

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

**CRM-M-2177 of 2016 (O&M)
Date of Decision : 01.03.2016**

Anwar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

- | | | |
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| 1 | Whether reporters of local newspaper may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | Yes |
| 3 | Whether the judgment should be reported in the digest? | Yes |

Present : Mr. Rajesh Lamba, Advocate
for the petitioner.

Mr. Sandeep Moudgil, Addl. Advocate General, Haryana.

FATEH DEEP SINGH, J.

The petitioner-Anwar who also happens to be the accused in this case got registered by way of FIR No.389 dated 26.12.2015 under Sections 279, 336, 379, 411 IPC and Section 11 of Prevention of Cruelty to Animals Act, 1960 (in short “the Act”) registered at Police Station Aadampur, District Hisar after a favourable order dated 28.12.2015 (Annexure P-1) of learned Judicial Magistrate 1st Class, Hisar whereby *sapurdari* of thirteen camels was granted to him on his application and consequent upon reversal of his fate when criminal revision filed by the State against such an order of interim custody of the animals was allowed by the learned Additional Sessions Judge, Hisar vide orders dated 2nd January, 2016

(Annexure P-3) whereby the orders of the learned Magistrate were set aside, has sought to challenge the same before this Court by way of instant petition under Section 482 Cr.P.C.

It was on 26.12.2015, as is claimed by the prosecution, SI Satbir Singh from Police Station Adampur, Hisar while present at bus adda Kabrel received a secret information that from the side of village Bangla one truck bearing No.RJ-022-GA-2347 was coming loaded with thirteen camels which were tied from the legs and were being ferried. It was further alleged that the animals were loaded one upon the other and thus, were facing great difficulty. Finding the information to be reliable, a naka was laid and the above-mentioned vehicle was seen coming rashly and negligently at a high speed and was stopped which was found to be driven by accused-Sabir and from the truck thirteen camels were got recovered which were tied from the mouth and they were facing great difficulty in breathing. It was thereupon the present case was got registered under the provisions of Sections 279, 336, 379, 411 IPC and Section 11 of the Prevention of Cruelty to Animals Act, 1960. It was during the course of time, an application under Section 451 Cr.P.C. was moved by the People for Animals Society (in short “ the Society”) for the interim custody of these thirteen camels on the grounds that they had necessary paraphernalia to treat the animals in the hospital as well as to take their appropriate care. This interim custody was allowed vide order dated 23.12.2015 of learned Judicial Magistrate 1st Class, Mewat. It was thereafter, separate applications regarding *sapurdari* of these thirteen camels were presented before the learned Magistrate,

one by the Society and other by the accused/owner. It was through impugned orders dated 28.12.2015 (Annexure P-1) the learned Judicial Magistrate, 1st Class, Hisar allowed the *sapurdari* to the accused/owner and which was challenged by way of revision by the State and the Court of learned Additional Sessions Judge, Hisar vide orders dated 02.01.2016 (Annexure P3) set aside the orders of the learned Magistrate disallowing the *sapurdari* of thirteen camels and which is the precise matter listed before this Court.

Heard Mr. Rajesh Lamba, Advocate for the petitioner and Mr. Sandeep Moudgil, Additional Advocate General, Haryana and perused the records of the case.

The scheme of procedure pertaining to disposal of property has been well enshrined by way of Chapter XXXIV of the Code of Criminal Procedure. Section 451 Cr.P.C. deals with order for custody and disposal of property at the pending trial whereas Section 452 Cr.P.C. is in respect of order for disposal of property at the conclusions of trial. The term “property” has been explained by way of explanation to Section 451 Cr.P.C. and by way of sub-Section (5) to Section 452 Cr.P.C. whereby the term “property” defined therein includes property of any kind or document which is produced before the Court or which is in its custody regarding which offence appears to have been committed or appears to have been used for commission of any offence.

As has been contended on behalf of the State by Mr. Sandeep Moudgil, Addl. Advocate General, Haryana, the gamut of allegations of the prosecution are that the animals were tied on the

vehicle in such a manner that it tantamounts to commission of cruelty and thus, a cognizable offence is deemed to have been committed and which arguments have been controverted on behalf of the petitioner by his counsel Mr. Rajesh Lamba, who has sought to highlight the reasoning spelled out by the learned trial Court while allowing the interim custody of the animals to the petitioner.

This Court makes it emphatically clear that Section 451 Cr.P.C. empowers the Court to pass orders about property of any kind or a document produced in the Court or is in the custody of the Court whether or not any offence appears to have been committed in respect of such property.

A perusal of the records reflects that the learned Magistrate on the application under Section 451 Cr.P.C. for interim custody of these thirteen camels moved by the Society when the animals were produced before it without issuance of notice to the accused/owner/or the person from whom the same were recovered, has passed orders of interim custody on 23.12.2015 holding that interim custody of these camels is directed to be handed over to the Society till the owner proves its claim and further directing that approved rates shall be charged from the true owner for welfare of the animals and, it is thereafter, the accused/owner had moved an application before the learned Magistrate who, after calling for the report of the SHO and going through the attested copies of the receipts regarding purchase of these camels, had passed the orders releasing these animals through orders dated 28.12.2015 (Annexure P-1). The learned trial Court has placed reliance on

“Manager, Pinjrapore Deudar vs. Chakram Moraji Nat, 1998 AIR (SC) 2769” and **“Bharat Amratlal Kothari and another vs. Dosukhan Samadkhan Sindhi and others, 2009(4) RCR (Criminal) 939”** two views of the Hon'ble Apex Court whereby in *Manager, Pinjrapore Deudar's case (ibid)* the question of grant of interim custody of the animals so seized under the Act was under consideration and similarly in *Bharat Amratlal Kothari's case (ibid)*, a subsequent view of the Hon'ble Apex Court, wherein the question as to the entitlement of interim custody by the owner was considered it was held by their Lordships that being undisputedly owners they were certainly entitled to custody of these animals.

Though, the State Counsel has sought to advert on to the medical report dated 28.12.2015 to hammer home the point that it finds mention that out of these thirteen camels, eight were males and five were females, out of whom two camels were emaciated due to cruelty and they were bleeding from nose and not feeling well. A clear look at these observations of alleged veterinary expert, which has been placed on the records by way of photostat copies, leaves much scope of doubt over its veracity. Firstly, on account of the fact that there is no such mention of either injuries to the animals at the time of seizure which is reflected from the FIR and it only finds mention that these animals were found tied from the legs as well as at the mouth. It has been rightly contended on behalf of the petitioner's side that the only recourse to tie a camel is tying it from the mouth side by means of a rope and which could not be displaced on behalf of the State. It was very well observed that it nowhere finds

mentioned the animals were in such a state that they need to be kept in an infirmary for their treatment or any special diet is necessitated to restore them back to health. The learned State Counsel could not by any means, impress upon this Court, how a reasonable apprehension exists in the mind of the State that there was total negligence or lack of due exercise of care and caution by the owner failing to provide sufficient food drink or shelter to the animals during the course of their carriage and that the animals were subjected to unnecessary pain and suffering which could be termed as cruelty to these animals. There is nothing to show to this Court that the stand of the State that the cruelty was emancipating from stuffing of the animals in the vehicle or there were injuries of such a nature that there was reasonable apprehension that the animals were treated with cruelty and there is no tangible proof on the file to reflect it so. The State Counsel does not disputes before this Court as to the ownership of the petitioner over these animals, it needs to be reasserted here that in Indian rural areas, especially amongst the agricultural class, animals are an integral part of their sustenance as well as the economy and which sub-serves not only the needs of agriculture but as well as source of livelihood to the owners who normally belong to the lower strata of the society. It is a matter of common knowledge that milk of camels are sold, they are used to transport articles as well as for so many subservient means of activity, thus, depriving the owner of the custody of these animals would not only deny him his legitimate right to the use of these animals which could be essential for him as well as upkeep of his

family but would also result in denial of his right to life and liberty an important fundamental right engraved in the Constitution of the country. However, it cannot be lost sight of the provision of Section 3 of the Act which casts a duty on every person having the charge or care of any animal to take reasonable measures to ensure well being of such animals and to prevent infliction of unnecessary pain or suffering.

Apparently, from the records before this Court, nothing is discernible to the effect and as is the claim of the petitioner before this Court as well that he is the lone and rightful claimant being the owner of these animals which is not disputed by the counsel for the State. Normally there are three modes of dealing with such properties i.e. by forfeiture, destruction and custody. It is not in any manner disputed that the animals have been recovered from the applicant/petitioner who claims to be *bona fide* and legitimate claimant over the ownership of these animals and there is admittedly no apparent better claimant to these animals and holding out that under the **guiding principle** of criminal jurisprudence an accused is proved to be innocent till found guilty, thus, by this analogy though the prayer of the petitioner is sought to be opposed for which reliance has been placed on the judgment of Hon'ble Supreme Court of India in **“Criminal Appeal Nos.283-287/2002 titled as State of U.P. vs. Mustakeem and others, decided on 22.02.2002”**. With due apologies to the cited ratio, it is not the case of the State before this Court or at any stage of the proceedings that there was reasonable apprehension that the animals were being ferried for their meat or for

any illegal purposes whatsoever. The question that the animals were certainly ill-treated by the owner, are a matter of evidence to be sufficiently adjudicated at the time of trial. Counsel for the State could not highlight any of the elements that the petitioner had earlier committed such a criminal offence under the Act which disentitles him to any such relief or that he would not be able to keep the animals in a healthy state and that if the animals are left with him they are likely to be exposed for further cruelty. Handing over of the animals to the Society would also result in unnecessarily burdening the owner to pay for their upkeep to the Society besides loss of revenue to him, are matters which too have bearing on this matter. At this stage, depriving the owner of his custody over these animals would certainly tantamount to violation of the provisions of Section 29 of the Act as it would virtually tantamount to passing of orders of forfeiture of the animals. The learned Magistrate has rightly considered the principles laid down in *Manager, Pinjrapore Deudar's case (ibid)* by holding that the factors need to be determined for interim custody also includes the nature and gravity of the offence alleged whether the first offender alleged to have been found guilty under the Act earlier or that there was better claimant than the owner to lay claim over the custody of animals during the prosecution and that the condition of the animals at the time of inspection was found unsatisfactory and that the possibility of these animals again subjected to cruelty and, thus, there is a sound reasoning spelled out in the findings returned by the learned trial Court. The learned Revisionist Court has heavily relied on

Mustakeem's case (ibid) when the allegations in the cited ratio were of likelihood of the animals being slaughtered which is not so before this Court as well as there being factual disparity.

Thus, in the totality of what has been detailed and discussed above, the impugned findings dated 02.01.2016 of the learned Additional Sessions Judge, Hisar (Annexure-P-3) impugned before this Court are wrong and incorrect appreciation of the case before it and which has certainly resulted in miscarriage of justice necessitating intervention by this Court whereby the impugned orders are set aside upholding the orders dated 28.12.2015 of the learned Magistrate (Annexure P-1) and, therefore, allowing the present revision in those terms.

Records be sent back.

March 01, 2016
Dpr

(FATEH DEEP SINGH)
JUDGE