

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.2181 of 2013

ORDER:-

The revision is filed against the orders of the learned II-Metropolitan Magistrate, Cyberabad at L.B.Nagar, in CrI.M.P.No.1111 of 2013 in Cr.No.829 of 2013 of P.S. LB Nagar, dated 12-08-2013.

2. The facts are as under:-

On 06-07-2013, a DCM Eicher Van bearing No.AP 12 V 0573 was carrying 11 oxes, 10 big buffaloes and 8 small buffaloes, which were purchased at Dhone, Kurnool District, and being transported to Hyderabad. The said animals were seized by the police and case was registered. The livestock was handedover to Pujaya Sri Ram Chandra Dongree Maharaj Gowshala near Injapur village, Sagar Road.

3. The petitioner, who is said to be the owner of the livestock, filed a petition for interim custody. By the impugned order, the learned Magistrate dismissed the same.

4. The contention of the petitioner is that he purchased the livestock from the owners and produced proof thereof. He was taking the animals for the purpose of his agricultural operations. Keeping the livestock in the custody of Gowshala is not justified and it is also represented that subsequent to the animals being handed over to Gowshala, three cattle died.

5. Transporting of animals as such not prohibited but if it is for the permissible purposes, the same can be allowed. But the transportation should be such that it should not cause any cruelty towards animals. The allegation is that about 29 livestock of oxes, big buffaloes and small buffaloes were being transported in a DCM Van, which can hardly accommodate those many number of animals. That apart, the allegation is that the animals were being transported

to slaughter house without proper certification.

6. The learned Magistrate has considered the case law on the subject and held that the interim custody of the livestock cannot be given to the petitioner.

7. Learned Counsel appearing for the petitioner has relied upon a decision of the Supreme Court reported in **MANAGAR, PINJRAPOLE DEUDAR AND ANOTHER v. CHAKRAM MORAJI NAT AND**

OTHERS^[1] wherein it is held as under:-

“It follows that under Section 35(2) of the Act, the Magistrate has discretion to handover interim custody of the animal to Pinjarapole but he is not bound to handover custody of the animal to Pinjraople in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, Pinjraople has no preferential right. In deciding whether the interim custody of the animal be given to the owner who is facing prosecution, or to the Pinjraople, the following factors will be relevant: (1) the nature and gravity of the offence alleged against the owner; (2) whether it is the first offence alleged or he has been found guilty of offences under the Act earlier; (3) if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution; (4) the condition in which the animal was found at the time of inspection and seizure; (5) the possibility of the animal being again subjected to cruelty.”

8. The above observations of the Supreme Court are to the effect that the learned Magistrate has to decide as to in whose custody the animal should be pending disposal of the main case. In an unreported decision of the Supreme Court in **STATE OF UTTAR PRADESH v. MUSTAKEEM AND OTHERS (Criminal Appeal Nos.283-287of 2002)**, which was decided on 22-02-2002, the Supreme Court made the following observations:-

“Leave granted.

The State of Uttar Pradesh is in appeal against the direction

of the Court directing release of the animals in favour of the 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 tightly 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.”

9. While granting interim custody, the factors to be considered are as to for what purpose the animals were being transported and whether the act of the petitioner in transporting the cattle, in any way, amounted to cruelty. Only during the course of trial, these aspects will be brought on record. At this stage, granting interim custody of the livestock to the petitioner as against Gowshala cannot be ordered for the reason that the petitioner/accused was *prima facie* found to contravene the provisions of the law which is meant to protect and preserve the animals.

10. It is represented that the investigation has been completed and charge sheet has been filed. Therefore, while dismissing the petition, the learned Magistrate is directed to dispose of the main case, as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order. After completion of the trial, it is open to the Magistrate to order for release of the livestock in favour of the person whoever is held to be entitled to.

11. In the result, the Criminal Petition is dismissed. The learned Magistrate is directed to dispose of the main case within a period of

two months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in this Criminal
Petition shall stand closed.

M.S.K.Jaiswal, J

September, 2015

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[\[1\]](#) AIR 1998 S.C., 2769