

islam Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-16-2000

Reported in : 2001(2)MPHT89; 2001(2)MPLJ627

Judge : Mr. S.C. Pandey, J.

Acts : [Prevention of Cruelty to Animals Act, 1960](#) - Sections 11, 29, 29(1) and (2); Motor Vehicles Act - Sections 177; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 375, 376 and 454

Appeal No. : Criminal Revision Nos. 593, 597 and 598 of 2000

Appellant : islam

Respondent : State of M.P.

Advocate for Def. : Shri D.S. Thakur, Adv.

Advocate for Pet/Ap. : Shri D.N. Shukla, Adv.; Shri A.S. Raizada on behalf of ; Shri S.K. Seth, Adv.

Disposition : Criminal revisions allowed

Judgement :

ORDER

S.C. Pandey, J.

1. This revision is directed against the order dated 11-4-2000, passed by 1st Additional Sessions Judge, Shahdol, in Criminal Appeal No. 22 of 2000, whereby the Court-below confirmed the order dated 15-3-2000, passed by Judicial Magistrate First Class, Budhar, in Criminal Case No. 217/2000.

2. This order shall also govern Criminal Revision Nos. 597/2000 and 598/2000, parties being in both these revisions, Istyak Ahmed v. State of Madhya Pradesh, as common questions of facts and law arise in these revisions.

3. According to the prosecution case, on 11-3-2000 at Budhar, the applicant was found transporting the cattle in a truck bearing its registration No. as UP-78-N/1437. The truck was stopped near Rest House, Budhar and on checking it was found that 19 cattle were being carried in the truck, who were not being treated well and there was no provision of water and food for the animals in the truck. Thereupon, the Station House Officer of Police Station Budhar made a report and got the animals medically examined by a Veterinary Surgeon. It was found that the animals were not in healthy condition and they were found to have sustained abrasions on their bodies. After completing the investigation a challan was filed against the applicant by the police before the Judicial Magistrate First Class, Budhar, under the provisions of [Prevention of Cruelty to Animals Act, 1960](#) (Act No. 59 of 1960) (henceforth 'the Act') and also under the provisions of Motor Vehicles Act.

4. It appears that the applicant admitted his guilt before the Trial Magistrate and, therefore, he was sentenced to pay a fine of Rs. 50/- under Section 11 of the Act and further to pay a fine of Rs. 100/- under Section 177 of Motor Vehicles Act. It was also directed by the Trial Magistrate that in default of payment of fine by the applicant he shall undergo simple imprisonment of 15 days. The Trial Magistrate had also ordered that the 19 animals seized from the custody of the applicant shall be liable to be confiscated under Section 29 of the Act.

5. The appeal filed by the applicant against the aforesaid order of the Trial Magistrate regarding confiscation of the animals, was rejected by the Court-below by the impugned judgment dated 11-4-2000 and the order of the Trial Magistrate was confirmed.

6. In this appeal, it has been urged by the learned counsel for the applicant that at best on the allegations made by the prosecution the applicant shall be liable to be charged under Sections 11(1)(d) and 11(1)(h) of the Act and, therefore, the admission of guilt by the applicant would be confined to these provisions and none other. The learned counsel for the applicant further argued that there would be no occasion for exercise of powers under Section 29 of the Act under the facts and circumstances of the case and both the Courts-below have wrongly held that the provisions of that Section were attracted.

7. In reply, it is sought to be urged by the learned counsel for the non-applicant as well as the intervener that the order passed by the Trial Magistrate is not liable to be appealed against. However, the learned counsel for the applicant pointed out that Section 454 of the Code of Criminal Procedure gave ample power against confiscation of property.

8. In the opinion of this Court, firstly, this point was not raised before the Lower Appellate Court that the appeal did not lie. Secondly, the order of the confiscation of the property in exercise of Section 29 of the Act was in addition to the sentence passed by the learned Trial Magistrate on the plea of admission of guilt by the applicant. The applicant had never admitted that his property is liable to be confiscated under Section 29(2) of the Act. Therefore, the appeal cannot be said to be against the plea of admission of guilt within the meaning of Section 375 of the Code of Criminal Procedure. Section 375 of the Code of Criminal Procedure is confined to a conviction on the plea of guilt. The exercise of power under Section 29(2) of the Act does not amount to conviction of the applicant. It is clear from Section 376 of the Code of Criminal Procedure that even in petty cases an appeal would lie if any other punishment is combined with a petty sentence which does not fall within the exception Nos. (i), (ii) and (iii) to the proviso to Section 376 (a) (b) (c) and (d) of the Code of Criminal Procedure. In this case, no exception is attracted here for the reason that the entire property is being confiscated. The Court is, therefore, empowered to hear an appeal when there is forfeiture or confiscation of property. Thus, looking from any point of view it cannot be said that the order of the Trial Magistrate was not appealable. However, this Court does not give a very final opinion on this question as this point was not raised in the Lower

Appellate Court and the parties went on to argue the case as if an appeal lies. It will not be in the interest of justice to allow the non-applicant or the intervener to raise this point in this revision at this stage because the rights of the applicant are likely to be altered by inaction of the non-applicant and also the intervener.

9. In any case, even if the appeal does not lie, this Court is not powerless to treat this revision against the original order passed by the Trial Magistrate and interfere with the order suo motu in exercise of its revisional jurisdiction in order to do justice between the parties. Therefore, the only question is whether the Court-below should have exercised its power under Section 29 of the Act. Section 29 (1) and (2) of the Act reads as under :--

'29. Power of Court to deprive person convicted of ownership of animal.-- (1) If the owner of any animal is found guilty of any offence under this Act, the Court upon his conviction thereof, may, if it thinks fit, in addition to any other punishment make an order that the animal with respect to which the offence was committed shall be forfeited to Government and may, further make such order as to the disposal of the animal as it thinks fit under the circumstances.

(2) No order under sub-section (1) shall be made unless it is shown by evidence as to a previous conviction under this Act or as to the character of the owner or otherwise as to the treatment of the animal that the animal, if left with the owner, is likely to be exposed to further cruelty.'

It has been argued by the learned counsel for the applicant that there is no occasion for exercise of powers under Section 29(1) of the Act because it has not been shown, by evidence, as to a previous conviction of the applicant or as to the character of the owner or otherwise as to the treatment of the animals that the animals, if left with the owner, they are likely to be exposed to further cruelty.

10. Learned counsel for the non-applicant as well as the intervener argued that the fact that 19 animals were being carried in a truck in itself is a sufficient circumstance for confiscation of the animals. No other proof is necessary when the applicant himself admitted his guilt.

11. Having heard the learned counsel for the parties on merits of this case, it is apparent that the applicant cannot be held to have been convicted previously as there is not material on record, and the learned counsel for the parties agreed on this point that there is no previous conviction of the applicant. There is also no evidence on record as to the character of the applicant. It was the duty of the prosecution to bring evidence on record to the effect that the applicant was habitually cruel to the animals or habitually committed such kind of offence for which he has been charged. Even though there is no previous conviction, this evidence is also not on record. Another aspect of the matter is that both the Courts-below appear to have exercised their powers on the ground that if the animals are left with the owner, they are likely to be exposed to further cruelty. This cannot also be held to be proved. The applicant was carrying the animals from Kanpur to Calcutta. Even if he has been found to be guilty under the Act, it cannot be said that the act of conveying the animals in confinement by the applicant shall be repeated by him in a cruel manner when the applicant was already punished, as the prosecution has not been able to establish this aspect of the matter by placing sufficient material on record in this regard. The exercise of powers by the Court under Section 29(1) of the Act depends upon the fact if the conditions mentioned in Section 29(2) thereof are reasonably found to be proved. Therefore, both the Courts-below erred in ordering confiscation of the animals belonging to the applicant, in exercise of powers under Section 29(1) of the Act.

12. For all the aforesaid reasons, this revision and both the connected Criminal Revision Nos. 597/2000 and 598/2000 are hereby allowed. All the three impugned orders, dated 11-4-2000, in this revision as well as in the aforesaid two criminal revisions, and the orders of the Trial Magistrate in their respective criminal cases directing confiscation of the animals are hereby set aside. It is directed that the applicants shall be entitled to receive the 19 (nineteen) animals back from the State in the condition they were seized by the Station House Officer, Police Station Budhar. In case, the animals, presently, are not available for some reason or the other, the State/non-applicant is bound to compensate the applicants, in all the three revisions, by paying reasonable price of the animals seized, within a period of three months from today.

13. Criminal Revisions allowed.

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