

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order delivered on: 14th January, 2015

+ **CRL.M.C. 5934/2014**

GAURAV GUPTA Petitioner
Through Mr.S.D. Windlesh, Adv.

versus

SAT PAL & ORS Respondents
Through Mr.M.N. Dudeja, APP for the
State/R-4 along with SI Praveen
Kumar, P.S. Vivek Vihar.

+ **CRL.M.C. 89/2015**

SANJAY GANDHI ANIMAL CARE CENTRE Petitioner
Through Mr.S.D. Windlesh, Adv.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through Mr.M.N. Dudeja, APP for the State
along with SI Praveen Kumar,
P.S. Vivek Vihar.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

1. The above-mentioned petitions have been filed by the petitioners under Article 227 of the Constitution of India read with Section 482 of the Cr.P.C. for setting aside orders dated 8th August, 2014 and 11th December, 2014.

2. Brief facts of the matter are that on 2nd August, 2014 on the statement of the petitioner herein namely Gaurav Gupta FIR No.581/2014 under Section 11 of Prevention of Cruelty to Animal Act read with Section 429 IPC was registered at Police Station, Vivek Vihar, Delhi. In his statement the complainant stated that he is the President of Raiding Party of People for Animals and on 2nd August, 2014 he received an information that some sheep and goats are being taken to Jammu and Kashmir for slaughtering. He further stated that upon receipt of the said information he along with the other members of his raiding party reached at the red light of Surya Nagar and found two trucks bearing registration Nos. HR 37A 7737 and HR 55 G 8568 standing on the side of the road loaded with goats and sheep.

3. After registration of the FIR, the investigation was taken up. During the course of investigation, a total of 383 goats and sheep were rescued from the said trucks which were deposited in Sanjay Gandhi Animal Care Centre. During the course of investigation statements of witnesses were recorded, evidence was collected, drivers of the trucks i.e. Karan Singh and Neksi Lal, and owners of the animals i.e. Satpal and Ashok Kumar Nagar were also arrested. While the investigation was pending, the owners of the animals moved an application before the Court of Chief Metropolitan Magistrate seeking custody/superdari of the animals. The said application came up for hearing before the Court on 8th August, 2014 when the Court directed to release the animals on superdari on

furnishing superdari bond of Rs.10 lac with other directions related to the welfare of the animals.

4. Pursuant to the aforesaid order dated 8th August, 2014 SI Parveen Kumar, Investigating Officer along with the owners of the animals, went to Sanjay Gandhi Animal Care Centre for handing over of the animals to the superdar. Praveen Kumar, Investigating Officer on reaching Sanjay Gandhi Animal Care Centre took photographs of 330 animals and physically verified them. He was informed by the said Centre that 45 animals were sent to DSPCA for treatment as those were infected animals. However, the Incharge of Sanjay Gandhi Animal Care Centre did not hand over the animals to the applicant/owner/superdar. In the meanwhile, the petitioner herein filed a Revision Petition which came up for hearing before the Court of Additional Sessions Judge, Karkardooma Courts, Delhi. On 11th December, 2014 during the hearing on the revision petition, it was revealed that as many as 45 animals, which were entrusted with Sanjay Gandhi Animal Care Centre, were not available there. It was observed by the Court that an action for the criminal breach of trust needs to be taken against the Incharge of Sanjay Gandhi Animal Care Centre. Accordingly, FIR No.1012/2014 under Section 406 IPC was registered at Police Station, Vivek Vihar, Delhi. During the course of investigation, Incharge of Sanjay Gandhi Animal Care Centre was asked to join the investigation. The revision petition is still pending.

5. The contention of the learned counsel for the petitioner is that the order dated 11th December, 2014 was passed during strike and without hearing the petitioner. It is argued that Sanjay Gandhi Animal Care Centre has shifted 389 animals to DSPCA which does not possess the requisite basic facilities for these animals and the Court has incorrectly directed the Police Commissioner to take criminal action against the incharge of the Sanjay Gandhi Animal Care Centre. These animals are some sheep and goats which were being taken to Jammu and Kashmir for slaughtering. The counsel has also referred the memorandum dated 29th December, 2014 issued by the Office of the Director, Animal Husbandry Deptt., Govt. of NCT of Delhi, No.F.13(13)/AHD/VASHQ/SGACC/2014/54-55 wherein the communication was issued to Sanjay Gandhi Animal Care Centre advising not to move the infected lot of animals suffering from PPR to an uninfected premises i.e. DSCPA, till the entire lot is re-examined by the veterinarians of the Department and RDDI, Jalandhar declares the animals negative after laboratory testing. It is contended by learned counsel for the petitioner that the superdar intended to send these infected animals i.e. sheep and goats to Jammu and Kashmir for slaughtering which not only amounts to cruelty to the animals but is also harmful to the health of human beings.

6. Prima facie it appears from the trial Court order that the trial court has passed the order merely on the basis of statement of superdars that they would take proper care of the animals without examining their past conduct and without considering that the

infected sheep and goats should not be slaughtered even otherwise since the human being would consume the infected meat. Moreover, cruelty upon these animals has to be taken into consideration.

7. The Supreme Court in ***Manager, Pinjrapole Deudar & Anr Vs. Chakram Moraji Nat & Ors*** AIR 1998 SC 2769 observed as follows:

"8. From a plain reading of the provisions, above noted, it is evident that Sub-section (1) of Section 35 enables the State Government to appoint infirmaries for the treatment and care of animals in respect of which any of the offences under the Act has been committed and to authorise the detention of such animals pending their production before a Magistrate. Under Sub-section (2), the Magistrate may order that: (a) the animal shall be treated and cared for in an infirmary till such time it is fit to perform its usual work or is otherwise fit for discharge; (b) the animal shall be sent to a Pinjrapole; or (c) the animals shall be destroyed if it is certified by a veterinary officer, authorised under the Rules, to be incurable or if it is found that it cannot be removed without cruelty. Mandate of Sub-section (3) is that no animal shall be released from an infirmary unless it is directed to be sent to Pinjrapole or be destroyed or certified by concerned veterinary officer to be fit for discharge. Sub-section (4) imposes liability for payment of the cost of transporting the animal to an infirmary or Pinjrapole and its maintenance and treatment in an infirmary, in accordance with the prescribed rates, which, however, can be dispensed with if the Magistrate is satisfied that on account of the poverty of the owner, he is unable to bear the same, otherwise it may be recovered as arrears of land revenue, as envisaged in Sub-section (5). Sub-section (6) says that

if the owner refuses or neglects to remove the animal within the time specified by the Magistrate then he can order the sale of the animal and appropriation of the sale proceeds for the cost thereof and in the event of there being surplus proceeds of such sale, payment of the same to the owner on his application within two months of the sale. This is postulated by Sub-section (7).

9. 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.

10. Now advertent to the contention that Under Section 35(2), in the event of the animal not being sent to infirmary, the Magistrate is bound to give the interim custody to Pinjrapole, we find it difficult to accede to it. We have noted above the options available to the Magistrate Under Section 35(2). That Sub-section vests in the Magistrate the discretion to give interim custody of the animal to Pinjrapole. The material part of Sub-section (shorn of other details) will read, the Magistrate may direct that the animal concerned shall be sent to a Pinjrapole. Sub-section (2) does not say that the Magistrate shall send the animals to Pinjrapole. It is thus evident that the expression "shall be sent" is part of the direction he decides to give interim custody to Pinjrapole. It follows that Under Section 35(2) of the Act, the Magistrate has discretion to hand over interim custody of the animal to Pinjrapole but he is not bound to hand over custody of the animal to Pinjrapole in the event of not

sending it to an infirmary. In a case where the owner is claiming the custody of the animal, Pinjrapole 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 Pinjrapole, 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. There cannot be any doubt that establishment of Pinjrapole is with the laudable object of preventing unnecessary pain or suffering to animals and providing protection to them and birds. But it should also be seen, (a) whether the Pinjrapole is functioning as an independent organization or under the scheme of the Board and is answerable to the Board; and (b) whether the Pinjrapole has good record of taking care of the animals given under its custody. A perusal of the order of the High Court shows that the High Court has taken relevant factors into consideration in coming to the conclusion that it is not a fit case to interfere in the order of the learned Additional Sessions Judge directing the State to hand over the custody of animals to the owner."

8. The Supreme Court in ***Animal Welfare Board of India Vs. A. Nagaraja and Ors.*** (2014) 7 SCC 547, laid down the following:

- a) We declare that the rights guaranteed to the Bulls Under Sections 3 and 11 of PCA Act read with Articles 51A(g) & (h) are cannot be taken away or curtailed, except Under Sections 11(3) and 28 of PCA Act.
- b) We declare that the five freedoms, referred to earlier be read into Sections 3 and 11 of PCA Act, be protected and safeguarded by the States, Central Government, Union Territories (in short "Governments"), MoEF and AWBI.
- c) AWBI and Governments are directed to take appropriate steps to see that the persons-in-charge or care of animals, take reasonable measures to ensure the well-being of animals.
- d) AWBI and Governments are directed to take steps to prevent the infliction of unnecessary pain or suffering on the animals, since their rights have been statutorily protected Under Sections 3 and 11 of PCA Act.
- e) AWBI is also directed to ensure that the provisions of Section 11(1)(m)(ii) scrupulously followed, meaning thereby, that the person-in-charge or care of the animal shall not incite any animal to fight against a human being or another animal.
- f) AWBI and the Governments would also see that even in cases where Section 11(3) is involved, the animals be not put to unnecessary pain and suffering and adequate and scientific methods be adopted to achieve the same.
- g) AWBI and the Governments should take steps to impart education in relation to human treatment of animals in accordance with Section 9(k) inculcating the spirit of Articles 51A(g) & (h) of the Constitution.
- h) Parliament is expected to make proper amendment of the PCA Act to provide an effective deterrent to

achieve the object and purpose of the Act and for violation of Section 11, adequate penalties and punishments should be imposed.

- i) Parliament, it is expected, would elevate rights of animals to that of constitutional rights, as done by many of the countries around the world, so as to protect their dignity and honour.
- j) The Governments would see that if the provisions of the PCA Act and the declarations and the directions issued by this Court are not properly and effectively complied with, disciplinary action be taken against the erring officials so that the purpose and object of PCA Act could be achieved.
- k) TNRJ Act is found repugnant to PCA Act, which is a welfare legislation, hence held constitutionally void, being violative of Article 254(1) of the Constitution of India.
- l) AWBI is directed to take effective and speedy steps to implement the provisions of PCA Act in consultation with SPCA and make periodical reports to the Governments and if any violation is noticed, the Governments should take steps to remedy the same, including appropriate follow-up action."

9. The Supreme Court in the latest case of ***State of U.P. Vs. Mustkin & Ors.*** (SLP (Crl.) 283-287 of 2002 observed as under:

"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 Provision of Prevention of Cruelty to Animals Act, 1960, and the specific allegations in the FIR was that the animals were transported for being slaughtered and the animals were

ties 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 Ld. 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 undertake 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.”

10. In view of the settled law, I have considered the abovesaid matter from various angles. It appears to me that the order dated 11th December, 2014 was passed without hearing the learned counsel for the petitioner. The Revisional Court by the said order dated 11th December, 2014 has handed over the *superdari* to the *superdar* with regard to the infected animals also who intended to send the same to Jammu and Kashmir for slaughtering. The learned Revisional Court did not consider the guidelines issued by the Office of the Director, Animal Husbandry Deptt., Govt. of NCT of Delhi, No.F.13(13)/AHD/VASHQ/SGACC/2014/54-55. As a matter of fact, the said order was passed without hearing. Actually the same ought not to have been passed with regard to infected animals. The health certificate ought to be obtained as per guidelines. There is force in the submission of the learned counsel for the petitioner that the statement of the superdars has no force in view of the past experience. The clearance of the said infected animals for the

purpose of slaughtering would amount to cruelty which is not only to them but also humans who would suffer if they consume the infected meat.

11. Under these circumstances, the impugned order dated 11th December, 2014 is set aside to the extent that in case the infected animals have not been sent by the superdar to Jammu and Kashmir for slaughtering, the status quo shall be maintained until the guidelines are complied by the superdar on showing the health certificate as per the guidelines and the same may be released to the superdar after hearing the counsel for the petitioner.

12. Both the petitions are accordingly disposed of.

MANMOHAN SINGH, J.

JANUARY 14, 2015/jk