

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.8.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 463 of 2014

Abdul Nazer

.. Petitioner/Petitioner

Versus

The State Rep.by its
The Inspector of Police
Avinashi Police Station,
Tiruppur.

.. Respondent/Respondent

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the order dated 30.01.2014 made in Crl.M.P. No.313 of 2014 on the file of learned Judicial Magistrate, Avinashi.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : Mr.Mohamad Riyaz
Government Advocate (Crl.side)

ORDER

The petitioner has filed the above Criminal Revision Petition challenging the order dated 30.01.2014 passed by the Court below rejecting the application filed by the petitioner under Sections 451 and 457 of Cr.P.C. for return of cattle.

2. The petitioner herein is the accused. According to the petitioner, his cattle were seized by the respondent police for the offence under Section 11(1)(i) of Tamil Nadu Prevention of Cruelty to Animals Act, 1960 and 66 (1) read with 192 MV Act. Therefore, the petitioner filed Crl.MP.No.313 of 2014 praying for interim custody of the cattle till the disposal of the case and the same has been dismissed by the learned Judicial Magistrate, Avinashi, by order dated 30.01.2014. Aggrieved over the same, the petitioner has filed the present revision.

3. According to the revision petitioner, he is the owner of 22 buffaloes and he has transported the same only for agricultural operations and without the aid of the buffaloes, his agricultural operations are being affected.

4. Learned counsel for the petitioner submitted that the petitioner is the owner of the cattle and he is using it only for agricultural operations and if the buffaloes are kept in Ghoshala along with other animals, its health will get affected. The learned counsel for the petitioner further submitted that the petitioner

undertakes to keep the buffaloes in good condition and undertakes to produce the same as and when directed by the Court below and also undertakes to furnish sufficient sureties for the release of the vehicle. Therefore, the learned counsel for the revision petitioner prayed for return of cattle.

5. Learned Government Advocate (Criminal side) would contend that the petitioner has transported the cattle in most cruel manner, by violating the principles of The Prevention of Cruelty to Animals Act, 1960 and the Transport of Animal Rules 1978. According to the learned Government Advocate, more than six cattle cannot be transported in one vehicle. The learned Government Advocate further submitted that the petitioner has transported the cattle without getting permission from the competent authority and, therefore, the Court below has rightly dismissed the petition.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal side) and perused the materials available on record.

7. At the outset, the revision petition cannot be maintained for the simple reason that the petitioner himself has categorically admits that he has transported 22 cattle in one lorry from Karnataka to Kerala without any basic facilities, namely, proper food and water, which is in violation of the Act. As per the Motor Vehicles Act, only six cattle can be transported in one lorry.

8. In this context, it is useful to refer the judgment of this Court in *Naseerulah vs State* by the Sub-Inspector of Police, Coonoor (CDJ 2013 MHC 1960), wherein it is held thus:-

7. At the outset, when we see the case, the petitioner had carried 24 cows in one vehicle. The photographs which has been produced at the time of hearing the revision, show that the injuries caused to the animals because of the cramp nature as they were all kept in one lorry. Before dealing with this subject, first of all, we can deal with various enactments, rules and regulations which are already provided insofar as to the transportation of the cattle and safeguard of the cattle. Section 11 of the Prevention of Cruelty to Animals Act, 1960, elaborately deals with various cruelty meted out to animals and Section 11(1)(d) specifically deals with the injuries caused during transportation of animals. Chapter III, Section 11 deals with cruelty to animals generally which reads as follows:

"11. Treating animals cruelly.-(1) If any person-
(a) beats, kicks, overrides, overdrives, overloads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animal to be so treated; or

(b) [employs in any work or labour or for any purpose any animal which, by reason of its age or any disease], infirmity, wound, sore or other cause, is unfit to be so employed, or being the owner, permits any such unfit animal to be so employed; or

(c) wilfully and unreasonably administers any injurious drug or injurious substance to [any animal] or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by [any animal]; or

(d) 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; or

(e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or

(f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or

(g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or

(h) being the owner of [any animal], fails to provide such animal with sufficient food, drink or shelter; or "

8. Further, we have got the Transport of Animals rules, 1978 enacted in exercise of powers conferred under Section 38 (2)(h) of the Prevention of Cruelty to Animals Act, 1960. In the rules, Rule 56 stipulates the conditions as to how the cattle should be transported in such a manner without causing any injury or discomfort to the animals. Rule 56(c) specifically stipulates that no goods vehicle shall carry more than six cattle. In fact, Rule 56 also empowers that the cattle should be transported with all precautions viz.,

(a) specially fitted goods vehicles with a special type of tail board on padding around the sides should be used;

(b) ordinary goods vehicles shall be provided with anti-slipping material, such as coir matting or wooden board on the floor and the superstructure, if low, should be raised;

(c) no goods vehicle shall carry more than six cattle;

(d) each goods vehicle shall be provided with one attendant;

(e) while transporting the cattle, the goods vehicle shall not be loaded with any other merchandise; and

(f) to prevent cattle being frightened or injured, they should preferably face the engine.

11. Further, Rule 97 of the Transport of Animals Rules, 1978, stipulates cancellation of permit or authorisation for permit in the event of non-compliance or contravention of any of the rules contained in these rules for transport of animals. Again Section 29 of the Prevention of Cruelty to Animals Act, 1960 deprives the person convicted under the provisions of the Act from claiming ownership in respect of the animals involved in such crime. It is common knowledge that invariably the persons admitted the offences and paying a paltry fine and thereafter they seek for return of vehicle as well as animals claiming to be the owner. On a careful reading of Section 29 (1) of the above said Act would clearly indicate that having committed the offence he should not be permitted to utilise the very animals which he had subjected to inhumane practices and especially, without giving any protection for them. In the present case, where 24 cows have been taken in one vehicle. In this connection, this Court has also guided by the judgment of this Court made in CrI.R.C.No.1534 of 2001 reported in 2002-1-CTC-627 (Prema Veeraraghavan v. State by the Inspector of Police, K-10, Koyambedue P.S., Chennai and another) that is also a case where 18 buffaloes were carried in one vehicle on 24.10.2001. The petitioner is an Export Consultant under Committee for the Purpose of Control and Supervision of Experiments on Animals (CPCSEA), Government of India, filed a complaint that they were charged under Section 428 and 429 I.P.C. and Section 11 of Prevention of Cruelty to Animals Act, 1960, the lorry and 18 buffaloes were seized. In fact, one of the buffaloes was found dead even at the time of seizure. Thereafter, the applicant filed an application seeking for return of balance of the buffaloes. The lower Court ordered for return of the buffaloes. Aggrieved against the same, a revision was filed challenging the order of release. In the revision, this Court in CrI.R.C.No.1534 of 2001 has categorically held that when invoking Section 29(3) of the Prevention of Cruelty to Animals Act, 1960, the second respondent owner would not be entitled to the custody of the buffaloes. In fact, this Court has

clearly held that that section provided the animal could not be given to any of the persons who are accused of the offence. The relevant portions of the above order is extracted as under:

"4. On considering the submission made by the counsel for the parties and on perusal of the Case Diary, it is notified that the second respondent would not be entitled to the custody of the buffaloes in view of Section 29(3) of the Prevention of Cruelty to Animals Act.

5. The above section would provide that the custody of the animal could not be given to any of the persons, who are accused of the offence.

6. On going through the Case Diary and other records, it is clear that 18 buffaloes were packed in a lorry in violation of the Transport of Animal Rules, 1978. The buffaloes were kept jam-packed with a rope fastened through their nose and out of 18 buffaloes, one died. So it is clear that the offence has been committed under the Prevention of Cruelty to Animals Act.

7. Even according to the first respondent in the petitioner before the lower Court, he only arranged for the transport of the buffaloes to be taken to Andhra Pradesh for agricultural purpose. It is the contention of the petitioner that these buffaloes were to be taken to Kerala for butchering.

8. Under Rules 47 to 56 of the Transport of Animal Rules, 1978, no goods vehicle should carry more than six cattle and there should be a valid certificate by a qualified Veterinary Surgeon that the animals are fit to travel and each consignment should bear a label showing the name and address of the consignor and the consignee. Admittedly, in this case, 18 buffaloes were transported in a single lorry without any certificate in violation of the rules.

9. Moreover, the second respondent, who claimed to be the owner of buffaloes and arranged for the transport of the said buffaloes, is also a party to the said offence and he has also been arrayed as an accused. Under those circumstances, the second respondent is not entitled to the interim custody of the buffaloes."

12. In this connection, Section 429 of I.P.C. also can be taken note of. In this case, Section 429 of I.P.C. provides punishment for mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees with imprisonment for a term which may extend to two years, or with fine, or with

both. The said section is a cognizable one. If we read Section 429 of I.P.C., the word used in the Section is even maiming the cattle and it is also included Cow or Ox. Here we come across in one vehicle more than 20 cows or buffaloes were transported and in that process, namely the people who has taken it in the vehicle or during the transport, one animal is being attacked by another which shows only the inhumane attitude and inducement of the said person transporting the animals. Therefore, even the maiming or injury caused because of the illegal transportation therefore, the owner can be hauled up. Unfortunately, when all these provisions are there, we find that these people transported these animals to butchery without following the rules and regulations. Taking into consideration that the prices are different from State to State. In fact, most of the cases, cattle are being transported continuously for a period of 48 hours crossing inter-State border without even providing fodder or water. They are mostly taken only for slaughtering house in Kerala. They are transported in complete violation of the legal provisions, that too, right under the nose of the authority who is duty bound to implement such laws. The object of the Prevention of Cruelty to Animals Act, 1960, is only to prevent animals from being put to cruelty and that it is imperative to implement both these Acts by the authorities concerned. I only fervently hope that hereafter these laws which are provided for preventing cruelty to animals will be implemented in the strict sense. The lower Courts in Tamil Nadu shall take note of these provisions and also see that as to how the offenders should be punished properly. Therefore, the finding of the lower Court that the petitioner is not entitled for return of the cattle is well founded and correct. At the same time, another painful thing has happened in this case and that has also to be taken note of. Subsequent to the cattle being handed over to the second respondent, they have maintained it for six months and during that period 21 cattle also died. The post mortem certificate have been produced. In all the cases, they have sustained injuries during illegal transportation. In fact, in one case, gangrene has set in and it has been operated from spreading further and the injuries of the nature sustained only during illegal transportation was the cause of the death. Here is the fittest case where Court has to come to the rescue of the animals and prevent cruelty meted out to the poor animals and the watchful thing of society which are taking care of the animals should be encouraged to stop this offence. Stringent action should be taken as against those who violates the laws in future. Even the vehicles which are used should be dealt with under the Motor Vehicles Act concerned and punishment has to be imposed.

9. Admittedly, in this case, the petitioner has transported 22 cattle in one lorry that too, without obtaining permission for such transportation. Therefore, the petitioner cannot claim any right over the property, namely, cattle. Since the petitioner has transported the cattle without valid permission, no lenience can be shown against the petitioner.

10. For all the above stated reasons, I do not find any reason to interfere with the reasoned order passed by the Court below. Accordingly, this revision is dismissed. Consequently, connected miscellaneous petition is closed. The trial Court is directed to complete the main case itself as expeditiously as possible.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1. The Judicial Magistrate Court, Avinashi

2. The Public Prosecutor, High Court, Madras

+1 cc to M/s.K.Govi Ganesan, Advocate, sr.40854

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