

Serial No. 01

Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 29 of 2021

Date of Decision: 08.02.2023

Dhyan Foundation

Vs.

State of Meghalaya & 2 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. V. Shraff, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Mr. S. Sengupta, Addl. PP
Mr. H. Kharmih, Addl. PP

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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JUDGMENT

1. This is an application under Section 482 Cr.P.C. and under Article 227 of the Constitution of India invoking the inherent and supervisory powers of this Court to interfere with an order dated 16.04.2021 passed by the learned Sessions Judge, Ri-Bhoi District, Nongpoh in Criminal Revision No. 4 and 5 of 2021 related to Khanapara P.S. Case No. 6(02) of 2021.

2. A brief fact of the case as could be seen from the materials on record is that on 28.02.2021, an FIR was lodged at the Khanapara Police Station, Ri-Bhoi District by one Smti. Kavita Jain, a member of the Gao Gyan Foundation alleging that a number of goods vehicles were transporting cattle from the cattle market at 9th Mile, Ri-Bhoi District for illegal smuggling to Bangladesh and such cattle numbering about 500 or so were hoarded in a cruel manner in clear violation of the provisions of the Prevention of Cruelty to Animals Act, 1960. Accordingly, a case was registered being Khanapara P.S. Case No. 6(02) of 2021 under Sections 428/429 IPC read with Section 11 of the Prevention of Cruelty to Animals Act.

3. In course of investigation, about 351 cattle were seized from 11 numbers of vehicles and they were handed over to the Veterinary Department for safe custody and were later kept inside the 9th Mile, Baridua Cattle Market Campus, Ri-Bhoi District.

4. The petitioner's Organisation (Dhyan Foundation) through its volunteer Ms. T.N. Chandrani then filed a Zimma Application No. 138 of 2021 under Section 451/457 Cr.P.C. before the learned Judicial Magistrate First Class (JMFC) seeking custody of the seized cattle. The learned JMFC vide order dated 10.03.2021 allowed the prayer made in the said application and directed that the custody of the said 351 cattle be handed over in the

custody of Dhyan Foundation to be kept in the designated Gaushala and to be looked after and taken care by the said Organisation.

5. Being aggrieved by the said order of the learned JMFC dated 10.03.2021 the respondents No. 2 and 3 herein preferred separate criminal revision petition before the Court of the learned Sessions Judge, Ri-Bhoi District assailing the said order aforementioned. The learned Sessions Judge upon hearing the parties have thereafter passed a common order and judgment dated 16.04.2021 allowing the prayer made in the said criminal applications. It is this order dated 16.04.2021 which is assailed herein in this present proceeding.

6. Heard Mr. V. Shraff, learned counsel for the petitioner who has submitted that the FIR lodged by the representative of the petitioner's Organisation has clearly made out a case of subjective cruelty meted out to about 351 cattle caught in the act of being transported in a number of vehicles with scant regard for adherence to the relevant law and rules relating to prevention of cruelty to animals.

7. At this juncture, the learned counsel for the petitioner has led this Court to the provisions of Transport of Animals Rules, 1978, particularly Rules 47 and 56 and has submitted that Rule 47 provides for a valid certificate by a qualified veterinarian surgeon to the effect that the cattle in

question are in fit condition for travel by rail or road and that Rule 56 has specifically laid down specifications required to be present in transport vehicles, such as required space and special fittings etc., in such vehicle to ensure maximum safety for transportation of such cattle which was not present in the vehicles carrying the said cattle seized by the police in the instant case.

8. The learned counsel has referred to the case of Raghuram Sharma & Anr. vs. C. Thulsi & Anr. wherein vide order dated 05.02.2020 in Criminal Appeal No. 230 of 2020, the Hon'ble Supreme Court dealing with a case involving allegations of violation of the provisions of the Prevention of Cruelty to Animals Act, 1960, wherein upon an FIR being filed alleging that the accused therein were involved in transporting about 37 cattle in a truck in clear contravention of Rule 56 of the Transport of Animals Rule, 1978 and in course of the proceedings, the custody of the said cattle was given to the said accused, the Hon'ble Supreme Court has held that in such a case, interim custody of the animal ought not to be given to the accused who were found prima facie guilty of causing cruelty to the animals.

9. The learned counsel has also referred to the provisions of clause (d) of sub-Section 1 of Section 11 of the said Act to submit that any person who convey or carries any animals in a vehicle in such a manner as to subject the

same to unnecessary pain or suffering has thus violated the provisions of the Act. Again, under sub-Section 2 of Section 11, it is provided that an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence and in this case, the learned court below has failed to appreciate that the owner although not arraigned as an accused, but who is said to be in possession of sale purchase receipt in respect of the said cattle has failed to take reasonable care in the transportation of the said cattle and as such, is liable for the offence, but vide the impugned order, custody of the cattle was given to such owner(s).

10. The learned counsel has again submitted that it is well settled that in a litigation involving a case of cruelty to animals, during the pendency of the criminal trial, the custody of the animals in question cannot be given to the owners and in terms of the provision of Rule 3(b) of the Prevention of Cruelty to Animal (Care and Maintenance of Case Property) Rules, 2017, the Magistrate may direct that the animals be housed at an Infirmary. Pinjrapole, SPCA, Animal Welfare Organisation or Gaushala during the pendency of the litigation. The petitioner's Organisation being a duly recognized Animal Welfare Organisation, the custody of the said cattle in this case ought to have been entrusted to it.

11. In support of his contention and submission, the learned counsel has placed reliance on the following authorities:

- i. *Raguramsharma & Anr. v. C. Thulsi & Anr. Order dated 05.02.2020 in Criminal Appeal No. 230 of 2020 passed by the Hon'ble Supreme Court;*
- ii. *State of U.P. v. Mustakeem & Ors. Order dated 22.02.2002 in Criminal Appeal No. 283-287/2002 passed by the Hon'ble Supreme Court;*
- iii. *Dhyan Foundation v. State of Tripura & Ors. Order dated 08.10.2021 in Crl. Rev. P. No. 41 of 2021 passed by the Hon'ble High Court of Tripura;*
- iv. *Dhyan Foundation v. State of Assam & Ors. Order dated 21.09.2020 in Crl. Pet. 452/2020 passed by the Hon'ble Gauhati High Court and*
- v. *Animal Welfare Board of India v. A. Nagaraja & Ors: (2014) 7 SCC 547 para 26*

12. Per contra, Mr. N.D. Chullai, learned AAG along with Mr. S. Sengupta, learned Addl. PP appearing for the State respondent in his argument has submitted that on the basis of the FIR filed by the member of the petitioner Organisation on 27.02.2021 leading to the registration of the

said Khanapara P.S. Case No. 06(02) 2021, it is a fact that about 351 cattle which were found transported in a number of vehicles were seized and handed over to the Veterinary Department for their safe custody and such cattle were then kept at inside the cattle market at Baridua, Ri-Bhoi District.

13. The learned AAG has also submitted that no prima facie evidence of cruelty to the said cattle was found except against the drivers of vehicles number AS-01-DD-381 and ML-05-E-2941, namely Shri. Jaharul Mia and Shri. Bul Kyndait, respectively who were then arraigned as accused in the said case.

14. On completion of the investigation, the Investigating Officer filed the charge sheet and the above named accused were charge sheeted in the case and send up for trial before the concerned court under section 428/429 IPC read with Section 11 of the Prevention of Cruelty to Animals Act, 1960.

15. Again, it is submitted that the private respondents herein who claimed themselves as owners of 64 and 23 cattle respectively have challenged the order dated 10.03.2021 passed by the learned Judicial Magistrate First Class, Ri-Bhoi District wherein interim custody of the said cattle was given to the petitioner's Organisation herein in response to an application filed by the said Organisation in that regard and such separate applications under Sections 397/399 Cr.P.C. was filed before the learned

Sessions Judge, Ri-Bhoi District being Criminal Revision Petition No. 4 and 5 respectively.

16. The learned Session Judge upon hearing the parties have passed a common judgment and order dated 16.04.2021 by which order the impugned order dated 10.03.2021 passed by the learned JMFC was set aside and interim custody of the said cattle was then given to the respondents No. 2 and 3 herein.

17. The learned AAG has submitted that in the first instance, the said private respondents No. 2 and 3 herein were not arrayed as accused in the said Khanapara P.S. Case No. 06(02) 2021 and as such, the provision of Section 11 of the Prevention of Cruelty to Animals Act is not applicable to their case.

18. It is further submitted that being regarded as Owners, the learned Sessions Judge vide the impugned Order dated 16.04.2021 has rightly handed over the interim custody to the said respondents No. 2 and 3 respectively.

19. Reference was also made to the Status Report filed by the Investigating Officer who has clearly noted that there is no evidence of cruelty to the animals meted out by either the cattle owners or the owners of the vehicles from which the cattle were seized, except for the two

owners/drivers of the said vehicle No. AS-01-DD-1381 and ML-05-E-2941.

20. In support of the State respondent's case, the learned AAG has cited the case of Dhyan Foundation v. State of Assam & Ors. in Crl. Rev. P/146/2021 passed by the Hon'ble Gauhati High Court vide Order dated 26.10.2022 and has finally submitted that there is no legal infirmity with the impugned order assailed and the same may be sustained.

21. Based on the facts and circumstances as presented above and on the basis of the submission and contention of the rival parties, this Court is made to understand that this case involves a dispute on the alleged act of cruelty meted out to about 351 cattle which were allegedly hoarded in a number of vehicles by the concerned individuals with scant regard to the relevant law and rules dealing with prevention of cruelty to animals.

22. It should not be mistaken that all life form in our planet Earth are to be respected and place and position alongside mankind cannot be ignored. Though throughout history there has been a concerted effort by mankind to subjugate other forms of life form, either for the purpose of supplementing their diet or otherwise, on concerns being raised in this regard, laws and regulations have been put in place to ensure that such life form are treated with dignity, albeit, even if some or most of them are eventually killed for human consumption purpose.

23. In this regard, in India we have many such laws and regulations and the Prevention of Cruelty to Animals Act, 1960, Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017, Transport of Animals Rules, 1978 and the like have been put in place in pursuit of the noble purpose of treating animal life with dignity.

24. The petitioner and his Organisation have been duly recognised by the Animal Welfare Board of India, deemed to be actively engaged in the welfare and rehabilitation of rescued cattle in the country and running about 30 Gaushalas are doing commendable work and mission in this regard. That this case was initiated by lodgment of an FIR dated 28.02.2021 by this Organisation alleging cruel treatment to a number of cattle transported in a number of vehicles within the Ri-Bhoi District has culminated in due registration of the said FIR and criminal proceedings initiated against the accused person therein.

25. However, in course of the said criminal proceedings, about 351 cattle were seized by the police prompting the petitioner's Organisation to file an application under Section 451 Cr.P.C before the Court of the First Class Judicial Magistrate at Ri-Bhoi with a prayer for to be granted interim custody of the said cattle. The learned JMFC vide order dated 10.03.2021 has allowed the said prayer and the custody of the said cattle was directed to be handed

over to the petitioner's Organisation on certain conditions.

26. The private respondents herein claiming to be the owners of some of the cattle being aggrieved by the said order dated 10.03.2021 has approached the Court of the learned Sessions Judge, Ri-Bhoi District with separate applications under Section 397/399 Cr.P.C. being registered as Criminal Revision No. 4 and 5 of 2021 respectively with a prayer to set aside and quash the impugned order and to be allowed to assume interim custody of the said cattle.

27. The learned Sessions Judge vide a common judgment dated 16.04.2021 after hearing all the parties concerned has deemed it fit to set aside the impugned order dated 10.03.2021 and has instead allowed interim custody of 64 cattle to be given to the private respondent No. 2 and another 23 cattle to private respondent No. 3 herein.

28. Being aggrieved by the said order dated 16.04.2021 the petitioner's Organisation has approached this Court with this instant application with a prayer to set aside and quash the same.

29. The learned counsel for the petitioner has stressed on the fact that prima facie, it has been proved that the said cattle were treated cruelly at the time when they were seized from the vehicles numbering about 11 on the way to be transported to Bangladesh.

30. Citing the relevant provision of law regarding the mode and manner on how transport of animals should be affected, the provision of Rule 56 of the Transport of Animals Rule, 1978 was cited which rule has specifically provided the manner on how cattle are to be transported by goods vehicles and what necessary precaution are to be taken.

31. The learned counsel has however submitted that under sub-Section 2 of Section 11 of the said Prevention Act, the law provides that an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence and in this case considering the fact that the said cattle have been treated cruelly during their transportation, the owner of such cattle even the alleged owners, that is, the respondents No. 2 and 3 herein are to be treated as accused persons in the case.

32. Again, referring to Rule 3 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 wherein Rule 3(b) has empowered the Magistrate to direct the animal to be housed at an infirmary, Pinjrapole, SPCA, Animal Welfare Organisation or Gaushala during the pendency of the litigation, the learned counsel for the petitioner has submitted that the learned Sessions Judge ought to have taken note of this provision while passing the impugned order and accordingly the said

impugned order has been passed without jurisdiction and the same is liable to be set aside and quashed.

33. As to the authorities cited by the learned counsel for the petitioner, in the case of Raguramsharma (supra) the Hon'ble Supreme Court dealing with a case of similar nature as the present one where the issue of interim custody of the seized cattle was deliberated, the court coming to the conclusion that the accused therein were prima facie guilty of causing cruelty to the animals has held that interim custody of the animals ought not to be handed over to the accused. This common trend has been followed in the cases cited by the petitioner as indicated at para 11 above.

34. However, as submitted by the learned AAG the facts and circumstances of the case between the parties is that on being seized, the said cattle were examined by a Veterinary Officer and on being certified that no cruelty has been inflicted upon the said cattle, they have been directed to be kept at the 9th Mile Baridua Cattle Market Campus, Ri-Bhoi District. Therefore, prima facie no case of cruelty against the said cattle has been made out, albeit subject to evidence during the trial.

35. The further contention of the learned AAG is that the private respondents herein though are owners of some of the cattle, they have not been arraigned as accused persons in the case and therefore, the observation

and findings made by the Hon'ble Supreme Court in the cases cited above will not be applicable as the observation made therein relates to the accused person which is not the case here. In this regard, the case of ***Manager, Pinjrapole Deudar & Anr. v. Chakram Moraji Nat & Ors.: (1998) 6 SCC 520*** paras 8, 9, 10 & 11 are relevant in the context of this case, the said paragraphs are reproduced below as:-

“8. From a plain reading of the provisions above noted, it is evident that sub-section (1) of Section 35 enables the State Government to appoint infirmaries for the treatment and care of animals in respect of which any of the offences under the Act has been committed and to authorise the detention of such animals pending their production before a Magistrate. Under sub-section (2), the Magistrate may order that:

- (a) the animal shall be treated and cared for in an infirmary till such time it is fit to perform its usual work or is otherwise fit for discharge;*
- (b) the animal shall be sent to a Pinjrapole; or*
- (c) the animals shall be destroyed if it is certified by a Veterinary Officer, authorised under the Rules, to be incurable or if it is found that it cannot be removed without cruelty.*

The mandate of sub-section (3) is that no animal shall be released from an infirmary unless it is directed to be sent to a Pinjrapole or be destroyed or certified by the Veterinary Officer concerned to be fit for discharge. Sub-section (4) imposes liability for payment of the cost of transporting the animal to an infirmary or Pinjrapole and its maintenance and treatment in an infirmary, in accordance with the prescribed rates, which, however, can be dispensed with if the Magistrate is satisfied that on account of the poverty of the owner, he is unable to bear the same, otherwise it may be recovered as arrears of land revenue, as envisaged in sub-section (5). Sub-section (6) says that if the owner refuses or neglects to remove the animal within the time specified by the Magistrate then he

can order the sale of the animal and appropriation of the sale proceeds for the cost thereof and in the event of there being surplus proceeds of such sale, payment of the same to the owner on his application within two months of the sale. This is postulated by sub-section (7).

9. In view of the above discussion and provisions of Section 451 CrPC, it appears to us that unless the owner of the animal in respect of which he is facing prosecution, is deprived of the custody (which can be done only on his conviction under the Act for the second time), no bar can be inferred against him to claim interim custody of the animal.

10. Now adverting to the contention that under Section 35(2), in the event of the animal not being sent to infirmary, the Magistrate is bound to give the interim custody to a Pinjrapole, we find it difficult to accede to it. We have noted above the options available to the Magistrate under Section 35(2). That sub-section vests in the Magistrate the discretion to give interim custody of the animal to a Pinjrapole. The material part of the sub-section (shorn of other details) will read, the Magistrate may direct that the animal concerned shall be sent to a Pinjrapole. Sub-section (2) does not say that the Magistrate shall send the animals to a Pinjrapole. It is thus evident that the expression "shall be sent" is a part of the direction to be given by the Magistrate if in his discretion he decides to give interim custody to a Pinjrapole. It follows that under Section 35(2) of the Act, the Magistrate has discretion to hand over interim custody of the animal to a Pinjrapole but he is not bound to hand over custody of the animal to a Pinjrapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, the Pinjrapole has no preferential right. In deciding whether the interim custody of the animal be given to the owner who is facing prosecution, or to the Pinjrapole, the following factors will be relevant:

- (1) the nature and gravity of the offence alleged against the owner;*
- (2) whether it is the first offence alleged or he has been found guilty of offences under the Act earlier;*
- (3) if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner*

will have a better claim for the custody of the animal during the prosecution;

- (4) the condition in which the animal was found at the time of inspection and seizure;*
- (5) the possibility of the animal being again subjected to cruelty. There cannot be any doubt that establishment of the Pinjrapole is with the laudable object of preventing unnecessary pain or suffering to animals and providing protection to them and birds. But it should also be seen:*
 - (a) whether the Pinjrapole is functioning as an independent organization or under the scheme of the Board and is answerable to the Board; and*
 - (b) whether the Pinjrapole has a good record of taking care of the animals given under its custody. A perusal of the order of the High Court shows that the High Court has taken relevant factors into consideration in coming to the conclusion that it is not a fit case to interfere in the order of the learned Additional Sessions Judge directing the State to hand over the custody of the animals to the owner.*

11. Dr. Singhvi represents that the Pinjrapole is prepared to keep the animals in custody without charging any money for their maintenance. In our view, that cannot be a correct criterion for giving custody of the animals to the Pinjrapole particularly when the Court has to decide the competing claims of the owner and the Pinjrapole for their custody.”

36. The case of Manager, Pinjrapole Deudar (supra) was also referred to by the Hon’ble Gauhati High Court in the case of Dhyani Foundation v. State of Assam & Ors. in Crl. Rev. P/ 146/2021 (supra) cited by the learned AAG.

37. On an overall analysis, this Court is firstly convinced that prima facie no cruelty has been inflicted on the cattle at the time of seizure as certified

by the said Veterinary Officer and that the private respondents herein being the owners of the 64 and 23 cattle respectively cannot be deprived of interim custody of their cattle in view of the proposition laid down by the Hon'ble Supreme Court in the case of Manager, Pinjrapole Deudar (supra).

38. To this extent, the impugned order dated 10.03.2021 passed by the learned Judicial Magistrate First Class as well as the order dated 16.04.2021 passed by the learned Sessions Judge, Ri-Bhoi District is modified, inasmuch as, the interim custody of the said 64 and 23 cattle are to be retained with the private respondents No. 2 and 3 herein respectively while the remaining 264 cattle are to be handed over to the petitioner's Organisation in the light of the order dated 10.03.2021.

39. In view of the above, this petition is hereby disposed of. No costs.

Judge

Meghalaya
08.02.2023
"Tiprilynti-PS"