

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1385 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, by the unsuccessful petitioner/ A1 is filed assailing the order, dated 15.05.2017, of the learned II Additional Judicial Magistrate of First Class, Khammam, passed in CrI.M.P.No.427 of 2017 in Crime No.229 of 2017 of P.S Khanapuram Haveli.

2. I have heard the submissions of *Sri A.Bhaskarachary*, learned counsel appearing for the petitioner, and of the learned Public Prosecutor appearing for the 1st respondent-State of Telangana. I have perused the material record including the order impugned. The 2nd respondent is stated to be the 2nd accused/ driver of the vehicle involved in the crime.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

According to the case of the prosecution, the petitioner and the 2nd accused were apprehended by the police concerned while they were transporting thirteen bulls, in a goods vehicle [(DCM) lorry] bearing Registration No. AP 29 TB 0335, in a cruel manner without taking the precautions as required under law; and, that therefore, the bulls that were being transported were seized and were kept in Om Sri Krishna Gosala, Gollagudem, for safe custody, as per the procedure. However, according to the petitioner herein, he is the owner of the thirteen bulls having purchased the same at Gokul Sai Krishna Bulls Shandy, Nagar Panchayat, Rajupeta, Thiruvur, Krishna District, for a valid consideration of Rs.4,08,000/-, *vide* Shandy receipts nos.735,736 and 737, dated 03.05.2017, and that after purchase of the said bulls, he had engaged the afore-stated vehicle and was transporting the bulls from the place of the Shandy to a place near Agricultural Market Committee, Kodad, and that

the said bulls were purchased for agricultural use and cultivation purposes and that Rahadaris permission etcetera were duly obtained for transporting the bulls and that when the vehicle reached Green Wood School, Gollagudem road, Khammam outskirts, the police of Khanapuram Haveli apprehended the petitioner and the other accused and falsely implicated them and registered a false crime for the offence punishable under Section 11 read with Section 38 of Prevention of Cruelty of Animals Act, 1986 ('the PCA Act'). Having pleaded accordingly, the petitioner filed an application under Section 457(1) of the Code before the learned Magistrate seeking interim custody of the said bulls by offering to undertake to produce the bulls as and when required and as directed by the Court *inter alia* stating that he is the proper person to take proper care of the bulls daily and that if the bulls are kept in the Gosala, they may not be properly fed and they may be subjected to ill-health and that continuation of the bulls in the Gosala would result in irreparable loss to him. In the application seeking interim custody, the petitioner stated that the bulls are required for safe custody and sale to farmers. However, the prosecution by filing a counter resisted the request of the petitioner *inter alia* relying upon the judgment dated 22.02.2002, of the Supreme Court in State of UP v. Mustakim and others in Criminal Appeal No.283 to 287 of 2002, wherein it was stated to have been held that when there is a specific allegation in the FIR that animals are being transported for slaughter by tying them very tightly to each other and when a criminal case is pending, the animals shall be kept in a Gosala. It is also stated in the counter that the animals in the subject case are governed by the provisions of Animal Preservation Act, 1977, and Transport of Animals Rules, 1978, (as amended). It is the case of the prosecution that without taking necessary statutory precautions, the animals are being transported illegally for being slaughtered and that, therefore, the bulls cannot be returned to the petitioner.

4. The trial Court dismissed the application of the petitioner and refused to grant interim custody of the bulls to the petitioner. Having been aggrieved of the said order, the petitioner filed the present revision case.

5. At the hearing, learned counsel for the petitioner would submit as follows:

The petitioner and four others purchased the bulls at the Shandy, on 03.05.2017. The petitioner purchased four bulls; whereas, T.Saraiah, P.Srinivasa Reddy and T.Srinu purchased two bulls each and one A.Nagaraju purchased three bulls out of the total number of bulls for a total consideration of Rs.4,08,000/-. The distance between the place of purchase and the destination is about 100 KMs only and the transportation time is less than two hours. The 1st petitioner accompanied the bulls while they were being transported. The offence is a non-cognizable offence. The petitioner is falsely implicated in the crime. The trial Court erroneously dismissed the petition by assuming that the animals are being transported for slaughtering. If the animals are kept in the Gosala till the conclusion of the trial, the animals may fall sick for lack of proper food & water and attendance, as in a gosala, no individual attention will be given to each bull. If the interim custody of the bulls is given to the petitioner, he and the other petitioners will take utmost care of the bulls as they have all purchased the bulls for a valuable consideration. The bulls are required for doing agricultural operations. The petitioner has already given an undertaking before the trial Court to produce the bulls as and when required and as directed by the Court below. The petitioner is also prepared to furnish adequate security and abide by any conditions that may be imposed by the Court. Therefore, the bulls may be released by setting aside the orders of the Court below.

6. The learned Public Prosecutor while reiterating the case urged before the trial Court, which is stated supra, would further contend as follows: 'The

petitioner in his petition filed before the trial Court has only stated that he had purchased thirteen bulls and that he is the owner of the said bulls and that interim custody of the same is required for the purpose of sale to farmers; however, in the present revision case, he has improved his case by stating that he had purchased four bulls only and that four others purchased the remaining bulls. The present version is an improved version and cannot be countenanced. If the petitioner is the owner of four bulls only, he is not entitled to seek interim custody of all the bulls. Charge sheet is filed and it is under the scrutiny of the learned Magistrate. Further, if the interim custody of the bulls is given to the petitioner and if they are sold to third parties during the pendency of the case, it would be impossible to again produce the bulls before the Court as and when required or at the conclusion of the trial, in case of the eventual conviction of the accused. None of the contentions raised by the petitioner merit consideration. Therefore, the revision is liable to be dismissed.

7. I have given detailed and thoughtful consideration to the facts and submissions.

8. The petitioner in his petition filed before the trial Court stated that he purchased thirteen bulls at Gokul Sai Krishna Bulls Shandy, Nagar Panchayat, Rajupeta, Thiruvur, Krishna District, for a valid consideration of Rs.4,08,000/- . However, in the present revision case, he has submitted for the first time that he purchased four bulls and that the remaining four others purchased the remaining bulls. In the petition filed before the trial Court, he sought interim custody of all the thirteen bulls *inter alia* stating that interim custody is required as he is only the competent person to feed and maintain the bulls and take care of them and as such, it is necessary to release the bulls to him. He further stated that the release of bulls is necessary for sale to farmers. Further, the version of the petitioner as stated before this Court is an improved

version and is contrary to his case urged in the petition filed before the trial Court, as rightly pointed out by the learned Public Prosecutor. In the petition before the trial Court, there is no whisper that he is the owner of four bulls and that some other persons are the owners of the remaining bulls. The petitioner could not explain as to how he is entitled to take interim custody of all the bulls when he is the owner of only four bulls and not all the bulls. Moreover, the bulls are lodged in a Gosala. The trial Court in its order noted to the effect that while transporting the bulls, necessary precautionary measures were not taken and that the statutory guidelines, which are required to be followed, were also not followed while transporting the bulls. It is not the case of the petitioner that he obtained necessary fitness certificates for the bulls in the required form for the purpose of transportation and has taken other precautions to ensure that the animals are not subjected to unnecessary pain and suffering during transportation.

9. According to the submissions of the learned Public Prosecutor, certain statutory guidelines are to be followed and certain precautions are to be taken while transporting the animals. Some such guidelines and precautions are as follows:

- (i) The average space provided per cattle in Railway wagon or vehicle shall not be less than two square metres.
- (ii) Suitable rope and platforms should be used for loading cattle from vehicles
- (iii) Watering arrangements on route shall be made and sufficient quantities of water shall be carried for emergency.
- (iv) Sufficient feed and fodder with adequate reserve shall be carried to last during the journey.
- (v) Adequate ventilation shall be ensured.
- (vi) Emergency/ first-aid equipment shall be carried
- (vii) Vehicle should have suitable ramps and platforms for loading and unloading.
- (viii) There should be sufficient bedding on the floor of the vehicle.
- (ix) Vehicle breast bars should be properly placed

- (x) Vehicles shall be maintained so as not to cause injury, pain or suffering
- (xi) Vehicle shall be a vehicle, which is clearly identified as an animal carrier

The learned Public Prosecutor also submits that there was no sufficient floor area in the vehicle and also sufficient bedding on the floor of the vehicle for carrying thirteen animals and that in a vehicle like the one involved in the crime, it is impermissible to carry thirteen bulls at a time and that the vehicle is not having suitable ramps and platform for loading and unloading and that there was no feeding and watering arrangement for the bulls.

10. The trial Court noted in its orders that the lorry in question is required to carry six bulls only; but, in this case, thirteen bulls were being transported in the lorry endangering the lives of the bulls and that in the facts and circumstances of the case, the animals can be allowed to be kept in Gosala till the completion of trial and that the bulls cannot be given for interim custody to the petitioner.

11. On the above analysis and having given detailed and thoughtful consideration to the facts and circumstances, this Court finds that the petitioner could not make out valid and sufficient grounds calling for interference with the order of the trial Court and for granting any relief.

12. In the result, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

9th June 2017
RAR

M. SEETHARAMA MURTI, J