

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.395 OF 2015

ORDER:

Aggrieved by an order dated 19.02.2015 passed in CrI.M.P. No.122 of 2015 in S.T.C. No.48 of 2015 on the file of the Judicial Magistrate of First Class at Peddapalli, wherein and whereunder an application filed for interim custody of 14 oxen in favour of the petitioner/owner, was dismissed, the present Criminal Revision is filed.

The case of prosecution is as under :

On 08.02.2015 one Japathi Rajesh lodged a report stating that on the said date there was a fair of oxen and he noticed some persons shifting 14 oxen into a van to be taken to Hyderabad by violating the rules for animals protection. The Gomatha Rakshak Sena stopped the van and gave intimation to Peddapally Police. On receipt of such information the police came to Kaman Chowrasta, seized the custody of the TATA DCM van bearing No.A.P.28-TE-9550 along with 14 oxen. Basing on these allegations, the police filed a petty charge-sheet for the offences punishable under Section 11(1)(a) of Prevention of Cruelty to Animals Act, 1960 and Section 56(c) of Transport of Animals Rules, 1978. The said charge-sheet was taken on file and numbered as S.T.C. No.48 of 2015 on the file of the Judicial Magistrate of First Class at Peddapalli.

Pending the said proceedings, the petitionr herein filed CrI.M.P. No.122 of 2015 seeking interim custody of 14 oxen, which was rejected. Challenging the said order, the present Revision is filed.

The Apex Court in **Mohd. Moinuddin v. State of Andhra Pradesh**, held that "The fact that while transporting 75 buffalo calves, 17 of them died during transport prima facie indicate that the accused are guilty of cruelty towards the animals, which are seized in the case. Therefore, in case the accused are going to be convicted, then there is prima facie possibility of forfeiting the seized animals to the Government."

In the instant case, the learned Magistrate rejected the request on the ground that the act of transporting of 14 oxen amounts to cruelty. The Court also held that as per Rule 56(c) of Transport of Animals Rules, 1978, no goods vehicle shall carry more

than six cattle. From the above, it is clear that the request of the petitioner was rejected not on the ground that there is every likelihood of cattle being sent to slaughter house, but on the ground of violating Rule 56(c) of the Transport of Animal Rules, 1978.

Learned Public Prosecutor on instructions submits that there is no dispute with regard to the ownership of the cattle. In CrI.R.C. No.1966 and 1063 of 2011, this Court while considering the various provisions of the Prevention of Cruelty to Animals Act, 1960 held that confiscation can be ordered only on second or subsequent convictions and in the absence of any application filed by prosecution for altering the nature of the provisions, the Court sustained the order passed by the trial Court in ordering custody of live-stock to third party.

Similarly, the Apex Court in **Manager, Pinjrapole Deudar and another v. Chakram Moraji Nai and others** held that;

“In view of the above discussion and provisions of Section 451 Cr.P.C., it appears to us that unless the owner of the animal in respect of which he is facing prosecution, is deprived of the custody (which can be done only on his conviction under the Act for the second time), no bar can be inferred against him to claim interim custody of the animal.”

Keeping in view the guidelines laid down on the judgment referred to above, I shall deal with the case on hand.

Admittedly, the petitioner is the owner of 14 oxen seized by the police. Nowhere it is revealed that the petitioner was involved in the offence of this nature earlier. Further, no application is filed by the police for changing the nature of offence alleged against the petitioner in the charge-sheet. Therefore, as things stood thus, the accused is prosecuted only for offences under the provisions of Prevention of Cruelty to Animals Act, 1960. It is not the case of prosecution that animals are being sent to slaughter house. Having regard to the said circumstances, the request of the petitioner can be considered.

Accordingly, the CrI. Revision is allowed and the property i.e., 14 oxen seized in S.T.C. No.48 of 2015 on the file of the Judicial Magistrate of First Class at Peddapalli, be given interim custody to the petitioner herein on such terms and conditions as the trial court deems fit and proper.

C. PRAVEEN KUMAR, J

Date: 02.04.2015

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