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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

CRL.R.C.Nos.47, 75 to 82 of 2015

and

M.P.Nos.1 to 1 of 2015

Nijamudeen (M/A 36 years)
S/o.Sowkath Ali
President
Coimbatore Cattle Care
No.112/86, HUDCO Colony
Tatabath, Coimbatore.

...Petitioner in all Crl.RCs

Vs.

The Inspector of Police
Avinasipalayam Police Station
Palladam
Tiruppur District.
Cr.No.377 of 2014)

...R1 in All Crl.R.Cs

Balasubramaniam

...R2 in Crl.R.C.No.47 of 2015

Mayilsamy

...R2 in Crl.R.C.No.75 of 2015

D.Krishnan

...R2 in Crl.R.C.No.76 of 2015

Durai Subramaniam

...R2 in Crl.R.C.No.77 of 2015

Zakir Hussain

...R2 in Crl.R.C.No.78 of 2015

Selvam

...R2 in Crl.R.C.No.79 of 2015

S.Mohammed Zakhir

...R2 in Crl.R.C.No.80 of 2015

Shabariraj

...R2 in Crl.R.C.No.81 of 2015

Jiyavudeen

...R2 in Crl.R.C.No.82 of 2015



PRAYER in Crl.R.C.No.47 of 2015: Criminal Revision Case is filed under Section 397 read with 401 & 482 of Cr.P.C., against the order in Crl.M.P.No.5283 of 2014, 5288 (in Crl.R.C.No.75 of 2015), 5289 (in Crl.R.C.No.76 of 2015), 5284 (in Crl.R.C.No.77 of 2015), 5285 (in Crl.R.C.No.78 of 2015), 5286 (in Crl.R.C.No.79 of 2015), 5291 (in Crl.R.C.No.80 of 2015), 5290 (in Crl.R.C.No.81 of 2015), 5287 (in Crl.R.C.No.82 of 2015) respectively dated 19.12.2014 passed by the learned Judicial Magistrate, Palladam.

For Petitioner : Mr.V.Gopinath
in all revisions Senior Counsel for Mr.S.S.Suresh

For Respondents : Mr.V.Arul
in all revisions Government Advocate (Crl. Side) for R.1

Mr.M.Easan for R.2

COMMON ORDER

These Criminal Revision Cases arise out of the one and the same occurrence in connection with a case registered in Cr.No.377 of 2014 and hence, all these revision cases are taken up together for common disposal and disposed of by this common order.

2. These Criminal Revision Cases have been filed by the defacto complainant against the allowing of the petitions in Crl.M.P.Nos.5283 of 2014, 5288 of 2014, 5289 of 2014, 5284 of 2014, to 5286 of 2014, 5291 of 2014, 5290 of 2014 and 5287 of 2014, by common order dated 19.12.2014, seeking for return of property viz., seized cattle.

3. The case of the petitioner/defacto complainant is that he is the President of Coimbatore Cattle Care Welfare Trust, an organisation for the welfare of animals. On 25.11.2014, when he was nearing Palladam, he saw nine lorries going ahead of him. On suspicion, when he intercepted the lorries and enquired the drivers and owners of cattle, he came to know that the accused were transporting the animals to Kerala. There are totally 216 animals consisting of buffaloes, cows and calves were kept jam packed and therefore, they sustained grievous injuries. They were not provided with fodder or water. The defacto complainant lodged a complaint before the first respondent, based on which, cases were registered against the second respondents in Cr.No.37 of 2014 for the offences under Sections 11(1) a,d,g,h, 29, 35 and 38(2) h of Prevention of Cruelty to Animals Act, 1960, 147, 428, 429 IPC and 237 r/w. 177 of Motor Vehicles Act. After registration of the cases, the owners of cattle preferred petitions before the learned Judicial Magistrate, Palladam, seeking for return of cattle belonging to them. The learned Magistrate, by common order dated 19.12.2014, allowed the petitions. Aggrieved against the same, these Criminal Revision Cases



are filed by the defacto complainant.

4. Mr.V.Gopinath, learned Senior Counsel appearing for the petitioner/defacto complainant would bring to the notice of this Court that an illegal act of taking 216 animals in nine lorries from Tamil Nadu to Kerala was intercepted at the instigation of defacto complainant, who is the President of Coimbatore Cattle Care Welfare Trust, an organisation for the welfare of animals. He would further contend that to the alleged owners of cattle, the Lower Court ought not to have granted the custody of animals, because, as per the Prevention of Cruelty to Animals Act 1960, the cattle should be taken care of and maintained even during the course of trial in a proper way. When cruelty to cattle is made, rightly Sections 428, 429 and 237 IPC r/w.177 of Motor Vehicles Act are invoked. He would further submit that by transporting in the lorries more than the prescribed number of animals, the owners of cattle have violated the provisions of Prevention of Cruelty to Animals Act, 1960. To substantiate his contention, learned Senior Counsel would rely on a judgment of this Court reported in CDJ 2013 MHC 1960, Naseerulah vs. State by Sub-Inspector of Police, Coonoor & another, wherein, this Court has elaborately discussed about the various provisions of the Prevention of Cruelty to Animals Act 1960, Transportation of Animal Rules 1978, Motor Vehicles Act and Tamilnadu Animal Preservation Act 1958 and this Court has extracted the various violations and has ultimately held that the animals shall not be returned back to the accused, who caused injuries and death to the animals. Further, this Court has clearly held in the judgment how the Lower Court has to take into consideration in such matters relating to return of animals. But, the Lower Court, without following the said judgment has straightaway ordered for return of animals. He would further add that now the cattle were maintained in a Kosala by name Vellayangiri Kosala and therefore, the Lower Court should have directed the alleged owners of cattle to pay the necessary maintenance charges for the maintenance and upkeep of animals, during the course of trial, but, violating the same, the Lower Court has straightaway passed the order directing the return of animals. He would further submit that the petitioner, who is the defacto complainant and Intervener, has got every right to safeguard the interest and welfare of the cattle.

5. Mr.V.Arul, learned Government Advocate (Criminal Side) appearing for the first respondent would submit that only an interim custody of cattle was given to the accused.

6. Mr.M.Easan, learned counsel appearing for the second respondents/owners of the cattle would mainly contend that as owners of the cattle, they are automatically entitled to get to the custody of the cattle and during the course of trial, it is the responsibility of the owner to maintain the cattle. Since, the owners of the cattle were ready and willing to abide by any

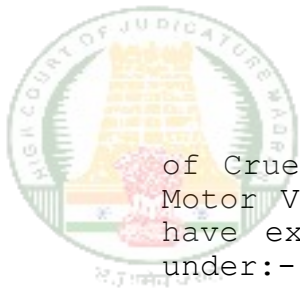


conditions, the Lower Court has rightly ordered for return of animals.

7. Heard both sides and I have carefully perused the entire materials available on record.

8. At the outset, I have to state that here is a case, where huge numbers of cattle (216 cattle) were transported without any facility in nine lorries in an inhumane manner and thus, there is a clear violation of Prevention of Cruelty to Animal Act 1960. It is brought to the notice of this Court that during the transportation of animals, the animals were stuffed with chilly in their eyes, in order to prevent them from sleeping during the course of transit and also to prevent them from moving from their places in the vehicle. Through their nose, a rope is fastened. They were all suffocated and some of them die in the course of transport. The accused are butchers by profession and they have transported the same to Kerala for butchering. The pregnant cows were taken, which is against the Prevention of Cruelty to Animals Act, 1960. Further, it violates Transport of Animals Rules, 1978. As per 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, nine lorries were used to take 216 cattle and they were kept jam-packed with a rope fastened through their nose, that too, without any certificate in violation of the rules, which means that per lorry they have taken 22 to 23 fully grown cows. That by itself is a cruelty to animals. Infact, it is brought to the notice of this Court that one cow at the time of unloading died. Further, several cattle sustained bleeding injury and suffered suffocation because of the inhumane transportation. With all these things can we able to safely conclude that the owners of the cattle are the proper person to take custody of the cattle. Definitely not. The owners of the cattle cannot be the persons, to whom, the custody of cattle can be entrusted. Basic courtesy requires. The cattle subjected to inhumane practice, that too, without giving any protection and therefore, the cattle should not be entrusted to the persons concerned. The cattle should be given proper basic maintenance. In my considered opinion, during the course of trial, the cattle should not be entrusted to the custody of the persons who are accused of the offence of committing cruelty to animals and therefore, the Lower Court ought not to have granted return of cattle to owners of cattle.

9. I had an occasion to deal with a similar case, which is reported in CDJ 2013 MHC 1960, Naseerulah vs. State by Sub-Inspector of Police, Coonoor & another (cited supra), wherein, I have elaborately discussed about the various provisions of the Prevention



of Cruelty to Animals Act 1960, Transportation of Animal Rules 1978, Motor Vehicles Act and Tamilnadu Animal Preservation Act 1958 and I have extracted the various violations and has ultimately held as under:-

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"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

(emphasis supplied)

(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



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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.

...

12. The facts in that case squarely applies to the fact of the present case. Therefore, also the lower Court was correct in dismissing the application. In fact, the power of Court to deprive person convicted of ownership of animal under Section 29 of the Act was also dealt with by the Supreme Court in a judgment reported in (2007) 15 SCC 588, State of M.P. Vs. Islam, wherein, the Supreme Court has categorically held that as per Section 29(1) of the Act, undoubtedly, confers jurisdiction on the Court, in the event the offender stands convicted, to pass an order of forfeiture of the animals in favour of the Government. But, a close scrutiny of language used



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therein, Section 29(1) stands appears to be restricted and subject to the provisions contained in sub-section (2) of Section 29 specifically lays down three specific conditions. The three specific conditions are as follows:-

- a) It is shown by evidence as to a previous conviction under this Act.
- b) as to the character of the owner or otherwise, as to the treatment of the animal.
- c) that the animal, if left with the owner, is likely to be exposed to further cruelty.

In this case, the Court should be guided by this principle that there should be an evidence that when the owner is already convicted of a previous offence of same nature or when there is an evidence that the character of the owner is as to which he treats the animal in a bad manner or animal is left with the owner is exposed to further cruelty. In this case, admittedly, there is an evidence that the cattle have been taken to Kerala for butchering purposes. When there is a specific ban in regard to slaughtering of cow and further more, there were lot of injuries caused and the post-mortem certificate issued by the doctor clearly indicates that there are injuries and the veterinary doctor has also been examined at the time of the seizure also and that when clear cut evidence is available, naturally, the custody cannot be given. Apart from this, as rightly pointed out by the learned Counsel for the respondent that there could be some guidelines issued to the lower Courts as well as the authorities concerned in respect of the transport of such animals. In this case, we are also governed by Section 32 of the Prevention of Cruelty to Animals Act, 1960 which confers the power of search and seizure for the the police officers in contravention of the provisions of the Act. An argument was made that the offence under Section 11(1)(d) is a non-cognizable offence within the meaning of Code of Criminal Procedure. But Section 102 of Cr.P.C. which is extracted below clearly empowers the police officer to seize any material with regard to any offence which include the offence under Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960. In this connection, a ruling of the Gujarat High Court reported in 1998 CrI.J. 1337 (Panjrapole, Deodar and etc., v. Chakaram Moraj Nat, Maldhari and another) wherein it is clearly stated that under Section 102 of Cr.P.C. the police has power to seize animals also. The following may be usefully



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extracted:

"18. Though at the first instance, the contention raised by Mr. Tirmizi appears to be attractive, in my view, it has no substance. Section 102 of the Cr.P.C. empowers the Police Officer to seize any property which may be alleged or suspected to have been stolen or which may be found under the circumstances which create suspicion of the commission of an offence. Section 102 reads as follows: Section 102: Power of police officer to seize certain property.

(1) Any police officer may seize any property which may be alleged or circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

The words 'any offence' employed u/S.102 shows unmistakably that even though there may be commission of non-cognizable offence, the police may seize any property found under the suspicious circumstances. Sub-section (2) of Section 102 provides that, such officer, subordinate to the officer in charge of the police station, shall forthwith report the seizure to that officer. Sub-clause (3) provides that, every police officer acting under sub-clause (1) shall forthwith report the seizure to the Magistrate having the jurisdiction. Thus, the police officer has a power to seize animal on suspicion of commission of an offence committed under the Act of 1960 or under the other ancillary provisions, irrespective of the fact that they are non-cognizable offences. On such seizure, the police officer is required to forthwith report to the Magistrate having the jurisdiction. The Court is required to pass an appropriate order with respect to the custody of the animal under the provisions of Section 451 of the Cr.P.C. Thus, in my view, irrespective of the fact that, except



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offences under clause (i), (n) or (o) of Sub-section (1) of Section (11) or 12 of the Act of 1960, rest of the offences are non-cognizable, the police has a power to seize the animal under Section 102 of the Cr.P.C. and the Magistrate will be competent to pass an order u/s.451 of the Cr.P.C."

...

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

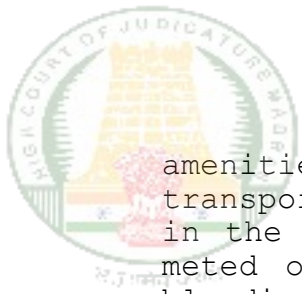


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is well founded and correct. At the same time, another painful thing has happened in this case and that has also to be taken note of. Subsequent to the cattle being handed over to the second respondent, they have maintained it for six months and during 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."

10. In the decision cited supra, I have clearly indicated the mode to be done. The facts in that case squarely applies to the fact of the present case. Here in this case, if the cattle, if again left with the owners, is likely to be exposed to further cruelty. We find that the accused transported the cattle to burchery without following the rules and regulations. The cattle were being transported continuously from State to State without even providing fodder or water. The transportation is done in total violation of the legal provisions. The object of the Prevention of Cruelty to Animals Act 1960, is only to prevent animals from being put to cruelty. Further, stringent action should be taken as against those who violates the laws in future. The vehicles which are used for the commisison of this kind of offence should be dealt with under the Motor Vehicles Act. The Lower Court has not considered the decision cited supra in a proper perspective and has ultimately granted the custody of cattle to the owners of cattle.

11. But, right now luckily, the cattle are maintained in a Kosala. Infact, learned Senior Counsel appearing for the petitioner/defacto complainant has voluntarily stated before this Court that the defacto complainant is prepared to maintain the cattle in the Kosala and he is also prepared to incur all the charges required for the maintenance of cattle in the Kosala. The organisation taking care of the animals should be encouraged to stop this offence. When a voluntary organisation come forward to save the life of cattle, can we accept the contention of owners of cattle that they are entitled for the custody of cattle as owners of cattle, who have not even had the basic courteousy to provide the basic



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amenities of providing fodder and water to the cattle while transporting the cattle in vehicles and who have inserted the chilly in the eyes of cattle and ultimately, due to the inhumane treatment meted out to the cattle, some cattle died due to suffocation and bleeding injuries.

12. For the foregoing discussions held and also in the light of the decision cited supra, the common order of the Lower Court is liable to be set aside and accordingly, it is set aside. These Criminal Revision Cases are allowed. Consequently, connected Miscellaneous Petitions are closed. It is hereby made clear that the cattle shall be maintained in the Kosala till the disposal of the case. The undertaking given by the defacto complainant that he is prepared to incur all the charges required for the maintenance of cattle in the Kosala, is recorded with appreciation.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police
Avinasipalayam Police Station
Palladam
Tiruppur District.

2. The Judicial Magistrate,
Palladam.

1 CC to Mr.S.S.Suresh, Advocate SR.No. 34916

1 CC to Mr.M.Easan, Advocate SR.No. 34514

CRL.R.C.Nos.47, 75 to 82 of 2015
and M.P.Nos.1 to 1 of 2015

ALA (CO)
PSI (22.07.2015)