



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE M. VENUGOPAL

Crl.R.C. (MD).No.560 of 2015

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Anju : Petitioner/Accused No.2
Vs.

1.The Sub-Inspector,
Samayapuram Police Station,
Trichy District, under Cr.No.510 of 2015.

2.Akila Bharatha Hindu Maha Shaba,
Rep. by its State Secretary P.Senthil,
Son of Periyasamy, No.1, Kalaingar Nagar,
Kovilanoor Village, Virudhachalam Taluk,
Cuddalore District.

(2nd Respondent is impleaded as per
order of this Court, dated 07.12.2015
in M.P. (MD) No.1 of 2015)

: Respondents

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, against the order dated 03.11.2015 passed in Cr.M.P.No.7590 of 2015 by the Learned Judicial Magistrate No.III, Trichirappalli.

For Petitioner	: Mr.K.R.Laxman
For R1	: Mr.P.Kandasamy
	Government Advocate (crl.side)
For R2	: Mr.G.R.Swaminathan

ORDER

The Revision Petitioner/Respondent/second Accused has focused the instant Criminal Revision Case as against the order, dated 03.11.2015 in Cr.M.P.No.7590 of 2015 passed by the Learned Judicial Magistrate No.III, Trichirappalli, as an aggrieved person.

2.The Learned Judicial Magistrate No.III, Trichirappalli, while passing the impugned order in Cr.M.P.No.7590 of 2015, dated 03.11.2015, filed by the Revision Petitioner/second accused, at paragraph Nos.5.6 to 5.8, had observed as follows:

"5.6.But the latest current dictum has been enumerated in 2015 4 MLJ (Crl) 38, wherein elaborately discussed about the proper person for giving interim custody of animals. The Law laid down in this Judgement is as follows:

The Owners of the cattle cannot be the persons to whom the custody of cattle can be entrusted. Basic Courteously
<https://hse.ces.ports.gov.in/Idse> 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 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."

5.7. It is notified that the Petitioner would not be entitled to the custody of the Buffaloes in view of Section 29(3) of the Prevention of Cruelty to Animals Act. 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. In this Petition, the Accused is the Petitioner and hence he is not entitled to the interim Custody of the Buffaloes as per Section 29 (3) of the Act and as per the dictum in (2015) 4 MLJ (Cr1.) 38.

5.8. With regard to the second consideration the Petition was not filed either by the Koshala to transfer the animals to other Koshala or by the prosecution. Hence, this Court concludes that at this stage the Petitioner has no locus standi to file this petition. Hence, the petition is hereby dismissed." and resultantly, dismissed the petition.

3. According to the Learned counsel for the Petitioner/A2, the order of dismissal, dated 03.11.2015, in Cr.M.P.No.7590 of 2015 passed by the trial Court is improper, untenable and is against the provision of Law and therefore, it is to be set aside in the eye of Law.

4. The Learned counsel for the Petitioner brings it to the notice of this Court that the Petitioner/second accused was the purchaser of 14 Buffaloes from Rajamundri market, Andhra Pradesh for the purpose of 'Agriculture' and when the said Buffaloes were transported to Pollachi in a vehicle bearing registration No.AP-05-TB-6574, the vehicle was seized by the Respondent police.

5. As a matter of fact, the said Buffaloes were taken into custody alleging that the said Buffaloes were taken for slaughtering. Moreover, the said Buffaloes were transported in the vehicle by tying their legs on the ropes and ill-treated. As such, the Defacto Complainant/Akila Bharatha Hindu Maha Shaba had filed a complaint and a case was registered.

6. The Learned counsel for the Petitioner primarily contends that the whole case of the prosecution is a false one and in fact, the said 14 Buffaloes were taken for agricultural purpose only and in this regard, the Petitioner had filed an application under Section 451 of Cr.P.C. Seeking possession of the said 14 Buffaloes.

7. The Learned counsel for the Petitioner submits that the Petitioner/second accused is the owner of the said 14 Buffaloes and in fact, the 'Gosalai' is primarily for Milk Cows and Ox and that the trial Court had confused the Milk Cow and Ox with Buffaloes. As such, the impugned order is liable to be set aside.



8. It is represented on behalf of the Petitioner that when Buffaloes are not maintained at 'Gosalai' with sufficient food, the trial Court should have returned the Buffaloes to the Petitioner and the failure on the part of the trial Court in this regard is an improper one.

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9. The Learned counsel for the Petitioner takes a forceful plea that when Buffaloes were neither used for meat purpose nor for milk purpose, it is always used for agriculture purpose and viewed in that perspective, the entire case of the prosecution fails. Further, the Petitioner/second accused ought to have been given the custody of the said Buffaloes and the dismissal of the Miscellaneous Petition filed by the Petitioner by the trial Court is an incorrect one.

10. Finally, it is the contention of the Learned counsel for the Petitioner/second accused that because of the only reason that Buffaloes were carried in one vehicle, huddled together, the petition for return of the said Buffaloes was dismissed by the trial Court.

11. The Learned counsel for the Petitioner/A2 cites the order of this Court dated 05.08.2015 in CrI.R.C.(MD)No.307 of 2015 between SHANMUGAPRIYAN v. STATE and another, whereby and wherein, it is observed and held as follows:-

"2. A perusal of the order passed by the Judicial Magistrate would go to show that sufficient safeguards have been ensured and sufficient conditions have been imposed upon the second Respondent to ensure that the cattle are kept in safe condition. Following are the conditions imposed by the Judicial Magistrate:

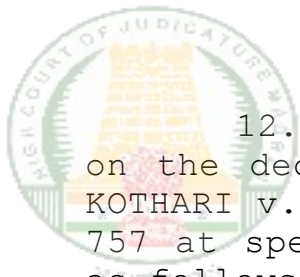
1. Each of the Petitioner shall execute bond for Rs.75,000/-.

2. Photograph of cattle shall be taken in the presence of I.O. The same shall be submitted to the Court along with a Panchanama.

3. The Petitioner shall produce the cattle as and when required by this Court.

4. Further the Petitioner shall not sell the cattle. There is no irregularity in the procedure adopted by the Judicial Magistrate in handing over the custody of the second Respondent. Whether the cattle were ill-treated or mistreated or harassed are the matters to be considered during the trial. Therefore, there is no merit in the Criminal Revision Petition and the Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

3. The second Respondent herein, who is the claimant before the Judicial Magistrate, shall also be required to file an affidavit before the Judicial Magistrate stating that the cattle will not be used for the purpose of slaughtering."



12.Also, the Learned counsel for the Petitioner/A2 relied on the decision of the Hon'ble Supreme Court in BHARAT AMRATLAL KOTHARI v. DOSUKHAN SAMADHAN SINDHI reported in (2010) 1 SCC (Cri) 757 at special page 758, whereby and where under, it is observed as follows:-

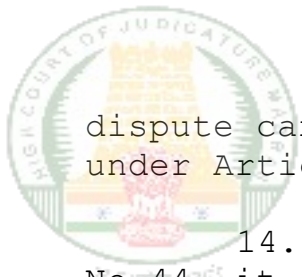
"Those who are not even remotely alleged to have committed offence/offences, cannot be convicted at all either at the trial or while exercising so-called wide jurisdiction under Article 226 of the Constitution. Appellant 1's FIR was not registered against any of Respondents 1 to 6. The four accused named therein were not parties to the petition filed by Respondents 1 to 6 nor had they approached the High Court for custody of the goats and sheep seized. Therefore, conviction of Respondents 1 to 6 under Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 and imposition of fine of Rs.50 on each of them by the High Court has to be regarded as without jurisdiction, unauthorised, unwarranted and illegal and has to be set aside."

13.Also, in the aforesaid decision, at page No.768, at paragraph Nos.39 to 41, it is observed as follows:-

"39.In the said inquiry the question posed for determination of the Learned Chief Judicial Magistrate, Palanpur, would be whether the appellant No. 1 and others with police personnel had committed loot of trucks with goats and sheep and also cash amount of Rs.1,11,000. The said inquiry is not concluded as on today nor any finding is rendered that the appellant No. 1 and others with the aid of police personnel had committed loot of the articles mentioned in the complaint of that case. Therefore, the appellant No. 1 could not have been directed to pay compensation and cost to 6 without prejudice to their rights and contentions in the criminal proceedings initiated by way of Criminal Inquiry Case No. 237 of 2008.

40.Moreover, no claim was advanced by the Respondent No. 8 herein that the appellant No. 1 should be directed to pay, on behalf of the owners, i.e., the Respondent Nos. 1 to 6, the cost of maintenance and treatment of the animals in question in accordance with the provisions of sub-Section (4) of Section 35 of the Act. Normally, cost of maintenance and treatment of the animals in such cases would be payable by one who claims custody or who are the owners of the live stock but not by the complainant. In the instant case the assertion made by the appellant No. 1 is that he was handed over custody of goats and sheep by the police after registration of FIR seems to be that the appellant No. 1 had taken possession of the live stock and trucks illegally before the FIR was lodged and had acted in a high handed manner.

41.The dispute whether appellant No. 1 was handed over custody of goats and sheep after filing of the complaint or before the complaint was lodged, will have to be adjudicated upon evidence to be lead by the parties. Such a highly contentious



dispute cannot and could not be resolved in a petition under Article 226 of the Constitution."

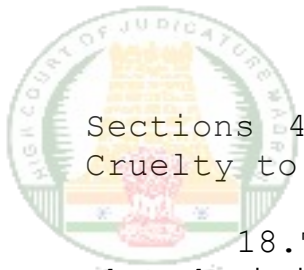
14. Furthermore, in the aforesaid decision at paragraph No.44, it is observed as follows:-

"During the course of hearing of the appeal, the Learned counsel for the appellant No. 1 has referred to several admissions made by the Respondent Nos. 1 to 6 which would indicate that the custody of the goats and sheep seized was handed over to the appellant No. 1 by the police. However, it is not necessary to make a detailed reference to them. What is important to be noticed is that in the order passed by the Learned Additional Chief Judicial Magistrate no officer has been named at all. Whether search and seizure of the goats and sheep is illegal or not can be effectively gone into only at the stage of final disposal of the trial and not at interim stage when the court hears an application under Section 451 read with Section 457 of the Code of Criminal Procedure, 1973 for interim custody of the muddammal. Direction to the State Government to initiate appropriate departmental action for illegal or unauthorized actions at the interim stage is harsh as well as not called for on the facts of the case. Therefore, the said direction, which is contained in clause (5) of paragraph 14 of the impugned judgment, also deserves to be set aside."

15. The Learned Government Advocate (crl. Side) appearing for the first Respondent and the Learned counsel appearing for the second Respondent repelled the contentions of the Learned counsel for the Petitioner/A2 and submits that 14 Buffaloes were tied with ropes in the legs and nose harshly and in fact, the said Buffaloes were huddled together, each one dashing jostling over another, in one lorry without necessary food and water and also there was no veterinary Doctor's certificate enabling them to be taken in the vehicle and in fact, the said Buffaloes were taken for slaughtering in Kerala.

16. It is to be pointed out that based on the intervenor's complaint, the First Respondent/police had seized the vehicle bearing registration No.AP-05-TB-6574 and arrested the Petitioner/second accused and released him on bail. Also, it comes to be known that 14 Buffaloes in question were handed over to the 'Cow Safety Sangh Gosalai' at Srirangam for custody.

17. At this stage, a perusal of the charge sheet filed by the first Respondent/police shows that the Petitioner/second accused, as owner of the 14 Buffaloes had taken the said Buffaloes from the State of Andhra to Kerala State on 18.10.2015 at about 5.00 a.m. in the morning for the purpose of slaughtering the animals in the vehicle bearing registration No.AP-05-TB-6574 and the Buffaloes' legs were tied with rope and was ill-treated by the accused by means of transporting the said animals and that the Revision Petitioner/A2 along with A1 was charged under



Sections 428 and 429 IPC and Section II(I)(d) of Prevention of Cruelty to Animals Act, 1960.

18.The Learned counsel for the second Respondent relies on the decision of Judgment of Hon'ble Supreme Court in Criminal Appeal Nos.283 to 287 of 2002, dated 22.02.2002 (arising out of SLP (Crl) Nos.2790, 2793, 2795, 2797 and 2800 of 1999) between State of U.P. v. MUSTAKEEM AND OTHERS, wherein it is observed and held as under:-

"Leave granted.

The State of Uttar Pradesh is in appeal against the direction of the Court directing release of the animals in favour of owner. It is alleged that while those animals were transported for the purpose of being slaughtered, an FIR was registered for alleged violation of the provisions of Prevention of Cruelty to Animals Act, 1960, and the specific allegation in the FIR was that the animals were transported for being slaughtered, and the animals were tied very rightly to each other. The criminal case is still pending. On an appeal for getting the custody of the animals was filed, the impugned order has been passed. We are shocked as to how such an order could be passed by the Learned Judge of the High Court in view of the very allegations and in view of the charges, which the accused may face in the criminal trial. We therefore, set aside the impugned order and direct that these animals be kept in the Goshala and the State Government undertakes to take the entire responsibility of the preservation of those animals so long as the matter is under trial.

The appeals stand disposed of accordingly."

19.The Learned counsel for the second Respondent cites the decision of this Court in S.MURALIDHARAN v. NOGARAJ AND ANOTHER reported in 2015 (4) MLJ (CRL.) 38 at special page 39, wherein it is observed and held as follows:-

"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 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 vehicles which are used for the commission of this kind of offence should be dealt with under the Motor Vehicles Act. The Lower Court has not considered the decision Naseerulah v. State by Sub-Inspector of Police, Coonoor and Another and has ultimately granted the custody of cattle to the owners of cattle."

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20.Also, in the aforesaid decision at paragraph No.9 at page Nos.41 to 45, it is observed as follows:-



"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:-

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

<https://hcservices.ecourts.gov.in/hcservices/> 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.

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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."

...

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."

21. At this juncture, this Court worth recalls and recollect the decision in AKHIL BHARAT KRISHI GOSEVA SANGH v. STATE reported in 1992 CrL.L.J. 2195, at special page 2196, wherein at paragraph Nos.3 to 5, it is observed and held as follows:-

3. Pending enquiry into the case, the persons claiming to be the owners of the animals filed CrL.M.P. Nos. 2638 to 2644/91 claiming interim custody of the animals under S. 451, Cr.P.C. The Petitioner society also filed CrL.M.P. 2645/91 for interim custody of the cattle. The Learned Addl. Judl. I Class Magistrate, Hyderabad East and North, by his order dated 26-8-91 directed the interim custody of the animals to be with the Petitioner-society in preference to the persons claiming ownership of the cattle, observing that the very purpose of the Act will be defeated, if the interim custody is given to the so-called owners, as they may slaughter the animals if custody is given to them. Having regard to the fact that the Petitioner-society is a voluntary organization, engaged in charitable activities of looking after the welfare of the cattle etc., the Learned Magistrate has rightly passed the order.

4. The Petitioner is aggrieved with the conditions imposed in the order, namely, in directing the Petitioner to furnish security in a sum of Rs. 60,000/- in addition to execution of a



bond for Rs. 60,000/- Smt. Jayasree Sarathy, Learned counsel for the Petitioner submits, that the Petitioner is serving a public cause and has come forward to look after the dumb animals and to protect them, and it is not proper to insist upon the Petitioner furnishing security, apart from the execution of a personal bond. The contention of the Learned counsel is well-founded In *Krusha Goseva Sangh v. State of Maharashtra*, 1988 Mh LJ 293 it was held that, if the Organisations like Goseva Sangh come forward for taking responsibility for preservation and protection of the cattle then they should be preferred. In *Ejaz Ahmed Kallu Alias Jhimka v. State of Maharashtra* (Crl MP No. 714/86 dt. 12-8-86) referred to in the aforesaid decision, the maintenance charge of each animal is fixed at Rs. 7/- per day and it was directed that at the conclusion of the trial, the account should be verified on that basis. As that decision was rendered in the year 1986, it will be necessary that the Court concerned will have to evaluate as to what will be the probable maintenance charge of each animal, having regard to the cost involved in the present day. The imposition of the condition to furnish security for execution of a personal bond is not warranted and has to be deleted. Further, there should be a direction that the person claiming ownership of the cattle should be directed to pay the cost of maintenance. The cattle shall be kept in the custody of the Petitioner-society.

5. The Revision is accordingly allowed in part. The direction with regard to the furnishing of security by the Petitioner is set aside. The rest of the directions, namely, execution of a bond for Rs. 60,000/- and the direction to produce that cattle as and when required by the Court shall remain. There shall be a further direction to the Learned Magistrate to fix the cost of maintenance of the cattle kept in the interim custody of the Petitioner, and the persons who are ultimately held to be owners of the cattle will be directed by the Learned Magistrate to pay the cost of maintenance, to the Petitioner society. With the above modification, the Revision is allowed."

22. It is to be noted that the power under Section 451 of Cr.P.C. should be exercised expeditiously and in a judicious manner during inquiry of trial keeping in mind the following factors viz.,

"(1) the Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. The Court or the police would not be required to keep the articles in safe custody;

3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail, as per the decision of the Hon'ble Supreme Court in *ASHOK KUMAR v. STATE OF BIHAR*, reported in 2001 (9) SCC 718."



23. In fact, Sections 451 and 457 of Cr.P.C. Somewhat overlap, although Section 457 of Cr.P.C. is a general provision, which applies to all cases, where there is no 'Inquiry or trial' pending.

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24. It cannot be forgotten that Section 452 of Cr.P.C. provide for the disposal after inquiry or trial is over. It cannot be over emphasised that an order under Section 451 of Cr.P.C. is transitory and is intended to preserve the property, pending trial. It is to be remembered that even if custody is given to the owner, he acts as a representative of the Court. To put it succinctly the concerned Court does not decide the question or rights of the litigants in respect of a property. In fact, it merely determines about the custody of property as per decision in CHARLINGAPPA SHARNAPPA v. KARNATAKA reported in 1978 CrL.L.J. NOC 274 (Kant).

25. Also, that if the release of the property seized will in any manner affect or prejudice the course of justice at the time of trial, it will be a wise discretion to reject the claim for return of property, as per the decision of the Hon'ble Supreme Court in RAM PRAKASH SHARMA v. HARYANA reported in AIR 1978 SC 1282.

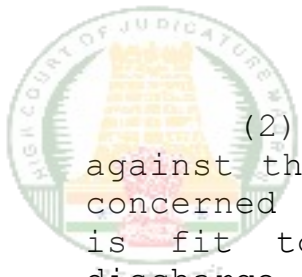
26. A careful perusal of the ingredients of the Prevention of Cruelty to Animals Act, 1960, indicates that Section 11 speaks of 'Trading Animals Cruelty'. Section 29 of the Act, deals with 'Power of Court to deprive person convicted of ownership of animal.' In fact, Section 29(2) of the Act reads as under:-

"No order under sub-section (1) shall be made unless it is shown by evidence as to a previous conviction under this Act or as to the Character of the owner or otherwise as to the treatment of the animal that the animal, if left with the owner, is likely to be exposed to further cruelty."

27. Further, Section 32 of the Act enjoins 'Powers of search and seizure'. Section 33 of the Act refers to 'Search warrants'. As a matter of fact, Section 34 of the Act deals with 'General power of seizure for examination'. Section 35 of the Act speaks of 'Treatment and care of animals'.

28. In this connection, it is useful to refer to the ingredients of Section 35 of the Prevention of Cruelty to Animals Act, 1960, which runs as under:-

"35. Treatment and care of animals : (1) The State Government, may by general or special order appoint infirmaries for the treatment and care of animals in respect of which offences under this Act have been committed, and may authorise the detention therein of any animal pending its production before a magistrate.



(2) The magistrate before whom a prosecution for an offence against this Act has been instituted may direct that the animals concerned shall be treated and cared for in an infirmary, until it is fit to perform its usual work or is otherwise fit for discharge, or that it shall be sent to a pinjrapole, or if the veterinary officer in charge of the area in which the animal is found or such a veterinary officer as may be authorised in this behalf by rules made under this Act certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed.

(3) An animal sent for care and treatment to an infirmary shall not, unless the magistrate directs that it shall be sent to a pinjrapole or that it shall be destroyed, be released from such place except upon a certificate of its fitness for discharge issued by the veterinary officer in charge of the area in which the infirmary is situated or such other veterinary officer as may be authorised in this behalf by rules made under this Act.

(4) The cost of transporting the animal to an infirmary or pinjrapole and of its maintenance and treatment in an infirmary, shall be payable by the district magistrate, or, in presidency-towns, by the commissioner of police;

Provided that when the magistrate so orders on account of the poverty of the owner of the animal, no charge shall be payable for the treatment of the animal.

(5) Any amount payable by an owner of an animal under subsection (4) may be recovered in the same manner as an arrear of land revenue,

(6) If the owner refuses or neglects to remove the animal within such time as a magistrate may specify, the magistrate may direct that the animal be sold and that the proceeds of the same be applied to the payment of such cost.

(7) The surplus, if any, of the proceeds of such sale shall, on application made by the owner within two months from the date of the sale be paid to him."

29.Also, Section 36 of the Act under the caption 'Limitation of Prosecutions' reads as under:-

"A prosecution for an offence against this Act shall not be instituted after prosecutions the expiration of three months from the date of the commission of the offence."

30.As far as the present case is concerned, the criminal case is pending on the file of the trial Court. The Petitioner/A2 along with A1 are to face the charges levelled against them in a criminal trial.



31. That apart, in the complaint, dated 18.10.2015 of the second Respondent/defacto complainant/Intervenor, it was categorically mentioned that when the vehicle bearing registration No.AP-05-TB-6574 was stopped and on questioning, he was informed by the persons, that the Buffaloes were transported from Andhra to Kerala for the purpose of slaughtering etc. In short, whether the 14 Buffaloes found in the vehicle as aforesaid on 18.10.2015 at 5.00 a.m. in the morning were to be really used for agriculture purpose and to be taken at Pollatchi or for Kerala for the purpose of slaughtering, all these aspects will have to be traversed upon at the time of trial of the main case in Crime No.510 of 2015 on the file of the Learned Judicial Magistrate No.III, Trichirappalli and not at the interim stage when the application under Section 451 or 457 of Cr.P.C. Seeking interim custody of the Buffaloes in question.

32. It is to be aptly pointed out that in a cow-slaughtering case, the cows may be given in the custody of charitable institution, security need not be demanded, as per decision in KRISHI GOSSEVA SANGH v. STATE OF MAHARASHTRA reported in 1988 Mah.L.J. 293.

33. In the light of upshot of detailed qualitative and quantitative discussions and also this Court on going through the impugned order, in CrI.M.P.No.7590 of 2015, dated 03.11.2015, passed by the trial, in dismissing the Miscellaneous Petition, this Court holds that the view taken by the trial Court in refusing the interim custody of the Buffaloes cannot be found fault with. Per contra, the same is valid and legal in the eye of Law. Consequently, the Criminal Revision Petition fails.

34. In the result, Criminal Revision Petition is dismissed. The order passed by the Learned Judicial Magistrate No.III, Trichirappalli in CrI.M.P.No.7590 of 2015, dated 03.11.2015, is affirmed by this Court for the reasons assigned in this Revision.

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.III, Trichirappalli.

2. The Sub-Inspector,

Samayapuram Police Station, Trichy District.

3. The Additional Public Prosecutor

Madurai Bench of Madras High Court, Madurai

+One cc to Mr.K.R.Laxman, Advocate, SR.No.72014

rj2

<https://hcservices.courtsofmadras.org/> 12/2015

Pre-Delivery Order made in
CrI.R.C.(MD).No.560 of 2015
14.12.2015