

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-19225 of 2014
Date of Decision: February 17, 2016

Khalid

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vandana Sharma, Advocate
for the petitioner.

Mr. Deepak Sabherwal, Addl.AG, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

FATEH DEEP SINGH, J.

Though in this petition under Section 482 Cr.P.C. the petitioner/accused has sought to challenge the orders dated 24.4.2014 of learned Judicial Magistrate 1st Class Gurgaon (Annexure P1) which have merged in orders dated 22.5.2014 of learned Additional Sessions Judge, Gurgaon (Annexure P/3) whereby his claim to custody of his animals stood declined.

It was on 20.4.2014, the petitioner Khalid was ferrying in vehicle bearing No.HR-74-1864, 24 buffaloes and was apprehended by the police of Police Station, Manesar, District Gurgaon leading to registration of an FIR No.143 dated 20.4.2014 under Sections 11, 59, 60 of Prevention of Cruelty to Animals Act, 1960 (for short, 'the Act'). It is during the course of things, the petitioner moved an

application for superdari of his 24 buffaloes as well as for the release of his vehicle in question, The Court of learned Judicial Magistrate 1st Class, Gurgaon through impugned orders Annexure P/1 ordered the release of the vehicle, however, declining the relief for superdari of 24 buffaloes on the ground that the applicant has failed to show the ownership of the buffaloes or produce any receipt having purchased the same nor has given any justifiable reason as to why he was taking buffaloes in a canter to Delhi. Aggrieved over these findings, the petitioner has filed a revision petition before the learned Additional Sessions Judge, Gurgaon and which was also dismissed vide orders dated 22.5.2014 Annexure P/3 and which are subject matter of challenge in this petition. In the impugned order the precise reasons which have led to passing of these impugned orders are that an owner is not exonerated under Section 11(2) of the Act if he does cruelty to animals and has drawn analogy from a law laid down in **State of U.P. vs.. Mustakeem and another 2002 (supple.) Crl. Appeal Nos.283-287 of 2002 dated 22.2.2012** holding that an order under this Act for release of animal could not be passed.

Appreciating the arguments that have been advanced on behalf of the learned counsel for the petitioner as well as State. it is an admitted stance of the two sides that there were in all 24 buffaloes at the time of their seizure and it is the submissions of the State that out of them 7 have expired regarding which post mortem reports have been placed on record. The contention that it was on account of stuffing of the animals in the vehicle which has led to these deaths are certainly too preposterous a proposition that has sought to be put forth to take the sympathy of this Court when the post mortem reports placed on record in themselves show the conduct of the doctor of People for Animal Hospital. These reports no where extensively and comprehensively

suggests the cause of death and is more of a rough estimation and, therefore, opposition to the plea of the petitioner, on that context certainly needs to be outrightly rejected. Moreover, how the doctor who claims to have conducted the post mortem of these animals could say with certainty that all the animals died on 20.4.2014 when there is no exact reasons and comprehensive causes to that effect to support hypotheses to that end.

As has been contended by the petitioner's counsel the main reason as expressed in the impugned order of the learned Magistrate which has been merged in the order of the revisional Court is that the petitioner could not bring forth the ownership of the animals or receipts of their purchase nor could give the reason as to why he was carrying the animals in the vehicle are matters which can only be sufficiently brought forth during the trial of the case. Even the reasons given by the Revisional Court show that the learned Court below is trying to pre-judge the things without calling for the evidence at the trial. The State counsel readily admits that neither any one else laid claim to these animals much less any bar under the Act for the release of the animals. Rather a certificate dated 21.4.2014 purported to have been issued by the People for Animal Hospital, Sadhrana, Gurgaon appears to be a motivated one within an oblique motive to further the case of the prosecution. There is neither any satisfaction much less the reasons given by the Court below that either there is failure to exercise any reasonable care and supervision by the owner of these animals so as to prevent cruelty to these animals. Since under the provisions of the Act upon first conviction entails only provision of fine and not imprisonment and further more, if in terms of Section 11 of the Act a person being the owner, neglects to exercise or cause to be exercised reasonably fails to provide sufficient food, drink or shelter and during

the course of its carriage subject to unnecessary pain and suffering could be hauled up for the allegations of cruelty which is adequately defined in these provisions. At the same time, the Act entails and makes it sufficiently clear that the animals are an integral part of the Indian economy and buffaloes being primarily sub-serving the ends of agriculture as well as a source of livelihood even to the lower strata of the society, thus, does not occasions such a blatant exercise of the powers by the Court when there is nothing tangible evidence to show reasonable apprehension of Authorities that the animals are likely to be slaughtered. Though, at the same time, Section 3 of the Act casts a duty on every person having the care or charge of any animal to take reasonable measures to ensure well-being of such animals and to prevent the infliction of unnecessary pain or suffering. Apparently, from the records nothing is discernible if these apprehended animals were ever produced before the Court at any stage of the proceedings when by virtue of Section 457 Cr.P.C. upon seizure of property by Police Officer is to report to a Magistrate and if such a property is not produced before a criminal Court when by virtue of sub-Section 2 of Section 457 to any person so entitled and known. In this case it is the claim of the petitioner that he is not only the owner but it is also the stand of the State that animals were seized from his possession. Keeping in view that there are normally three modes of disposal of properties seized by the police under the law, which are giving it to the rightful owner/claimant, forfeiture and destruction as per law. At the pre-trial stage especially when there is no apparent bonafide claimant other than the accused it is desirable to give such an article on supurdari and it only after trial any other appropriate measures can be adopted which is more in consequence with the golden principle that an accused is presumed to be innocent till found guilty. Thus, by that proposition entitles the

petitioner to such a custody at this juncture. Thus, ordinarily the petitioner is entitled to possession of the same upon such terms and conditions as the learned Magistrate might have been satisfied. Thus, by total non-application of mind and against principles of law and good administration of justice keeping the animals away from its rightful claimant has not only deprived the petitioner of the animals and their use but also to the mind of this Court is a flagrant misuse of the powers and tantamounts to forfeiture of these animals contrary to the provisions enshrined in Section 29 of the Act. Moreover, Section 451 Cr.P.C. has been enacted purely with a view as an interim arrangement and it is after the conclusion of the trial the Court can pass any such orders that the eventuality might require in terms of Section 452 Cr.P.C. At this pre-trial stage handing over these animals to the owner/possessor is most appropriate. Learned counsel for the State could not satisfy this Court what material was there on the record that the animals were not in a healthy state or that even if animals are left with the owner they are likely to be exposed to further cruelty, when admittedly, seven of these precious animals lost their lives upon their seizure by the police are matters of great significance and relevance for adjudication, Moreover, by retaining the animals would be resulting in burdening the State for maintaining the animals without any benefits. It might take reasonable time to complete the investigations and disposal of the trial and it would sub-serve the ends of justice, if the impugned orders are set aside by way of acceptance of instant petition, thereby, directing the release of these 24 buffaloes in favour of the petitioner which is the sole claim of the petitioner with an undertaking to produce the animals before the Court at the time of trial if so necessitated and with the undertaking that he will ensure their proper upkeep and medical treatment and would not cause any cruelty to them. The same

shall be subject to furnishing of adequate superdari bonds to the satisfaction of the trial Court.

The instant petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

February 17, 2016

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