

Court No. - 15

A.F.R.

Case :- APPLICATION U/S 482 No. - 1743 of 2021

Applicant :- Mohd. Abdul Khaliq

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

Counsel for Applicant :- Akhtar Jahan, Bahar Ali

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

Heard Shri Bahar Ali, the learned counsel for the applicant as well as Shri Prem Prakash, Mrs. Kiran Singh and Shri Hari Shankar Vajpayee, the learned A.G.A.-I for the State and perused the record.

The instant application has been filed by the applicant with a prayer to quash the charge sheet No. 424 of 2019 as well as entire proceeding of Case No. 1548 of 2020, State Vs. Mohd. Khaliq, arising out of Case Crime No. 462 of 2018, under Section 3/5/8 of Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (hereinafter referred to as the 'Act 1955'), Police Station Dewa, District Barabanki, pending in the court of learned additional Chief Judicial Magistrate, Court No. 16, Barabanki.

The facts of the case in short is that a first information report dated 02.11.2019 was lodged by the at Police Station Dewa, District Barabanki with the allegation that on an information received by informer when A.S.I.-Dharmendra Kumar Yadav and other police personnel reached at Sarsaudi Village near the school they saw one person coming holding a sack, on seeing police personnel that person tried to return back, but the police caught him and on his search beef of cow progeny was found in the sack holding by him. On interrogation the said person told his name Zahoor, he told that he along with the applicant are involved in cow slaughtering and he was going to Lucknow for selling the same.

Learned counsel for the applicant submits that there is no chemical analysis report from the veterinary doctor whether seized meat belongs to cow progeny and in the absence of any chemical analysis report, the Investigating Officer submitted charge sheet against the applicant, whereupon the learned Magistrate has also taken cognizance in a routine manner and summoned the applicant for facing trial.

Per contra, learned Additional Government Advocates submit that charge sheet was rightly submitted by the Investigating officer and the cognizance taken by the learned Magistrate is also in accordance with law. The name of applicant came into light in the confessional statement of co-accused, Zahoor, who was arrested along with the cow meat, who confessed that he and the applicant were involved in slaughtering of cow, therefore, prima facie offence under Section 3/5/8 of the Act, 1955 is made out against the applicant.

After considering the arguments as advanced by the learned counsel for the parties and from the perusal of the charge sheet as well as cognizance order and the F.I.R., offence under Section 3/5/8 of the Act, 1955 is prima facie made out against the applicants. No case is made out for quashing of the proceeding of Criminal Case No. 525 of 2020, under Section 3/5/8 of Act, 1955. It is relevant to quote Section 3, 5, & 8 of Act, 1955 for adjudication of this case :

3. Prohibition of cow slaughter.-(1) Except as hereinafter provided, no person shall slaughter or cause to be slaughtered, or offer or cause to be offered for slaughter-

(a) a cow, or

(b) a bull or bullock, unless he has obtained in respect thereof a certificate in writing, from the competent authority of the area in which the bull or bullock is to be slaughtered, certifying that it is fit for slaughter, in

any place in Uttar Pradesh; anything contained in any other law for the time being in force or an usage or custom to the contrary notwithstanding.

(2) No bull or bullock, in respect of which a certificate has been issued under sub-section (1) (b) shall be slaughtered at any place other than the place indicated in the certificate.[***]

(3) A certificate under sub-section (1) (b) shall be issued by the competent authority, only after it has, for reasons to be recorded in writing; certified that-

(a) the bull or bullock is over the age of [fifteen years] or

(b) in the case of a bull, it has become permanently unfit and unserviceable for the purpose of breeding and, in the case of bullock, it has become permanently unfit and unserviceable for the purposes of daughter and any kind of agricultural operation :

Provided that the permanent unfitness or unserviceability has not been caused deliberately.

(4) The competent authority, shall, before issuing the certificate under sub-section (3) or refusing to issue the same, record its order in writing [***].

(5) The State Government may, at any time, for the purposes of satisfying itself as to the legality or propriety of the action taken under this section call for and examine the record of any case and may pass such order thereon as it may deem fit.

[(6) Subject to the provisions herein contained, and action taken under this section, shall be final and conclusive and shall not be called in question.]

5. Prohibition on sale of beef.-Except as herein excepted and notwithstanding anything contained in any other law for the time being in force, no person shall sell or transport or offer for sale or transport or cause to be sold or transported beef or beef-products in any form except for such medicinal purposes as may be prescribed.

Exception. - A person may sell and serve or cause to be sold and served beef or beef-products for consumption by a bona fide passenger in an air-craft or railway train.

[5A. 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 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 offense 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 abetment 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.]

[5B. Whoever causes any physical injury to any cow or its progeny so as to endanger the life thereof such as to mutilate its body or to transport it in any situation whereby endangering the life thereof or with the intention of endangering the life thereof does not provide with food or water shall be punished with imprisonment for a term which shall not be less than one year and which may extend to seven years and with fine which shall not be less than one Lakh rupees and which may extend to three Lakh rupees.]

[8. (1) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of Section 3, Section 5 or Section 5-A shall be guilty of an offence punishable with rigorous imprisonment for a term which shall not be less than three years and which may be extend to ten years and with fine which shall not be less than three Lakh rupees and which may extend to five Lakh rupees.

(2) Whoever after conviction of an offence under this Act is again guilty of an offence under this Act, shall be punished with double the punishment provided for the said offence for the second conviction.

(3) The names and the photograph of the person accused of the contravention of the provision of Section 5-A shall be published at some prominent place in locality where the accused ordinarily resides or to a public place, if he conceals himself from the law enforcement officers.]

Accordingly, the contention of the learned counsel for the applicant that no offence against the applicant is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment, **has no force.**

We are living in a secular country and must have respect for all religions and in Hinduism, the belief and faith is that cow is representative of divine and natural beneficence and should therefore be protected and venerated. The cow has also been associated with various deities, notably Lord Shiva (whose steed is Nandi, a bull) Lord Indra (closely associated with Kamadhenu, the wise-granting cow), Lord Krishna (a cowherd in his youth), and goddesses in general (because of the maternal attributes of many of them). The cow is the most sacred of all the animals of Hinduism. It is known as Kamadhenu, or the divine cow, and the giver of all desires. According to legend, she emerged from the ocean of milk at the time of Samudramanathan or the great churning of the ocean by the gods and demons. She was presented to the seven sages, and in the course of time came into the custody of sage, Vasishtha. Her legs symbolise four Vedas; her source of milk is four Purushartha (or objectives, i.e. dharma or righteousness, artha or material wealth, kama or desire and moksha or salvation); her horns symbolise the gods, her face the sun and moon, and her shoulders agni or the god of fire. She has also been described in other forms: *Nanda*, *Sunanda*, *Surabhi*, *Susheela* and *Sumana*.

The origin of the veneration of the cow can be traced to the Vedic period (2nd millennium 7th century BCE). The Indo-European peoples who entered India in the 2nd millennium BCE were

pastoralists; cattle had major economic significance that was reflected in their religion. The slaughter of milk-producing cows was increasingly prohibited. It is forbidden in parts of the *Mahabharata*, the great Sanskrit epic, and in the religious and ethical code known as the *Manu-Smirti* ("Tradition of Manu"), and the milk cow was already in the Rigveda said to be "*unslayable*". The degree of veneration afforded the cow is indicated by the use in rites of healing purification, and penance of the *panchagavya*, the five products of the cow-milk, curd, butter, urine, and dung.

Subsequently, with the rise of the ideal of *Ahimsa* ("non-injury"), the absence of the desire to harm living creatures, **the cow came to symbolize a life of nonviolent generosity**. In addition, because her products supplied nourishment, **the cow was associated with motherhood and Mother Earth** and legislation against cow killing persisted into the 20th century in many princely states.

Legends also state that Brahma gave life to priests and cows same time so that the priests could recite religious scriptures while cows could afford ghee (clarified butter) as offering in rituals. **Anyone who kills cows or allows others to kill them is deemed to rot in hell as many years as there are hairs upon his body**. Likewise, the bull is depicted as a vehicle of Lord Shiva: a symbol of respect for the male cattle.

In the *Mahabharata*, Bhishma (grandfather of the leaders of warring factions) observes that the cow acts as a surrogate mother by providing milk to human beings for a lifetime, so she is truly **the mother of the world**. The Puranas state that nothing is more religious than the gift of cows. Lord Rama was given a gift of many cows.

In the late 19th and 20th century, in India, a movement to protect cows arose that strove to unify the citizens by demanding

that the Government of India ban cow slaughter with immediate effect in the country.

This Court also hope and trust that the Central Government may take appropriate decision to ban cow slaughtering in the country and to declare the same as 'protected national animal'.

From the perusal of the materials on record and looking into the facts of the present case and after considering the arguments made at the bar, it does not appear that no offence has been made out against the applicant.

At the stage of issuing process the court below is not expected to examine and assess in detail the material placed on record, only this has to be seen whether prima facie cognizable offence is disclosed or not. The Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:-**(i) R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866, (ii) State of Haryana Vs. Bhajanlal, 1992 SCC (Cri.)426, (iii) State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.)192 and (iv) Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.)283.**

From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continue. In **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court under Section 482 Cr.P.C

itself envisages three circumstances under which the inherent jurisdiction may be exercised:- (i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

The High Court would not embark upon an inquiry as it is the function of the Trial Judge/Court. **The interference at the threshold of quashing of the charge sheet/criminal proceedings in case in hand cannot be said to be exceptional as it discloses *prima facie* commission of an offence. In the result, the prayer for quashing of charge sheet/ criminal proceedings of Case No. 1548 of 2020, State Vs. Mohd. Khaliq, arising out of Case Crime No. 462 of 2018, under Section 3/5/8 of Uttar Pradesh Prevention of Cow Slaughter Act, 1955, Police Station Dewa, District Barabanki is refused. There is no merit in this application filed by the applicant under Section 482 Cr.P.C.**

In view of the aforesaid submissions made by the learned counsel for the parties and considering the judgments passed by Hon'ble Supreme Court referred above, this Court finds no merit in the present application and the same is liable to be dismissed.

Accordingly, the present application under Section 482 Cr.P.C. filed by the applicant is dismissed.

Order Date :- 14.2.2023

Mustaqeem