

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.1055 OF 2016

-
ORDER:

-
This Criminal Revision Case is filed by the petitioner-de facto complainant challenging the order of the Additional Judicial First Class Magistrate at Shadnagar in allowing CrI.M.P.No.81 of 2016 in Crime No.84 of 2016 filed by the owner of the property under Section 457 r/w 451 Cr.P.C. for return of seized animals for interim custody.

Basing on the complaint given by the de facto complainant-petitioner herein, police at Shadnagar seized the pet animals namely, six horses, 5 birds, 5 dogs and 7 puppies and one elephant from the custody of M/s.Jamuna Circus while it was conducting circus at Shadnagar, Mahaboobnagar District and a case was registered in Crime No.84 of 2016 on the file of Shadnagar Police Station for the offence under Section 11(1) of Prevention of Cruelty to Animals Act, 1960 against the second respondent herein and others. The second respondent herein being the Manager of said circus company filed the impugned application seeking interim custody of the said animals and the same was allowed by the Court below imposing stringent conditions. Being aggrieved by granting of interim custody of said animals, the complainant filed the present revision.

It is submitted by the learned counsel for the petitioner that the earlier permit accorded to the accused circus company to use those animals for performance was already cancelled for contravention of the conditions of permission and that their appeal was also dismissed and therefore, they are not entitled to keep the animals for any purpose much less for the purpose of performance. Further as per the provisions of the Act, the

animals seized from the possession of the accused cannot be given to interim custody unless a certificate of fitness is issued by Veterinary officer. Furthermore if the accused are given interim custody of the seized animals, again they would put those animals for same commercial exploitation and cruelty.

On the other hand, the learned counsel for the accused-second respondent contends that the accused are conducting the circus duly obtaining all necessary sanctions and that there is no complaint from the general public. Further out of seized 5 dogs, one dog is reported to be dead in the custody of petitioner and the Blue Cross of Hyderabad. Further the accused circus company have complied with all the conditions imposed by the Court below for granting of interim custody of the seized animals.

This Court while granting interim suspension on 19.4.2016, passed the following order:

“There shall be interim suspension of the order, dated 07.04.2016, in CrI.M.P.No.81 of 2016 in CR.No.84 of 2016, on the file of the Additional Judicial Magistrate of First Class, Shadnagar in Mahabubnagar District, to the extent of releasing one (1) elephant, six (6) horses and five (5) birds only. The 2nd respondent is at liberty to take interim custody of five (5) dogs and seven (7) puppies subject to the conditions imposed in the impugned order.”

Learned counsel for the petitioner submitted that the interim suspension granted by this Court need not be vacated since the order of the trial Court is perverse in nature and liable to be set aside.

Per contra, the learned counsel for the second respondent submitted that under the provisions of the Prevention of Cruelty to Animals Act, the question of confiscation/seizure of animals does not arise unless it is brought to the notice of the Court that the offender committed the offence for the second time. Further, it is

submitted that running of circus in the State is not banned and the order passed by the trial Court is in accordance with law.

This Court heard the arguments and perused the material brought on record.

As rightly pointed out by the learned counsel for the second respondent the provision under the Prevention of Cruelty to Animals Act does not envisage confiscation of animals concerned for the offence, if any, committed by the second respondent for the first time, even according to the prosecution. That apart, this Court is of the view that the order passed by the trial Court is in accordance with law since the Court has taken into consideration all the aspects and ordered for interim custody of the animals in favour of the second respondent. While passing the impugned order, the trial Court has also directed the persons concerned to subject the animals for medical check-up every month apart from imposing stringent conditions. Hence, this Court does not see any ground to interfere with the impugned order passed by the trial Court in granting interim custody of the animals seized.

In the result, the Criminal Revision Case is dismissed confirming the impugned order passed by the trial Court. However, the second respondent is directed to pay a sum of Rs.50,000/- towards maintenance expenses to the petitioner's sister-concern by whom the seized animals are maintained.

Pending Miscellaneous Petitions, if any, stands closed.

JUSTICE RAJA ELANGO

28.06.2015

Tsr

