrying out such operation by the State Government. The authorization of the Assistant Sub Inspector has also not been brought on record by the State counsel to justify the search and seizure made by him. Thus on consideration of the factual as well as legal aspects the provisions of Section 10 of the Act has been -6- completely violated as the search and seizure has been made by a person not competent under the Act and therefore when the search and seizure itself is bad in law the entire criminal proceedings gets vitiated. As a consequence to the discussions made hereinabove the entire criminal proceedings in connection with Hazaribagh Sadar P.S. Case No. 472/2013, corresponding to G.R. No. 2352/2013, is hereby, quashed and set aside. Consequent to the quashment of the entire criminal proceedings the vehicle bearing registration no. HR-38H-5093 be released in favour of the petitioner. So far as the confiscation proceeding which has been initiated vide Confiscation Case No. 01/2013 the same also has become redundant in view of the entire criminal proceedings having been quashed as indicated aforesaid. In the result, this application is allowed. (R. Mukhopadhyay, J.) Alok/-

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