

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. No.36/2023

Dhyan Foundation, A-80, South Extension, Part 2, New Delhi-110049,
represented by its Authorised Signatory, Ms. Vimal Kumari, Age-72 Years,
Daughter of:-Gouri Shankar, Resident of:-Miran Sahib, P.O. & P.S.-Miran
Sahib, District:-Jammu, Pin-181101.

.....Petitioner(s).

V E R S U S

1. The State of Tripura.

2. Mr. Sujan Miah, S/O-Abdul Sattar, Resident of:-Sachindra Pally, Madhya
Charipara, P.O.-O.N.G.C, P.S.-Amtali, West Tripura, Tripura, 799003
(Accused/driver of vehicle bearing registration no.TR-01-AN-1711).

.....Respondent(s).

For Petitioner(s) : Mr. Monoswae Dey, Advocate.

For Respondent(s) : Mr. Samrat Ghosh, Addl. P.P.,
Mr. P. Rathor, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **06th October, 2023.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Vivek Deb, learned counsel appearing for the
petitioner/Foundation. Also heard Mr. Samrat Ghosh, learned Additional
Public Prosecutor appearing for the respondent No.1-State and Mr. P. Rathor,
learned counsel appearing for the respondent No.2.

2. The petitioner herein approached this Court being aggrieved by
the order dated 20.06.2023 passed by the learned Judicial Magistrate 1st Class,
Court No.1, Agartala, West Tripura and order dated 28.06.2023 passed by the
learned Chief Judicial Magistrate, West Tripura, Agartala in connection with
A.D. Nagar P.S. case No.39 of 2023. The relevant extract of both the orders are
extracted hereunder:

"20.06.2023.
.....

Perused the CD meticulously.

Upon perusal the case record and CD, I have serious reservation as to whether sections 382F of IPC (State Amendment) will attract or not.

Hence, considering the facts and circumstances of the case and nature of offence involved, I am inclined to release the accused persons as well as the cattle on bail.

The accused persons namely **1) Maninur Rahaman, 2) Md. Khokan Miah, & 3) Md. Sujan Miah** may go on bail on their furnishing bail bond of Rs.50,000/- each with one surety each of like amount. In default of furnishing bail bond, the a/ps shall be remanded to JC till 27.06.2023.

The cattle (five cows) be released in favour of petitioner Abdul Sattar @ Manu Miah or Sujan Miah on their furnishing indemnity bond of the Rs.50,000/- per cow.

Send copy of this order to the IO for information and compliance.

IO is hereby directed to expedite the investigation and submit up to date status report of investigation on the next date.

Send back the CD in sealed cover.

Fix 24.08.2023 for report by IO.

Sd/- (20.06.2023)
Judicial Magistrate 1st Class
Court No.1
Agartala, West Tripura.

Later on,

Bail bond furnished on behalf of the accused persons namely **1) Maninur Rahaman, 2) Md. Khokan Miah, & 3) Md. Sujan Miah** which are checked, found correct & accepted.

Sd/- (20.06.2023)
Judicial Magistrate 1st Class
Court No.1
Agartala, West Tripura."

"28.06.2023:
.....

In this case, some cattle were seized and as per order dated 20.06.2023, those were ordered to be handed over to the petitioner.

But as per police report, it is surprising to note that the authorities of Dayan Foundation where the cattle are kept, denied to comply the order of the Court and stated that if they do not get order from their higher authority at Delhi, they will not release the same.

The matter is highly contemptuous.

Before proceeding with this matter, the O/C of A.D. Nagar PS be asked to collect the registered address of the Managing Director of Dayan Foundation, so that, the contempt of the order be communicated to them and after that if there is any non-compliance, then the matter is to be dealt with accordingly.

The OC, A.D. Nagar PS shall also inform the authorities of Dayan Foundation here at Devipur to appear before the Court on the next date and to explain as to why their such act should not be viewed seriously.

Send a copy of this order to the OC, A.D. Nagar PS for compliance.

Fix 12.07.2023 for order.

Sd/- (28.06.2023)
(Saikat Das)
Chief Judicial Magistrate
West Tripura, Agartala."

3. The contention of the petitioner was taken note of in the order dated 19.07.2023 which reads as under:

"Heard Mr. Harish Pandya, learned counsel assisted by Mr. Amankant Mishra and Mr. Mooswaee Dey, learned counsel appearing for the petitioner and also heard Mr. Ratan Datta, learned Public Prosecutor appearing for the State-respondent No.1.

Learned counsel for the petitioner submits that the petitioner is a registered Animal Welfare Organization under the 'Ministry of Environment, Forests and Climate Change', Government of India. Certificate is at Annexure-I. It has been running 45 gaushalas and several animal centres across the country accommodating over 70,000 cattle and over 500 other animals including cows, buffalos, camels, dogs, monkeys, etc. It has also received recommendations and awards for its work in the field of animal welfare.

In the instant case which arises out of A.D. Nagar P.S Case No.2023ADN039 dated 14.06.2023 against the accused/private respondent herein under Section 382-F of IPC and Sections 11(a)(d)(h) of the Prevention of Animals to Cruelty Act, 1960 for transporting 5 Bulls in a vehicle bearing No.TR-01-AN-1711 tied in a very cruel manner without proper arrangement of fodder and water, the learned Court of Judicial Magistrate 1st Class, Court No.5, West Tripura, Agartala by order dated 14.06.2023 directed the police to hand over the custody of the seized cattle to a registered/recognized animal shelter. By virtue of that order, these animals were handed over to the petitioner-organization which maintains a cattle care shelter near Agartala where about 2000 cattle and animals are being kept and taken care of. However, without hearing the petitioner, by the impugned order dated 20.06.2023, the cattle were ordered to be handed over to the accused once again. By the second impugned order dated 28.06.2023, the learned Court observed that non-release of the cattle is contemptuous and as such the Officer-in-charge of A.D. Nagar P.S was asked to collect the registered address of the Managing Director of the petitioner-foundation, so that, contempt of the order be communicated to them and if there is any non-compliance, the matter may be dealt accordingly.

Learned counsel for the petitioner has referred to the provisions of the Prevention of Animals to Cruelty Act, 1960 and a judgment rendered by Co-ordinate Bench of this Court in Criminal Revision Petition No.35 of 2021 also pursued by the same petitioner in respect of release of 9 cattle kept in safe custody of the petitioner-organization after being seized during trafficking from the accused persons. He submits that the learned Court on that instance considered various judgments rendered by different High Courts and quashed the order of the learned Magistrate by which the cattle were directed to be released in favour of the accused. He submitted that the petitioner has also not

been given an opportunity before directing release of the cattle in favour of the accused in teeth of the provisions of the Prevention of Animals to Cruelty Act, 1960. The petitioner is at dark as to whether the investigating agency has submitted a report about the well-being of the cattle now in custody of the petitioner or not. Petitioner is suffering from a threat of contempt and as such, has approached this Court under Section 397 of Cr.P.C.

Learned Public Prosecutor is allowed time to seek instructions from the Investigating Officer.

Let notice be issued upon the private respondent under ordinary process and also to be served through the learned Court of Judicial Magistrate 1st Class, West Tripura, Agartala where the accused are facing trial in connection with A.D. Nagar P.S. Case No.39 of 2023. Requisites be filed by Friday.

Notice is made returnable on **18th August, 2023.**

In the meantime, the directions contained in the orders dated 20.06.2023 and 28.06.2023 so far as it relates to release of the cattle, shall remain stayed."

4. Respondent No.2/accused-owner of the cattle said to be purchased by him has appeared and filed his counter affidavit. The State-respondent has also appeared and filed their counter affidavit. A rejoinder affidavit has been filed by the petitioner. A status report has also been filed by the respondent No.1 on affidavit containing the report of the Investigating Officer S.I., A.D. Nagar P.S. dated 05.09.2023.

5. Respondent No.2 has questioned the locus of the petitioner as neither being the complainant nor the de-facto complainant nor a party in F.I.R. No.39 of 2023 dated 14.06.2023 of A.D. Nagar P.S. case No.2023ADN039 of the same date registered under Section 382F of the Indian Penal Code (IPC, for short) and Section 11(a))d)(h) of the Prevention of Cruelty to Animals Act, 1960. According to the respondent No.2, 5(five) number of medium sized cows having different colours were seized by the police while being carried through a four wheeler vehicle bearing registration No.TR-01-AM-1711 by one driver Mahinur Rahaman regarding which the learned Judicial Magistrate 1st Class, Court No.5, Agartala, West Tripura passed orders on 14.06.2023 and 16.06.2023 directing the I.O. to ensure the safety, health, fooding of the cattle.

The SDM concerned was also asked to provide assistance in that regard. The I.O. was directed to keep the seized cattle in safe custody of any registered/ recognized animal shelter where the safety, health, fooding of the cattle would be taken care of. Respondent No.2 also contends that he had purchased the cows from one Samir Miah, S/O. Sultan Miah, resident of 6/230, Village-Old Agartala, by profession-Terminated Government Teacher and while the same were being transported to the house of respondent No.2, they were detained by the police in connection with the said case. Samir Miah sworn an affidavit before the Notary Public on 15.06.2023 supporting the fact that he had sold those five cows to the respondent No.2 as he was in need of money. Receipt Number 4576 was issued by the Ranirbazar Puro Parishad in favour of Samir Miah for selling of five cows. His declaration dated 14.06.2023 was signed by one Khela Debnath, Pradhan of Purba Champamura Gram Panchayat of Old Agartala, West Tripura. It is also stated that by order dated 20.06.2023 the respondent No.2 and other accused persons were released on bail and the seized cows were also directed to be released in favour of respondent No.2 after furnishing indemnity bond of Rs.50,000/- per cow. The I.O. was directed to expedite the investigation and submit up-to-date status report. A compliance report was submitted by the I.O. on 27.06.2023 in which it was stated that on 21.06.2023 one Sujana Miah appeared and five number of indemnity bonds in favour of five seized cows were submitted. However, when the police personnel along with the bailor reported to the present petitioner for release of the seized cows, it was strongly refused. The impugned orders have been passed as direction of the learned Court to release the cattle was not being complied by the petitioner. Respondent No.2 has also referred to an order dated 29.07.2020 passed in Criminal Petition No.27 of 2020 by the then Hon'ble Chief Justice of this Court where the learned Court refused to interfere in the

matter finding no error as it was of the opinion that the petitioner has extremely limited role to play in the present situation.

6. The affidavit of respondent No.1 has defended the impugned order. It states that the petitioner/Foundation does not become the absolute owner of the seized cattle and they are under bounden duty to obey the order passed by the learned Court below. It is also stated that the petitioner/Foundation had not cooperated with the I.O. in implementation of the Court's order and had not allowed him to enter into the Foundation premises to identify the seized cattle. Petitioner does not have any *locus standi* to challenge the impugned order of the learned Magistrate. The order passed by the learned Court below is within jurisdiction and, therefore, does not require interference.

7. The status report has been filed. Mr. Samrat Ghosh, learned Addl. Public Prosecutor appearing for the respondent-State, has also referred to the order dated 02.01.2021 passed in the case titled ***"Buffalo Traders Welfare Association vrs. Union of India"*** [though no such order has been found from the website of the Apex Court] and order dated 11.07.2017 passed in ***All India Jamiatul Quresh Action Committee vrs. Union of India*** in Writ Petition (C) No.422 of 2017. It is submitted that the validity of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 were stayed by the Madurai Bench of the Madras High Court. The Apex Court had in the resultant appeal also recorded the submission of learned Addl. Solicitor General that the Union of India is not seeking modification of the aforesaid interim order since the Ministry of Environment and Forests has presently seized of the matter. After appropriate determination, changes if any, as may be considered appropriate, would be introduced after which the amended rules shall be re-notified. Learned counsel for the respondent-State submits that the

present petitioner, therefore, cannot take the shelter of the Rules of 2017. Apart from the above, learned counsel for the State has referred to the status report dated 22.09.2023 filed by the Investigating Officer about the status of the cows kept in the custody of the petitioner in connection with the instant A.D. Nagar P.S. case. It indicates that the authority of the petitioner has been non-cooperative and neither they have earmarked the cows nor they have allowed the respective owners to help the I.O. to identify those cows rather they have shown a huge number of cows to the I.O. and requested him to find out the relevant cows. The petitioner has given cryptic answers about the condition of the cows kept in connection with the above case to the query made by the I.O. to the petitioner's representative.

8. The I.O. in his status report (Annexure-A) has referred to the chronology of the events undergone in connection with the instant criminal case; the direction of the learned Court to release the seized cattle lying in the custody of the petitioner as per order dated 20.06.2023 and the non-cooperation and refusal of the petitioner to release the cattle. The I.O. also states that after entering the petitioner's Foundation campus to physically inspect the cows, he did not receive full cooperation. He was told that they cannot identify those five cattle amongst 600-700 cows as the animals were not ear-tagged. Being helpless, he requested the representative of the petitioner to allow him to summon the owners to identify the cattle but she bluntly refused saying that the outsiders are not allowed inside the campus of the petitioner organization. A set of questions and answers posed by the I.O. and answered by the representative of the petitioner have also been incorporated in the status report.

9. Petitioner has filed a rejoinder affidavit to the counter affidavit of the respondent No.2. He has referred to the order dated 08.12.2021 passed in

Crl.Rev.P. No.41 of 2021 in respect of the case of the petitioner in connection with the interim custody of the cattle under the same Act of 1960 and the rules framed thereunder. By referring to the said judgment, learned counsel for the petitioner contends that in no circumstances, the seized animals which are case property animals under the Act, can be released during pendency of the litigation because Rule 8 of the aforesaid rules categorically provides that if the accused is convicted or pleads guilty, the Magistrate shall deprive him of the ownership of such animals and the animals shall be forfeited to the infirmary.

10. Petitioner has also referred to the extracts of certain orders passed by the Apex Court in Criminal Appeal No.283-287 of 2002 in the case of *State of Uttar Pradesh vrs. Mustakeem and others*, Criminal Appeal No.230 of 2022 in the case of *Raguram Sharma & another vrs. C. Thulsi and another* but copies of the said judgments have not been enclosed to the rejoinder affidavit to substantiate the plea that the present case stands on similar footing as that of the other two cases. From whatever has been quoted in respect of the two judgments under paragraph-6 of the rejoinder affidavit, it appears that in the first case there were specific allegations in the F.I.R. that the animals were being transported for being slaughtered and on an appeal for getting the custody of the animals, the impugned order was passed. The Apex Court set aside the impugned order and directed the animals to be kept in the Gaushala and the State Government was to undertake the entire responsibility of the preservation of those animals. The extract of the order quoted under paragraph-6 in the case of *Raguram Sharma* indicates that 47 cattle were found to have been put in a container lorry and were being transported in similar fashion like another incident involving the same accused. The Apex Court while dealing with the facts of the case also observed that as against permissible norm of six

cattle, the number of animals which were being transported was 47 which had adverse impact on the health of the cattle as one buffalo had died while being transported and in the subsequent case, six animals had lost their lives. In these facts and allegations against the accused, it was observed that they were *prima facie* guilty of causing cruelty to the animals and, therefore, interim custody of the animals ought not to be handed over to the accused. The order of the High Court was set aside.

11. In the present case, 5(five) cows were alleged to be transported in a vehicle which were stated to be purchased by respondent No.2 from one Samir Miah. When the vehicle was intercepted by the police, the driver failed to produce any valid document in support of the recovered five cattle and, therefore, they were seized along with the vehicle. On physical inquiry, it was found that the vehicle had only less space and such transportation of five cows would cause cruelty. Thereafter, on directions of the learned Court below dated 14.06.2023 the cows were kept in the campus of the petitioner/Foundation by the I.O.. However, the learned Trial Court on 20.06.2023 after considering the submission of the accused persons that they are not cattle lifters and that they had valid proof that the cattle were purchased from one Samir Miah on 14.06.2023 from Ranirbazar Pura Parishad it was inclined to release the accused persons on bail as well as the cattle on the condition of furnishing of bail bond of Rs.50,000/- each with one surety of the like amount and indemnity bond of Rs.50,000/- each for the 5 cows. The order dated 20.06.2023 shows that the representative of the petitioner had denied to comply the order regarding release of cows. Thereafter, they were directed to appear before the Court and explain as to why their such act should not be viewed seriously. In this background facts and circumstances, this Court had asked for the status

report about the cattle from the Investigating Officer vide order dated 18.08.2023.

12. The relevant extract of the status report dated 05.09.2023 is reproduced hereunder:

“

v. The accused persons, thereafter, have filed a Criminal revision petition u/s-397/401 Cr.P.C. vide No-36 of 2023 against the Orders dated-20/06/2023 and 28/06/2023 passed by the Judicial Magistrate court No-04, West Tripura, Agartala before the Hon'ble High Court of Tripura, Agartala and the Hon'ble Court vide its kind Order dated-18.08.2023 has directed the Ld. Prosecution that, instructions may be taken to check the status of the cattle lying in the custody of the petitioner-foundation. Accordingly, as per the instruction of the Ld. Additional Public Prosecutor, High Court, I went to the Dhyhan Foundation upon giving prior information to the Foundation authority on 25/08/2023 at about 10:56 a.m. alongwith one women Constable Bina Das, W/C 1616 as because the Manager of the Dhyhan foundation was a women, namely, Smt. Vimal Kumari.

vi. After entering the Dhyhan Foundation, I was made to seat in a chamber of the Foundation. However, as I was not fully cooperated to physically inspect the cows and rather I was told that, they cannot identify those 5 cattles amidst some 600-700 cows as the animals were not ear-tagged and as per Smt. Vimal Kumari it was not at all possible for them to identify which cattle is of which case. Being helpless, I have requested Smt. Bimal Kumari to summon the owners to identify the cattle but she bluntly refused saying that, the outsiders were not allowed inside the Dhyhan Foundation.

vii. Thus, being compelled, sitting in the Chamber itself I have put forward the following questions to Smt. Vimal Kumari and received the following answers:

Questions & Answers

(a) Is there any identification of the seized cattles?

Answer- No

(b) Whether any ear tagging with number?

Answer- No

(c) Whether any cattles has died or not? If died then PM report and carcass of the cattles if any?

Answer- No

(d) What is the timing of food and water for the cattles?

Answer- In a day two times i.e. Morning from 0900 hrs to 1100 hrs & evening from 1430 hrs to 1700 hrs.

(e) Whether any financial assistance received from any authority including DM?

Answer- No

(f) Whether owners of the cattles are being charged for paying the daily necessity of the cattles?

Answer- No

(g) Any suggestion or complaint from the Dayan foundation authority?

Answer- No

I further state that, the authorities of the Dhyan Foundation especially, Smt. Vimal Kumari was extremely reluctant and very non-cooperative during the entire time when I visited Dhyan Foundation on 25.08.2023 and it was very hard to get proper answers from her and I have ask the same question time and again before I am given any satisfactory reply. The attitude of the authorities of the Dhyan Foundation was not good and was not at all cooperative.

This is for favour of your kind perusal and thus obliged.”

13. A perusal of the aforesaid status report creates an impression that the cattle are not being either ear-tagged as per the requirement of the rules on which the petitioner himself relies nor are identifiable amongst 600-700 cows. The representative of the petitioner has not fully cooperated with the I.O. in physical inspection of the cows. The I.O. had gone after giving prior information to the petitioner/Foundation authority on 25.08.2023 at about 10:56 a.m. with one woman constable as the Manager of the petitioner was a woman. The custody of the cattle was handed over to the petitioner/Foundation by the I.O. for their safe wellbeing as per the directions of the learned Court dated 14.06.2023 and 16.06.2023 as the petitioner/Foundation is a Registered Animal Welfare Organization under the Ministry of Environment, Forest and Climate Change, Government of India and runs several Gaushalas and several animal centres across the country as claimed by the petitioner organization. The learned Trial Court after consideration of the case of the accused and upon hearing the parties was inclined to release the cattle in favour of the respondent No.2 on furnishing indemnity bond of Rs.50,000/- per cow. Learned counsel for the respondent No.2 submits that the indemnity bond of Rs.50,000/- per cow has already been submitted. The case is awaiting trial. No observation about the guilt or innocence of the respondent No.2 can be made at this stage but if the wellbeing of the cows are not being properly taken care of in the custody of the petitioner and the animals have not even been identified or

ear-tagged as per the report of the I.O., petitioner does not have the legal or moral authority to seek the retention of the cattle in their custody despite a direction of the learned Trial Court to release them. The learned Court is, therefore, required to satisfy itself as to the welfare and custody of the cattle by directing proper inspection by an authorized Veterinary Officer of the State Government after their proper identification.

14. As such, this Court in the specific facts and circumstances noted above where the custody of the seized animals were handed over for a temporary period pursuant to the orders passed by the learned Trial Court does not feel inclined to entertain this petition whereby the petitioner has questioned the directions passed by the learned Trial Court vide its orders dated 20.06.2023 and 28.06.2023. The learned Trial Court is required to take a fresh decision on the provisional release of the cattle in favour of the respondent No.2 after consideration of the report of the authorized Veterinary Officer of the State Government in consonance with the provisions of the Prevention of Cruelty to Animals Act, 1960 and the relevant applicable rules. Learned Trial Court shall take a fresh decision upon the report of the Veterinary Officer as to the wellbeing of the cattle in accordance with law.

As a result, the instant revision petition is dismissed.

15. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.10.16
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