

Court No. - 84

Case :- APPLICATION U/S 482 No. - 12300 of 2021

Applicant :- Yas Mohammad

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ramesh Kumar Chaurasia

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Ramesh Kumar Chaurasia, learned counsel for the applicant and Sri Vinod Kant, learned Additional Advocate General appearing along with Sri Pankaj Saxena, learned Additional Government Advocate-I for the State-opposite party.

2. The present application under Section 482 of the Code of Criminal Procedure, 1973¹ has been filed with a prayer to set-aside the order dated 18.03.2021 passed by Additional Sessions Judge, F.T.C-1, Ballia in Criminal Revision No. 28 of 2021 (Yash Mohammad Vs. State), arising out of order dated 09.02.2021 passed in Case Crime No. 360 of 2020 under Sections 3/5-A/8 of The Uttar Pradesh Prevention of Cow Slaughter Act, 1955² and Section 11 of The Prevention of Cruelty to Animal Act, 1960³, Police Station-Bairiya, District Ballia.

3. The pleadings of the case indicate that pursuant to proceedings initiated with lodging of an F.I.R. dated 21.9.2020 under section 3/5-A/8 of the PCSA and Section 11 of the PCAA registered as Case Crime No. 360 of 2020 at Police Station-Bairiya, District-Ballia, the vehicle stated to be carrying the animals was seized under section 5-A of the PCSA. The applicant claiming to be the owner of the vehicle in question,

1 the Code

2 PCSA

3 PCAA

filed an application before the court of ACJM-I, Ballia, seeking release of the vehicle. The learned Magistrate upon taking into consideration the scheme of the Act and in particular, sub-section (7) of Section 5-A, which has been inserted by U.P. Act No. 20 of 2020, rejected the application. Aggrieved, against the order the applicant preferred a revision being Criminal Revision No. 28 of 2021 (Yash Mohammad Vs. State) and the learned Additional Sessions Judge/F.T.C.-1, Ballia held that there was no illegality or irregularity in the order passed by the Magistrate and accordingly, dismissed the revision by order dated 18.03.2021.

4. Learned counsel for the applicant has sought to assail the orders passed by the revisional court and the Magistrate by seeking to contend that since the vehicle of the applicant had been confiscated, the courts below have committed an error in rejecting the application for release, ignoring the powers exercisable under section 451 and 457 of the Code. He submits that the property in question i.e. the vehicle which is lying with the authorities is liable to be released. Reliance is sought to be placed on the judgement in the case of **Sunderbhai Ambalal Desai v. State of Gujarat**⁴

5. Learned Additional Government Advocate-I has controverted the aforesaid contention by submitting that the proceedings have been initiated under the PCSA, which is a Special Act, and provides a separate procedure with regard to confiscation and seizure under Section 5-A thereof, and in view of the provisions contained under Section 5 of the Code, the powers under Sections 451 to 457 relating to disposal of property would not be applicable. Accordingly, he submits that

4 AIR 2003 SC 638

the orders passed by the Magistrate and the revisional court cannot be said to be faulted with.

6. In order to appreciate the rival contentions the provisions as contained under Sections 5, 451, 452 and 457 of the Code may be adverted to, and the same are as under :-

"5. Saving.-Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

451. Order for custody and disposal of property pending trial in certain cases.-When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.-For the purposes of this section,"property" includes-

(a) property of any kind or document which is produced before the Court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

452. Order for disposal of property at conclusion of trial.-(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in Sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be

carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

457. Procedure by police upon seizure of property.-

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

7. The provisions contained under the PCSA, would also be required to be adverted to.

8. The PCSA is an Act to prevent the slaughter of cow and its progeny in the State of Uttar Pradesh. Section 5-A of the Act which is with regard to regulation on transport of cow, etc., and is relevant for the purposes of the controversy involved in the present case, is being extracted below:-

"5-A. Regulation on transport of cow, etc. - (1) 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 authorised by the State Government in this behalf by notified order and except in accordance with the terms and conditions of such permit.

(2) Such officer shall issue the permit on payment of such fee not exceeding [five hundred rupees] for every cow, bull or bullock as may be prescribed :

Provided that no fee shall be chargeable where the permit is for transport of the cow, bull or bullock for a limited period not exceeding six months as may be specified in the permit.

(3) Where the person transporting a cow, bull or bullock on a permit for a limited period does not bring back such cow, bull or bullock into the State within the period specified in the permit, he shall be deemed to have contravened the provision of sub-section (1).

(4) The form of permit, the form of application therefor and the procedure for disposal of such application shall be such as may be prescribed.

(5) The State Government or any officer authorised by it in this behalf by general or special notified order, may, at any time, for the purpose of satisfying itself, or himself, as to the legality or propriety of the action taken under this section, call for and examine the record of any case and pass such orders thereon as it or he may deem fit].

(6) Where the said conveyance has been confirmed to be related to beef by the competent authority or authorised laboratory under this Act, the driver, operator and owner related to transport, shall be charged with the offence under this Act, unless it is not proved that the transport medium used in crime, despite all its precautions and without its knowledge, has been used by some other person for causing the offence.

(7) The vehicle by which the beef or cow and its progeny is transported in violation of the provisions of this Act and the relevant rules, shall be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner of Police will do all proceedings of confiscation and release, as the case may be.

(8) The cow and its progeny or the beef transported by the seized vehicle shall also be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner will do all proceedings of the confiscation and release, as the case may be.

(9) The expenditure on the maintenance of the seized cows and its progeny shall be recovered from the accused for a period of one year or till the release of the cow and its progeny in favour of the owner thereof whichever is earlier.

(10) Where a person is prosecuted for committing, abetting, or attempting to an offence under Sections 3, 5 and 8 of this Act and the beef or cow-remains in the possession of accused has been proved by the prosecution and transported things are confirmed to be beef by the competent authority or authorised laboratory, then the Court shall presume that such person has committed such offence or attempt or abatement of such offence, as the case may be, unless the contrary is proved.

(11) Where the provisions of this Act or the related rules in context of search, acquisition, disposal and seizure are silent, the

relevant provisions of the Code of Criminal Procedure, 1973 shall be effective thereto.”

9. It would be pertinent to note that sub-sections (6), (7), (8), (9), (10) and (11) have been inserted after sub-section (5) of Section 5-A in terms of the Uttar Pradesh Prevention of Cow Slaughter (Amendment) Act, 2020. [U.P. Act no. 20 of 2020].

10. A plain reading of the provisions contained under Section 5-A of the PCSA would indicate that the transportation of cow, etc., is regulated in terms thereof. Sub-section (1) of Section 5-A contains a clear prohibition on transportation of any cow or bull or bullock, the slaughter whereof in any place in Uttar Pradesh is punishable under the Act, from any place within the State to any place outside the State, except under a permit to be issued by an officer authorised by the State Government in this behalf by notified order and except in accordance with the terms and conditions of such permit. Sub-section (4) mandates that the form of permit, the form of application therefor and the procedure for disposal of such application shall be such as may be prescribed.

11. In exercise of powers under Section 10 of the PCSA read with Section 21 of the U.P. General Clauses Act, 1904, and in supersession of Uttar Pradesh Prevention of Cow Slaughter Rules, 1956, the Uttar Pradesh Prevention of Cow Slaughter Rules, 1964⁵ were made. Rule 16 of the Rules, 1964 provides for issuance of a permit in a prescribed form to 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 the Act in any place in Uttar Pradesh from any place within the State to any place outside the State. For ease of

⁵ Rules, 1964

reference, Rule 16 of the Rules, 1964 is being reproduced below:-

“16. (1) Any person intending to transport or the 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 officer authorised under Section 5-A of the Act on prescribed Form "G".”

12. In terms of Section 2 of the Amending Act i.e. U.P. Act No. 20 of 2020 by means of which sub-sections (6), (7), (8), (9), (10) and (11) have been inserted in Section 5-A, the powers with regard to confiscation and seizure of which vehicle used in transportation of the beef or cow and its progeny, in violation of the provisions of this Act and the relevant rules have been delineated.

13. As per terms of sub-section (7) of Section 5-A, the vehicle by which the beef or cow and its progeny are being transported in violation of the Act and the relevant rules is to be confiscated and seized by the law enforcement officers and concerned District Magistrate/Commissioner of Police are to undertake proceedings of confiscation and release, as the case may be.

14. Sub-section (11) of Section 5-A provides that where the provisions of Act or the related rules in context of search, acquisition, disposal and seizure are silent, the relevant provisions of the Code shall be effective thereto. The provisions inserted under Section 5-A in terms of the aforesaid Amending Act, i.e. U.P. Act No. 20 of 2020 in respect of confiscation and release of vehicle would therefore, go to show that the scheme of the Act provides a complete procedure with regard to proceedings relating to confiscation and release. The necessary provisions with regard to confiscation, seizure and release of vehicle used for transportation in violation of the provisions of

PCSA and the Rules made therein, having being provided for, and the Act and the Rules not being silent in regard thereto as per the stipulation under sub-section (11) of Section 5-A, the provisions of the Code would not be invocable in matters relating to confiscation, seizure and release under the PCSA.

15. Section 5 of the Code contains a saving clause and as per terms thereof nothing contained in the Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

16. The applicability of the provisions of the Code in an area covered by a special or local law, in the context of the saving clause under section 5 of the Code was considered in the Constitution Bench judgment in the case of **Maru Ram Vs. Union of India**⁶ and also in **State (Union of India) Vs. Ram Sharan**⁷, and it was held that the section consists of three components: (i) the Code covers matters covered by it; (ii) if a special or local law exists covering the same area, the said law is saved and will prevail; (iii) if there is a special provision to the contrary, that will override the special or local law.

17. The PCSA is a “local law” within the meaning of Section 5 of the Code and in view thereof, the general provisions contained under Sections 451 of the Code with regard to custody and disposal of the property pending trial or the power for making an order for disposal of property at the conclusion of trial under Section 452 or the procedure under Section 457 would therefore, be subject to the powers exercisable under

⁶ (1981) 1 SCC 107

⁷ (2003) 12 SCC 578

Section 5-A of the PCSA which makes a special provision with regard to confiscation and seizure of the vehicle used for transport in contravention of the provisions of the Act.

18. The provisions under Section 451 to 457 of the Code are in the nature of general provisions whereas the provisions relating to seizure, confiscation and release as contained under Section 5-A of the PCSA which expressly deal with these matters would be in the nature of special provisions contained under a special Act and in view thereof, the normal rule of interpretation that the special provision must prevail over the general and if a case is covered by a special provision, the general provision would not be attracted, would be applicable.

19. In the case of *Sunderbhai Ambalal Desai* (supra), which is sought to be relied upon on behalf of the applicant, the subject matter of consideration was a challenge which had been raised to an order of police remand granted to the prosecuting agency for the petitioners therein, who were police personnel involved in offences punishable under Sections 429, 420, 465, 468, 477-A and 114 of the Indian Penal Code, 1860⁸ on allegations that they had committed offences during a period of time by replacing of valuable articles retained as case property by other spurious articles, misappropriation of the amount which was kept at the police station, unauthorised auction of the property which was seized and kept in the police custody pending trial and tampering with the records of the police station. The offences which were subject matter of the case were under the penal code and not under a special Act, and accordingly, the provisions under Sections 451 and 457 were applicable. The judgment in the case *Sunderbhai Ambalal Desai* (supra), which is an authority relating to release of vehicles

⁸ the Penal Code

seized in connection with criminal proceedings under general law would not be applicable under the facts of the present case which relate to proceedings under a special Act, particularly in view of the provisions under Section 5 of the Code.

20. A similar question as to whether the Magistrate would have jurisdiction to exercise powers under Sections 451, 452 and 457 of the Code to direct release of any property which was subject matter of confiscation proceedings under Section 72 of the U.P. Excise Act, 1910⁹ before the Collector, was considered in a recent judgement of this Court in the case of **Vikki Vs State of U.P. and Another**¹⁰ and taking into consideration that the Excise Act is a local law within the meaning of Section 5 of the Code, it was held that the provisions contained under Section 72 of the Excise Act would have the effect of denuding the Magistrate of his power to pass any order under Section 457 of the Code for release of any article seized in connection with an offence purporting to have been committed under the Act.

21. Applying the aforesaid principle to the facts of the present case, the vehicle in question having been confiscated and seized in exercise of powers under Section 5-A of the PCSA, which is in the nature of a special Act and a local law under Section 5 of the Code, the same would clearly have the effect of denuding the Magistrate of his power to pass any order under Sections 451, 452 and 457 of the Code for release of the vehicle seized for alleged violation of the provisions of the Act.

22. Having regard to the aforesaid, the view taken by the courts below in declining to entertain the application of the applicant for release of the vehicle during the pendency of

⁹ the Excise Act

¹⁰ Application U/S 482 No. 17735 of 2020

proceedings under the PCSA, cannot be said to suffer from illegality so as to warrant interference.

23. The application under section 482 of the Code is thus, **dismissed.**

Order Date :- 2.9.2021

Kirti

(Dr. Y.K. Srivastava, J)