



THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Criminal Petition No. 988/2023

Dhyan Foundation,
A-80, South Extension, Part 2, New Delhi-110049, represented
by its Authorized Signatory and volunteer Sr Ramesh Singh,
aged about 55 years S/o Lt. Ram Ekabal Singh, R/o
Gauburaha Path, Patharquary, P.O Udayanvihar, District:
Kamrup (M), Assam.

...Petitioner

Versus

1. The State of Assam,
Represented by the Public Prosecutor, Assam.
2. Fajar Ali,
S/o Anser Ali,
1 Pach Gumi, Chaygaon, Kamrup, Assam.
3. Anowar Hussain,
S/o Lt. Tepur Ali,
Vill: Maj Gumi, PS Chhayangaon,
DIST, Kamrup, Assam.
4. Eunus Ali
S/o Taleb Ali,
Vill Maj Gumi, PS Chhayagaon,
DIST, Kamrup, Assam.
5. Sukur Ali,
S/o Hazarat Ali,

Vill: Maj Gumi, PS Chhayagaon,
DIST, Kamrup, Assam.

6. Mojar Ali,
S/o Ser Ali,
Vill: Hatipara, PS Chhayagaon,
DIST: Kamrup, Assam.

...Respondents

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

For the Petitioner : Mr. J. Payeng. ...Advocate

For the Respondents : Mr. B. Sarma, Addl. P.P.
Mr. J. Hussain.

Date of hearing : 07.11.2023

Date of Judgment : **04.01.2024**

JUDGMENT AND ORDER

Heard Mr. J. Payeng, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State respondent no. 1 and Mr. J. Hussain, learned counsel for the respondent nos. 2 to 6.

2. Correctness or otherwise of the order, dated 17.05.2023, passed by the learned Sessions Judge, Kamrup, Amingaon, in

Criminal Revision Petition No.12/2023, is challenged in this petition, under Section 482 of the Code of Criminal Procedure, 1973 Cr.P.C.

3. It is to be noted here that vide the impugned order, dated 17.05.2023, the learned Sessions Judge, Kamrup, Amingaon has directed to release the seized, 18 (eighteen) number of cattle, in favour of the respondents No.2 to 6.

4. The background facts leading to filing of the present petition is adumbrated herein below:

“On 11.04.2023, at about 2:30 am, the informant, namely, *Rabindra Deka*, along with staff, were attending routine patrolling duty. Then they had intercepted 2(two) vehicles, which were proceeding towards Bagan side, from Sikarhati side, bearing Registration no. ML10-C-0209 and AS25-EC-3489 and apprehended one driver, namely, *Md. Fajar Ali*, of vehicle No.AS-25-DC-3489 but the driver of the other vehicle, bearing registration no. ML10-C-0209, managed to fled away, and on checking the vehicles they have found 13 nos. of cattle and the driver could not produce any documents, in respect of the same. Thereafter, the learned Chief Judicial Magistrate, Kamrup, Amingaon has given the custody of the seized cattle to Dhyhan Foundation, Gaushala, situated at Mandakata (the present petitioner), vide order dated 09.05.2023. Thereafter, the respondents no.2 to 6 filed a petition before the Chief Judicial Magistrate, seeking custody of the vehicle, but the learned Chief Judicial Magistrate has dismissed the said

petition and against the aforesaid order of the learned Chief Judicial Magistrate, the present petitioner had preferred one Revision Petition before the Court of learned Sessions Judge, Kamrup, Amingaon. Thereafter, hearing both the parties, the learned Sessions Judge, Kamrup, Amingaon, had directed to release the seized cattle in favour of the respondents no.2 to 6."

5. Being aggrieved, the petitioner, i.e. Dhyan Foundation Gaushala has approached this Court by filing the present petition on the following grounds:

- (i) that, the seized cattle were transported without Transport and Veterinary Certificate, as mandated by law.
- (ii) that, the cattle were being carried in the vehicle in cruel manner.
- (iii) that, the question of interim custody of the animal pending litigation in a proceeding under provision of The Prevention of Cruelty to Animal Act, 1960 has been laid down in the Rule 3 (b) of the Prevention of Cruelty to Animal (Care and Maintenance of Case Property Animals) Rules, 2016. And the impugned order was passed without considering the aforesaid Rule.
- (iv) that, the power conferred by Rule 3 (b) of the aforementioned Rule is a discretionary Power and the Magistrate has to house the seized animal in an infirmary, pinjrapole, SPCA, Animal

Welfare Organization, or Gaushala during pendency of the litigation, and the impugned order, dated 17.05.2023, reflects no reference to the aforementioned Rule.

- (v) that, the cattle were being carried by the respondents without requisite certificates such as Transport and Veterinary Certificate, as mandated by Rules 96-98 of *the Transport of Animals Rules, 1978*, and that the cattle were subjected to unnecessary pain and suffering and the impugned order was passed in contravention to Article 51A(g) of the Constitution of India and also the same is in contravention to the law laid down by Hon'ble Supreme Court in respect of ***Raguram Sharma & Anr. vs. C. Thulsi and Anr., Criminal Appeal No. 230/2022*** and in ***Animal Welfare Board of India vs. A. Nagaraja & Ors.***, reported in ***(2014) 7 SCC 547***. And therefore, it is contended to allow the petition.

6. The respondents no.2 to 6 have filed their affidavit-in-opposition, supporting the impugned judgment and order of the learned Sessions Judge, Kamrup, Amingaon. It is stated that they are the owner of the aforesaid cattle and they have purchased the same and they have produced the receipts before the Court and that they will produce the cattle as and when directed by the learned Court below and therefore, it is contended to dismiss the petition.

7. Mr. J. Payeng, learned counsel for the petitioner reiterating the grounds mentioned in the petition, submits that the impugned

order passed by the learned Sessions Judge Kamrup, Amingaon, suffers from manifest illegalities and in contravention of the Rules and the law laid down by the Hon'ble Supreme Court in number of cases and therefore, it is contended to allow the petition.

8. On the other hand, Mr. J. Hussain, learned counsel for the respondents no. 2 to 6 submits that as the respondents no. 2 to 6 are the owner of the cattle and they had purchased the same and produced the receipts before the learned Court below and they are entitled to take custody of the cattle. Referring to a decision of this Court in Criminal Revision Petition No. 146/2021, dated 26.10.2022, it is further submitted that the respondents no. 2 to 6 have transported the cattle within the same District for which permission is not required and the cattle were not carried for slaughtering and there is no whisper of any word in the F.I.R to that effect and that Section 11(7) of the Assam Cattle Preservation Act, 2021, is not mandatory and the word "may" is used there and as such discretion is left to the Magistrate to give custody of the seized cattle and that the petitioner has no preferential right to seek custody of the cattle from the Court.

9. Having heard the submissions of the learned Advocates of both side, I have gone through the petition and the documents placed on record and also perused the case law referred by the learned counsel for the petitioner as well as learned counsel for the respondents and also the impugned order passed by the learned Court below.

10. It appears from the record that the seized cattle were apprehended by Police on 11.04.2023, and a case being Palashbari PS Case No. 129/2023, has been registered under Sections 380/411 IPC, read with Section 13 of the Assam Cattle Preservation Act, 2021, read with Section 11 of Prevention of Cruelty to Animals Act, 1960 and thereafter, on the prayer being made by the Investigating Officer, the learned Chief Judicial Magistrate, Kamrup, Amingaon has given the interim custody of the seized cattle to the petitioner. Thereafter, the respondents no. 2 to 6 have filed a petition before the Court of learned Chief Judicial Magistrate, Kamrup and the learned Chief Judicial Magistrate, Kamrup, vide order, dated 09.05.2023, has dismissed the petition. Against the said order, dated 09.05.2023, the respondents no. 2 to 6 have preferred a Revision Petition before the learned Session Judge, Kamrup, Amingaon and the learned Sessions Judge, Kamrup, Amingaon in Criminal Revision Petition No. 12 of 2023, has allowed the petition filed by the respondents no. 2 to 6 and directed that 18 numbers of cattle, seized in connection with Palashbari PS Case No.129/2023, shall be released in the custody of the respondents, namely, *Mojor Ali, Eunus Ali, Anowar Hussain and Sukur Ali* on providing valid ID proof to the Investigating Officer on the conditions that (i). the cattle will not be sold or disposed with till disposal of the case, (ii). The cattle will be produced as and when required in connection with the investigation and trial (iii) no act should be done by which the value of the cattle is dissolved. It is to be noted here that in the aforementioned petition, the Investigating Officer has filed no

objection in allowing the Zimma Petition filed by the respondents no. 2 to 6.

11. Further, it appears that the learned Sessions Judge has held that a bar under Section 11(5) of the said Act come into play when the seizure was done under such circumstances where the parties have failed to show ownership of the cattle or the cattle has been subjected to any form of torture or misuse, but, in the case in hand there is no material on the record to show the cattle were tortured or misused and further that the petitioners have submitted valid purchase receipts in connection with the seized cattle. It is to be noted here that Section 11(5) of the Assam Cattle Preservation Act provides that on receipt of a report, the Judicial Magistrate 1st Class may, on 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 the vehicle/conveyance except cattle on furnishing of a bank guarantee, equal to the value of the material or vehicle/conveyance, to the satisfaction of the Court, pending disposal of the criminal proceedings instituted in respect of the alleged offence.

12. It is to be noted here that as observed by the learned Sessions Judge, Kamrup, Amingaon, there is no material to suggest that the cattle were subjected to torture. Moreover, the respondents no. 2 to 6 have produced the valid receipts of purchasing the seized cattle.

13. It is also to be mentioned there that in the case of ***Manager, Pinjrapole Deudar & Anr. Vs. Chakram Moraji Nat & Ors.,***

reported in **MANU/SC/0557/1998**, Hon'ble Supreme Court, while dealing with the custody of animals seized under The Prevention of Cruelty to Animals Act has 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."

14. 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."

15. Having regard to the proposition of law, so laid down in the aforementioned cases, and applying the same to the facts and circumstances in hand, I find that the impugned order dated 17.05.2023, passed by the learned Sessions Judge, Kamrup, Amingaon, in Criminal Revision Petition No. 12/2023, suffers from no infirmity or illegality, requiring any interference of this Court. The learned Court below has found that there is no material to suggest that the seized cattle were subjected to torture. Moreover, the respondent Nos.2 to 6 have produced valid documents of purchasing the cattle before the learned Court. And also there is no materials to suggest that the respondent Nos.2 to 6 are first offender and whether they have been found guilty of the offence earlier. Also there appears to be no possibility of subjecting the cattle to cruelty again. There is also no allegation that the cattles were carried in the vehicle for slaughtering.

16. I have also carefully gone through the case laws referred by Mr. J. Payeng, learned counsel for the petitioner and find that the ratio laid down in the aforementioned cases would not advance his case and therefore, I am not inclined to discuss the same in detail.

17. Under the aforementioned facts and circumstances, this Court finds no merit in this petition and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant