

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Cr1.O.P.No.17944 of 2015

Kotteswararao

... Petitioner

Vs

The Inspector of Police
Achirapakkam Police Station,
Kancheepuram District.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the respondent to produce the seized 30 buffaloes before the Judicial Magistrate, Maduranthakam as per the order of the learned Magistrate dated 10.07.2015.

For Petitioner : Mr.R.Sasi Kumar

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor.

For Intervener : Mr.C.Selvakumar
(S.Muralidharan)

O R D E R

This petition has been filed to direct the respondent to produce the seized 30 buffaloes before the Judicial Magistrate, Maduranthakam, as per the order of the learned Magistrate, dated 10.07.2015.

2. The petitioner is doing milk business. The petitioner purchased 30 buffaloes from the agricultural farm on 27.06.2015 for a sum of Rs.1,50,000/-. Thereafter, he decided to sell the same in Pollachi Cow Market. Hence, he loaded the above said 30 buffaloes in a lorry bearing Registration No.AP-25-T- 3117 and sent two persons along with the lorry for taking care of the buffaloes. But to the shock and surprise of the petitioner, the respondent police seized the buffaloes on the allegation under section 11(1)(d) of Prevention of Cruelty to Animals Act, 1960 & Section 428 and 429 IPC and Transporting of Animals Rules, 1978/2001 (sec.96/97). After seizure of the buffaloes, the respondent police registered the FIR. Hence, the petitioner filed an application on 2.7.2015, for return of property i.e., to give interim custody of the buffaloes, under sections 451 and 457 of Cr.P.C. in CMP.No.2712 of 2015 before the learned

Judicial Magistrate, Madhuranthagam. The learned Magistrate directed the respondent to produce the buffaloes before the said Court. In spite of the order passed by the Court below, the respondent police did not produce the buffaloes. Hence, the petitioner has come forward with the present petition.

3. Heard the learned counsel for the petitioner, learned Additional Public Prosecutor appearing for the respondent and the learned counsel appearing for the intervenor.

4. Learned Additional Public prosecutor submitted that it is practically not possible to produce all the buffaloes before the Court. Presently, the custody of the buffaloes are with Goshalas, by name, G.K.V. Trust, Mayiladithurai. The respondent police had filed Form 95 along with the vehicle seized by them. But the vehicle and Form 95 was returned by the Court on 10.07.2015, by passing the following order.

"Petitioner present. Case property not placed before this Court. This Court not able to know the present stage or condition of 30 buffaloes and without knowing that, this Court cannot pass any order. The respondent SI of Police appeared before this Court and stated that on that date of occurrence, in the same seized vehicle (AP 25 T 3117), 30 buffaloes carried and travelled to Mayiladudurai i.e., defacto complainant's place. The said action is condemn by this Court whether the respondent SI of Police permitted the defacto complainant to commit the same offence as of the accused by way of permitting to carry 30 buffaloes in a single vehicle from Acharapakkam to Mayiladudurai. If it is so, the matter is very serious and the Inspector of Police, Acharapakkam and DSP Madhurantakam has to take up the matter for action. For the purpose of present matter, without knowing the condition of buffaloes, this Court cannot pass any order, hence, case property should be produced before this Court without any delay and the I.O. has to explain this Court, the reason for sending 30 buffaloes to Mayiladudurai i.e., defacto complainant's place of outside the jurisdiction of this Court. Why he permitted to send 30 buffaloes in a single vehicle to Mayiladudurai. The I.O. has to explain before this court W.r.t. about matter in the written manner before this Court. Otherwise necessary action will be taken without fail. Hence, this court ordered to produce 30 buffaloes before this court without fail."

5. Learned counsel appearing for the intervener/defacto complaint also made his submission by relying on the judgement made by this Court in CrI.R.C.No.505 of 2013 etc. batch case, dated 27.07.2015. He further submitted that in an identical issue, this Court has passed an order relying on Section 102(3) of Cr.P.C. to the effect that where the property seized cannot be 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. Thus, the learned counsel for the intervener also opposed the production of the buffaloes before the Court.

6. In my considered opinion, as contended by the learned Additional Public Prosecutor, it is not proper to give a direction to the respondent police to produce 30 buffaloes before the Court. Therefore, the learned Judicial Magistrate, Maduranthakam, is directed to accept Form 95. After filing Form 95 by the respondent, the learned Magistrate, can pass appropriate orders with regard to handing over interim custody of the buffaloes to the petitioner, after hearing the intervener, namely, Goshala. Accordingly, the criminal original petition is disposed of.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Madhuranthagam.
2. The Inspector of Police
Achirapakkam Police Station,
Kancheepuram District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Selvakumar, Advocate, S.R.No.463
+1cc to Mr.R.Sasikumar, Advocate, S.R.No.4425

CrI. O.P.No.17944 of 2015

sai (CO)
srg (09/02/2016)