

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.6.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1408 of 2013
and
M.P.No. 1 of 2013

Vikram

... Petitioner/Intervenor

Versus

1. Y.Fogullah Shariff

2. State by Sub Inspector of Police
M1, Madhavaram P.S.,
Madhavaram, Chennai -110
(Crime No.1425 of 2013)

... Respondents

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to call for records in CRP.8 of 2013 dated 08.11.2013 by Principal Sessions Judge, Thiruvallur by reversing the order passed by Judicial Magistrate, Thiruvottiyur dated 05.09.2013 in CrI.MP.No.5501 of 2013 as set aside the same.

For Petitioner : Mr.L.S.Rajendra Kumar
for M/s.Norton and Grant

For R1 : No Appearance

For R2 : Mr. T.Arul
Government Advocate (CrI.side)

ORDER

The petitioner has filed the above Criminal Revision Petition challenging the order dated 05.9.2013 passed by the Court below ordering to return 20 buffaloes to the first respondent.

2. Revision petitioner herein is Goshala. The first respondent herein is the owner of the cattle. According to the first respondent, his cattle were seized by the second respondent police for the offence under Section 11(1)(A) of Tamil Nadu Prevention of Cruelty to Animals Act, 1960 read with 428 IPC. The first respondent filed CrI.MP.No.5501 of 2013 praying for return of cattle for safe custody till the disposal of the case and the same has been dismissed

by the learned Judicial Magistrate, Thiruvottiyur, by order dated 05.09.2013. Against which, the first respondent filed Revision in C.R.P.No.8 of 2013 before the learned Principal Sessions Judge, Tiruvallur. The learned Principal Sessions Judge, Thiruvallur, by order dated 08.11.2013, allowed the revision filed by the first respondent by ordering return of cattle to him. Aggrieved over the same, the intervenor has filed the present revision.

3. According to the revision petitioner, the first respondent has transported cattle in most cruel manner by violating the rules laid down by "The prevention of Cruelty to Animals Act, 1960 and the Transport of Animals Rules, 1978". According to the revision petitioner, the first respondent is not the real owner and he is only a name lender and if the cattle are handed over to him, there is possibility of further cruelty to the animals. Therefore, according to the revision petitioner, the order of return of cattle to the first respondent by the Court below is illegal.

4. The learned counsel for the revision petitioner/intervenor submitted that transportation of more than 6 cattle in one lorry itself is an offence. But the learned Principal Sessions Judge, Thiruvallur, without following the same, has ordered return of cattle to the first respondent, which is in violation of the proposition laid down by this Court in Naseerulah vs State by the Sub-Inspector of Police, Coonoor (CDJ 2013 MHC 1960).

5. Learned Government Advocate (Criminal side) would contend that the cattle ought not to have been returned to the first respondent, as the first respondent 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. Therefore, the learned Government Advocate prays for dismissal of the revision.

6. Though notice was sent to the first respondent, none appeared on behalf of him. The name of the first respondent was also printed in the cause list. The matter is disposed of on merits as per the judgment of the Hon'ble Supreme Court in 2013 (3) SCC 721.

7. Admittedly, the first respondent has transported 20 cattle in one lorry from Andhrapradesh to Madras. It is very clear that the cattle could not even stand in the small place. But they have been subjected to cruelty by travelling such a long distance continuously.

8. In this context, it is useful to refer the judgment of this Court dated 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 Crl.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 Crl.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. It is very clear that in one lorry, maximum 6 cattle is allowed to be transported. But the first respondent has transported 20 cattle in one lorry that too, for a very long distance, i.e. from Andhrapradesh to Madras, which is utter violation of the Act. But the First appellate Court without considering the said aspect, has wrongly come to the conclusion in ordering return of the cattle to the first respondent.

10. Now the cattle are in the custody of the Goshala, the second respondent herein. Trial is also pending. Therefore, without expressing any further opinion, while setting aside the order dated 08.11.2013 passed by the learned Principal Sessions Judge, Thiruvallur in C.R.P.No.8 of 2013, the trial Court is directed to expedite the trial and dispose the main case on merits and in accordance with law.

11. In the result, the Civil Revision case is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,
Thiruvallur
2. Judicial Magistrate,
Thiruvottiyur.
3. Public Prosecutor,
High Court, Madras.
4. The Sub Inspector of Police,
M1, Madhavaram Police Station,
Madhavaram, Chennai 110.

+1cc to M/s.Norton & Grant, Advocate, S.R.No.28460

Cr1 RC No. 1408 of 2013

KGK(CO)
CA(07/07/2015)



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