

Ashoo and Etc. Vs. State of U.P.

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Court : Allahabad

Decided On : May-23-1997

Reported in : 1998CriLJ1082

Judge : O.P. Garg, J.

Acts : Uttar Pradesh Prevention of Cow Slaughter Act, 1956 - Sections 3, 5 and 8; Essential Commodities Act - Sections 3 and 7; Prevention of Cruelty against the Animals Act - Sections 11; Code of Criminal Procedure (CrPC) , 1974 - Sections 482; Uttar Pradesh Prevention of Cow Slaughter Rules, 1984 - Rule 17(1); Bihar Foodgrains Control Movement Order, 1957

Appeal No. : Criminal Misc. Appln. Nos. 2697 and 2698 of 1997

Appellant : Ashoo and Etc.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : S.K. Agarwal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

O.P. Garg, J.

1. These are two connected applications in which a prayer has been made that the catties, which have been seized in Crime Case No. 50 of 197, P.S. Khalilabad, District Basti be released in favour of the applicants who are owners of the same. The applicants moved separate applications for the release of the catties before the Chief Judicial Magistrate, Basti which were rejected by order dated 1 -3-1997. Thereafter the applicants filed two separate revisions, being Revision Petition Nos. 83 of 1997 and 94 of 1997 before the Court of learned Sessions Judge, Basti who transferred the same to the Court of learned Illrd Additional Sessions Judge, Basti. Both these revision applications were dismissed and it was directed that the catties be auctioned and the sale proceeds be deposited for being paid to the person who is found to be entitled to receive the same after the disposal of the case.

2. Common case in both these applications is that the catties were purchased from Muthiyai Bazar Meerut and were being transported for sale to Bhulliya Bazar, Padrauna in two different trucks No. UP 12/3988 and UNU 4308. Both the trucks were intercepted by local Police of P.S. Khalilabad and the catties were seized under Sections 3/5/8 Prevention of Cow Slaughter Act and Section 11 of the Prevention of Cruelty against the Animals Act. The plea taken by the applicants is that the catties were not being transported for slaughtering purpose and no cruelty was committed unto the catties. The prosecution case against the applicants appears to be that the catties were being transported across the border of U.P. in State of Bihar for a slaughtering purpose.

3. Learned counsel for the applicants urged that the courts below have not approached the release applications filed by the applicants in their true perspective and rejected the same on insufficient and untenable ground. It was urged that even if the allegations against the applicants are accepted to be true, it would, at best, be a case of preparation to commit the crime and since preparation of crime is not punishable, the criminal case has been wrongly registered against the applicants.

4. In the instant case, the cattle market in district Padrauna was about 100-110 kms. away from the place where the cattle were seized and the distance of the Bihar border from the place of seizure is about 190 kms. In 1972 (9) ACC 130 : AIR 1972 SC 1610 *Nasu Sheikh v. State of Bihar* which was a case under Section 3/7 of the Essential Commodities Act, certain cultivators of village of Bihar were intercepted by Police at a distance of about: 75 kms. from the border of West Bengal while carrying paddy without permit. When asked, the cultivators gave out that they were taking the paddy to another village in Bihar. Hon'ble Supreme Court held that in such cases, the question of distance assumes much importance as there is possibility of accused persons' changing their mind at any time between the place of seizure and the State boundary. Therefore, the accused persons have not contravened Clause (3) of Bihar Foodgrains Control Movement Order, 1957. In another case reported in AIR 1970 SC 713 (*Milkiat Singh v. State of Punjab*) it was held that preparation to commit an offence is not punishable. Similar view has been taken by this court in the case reported in 1997 (34) All Cri C 111 (*Jagmohan alias Manohar Lal v. State of U.P.*). A reference may also be made to a decision of this Court in *Lal Bahadur and Ors v. State of U.P.* (Revision Application No. 1957 of 1983). This case was decided on 9th December, 1993. It was observed thus :-
.Rule 17(1) of U.P. Prevention of Cow Slaughter Rules, 1984 provides that 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 U. P. from any place within the State to any place outside the State shall apply for a permit to the licensing authority on prescribed form. It also provides that cow, bull or bullock transported without a valid permit shall be confiscated and shall be auctioned and the sale proceeds will be deposited and such person who caused unauthorised transport shall be prosecuted under Section 8 of the Act.

In that case, 21 catties were seized from village Bhaisaha situate within the jurisdiction of Police Station Kasia, District Deoria. There was no material on record to show as to what was the precise distance of the place the catties were apprehended from the border of the U. P. and Bihar. It was also stated in the judgment of the aforesaid case that if it was found that the catties apprehended from a place which was very close to the border, some presumption could be raised in favour of the prosecution. In the facts and circumstances, the court, in

that case, came to the conclusion that it cannot be said that the catties were being transported to a place outside the State of U. P. and, therefore, neither any permit was required nor the catties were liable to be confiscated. It was also said that it is possible that before a person has actually crossed an inter-State border, he may change his mind.

5. In the instant case, the catties were seized as said above, at a distance of about 190 kms. from the U. P. border. Thus, there was every possibility of applicants' changing their mind. It cannot, therefore, be said that the catties were being transported to Bihar, i.e., beyond the border of U. P.. for a slaughtering purpose. In *Babu v. State of U.P.* 1991 (Supp)AGC 110, it was held that there is nothing in the Act prohibiting preparation for cow slaughter. It should not be forgotten that transportation of the bullocks could only be an insulate offence not punishable under the Act.

6. There is nothing on record to indicate that the applicants have subjected the seized catties to cruelty.

7. There is no dispute about the fact that the applicants are owners of seized catties which were being transported in trucks to Bhulliya Bazar, Padrauna for commercial purpose. The detention of catties is a costly affair both for the State as well as the applicants. If the catties are allowed to be detained, in open outside the police station, and are not properly fed and looked after, they are liable to lose their health and value without any corresponding advantage. In case the catties are auctioned as directed by learned Additional Sessions Judge, the valuable rights of the applicants would be unnecessarily, without any corresponding advantage, shall be jeopardised. It is, therefore, found necessary to release the catties in favour of the applicants.

8. Both the applications under Section 482, Cr.P.C. are allowed. It is directed that the learned Additional Chief Judicial Magistrate, Basti shall release the catties seized in Crime case No. 50 of 1997, P. S. Khalilabad, District Basti in favour of the applicants on their furnishing adequate security to the satisfaction of the learned Magistrate and on incorporating an undertaking that seized catties shall not be sold during the pendency of the case and shall be made available as and

when required by Court.

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