



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Crl. Revision Petition No. 519 of 2022

DHYAN FOUNDATION
AN NGO REGISTERED UNDER INDIAN TRUSTS ACT AND ANIMAL
WELFARE BOARD OF INDIA FOR WELFARE OF ANIMALS
REPRESENTED BY MRS. GAYATRI KAPOOR WIFE OF ROHIT KAPOOR,
HAVING ITS REGD. OFFICE AT A-80, SOUTH EXTENTION-II,
P.O. NEW DELHI-110049 AND ONE OF ITS GAUSHALA AT
MANDAKATA, OPPOSITE MANDAKATA SWITCH GATE,
STATE HIGHWAY NO. 2, P.O. MANDAKATA- 781121,
DIST. KAMRUP, ASSAM.

..... PETITIONER.

-Versus-

1. THE STATE OF ASSAM,
REP. BY THE PP, ASSAM.
2. MD. NAZRUL ISLAM
S/O LT. HATEM ALI
R/O HOUSE NO. 111
KATAHBARI
FAKARUDDIN ALI AHMED PATH
BYE LANE NO. 6
HOUSE NO. 111,P.O. GUWAHATI – 781025, ASSAM.
3. MD. SAMSUL HOQUE
S/O MD. MESER ALI
R/O HOUSE NO. 32
SULTAN ALI PATH
KATAHBARI, P.O. GUWAHATI- 781025, ASSAM.

..... RESPONDENTS.

Advocates for the petitioner : Mr. J.C. Gaur,
Advocates for the respondents : Mr. K. Baishya, Addl. P.P.,

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

Date of Hearing : 15.09.2023

Date of Judgment : 26.09.2023

JUDGEMENT AND ORDER (CAV)

Heard Mr. J.C. Gaur, learned counsel for the petitioner and also heard Mr. K. Baishya, learned Addl. Public Prosecutor for the State respondent No. 1.

2. Legality, propriety and correctness of the order, dated 05.09.2022, passed by the learned Judicial Magistrate First Class, Kamrup, Guwahati (M), in Garchowk P.S. Case No.159/2022, under Section 11(1) of the Prevention of Cruelty to Animals Act, 1960, is challenged in this petition, under Section 397/401, of the Code of Criminal Procedure, 1973 by the petitioner- Dhyan Foundation. It is to be mentioned here that vide impugned order, the learned Judicial Magistrate has allowed interim custody of the seized 3 numbers of cattle, in favour of the private respondent Nos.2 & 3, by rejecting similar prayer of the petitioner seeking interim custody of the said 3 nos. of cattle.

3. The factual background leading to filing of the present petition is briefly stated as under:-

“On 22.05.2022, at about 12:30 PM, the one Anirban Sen, while he was travelling, had seen three cattle being tied with rope over neck and carried in a small vehicle bearing Registration No. AS-25 DC-1977, from Jalukbari to the City through NH 37 and on being asked the vehicle was intercepted by Police and when asked the driver of the vehicle had shown the receipt of purchasing the same from Chaygaon. But, they could not produce any certificate of fitness of the cattle that they are disease free and fit to travel, and thereby, violated the provision of the Prevention to Cruelty to Animal Act and Transportation of Animal Rules, 2001 and Transport of Animal Rules 1978 and Assam Cattle Preservation Act.

Upon the said FIR the Officer-in-Charge Garchowk P.S. has registered Garchowk P.S. Case No. 159 of 2022, U/s 11(1) of the Prevention of Cruelty to Animal Act and endorsed S.I. Mubarak Ali to investigate the same. The I.O. then seized the cattle preparing seizure list.

Thereafter, the petitioner approached the Court of Judicial Magistrate First Class, Kamrup (M), Guwahati, for interim custody of the seized three numbers of cattle during the pendency of trial of the case, by filing a Petition No.1210. The learned Judicial Magistrate First Class, Kamrup (M),

Guwahati, after hearing the parties, passed the impugned order, dated 05.09.2022, by giving custody of the three seized cattle to the private respondent Nos. 2 & 3, who also have filed petition seeking custody of the cattle and thereby rejected the prayer for interim custody of the seized cattle, filed by the petitioner.

4. Being highly aggrieved by the impugned rejection order, the petitioner approached this Court, inter alia, on the following grounds, amongst others:-

- (a) That, while passing the impugned order, the learned Magistrate has erred in law as well as in facts;
- (b) That, the seized cattle cannot be released in the custody of the owners, who are the accused of the case and instead the same may be released in the custody of the Gaushala of Pinjorapole and in the event of acquittal of the owner the cattle shall be liable to be forfeited to the state, and as such the impugned order of giving interim custody of the cattle to the respondent Nos.2 & 3 is illegal;
- (c) That, the learned Magistrate had ignored the fact that the seized cattle were purchased for slaughtering and allowing custody of the cattle to the owners the provision of Assam Cattle Preservation Act and also the provision of Prevention to Cruelty to Animal Act stands vitiated and that the cattle were not fit for animal husbandry;

(d) That, the learned Magistrate had ignored the provisions of Prevention to Cruelty to Animal(Care and Maintenance of Case Property Animals) Rules 2017;

5. The respondents' No. 2 and 3 have entered appearance and filed affidavit-in-opposition denying the assertions made in the petition. It is also stated that they have purchased the same lawfully from the market and enclosed the purchase receipts and that they have not violated any provision of law and that the learned court below has rightly released the seized cattle in favour of them and that they have purchased the cattle for cultivation/agriculture purpose and there is no legal bar in releasing the seized cattle in the interim custody of the owners either in the Prevention to Cruelty to Animals Act or in the Prevention to Cruelty to Animals (Care and Maintenance of Case Property) Rules, 2017. Reference in this context is made to a decision of Hon'ble Supreme Court in **Manager, Pinjrapole Deudar & Ors. vs. Chakram Moraji Nat & Ors** reported in **MANU/SC/0557 /1998**. It is also stated that there is no prima-facie evidence in the FIR about subjecting the cattle to cruelty and as such the learned court below had rightly rejected the prayer of the petitioner and that the petitioner has no *locus standi* to file the present petition and therefore, it is contended to dismiss the same.

6. Mr. J.C. Gaur, the learned counsel for the petitioner submits that the impugned order suffers from manifest illegalities. Mr. Gaur has, mainly advanced two-fold argument. Firstly, it is submitted that

there is no provision in the Act for releasing the seized cattle in the interim custody of the respondents pending trial. Secondly, Mr. Gaur submits that the cattle were purchased for slaughtering and not for cultivation/agriculture purpose, as such facilities are not available in the City. Mr. Gaur, therefore, contended to set aside the impugned order and to allow the prayer of the petitioner.

7. Per Contra, Mr. J. Islam, the learned counsel for the respondents has supported the impugned order, so passed by the learned court below. Mr. Islam, submits that the learned court below has released the seized cattle in the interim custody of the respondents having found no material of subjecting the cattle to cruelty by the respondents. Mr. Islam, referring to a decision of Hon'ble Supreme Court in **Manager, Pinjrapole Deudar & Ors. vs. Chakram Moraji Nat & Ors** reported in **MANU/SC/0557/1998**, submits that in the said case Hon'ble Supreme Court has directed to release the seized cattle in favour of the petitioner. Mr. Islam, therefore, has contended to dismiss the petition.

8. Having heard the submission of learned Advocates of both sides I have carefully gone through the petition and the documents placed on record and perused the impugned order passed by the learned court below.

9. It appears from the impugned order that while releasing the cattle in the interim custody of the respondents, the learned court below had relied upon a decision of Hon'ble Supreme Court in **Manager, Pinjrapole Deudar (supra)** and held that there is no

materials to suggest any cruelty or any sort of assault was inflicted upon the seized cattle. There is nothing in the FIR and also in the case diary to show that the cattle were carried in the vehicles in such a manner or position so as to cause unnecessary pain or suffering to them. The learned court below further found that there is no absolute bar in any provision of Prevention to Cruelty to Animals Act, prohibiting releasing of seized cattle in the interim custody of the owner pending trial.

10. Section 11 of the Prevention of Cruelty to Animals Act, deals with treating animals cruelly. **Section 11(1)(a)** provides that:- If any person beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animals to be so treated. **Section 11(1)(d)** provides that if any person conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering. In absence of any cruelty or assault being meted out to the seized cattle, as held by the learned Court below, it cannot be said that the ingredients of aforementioned section is satisfied with.

11. Though Mr. Gaur, the learned counsel for the petitioner submits that the cattle were purchased and carried to the City for the purpose of slaughtering, yet, no material is also placed before the court to establish the same. Merely, because there is no agricultural field in the City and therefore a presumption of purchasing and carrying the

same for the purpose of slaughtering is neither acceptable nor permissible.

12. It is also to be mentioned here that Hon'ble Supreme Court in the case of **Manager, Pinjrapole Deudar & vs. Chakram Moraji Nat & Ors** reported in **MANU/SC/0557/1998**, while dealing with custody of animals, seized under the Prevention of Cruelty to Animals Act, Hon'ble Supreme Court, in the said case, held as under:-

"In view of the above discussion and provisions of Section 451 Cr.P.C., 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."

11.1. It is further held in the said case that:-

"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 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 Pinjrapole. The material part of 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 Pinjrapole. It is thus evident that the expression "shall be sent" is part of the direction he decides to give interim custody to Pinjrapole. It follows that under Section 35(2) of the Act, the Magistrate has discretion to hand over interim custody of the animal to Pinjrapole but he is not bound to hand over custody of the animal to Pinjrapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, 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 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 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 animals to the owner."

13. Again in the case of **Bharat Amratlal Kothari vs. Dosukhan Samadkhan Sindhi & Ors**, reported in **MANU/SC/1799/2009**, in paragraph No. 17, Hon'ble Supreme Court had held as under:-

"17. This takes the Court to answer the question whether respondent Nos. 1 to 6 are entitled to relief of interim custody of goats and sheep seized pursuant to filing of complaint No. II-C.R. 3131 of 2008 registered with Deesa City Police Station. The fact that respondent Nos. 1 to 6 are owners of the goats and sheep seized is not disputed either by the appellant No. 1 or by the contesting respondents. Though the respondent No. 8 has, by filing counter reply, pointed out that the officials of Panjarapole at Patan are taking best care of the goats and sheep seized in the instant case, this Court

finds that keeping the goats and sheep in the custody of respondent No. 8 would serve purpose of none. Admittedly, the respondent Nos. 1 to 6, by vocation, trade in goats and sheep. Probably a period of more than one and half years has elapsed by this time and by production of goats and sheep seized before the court, the prosecution cannot prove that they were subjected to cruelty by the accused because no marks of cruelty would be found by this time. The trade in which respondent Nos. 1 to 6 are engaged, is not prohibited by any law. On the facts and in the circumstances of the case this Court is of the opinion that respondent Nos. 1 to 6 would be entitled to interim custody of goats and sheep seized in the case during the pendency of the trial, of course, subject to certain conditions."

14. Keeping the ratios, laid down in the aforementioned cases in mind, and also in the light of facts and circumstances on the record, while the impugned order of the learned court below is examined, this court left unimpressed by the submission of the learned counsel for the petitioner that the impugned order had failed to withstands the test of legality, propriety and correctness. Therefore, the submissions, so advanced by the learned counsel for the petitioner cannot be acceded to.

15. It is to be mentioned here that while exercising revisional jurisdiction the High Court cannot substitute its view for that of the trial court if two views are possible. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **Helper Girdharbhai vs. Saiyed Mohmad Mirsaheb Kadri and Ors.**, reported in **AIR 1987 SC 1782.**

16. In the given facts and circumstances on the record and also in view of the discussion and finding herein above, I find no merit in this Criminal Revision Petition, and accordingly, the same stands dismissed. The parties have to bear their own cost.

JUDGE

Comparing Assistant