

Enaam Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Nov-12-2010

Judge : Ashok Srivastava, J.

Appeal No. : CRIMINAL REVISION No. - 3330 of 2010

Appellant : Enaam

Respondent : State of U.P. and Anather

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : Anil Kumar Shukla, Adv

Judgement :

1. This revision has been filed by the revisionist against the order dated 16.6.2010 passed by learned Judicial Magistrate, Court No.2, Deoband, Saharanpur.
2. The learned Magistrate has rejected the application of the revisionist through which he had prayed for the release of cattle belonging to him which he was carrying them to some place within the State of U.P.
3. The brief facts of the case are that on 4.6.2010 the complainant of this case V.L.Varun, Sub-inspector of Police Station Ladgaon, Saharanpur was patrolling in his beat. He received a telephonic message on his mobile phone that certain cows and a bull were being carried to certain place who were loaded on a Tata 207

truck. This information was given to the complainant by certain activists of Shiv Sena. At about 10 p.m. on the highway near the village Hasanpur Latuni, the complainant intercepted the said Tata 207 truck. When the said vehicle was searched it was found that 3 cows, one bull and two calves were laden on the said vehicle. Two persons namely Irfan and Inam were found sitting in the said vehicle. On further search, from the cabin of the driver a bundle of wood, an axe, a 10 ft. long rope and two iron knives were recovered. On the basis of these facts the complainant was of the opinion that the animals were being carried to some place for slaughtering. Therefore both the persons were detained. A recovery and arrest memo was prepared at the spot and on the basis of the same an FIR was lodged with the police under Sections 3/5-A/8 of The U.P. Prevention of Cow Slaughter Act, 1955 and under Section 11 of The Prevention of Cruelty to Animals Act, 1960.

4. The animals were taken by the police in its custody. Records show that they have been given to the supurdgi of certain private persons.

5. The revisionist moved the Court of learned Magistrate for release of the animals to his custody. After hearing the revisionist and the prosecution the release application was rejected. Hence this revision has been filed.

6. It has been submitted from the side of the revisionist that the case registered in the matter is based on false allegations, that in the FIR itself it has been stated that on the intervention of some persons of Shiv Sena and the police the vehicle was intercepted and the animals were recovered from the possession of the revisionist-applicant. It has further been submitted that the revisionist and his companion showed the police the entire documents which were valid, but they were ignored and not looked into. It has further been submitted that there is no other claimant who may prefer claim for release of the cattle. It has also been submitted from the side of the revisionist that the cattle were transported for business purpose and not in order to be slaughtered. It has also been submitted that Section 5-A of U.P. Prevention of Cow Slaughter Act, 1955 and Rule 16 framed under the said Act do not require that there should be a permit for transporting animals within the State of U.P. Learned counsel for the revisionist has argued vehemently that there is absolutely no circumstance in the case which

may indicate that the cattle were being transported with the purpose of slaughtering. He has further stated that only on the ground of whimsical presumption on the part of Shiv Sena activists and the police a false case has been fabricated.

7. The revision has been opposed by the learned AGA.

8. I have heard learned counsel for the parties and perused the records.

9. My attention has been drawn towards three rulings of this Court reported in 2002 Cr.L.J124, Raju Singh v. State of U.P., 1999 (2) JIC 287, Mustakeem v. State of U.P. & 1991 (1) JIC 984, Kamruddin v. State of U.P.

10. The learned Magistrate has stated in his order impugned that under the provisions of sub- rule 1 Rule 16 of U.P. Prevention of Cow Slaughter Rules, 1964 it has been provided that a permit is necessary for transporting cattle within the State of U.P. This finding by the learned Magistrate is totally erroneous. Sub-section(1) of Section 5-A is as follows:

"No person shall transport or offer for transport or cause to be transported any cow, or bull or bullock, the slaughter whereof in any place in Uttar Pradesh is punishable under this Act, from any place within the State to any place outside the State, except under a permit issued by an officer authorized by the State Government in this behalf by notified order and except in accordance with the terms and conditions of such permit."

11. Similarly Sub-section (1) of Section 16 is as follows:

"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 Uttar Pradesh, from any place within the State to any place outside the State shall apply for a permit to the licensing authority on prescribed Form 'G'."

12. On a bare perusal of the above provisions it is evident that if the animals are being transported within U.P. no permit is required for the purpose. From the perusal of the F.I.R. it is evident that there is no allegation in it which may indicate

that cattle were being transported from the State of U.P. to some other State. The learned Magistrate has also referred Sub-section (1) of Section 7 of the Act in his order. I fail to understand as to under what circumstance he has referred it in his order as it was totally uncalled for because Section 7 of the Act has nothing to do with transporting or slaughtering of cows and animals. Sub-section (1) of Section 7 of the Act merely says that any person may surrender his cow, bull or bullock to a Goshala or an institution which shall accept such cow, bull or bullock according to the availability of accommodation and any cow, bull or bullock so surrendered shall not be returned to such person.

13. In the instant case admittedly the revisionist had never surrendered the animals seized by the police to a Goshala.

14. From the perusal of the allegations contained in the FIR it is clear that there is nothing in it which may indicate that the cattle were being carried to some place with a view to slaughter them.

15. I have gone through the three rulings mentioned above in this order. Keeping in view the law laid down in these rulings, I am of the view that this revision has got force and should be allowed with the conditions detailed in Raju Singh's case (Supra).

16. There is nothing on record which may indicate that it is the second or subsequent offence on the part of the revisionist. The owner of the cattle/animals shall be directed by the Magistrate to file an affidavit before him stating therein specifically whether the alleged offence is the first offence or not. The owner of the cattle will have to give an undertaking that in case animals/cattle are released in his favour the same will be kept properly and will not be subjected to cruelty during the custody. In case an affidavit containing the aforesaid statement is filed by the owner the cattle/animals shall be released in his favour with the following conditions:

1. Before releasing the animals the learned Court below shall get identification marks affixed on each of the animals through the concerned police station at the expense of the owner-revisionist and details of the same shall be kept on the

record of the police station as well as of the Court.

2. In case of death of any animal the owner-revisionist shall intimate the police station concerned as well as the Court and shall produce the carcass before the S.H.O./S.O. of the concerned police station or the Court if so required and only then the animal shall be buried or disposed of.

3. The animals/cattle shall be produced as and when required by the Court.

4. The owner-revisionist should furnish adequate security other than cash and bank guarantee to the satisfaction of the learned Magistrate.

5. The owner-revisionist shall deposit a reasonable lump sum amount commensurate to the actual amount already spent upon the maintenance of the animals and this reasonable amount shall be determined by the learned Magistrate.

17. In case of any default committed by the owner-revisionist, it will be open for the concerned police station or the learned Magistrate to seize the animals and keep the same in the custody of the Court and take action in accordance with law.

18. It is further directed that if the investigation has not been concluded as yet, the investigating officer shall make all endeavour to conclude the same within a period of one month from the date he receives a copy of this order. In case a charge sheet has already been filed in the Court, the learned Magistrate is required to conclude the trial, preferably within a period of three months from the date he receives a copy of this order.

19. Let a copy of this order be sent to the learned Magistrate and S.S.P./D.I.G. of the district concerned.

20. The revision thus stands allowed.

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