

GAHC010135162023



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Crl. Pet /619/2023

Abdul Kadir
S/o Abdul Matin
R/o Vill- Soro Pur, Bhanga
P.S. Badarpur, Dist. Karimganj

Petitioner

-Versus-

The State of Assam
Represented by the PP, Assam

Respondent

For Petitioner	:	Mr. A. Ahmed, Advocate
For Respondent	:	Mr. D. Das, Additional Public Prosecutor
Date of hearing	:	10.06.2024
Date of judgment	:	18.06.2024

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT

18.06.2024

(M.K. Kalita, J)

- 1)** Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor representing the State of Assam.

- 2)** This Criminal Petition has been registered on filing of an application under Section 482 of the Code of Criminal Procedure, 1973 read with Section 397/401 of the said Code by the petitioner namely, Abdul Kadir impugning the order dated 10.02.2023 passed by learned Session Judge Karimganj in Criminal Appeal No. 14/2022, whereby the order dated 20.08.2022, passed by learned Additional Chief Judicial Magistrate, Karimganj in G.R. Case No.1088/2022 was upheld. By the said order, the prayer for *zimma*, by the petitioner, of his cattle, which were seized in connection with the said case, was rejected by the learned Additional Chief Judicial Magistrate, Karimganj.
- 3)** The facts relevant for the consideration of the instant criminal petition, in brief, are as follows:
- (i)** On 23.05.2022 one Sri Pranab Mili, SI of Police of Malua PICP had lodged an FIR before the Officer-In-Charge of Badarpur Police Station, *inter-alia*, alleging that on 22.05.2022, at about 9.55 pm, an information was received through reliable sources regarding illegal smuggling and transportation of cattle from Makhibaha to Bangladesh through Kushiya River through Krishnopur Ghat. Accordingly, a *naka* checking was conducted at Sonapur at around 10.15 pm. Thereafter, at around 10.45 pm, the accused persons named in the FIR, namely, (1) Abdul Matin, and (2) Nazim Uddin

who were taking away 13 numbers of cows were detained at this spot for enquiry.

(ii) During enquiry it was found that the accused persons named in the FIR have stolen these cows from various locality and were intending to smuggle the same to Bangladesh. Apart from the above-named two accused persons, names of four other accused persons are also mentioned in the FIR, who were suspected to have been involved in the alleged crime along with the above-named two accused persons.

(iii) It is also stated in the FIR that the accused persons also led the police to four other cows which were recovered from nearby jungle.

4) The learned counsel for the petitioner has submitted that the petitioner is the owner of the cattle which were recovered from the grazing field which is stated to be jungle in the FIR.

5) The learned counsel for the petitioner has submitted that during the last part of April 2022 till June 2022, there was a devastating flood situation in the Karimganj district, and the house of the petitioner was also inundated and therefore, he along with other villagers took shelter near the National Highway along with his cows and to keep the cows safe he let them to be kept in high field where flood waters could not reach. However, the police misconceived said cows to be brought for illegal transportation and seized those cows from the grazing field.

- 6)** The learned counsel for the petitioner has also submitted that the *zimma* petition filed by the present petitioner seeking interim custody of his cows was rejected by the learned Additional Chief Judicial Magistrate, Karimganj due to wrong interpretation of the provision of Section 11 (5) of the Assam Cattle Preservation Act, 2021.
- 7)** It is submitted by the learned counsel for the petitioner that the present petitioner is the owner of the seized cows and he had produced documents in support of his claim of ownership of the seized cattle, before the learned Magistrate. It is also submitted by learned counsel for the petitioner that there is no accusation against the present petitioner in the G. R. Case No.1088/2022.
- 8)** The learned counsel for the petitioner has also submitted that no satisfaction was recorded by the learned Additional Chief Judicial Magistrate, Karimganj in the impugned order that there is enough material to presume that a *prima facie* offence under the Act has been committed by the present petitioner and mechanically declined to release the seized cows to the petitioner, in spite of the fact that the petitioner is the owner of the said cows. Learned counsel for the petitioner has also submitted that after rejection of the *zimma* prayer by the Court of learned Additional Chief Judicial Magistrate, Karimganj, the petitioner preferred an appeal under Section 12 of the Assam Cattle Preservation Act, 2021

to the Court of learned Sessions Judge, Karimganj against the aforesaid order. However, it is submitted by the learned counsel for the petitioner that the learned Sessions Judge, Karimganj also misread the provision of Section 11(5) of the Assam Cattle Preservation Act, 2021 and upheld the impugned order of learned Additional Chief Judicial Magistrate.

- 9)** It is also submitted by the learned counsel for the petitioner that the appellate Court, while dismissing the appeal, has also observed, in the impugned order, that no valid permit was shown by the petitioner, however, it totally missed the fact that the cattle of the petitioners were not meant for any transportation and it was not seized from any vehicle during transportation, rather those were seized from jungle on being shown by the FIR named accused. Learned counsel for the petitioner has also submitted that as the cows belonging to the petitioners were only grazing in the jungle, the question of obtaining permit under Section 7 of the Assam Cattle Preservation Act, 2021 does not arise in this case. It is also submitted that both the Courts namely, the Court of Additional Chief Judicial Magistrate, Karimganj as well as the Court of learned Session Judge, Karimganj mechanically rejected the *zimma* prayer of the petitioner ignoring the object of the Assam Cattle Preservation Act, 1921.
- 10)** The learned counsel for the petitioner has also submitted that under similar circumstances a Coordinate Bench of this Court

in the case of "***Md. Sirajul Islam Vs. The State of Assam***" (Order dated 20.10.2022 passed in the Criminal Revision Petition No. 429/2022) as well as in the case of "***Alfaruqure Faraji @ Alfaruk Foraji Vs The State of Assam And Anr***" (Order dated 17.08.2022 passed in Criminal Revision Petition No.321/2022) had directed to give interim custody of the seized cattle in favor of the owners of the said cattle.

- 11)** The learned counsel for the petitioner has also submitted that in both the above cited cases, the Court relied on the judgment of the Supreme Court of India in the case of "***Manager, Pinjarapol, Deudar and another v. Chakram, Moraji Nat and others***" reported in **1998 (6) SCC 520**, wherein the interim custody of seized goats and sheep were given to the owners of the said animals during the pendency of the case.
- 12)** On the other hand, Mr. D. Das, learned Additional Public Prosecutor, has submitted that in view of the provisions of Section 11(5) of the Assam Cattle Preservation Act, 2021 where there is a clear embargo on release of the seized cattle, there is no illegality or impropriety committed by the Court of the learned Additional Chief Judicial Magistrate, Karimganj or by the Court of learned Sessions Judge, Karimganj in rejecting the prayer of the *zimma* of the seized cows in favor of the present petitioners.
- 13)** I have considered the submissions made by learned counsel for both the sides and have perused the materials available

on record, including the scanned copy of the case records of Criminal Appeal Case No. 14/2022 as well as Badarpur P.S. Case No. 121/2022, which were called for in connection with the instant criminal petition.

- 14)** On perusal of the available records, it appears that on 27.05.2022, the petitioner, namely, Abdul Kadir, had filed an application before the Court of learned Additional Chief Judicial Magistrate, Karimganj, seeking *zimma* of the nine cattle out of seventeen cattle, which were seized in connection with the said case, claiming himself to be the owner of these said cattle. It appears that on the same day, one Arun Chandra Das had also filed an application before the said court seeking *zimma* of eight numbers of cattle seized in connection with the case, also claiming himself to be the owner. It also appears from the record that one *zimma* petition for the seized cattle was also filed on behalf of one Dhyan Chand Foundation Goshala, which claimed to be a registered trust having been recognized by Animal Welfare Board of India.
- 15)** However, it appears that by order dated 26.07.2022, learned Additional Chief Judicial Magistrate, Karimganj had rejected the prayer for *zimma* by the Dhyan Chand Foundation Goshala and directed the Investigating Officer to find out the ownership of the seized cattle and also directed the present petitioner to cooperate with the Investigating Officer and produce the documents of ownership of the cattle before the

Investigating Officer. A report was also called for from the Investigating Officer in this regard.

16) It also appears from the record that by order dated 20.08.2022, which has been impugned in the instant criminal petition, the learned Additional Chief Judicial Magistrate, Karimganj has observed that the Investigating Officer had submitted that no person could produce any valid document regarding ownership of the seized cattle, therefore, he could not ascertain as to who is the actual owner of the seized cattle. It also appears that the seized cattle are kept in the cow shelter at Katigora and it is reported by the Investigating Officer to the learned Additional Chief Judicial Magistrate that all the necessary amenities for survival of the cattle has been provided there. However, it appears that without giving any finding regarding the claim of ownership of the nine numbers of seized cattle by the present petitioner, the learned Additional Chief Judicial Magistrate, Katigora had rejected the prayer for *zimma*, mainly on the ground that during inquiry or trial, the giving of cattle on *zimma* to anyone including the owner is strictly prohibited under the said provision.

17) For the sake of convenience, the operative part of the impugned order passed by learned Additional Chief Judicial Magistrate, Karimganj is reproduced herein below:

"However, as the offence is registered under section 13 of the Assam Cattle Preservation Act 2021, before deciding zimma the court must have to consider

the provision under Section 11(5) of the Act which provides that the Magistrate may release other articles and conveyance except the cattle on zimma. Thus, during enquiry or trial giving the cattle on zimma to anyone including the owner is strictly prohibited. Hence, the zimma prayer of the petitioner is hereby rejected."

Thus, it appears that by impugned order dated 20.08.2022, the learned Additional Chief Judicial Magistrate, Karimganj had rejected the prayer for *zimma* of the seized cattle to the present petitioner mainly on the ground that, the said court was of the view that as per provision of Section 11 (5) of the Assam Cattle Preservation Act 2021, during enquiry or trial, giving the cattle on *zimma* to anyone, including the owner, is strictly prohibited.

- 18)** On the other hand, learned Sessions Judge, Karimganj, while considering the appeal preferred under Section 12 of the said Act, has observed in the impugned judgment dated 10.02.2023, that as the accused persons have failed to show any valid permit for transportation of the seized cattle, there are materials to presume that an offence under Section 7 read with Section 13 of the Act has been committed. The learned Sessions Judge, Karimganj has held that the Magistrate Court was correct in rejecting the prayer for *zimma* of the seized cattle in the light of the provisions of Section 11(5) of the Act. Thus, basically, it appears that both

the courts have rejected the prayer for *zimma* of the seized cattle to the petitioner citing the embargo provided in Section 11(5) of the Assam Cattle Preservation Act, 2021.

- 19)** Now, let us examine, as to whether such a strict prohibition, as viewed by both the above-mentioned courts, has been envisioned by the statute or not.
- 20)** If we look at the preamble of the Assam Cattle Preservation Act, 2021, it would make clear that the said Act was enacted to provide for the preservation of cattle by regulating their slaughter, consumption, illegal transportation and the matter connected and incidental therewith. Thus, the main object of the Act is the preservation of cattle and what has been regulated is the illegal slaughter, consumption and illegal transportation of the cattle. Section 13, read with Section 4, 5, 6, 7 and 8 of the aforesaid Act penalises the act of illegal slaughter, consumption and illegal transportation of the cattle. Section 11(5) and Section 11(7) of the said Act prescribes the enabling provisions for giving the interim custody of the seized materials, including cattle, during the pendency of the criminal proceedings.
- 21)** Section 11 (5) of the Assam Cattle Preservation Act 2021 provides as follows:

"11(5). On receipt of the report, the Judicial Magistrate First Class may, on his being satisfied that there is enough material to presume that a

prima facie offence under this Act has been committed or intended to be committed, release the seized materials including vehicle /conveyance except cattle on furnishing of a bank guarantee equal to the value of the material or vehicle /conveyance except, to the satisfaction of the Court pending disposal of the criminal proceeding instituted in respect of the alleged offence"

Whereas, Section 11 (7) of the Assam Cattle Preservation Act 2021 provides as follows:

"11(7). The cattle so seized may be handed over to an institution established under Section 20 of this Act or any existing Goshala or similar institution after value assessment by Animal Husbandry and Veterinary Department".

A plain reading of above provisions would clearly indicate that both are enabling provisions dealing with custody of seized materials including vehicle/conveyance/cattle during the pendency of the criminal proceeding instituted in respect of the alleged offence under the said Act. It also appears that whereas Section 11(5) deals with the interim custody of seized

materials including vehicle and conveyance, Section 11(7) deals with the interim custody of cattle.

- 22) In a catena of judgments [for example in **"New India Sugar Mills Ltd Vs. Commissioner of Sales Tax, Bihar"** reported in **AIR 1963 SC 1207** and in **"Kanwar Singh and Others Vs. Delhi Administration"**, reported in **"AIR 1965 SC 871"**, etc.], the Apex Court has observed as follows:

"It is a recognized rule of interpretation of statute that expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute and which effectuate the object of legislature".

- 23) As already discussed herein above, the object of the Assam Cattle Preservation Act, 2021, as appears from its preamble, is the preservation of cattle by regulating illegal slaughter, illegal transportation and consumption. Various provisions of the Assam Cattle Preservation Act, 2021 has to be interpreted harmoniously so as to further the object sought to be achieved by the said Act. In any criminal proceeding which is initiated under the said Act, where any allegation of commission of an offence under the Act has been made and where seizure of any cattle has been made, one of the prime concerns for the court would be to ensure the welfare of the

seized cattle. As the retention of the seized cattle by the seizing authority, during the pendency of the criminal proceedings, may not be conducive for the welfare of the seized cattle, the provision for interim custody of the seized cattle has been made in the Section 11(7) of the said Act. In the above-mentioned background, if the words "*except cattle*" appearing in Section 11(5) of the Act is interpreted to mean as an absolute bar in giving *zimma* of the cattle to anyone including the owner, it would frustrate the very object of the Act regarding the preservation and welfare of the cattle.

- 24)** This Court is of the view that the Section 11(5) of the Act has to be interpreted as an enabling provision regarding the interim release of the seized material, including vehicle and conveyance only, which were seized in a criminal proceeding instituted in respect of the alleged offence under the aforesaid Act. As regards the interim release of cattle is concerned, the enabling provision is provided in Section 11(7) of the Act, which enables the handing over of the seized cattle to an institution established under Section 20 of the Act or to existing Goshalas or similar institutions during the pendency of the criminal proceeding instituted in respect of the alleged offence.
- 25)** The question which arises at this stage is, as to whether there is any provision in the Assam Cattle Preservation Act, 2021 which imposes an absolute bar in giving interim *zimma*

of the seized cattle to its owner during the pendency of the criminal proceeding. This Court does not find any such absolute bar in any of the provision of the Assam Cattle Preservation Act 2021.

- 26)** While considering a similar question in respect of interpretation of Section 35 (2) of the Prevention of Cruelty to Animals Act, 1960, the Supreme Court of India in the case of "***Manager, Pinjarapol, Deudar and another v. Chakram, Moraji Nat and others***" (Supra) has held that subject to certain conditions the interim custody of seized animal may be given even to an owner who is facing an accusation in the pending criminal proceeding where the said animal has been seized. The Apex Court has observed in the aforesaid case as follows:

"10. Now adverting to the contention that under Section 35(2), in the event of the animal not being sent to an 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 owners."

- 27)** In the instant case, the petitioner Abdul Kadir has not been facing any accusation in the pending criminal proceeding in which the cattle have been seized. He has claimed himself to be the owner of the seized cattle and have produced certain

documentary evidence in support of his claim. However, the learned Additional Chief Judicial Magistrate, Karimganj, instead of examining the said documents and coming to *prima-facie* finding regarding the claim of the petitioner, had directed the Investigating Officer to ascertain the ownership of seized cattle. On failure of the Investigating Officer to ascertain the ownership of the seized cattle, the learned Additional Chief Judicial Magistrate, Karimganj has rejected the prayer for custody to the petitioner, citing absolute embargo, in giving such custody to the owner, under Section 11(5) of the aforesaid Act.

- 28)** Apart from the statement of the Investigating Officer which is reflected in the impugned order of the learned Additional Chief Judicial Magistrate, Karimganj that the seized cattle are provided with all necessary amenities for their survival in the cow shelter at Katigora, there is nothing on record from where the Magistrate could have assessed as to what amenities are provided in the Katigora cow shelter, what is the intake capacity of the said cow shelter and what is the actual number of cattle presently kept in the said cow shelter. These are relevant consideration which could not be discernible from the material available in the record. It also appears from the record that after seizure of the cattle in the aforesaid case, two cattle have already died due to "Tympanites". Under such circumstances, learned Additional Chief Judicial Magistrate, Karimganj ought to have properly examined the claim of the petitioner, instead of rejecting his

prayer by citing the embargo of the Section 11(5) of the Assam Cattle Preservation Act, 2021.

- 29)** The use of the word “may” in the Section 11(7) of the Assam Cattle Preservation Act, 2021 itself indicates that it is not mandatory in all circumstances that the seized cattle have to be handed over to an institution established under Section 20 of the Act or to any existing Goshala or similar institution. It is implied that in an appropriate case, to further the object of the Act i.e., the preservation of cattle, if the Judicial Magistrate of 1st class finds that welfare of the seized cattle is in giving the *zimma* of the same to its actual owner, none of the provisions of the Act prohibits him/her to do so.
- 30)** Accordingly, it is hereby held that, in an appropriate case, there is no embargo under Assam Cattle Preservation Act, 2021 in giving *zimma* of the seized cattle to the owner of the said cattle during the pendency of a criminal proceeding instituted in respect of the alleged offence under the said Act. It is also clarified that the Section 11(5) and Section 11(7) of the Assam Cattle Preservation Act, 2021 puts no such absolute embargo on the Court to give *zimma* of the seized cattle to its owner.
- 31)** In view of the discussion made and the reasons cited in the foregoing paragraphs, the impugned judgement dated 10.02.2023 passed by learned Session Judge, Karimganj in Criminal Appeal No. 14/2022 as well as the impugned order

dated 20.08.2022 passed by learned Additional Chief Judicial Magistrate, Karimganj in G.R. Case No. 1088/2022 are hereby set aside and quashed.

- 32)** The learned Additional Chief Judicial Magistrate, Karimganj is directed to decide afresh the prayer of the petitioner for the interim custody of the seized cattle on the basis of his claim of the owner ship over the seized cattle in the Badarpur P.S. Case No. 121/2022.
- 33)** Let a copy of this judgement be sent to the court of learned Sessions Judge, Karimganj as well as to the learned Additional Chief Judicial Magistrate, Karimganj.
- 34)** With the above observations, this instant criminal petition is accordingly, disposed of.

JUDGE

Comparing Assistant