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Nabbu Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-07-2005

Reported in : 2005(3)MPHT348; 2005(3)MPLJ512

Judge : U.C. Maheshwari, J.

Acts : Animal Cruelty Act, 1960 - Sections 11; Code of Criminal Procedure (CrPC) , 1974 - Sections 451 and 457; Krishak Pashu Parirakshan Adhiniyam, 1959 - Sections 4(1), 6A, 6B and 9(3)

Appeal No. : Criminal Revision No. 247/2005

Appellant : Nabbu

Respondent : State of M.P.

Advocate for Def. : S.S. Bisen, Govt. Adv.

Advocate for Pet/Ap. : A.D. Mishra, Adv.

Disposition : Appeal allowed

Judgement :
ORDER

U.C. Maheshwari, J.

1. An unsuccessful applicant/accused has preferred this revision against the order dated 1-2-05 passed by the Additional Chief Judicial Magistrate, Seoni in Criminal Case No. 10/05 whereby an application under Sections 451 and 457 of the Cr.PC filed by the applicant/accused was dismissed an the interim custody of seized cattle was refused. Being aggrieved of this order, the applicant has knocked the door of this Court for setting aside the said order and accepting his application.

2. It is an undisputed fact that offence under Sections 4(1), 6-A and 6-B of Krishak Pashu Parirakshan Adhiniyam and under Section 11 of the Animal Cruelty Act was registered against the applicant at Police Station, Keelari, District Seoni in which 17 catties were found in possession of the applicant under the violation of the provision of said Act which are kept in the Gaushala/cattle yard by the order of the Trial Court. It was also alleged that aforesaid cattle were transporting for slaughtering purposes which is prohibited under the law without requisite and proper sanction by the competent authority and it is also undisputed that the trial regarding the said offence is still pending and the case is yet to be decided by the Trial Court and during the pendency of the case those cattle were kept as an interim measure in the abovesaid Gaushala by the order of the Trial Court.

3. The abovesaid applicant being an owner of the seized catties filed an application under Sections 451 and 457 of the Cr.PC for giving interim custody to him and on consideration the Trial Court has dismissed the same on the ground that the expert report of the Veterinary Doctor regarding cattle is yet to be received and the seized cattle are very weak, matter relates to the cruelty towards the cattle and applicant himself is an accused in the case, therefore, it would not be proper to give the cattle in his interim custody, hence this revision.

4. Having heard learned Counsel for the applicant and on perusal of the impugned order and papers placed on record, I am of the considered view that seized cattle should have been given in the interim custody of the applicant but subject to some terms and conditions.

5. Learned Counsel for the applicant submits that the applicant is an agriculturist and resident of Village Deoritila, Police Station, Dhanora, Tehsil Ghansour, District Seoni and he is also involved in the cattle business and regularly he purchases

cattle from different places and same are sold to different persons of the various places. Some copies of the receipts are also submitted by the applicant regarding purchase of the abovesaid cattle. He further submitted that applicant was not carrying the cattle to slaughter house but they were being transported only for his business purposes. He states that on false allegation the case has been fabricated and in continuation of it his cattle were seized and being owner of the property, he is the only person who may have right to get all the cattle in his interim custody as per spirit of Sections 451 and 457 of the Cr.PC and in view of these factual matrix he prays to allow him to interim custody of the cattle.

6. In support of his contention he placed reliance on reported case in the matter of Prem Chand and Ors. v. State of C.G., reported in 2001 (Vol. 2) M.P.H.T., Page 93 (C.G.), in which it was held as under :--

'Learned counsel for the State though submitted that the cattle were being driven to Bihar but the case diary, barring the statements of some of the persons that the cattle were being driven to Bihar, does not contain anything that on what basis those persons could presume or infer that the cattle were being taken to Bihar. The applicants are shown to be residents of Village Mahda, Village Ramnagar and Village Wadrafnagar, all within the jurisdiction of Police Station Basantpur. If that is so, the defence of the present applicants that the cattle belong to them and that they are raising the cattle either for their own use or for trading cannot be considered to be a false story. In any case, the applicants so long as they are not held guilty would be entitled to the custody of their cattle property. 151 cattle if are given in the custody of somebody, then he would be required to look after the cattle and would also be required to make necessary arrangements for fodder and all other things. Ultimately, the expenses Will have to be born by the present applicants. The applicants who have yet not been held guilty cannot be saddled with the unnecessary expenditure which are likely to be incurred by the Supruddar. The Courts below without taking into consideration the practical problems which are likely to be faced by all concerned have rejected the applications. The said orders cannot be approved. The orders passed by the learned Courts below deserve to and are accordingly set-aside.'

7. He also placed his reliance on decided case in the matter of Gomukhi Sewa Dham v. State of Chhattisgarh and four Ors., 2005(1) M.P.H.T. 1 (CG), in which it is held as under :--

'In the Adhiniyam, 1959, no provision has been made regarding the safe custody of cattle, which has been seized, in respect of which offence has been committed under this Act. Sub-clause (b) of Sub-section (3) of Section 9 prescribes that the cattle in respect of which officer suspects any provision of Section 6-A or Section 6-B has been, is being or is about to be contravened along with the vehicles in which such (cow, calf of cow, calf of she-buffalo, bull or bullock) are found and thereafter take or authorize the taking of all measures necessary for securing the production of such cattle and vehicles so seized, in a Court for their safe custody pending production. No further provision has been made in this Act as to whom custody of the cattle will be handed over during the pendency of the investigation or trial. Therefore, general provisions of Section 451 of the Cr.PC are to be taken into consideration about the custody of the cattle.'

'Therefore, having regard to the facts of the case, totality of the circumstances and the above judgment of the Hon'ble Apex Court, I am of the opinion that respondent Nos. 2 to 4 have preferential right to have the custody of the cattle in question, during the pendency of the trial. However, it is to be ensured that while handing over the custody of the cattle to respondent Nos. 2 to 4 some stringent conditions are required to be imposed on them in order to ensure proper and safe custody of cattle so that the cattle are produced before the Court as and when required and they shall not dispose of or transfer the cattle during the pendency of the trial and also that no offence shall be committed against the cattle.'

8. While on the other hand, learned Counsel for the State has supported and justified the impugned order and prayed for dismissal of this revision.

9. On consideration of rival contention of the respective parties, it is apparent that all cattle have already been examined by the Veterinary Doctor and nothing remains for investigation regarding said cattle now question of interim custody of said cattle can be decided.

10. Therefore, now this Court has to examine whether applicant is entitled for interim custody or not. On perusing the papers placed on the record, it is apparent that before some days from seizure those cattle were purchased by the applicant from different villages of the territory of M.P. in the month of January, 2005 in order to prove his bonafides he also submitted some receipts of purchase of the cattle. But the same was not examined by considering the circumstances and instances by investigation officer before registering the offence or even by the Trial Court during the course of consideration of the impugned application. But it is also undisputed fact that the said cattle were seized from the custody of the present applicant and no any other person has come with the claim that the cattle do not belong to the applicant and but to some other person. Therefore, prima facie it is proved that the applicant is the real owner of the cattle. If the owner of the property is praying for interim custody then certainly his claim for interim custody is bonafide but in view of the allegations against him as alleged offence such interim custody can only be given by imposing some material terms and conditions over the applicant. Same view was adopted in the above said cited and referred cases.

11. In view of the above discussion I hold that the Trial Court has committed error in dismissing the said application filed under Section 451, read with Section 457 of the Cr.PC. Therefore, the impugned order is set aside and this revision is allowed with the following directions :--

(a) That the seized cattle would be given to the applicant on his furnishing a supurdnama to the satisfaction of the Trial Court.

(b) The value of the cattle shall be ascertained by the Trial Court and according to the valuation the applicant would be required to furnish the solvents surety to the satisfaction of the Trial Court and this surety would be given by a local resident of the concerned district.

(c) The applicant shall not remove those cattle beyond the jurisdiction of the Police Station, Dhanora or Keolari, District Seoni.

(d) The applicant shall be bound to submit weekly report relating to all cattle before the Trial Court.

(e) During pendency of the trial the applicant would not be entitled to transfer the cattle in any manner.

12. With the aforesaid directions, the revision petition stands allowed.

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