

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2015

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

CRL.R.C.Nos.871 and 872 of 2015

Subba Rao Jaladi

... Petitioner
in both revisions

-Vs-

State rep. by
Sub-Inspector of Police
Tharamangalam Police Station
Crime No.474 of 2015

... Respondent
in both revisions

Criminal Revision Cases are filed under Sections 397 and 401 of Cr.P.C., against the orders dated 06.08.2015 passed by the learned Judicial Magistrate, Omalur, Salem District, in C.M.P.Nos.3294 and 3295 of 2015.

For Petitioner : Mr.R.Margubandhu
in both revisions.

For Respondent : Mr.Mohamed Riyaz
in both revisions. Government Advocate (Crl.Side)

COMMON ORDER

These Criminal Revision Cases arise out of the same facts viz., transportation of cattle in a lorry in connection with the cases registered in Cr.No.474 of 2015 and hence, both revision cases are taken up together for common disposal and disposed of by this common order.

2. These Criminal Revision Cases were filed by the owner of the vehicle and cattle against the dismissal of the petitions in C.M.P.Nos.3294 and 3295 of 2015, by orders, dated 06.08.2015, seeking for return of lorry bearing Regn.No.AP-26-TT-3589 and return of cattle viz., 6 male buffaloes, 26 female buffaloes and 2 buffalo calves.

3. The case of the prosecution is that the petitioner, who is the owner of the lorry bearing Regn.No.AP-26-TT-3589, has used the said lorry for illegal transportation of large number of cattle. The defacto complainant is alleged to have intercepted the vehicle while the lorry was passing through main road at Tharamangalam and handed over the said lorry with cattle to the respondent police. On

the basis of which, a case was registered against the petitioner under Section 11(1)(d) of Prevention of Cruelty of Animals Act and Section 429 IPC r/w. Sections 96 and 97 of Transportation of Animal Rule 1978/2001. After registration of the case, the owner of cattle preferred petitions before the Lower Court seeking for return of vehicle and cattle belonging to him. But the said petitions were dismissed. Aggrieved against the same, these Criminal Revision Cases are filed by the petitioner, who is the owner of the vehicle and cattle.

4. Mr.R.Margabandhu, learned counsel appearing for the petitioner would submit that the petitioner is the owner of vehicle and cattle and therefore, he is automatically entitled to get to the custody of the same, but, the Lower Court has wrongly dismissed the petitions seeking custody of the cattle and vehicle and hence, he seeks to allow the revision and pray for ordering return of vehicle and cattle.

5. Mr.Mohamed Riyaz, learned Government Advocate (Criminal Side) appearing for the respondent would submit that the vehicle was involved in an illegal act of transportation of huge numbers of cattle and therefore, the Lower Court has rightly dismissed the petitions.

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

7. At the outset, I have to state that here is a case, where huge numbers of cattle were transported without any facility in vehicles in an inhumane manner and thus, there is a clear violation of Prevention of Cruelty to Animal Act 1960. It also 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, 34 numbers of cattle were taken in a lorry and they were kept jam-packed with a rope fastened through their nose, that too, without any certificate in violation of the rules. That by itself is a cruelty to animals. 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 owner of the cattle is the proper person to take custody of the cattle. Definitely not. The owner of the cattle cannot be the person, 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 person 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 person who is accused of the offence of committing cruelty to animals and therefore, the Lower Court has correctly dismissed the petitions.

8. 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:-

"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 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 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 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 action 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 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."

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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. In the decision cited supra, I have clearly indicated the mode to be done. The facts in that case squarely applies to the facts of the present case. Here in this case, if the cattle, if again left with the owner, is likely to be exposed to further cruelty. We find that the petitioner transported the cattle illegally without following the rules and regulations. The cattle were being transported continuously from District to District 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 vehicle which

is used for the commisison of this kind of offence should be dealt with under the Motor Vehicles Act. The Lower Court has rightly considered the decision cited supra and has ultimately dismissed the petitions.

10. Right now luckily, the cattle are maintained in a Goshala, by name, Velliengari Goshala, Athur, Narasipuram Post, Coimbatore. 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 owner of cattle that he is entitled for the custody of cattle as owner of cattle, who have not even had the basic courteousy to provide the basic amenities of providing fodder and water to the cattle while transporting the cattle in a vehicle and ultimately, due to the inhumane treatment meted out to the cattle, some cattle sustained suffocation and bleeding injuries.

11. For the foregoing discussions held and also in the light of the decision cited supra, which was rightly followed by the Lower Court, the impugned orders of the Lower Court are liable to be confirmed and accordingly, they are confirmed. These Criminal Revision Cases are dismissed. It is hereby made clear that the cattle shall be maintained in the Goshala, in which they were already kept and maintained, till the disposal of the cases. The Lower Court shall decide at the time of disposal of the main cases regarding the maintenance to be provided by the alleged owner.

paa

s/d-

Assistant Registrar(LA)

True Copy

Sub-Assistant Registrar

To

1. The Sub-Inspector of Police
Tharamangalam Police Station

2. The Judicial Magistrate,
Omalur, Salem District.

+ 1 cc to M/s.R.Margabandhu, Advocate SR 44382

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2015