

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1535 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code') is filed by the petitioner/ 3rd party, requesting to set aside the order, dated 08.05.2017, of the learned Special Judicial Magistrate of II Class, Jangareddigudem, passed in CrI.M.P.no.537 of 2017 in Crime No.54 of 2017 of Jeelugumilli Police Station of West Godavari District.

1.1 By the said orders, the learned Magistrate while allowing the petition of the 2nd respondent/ claimant filed under Section 457 of the Code seeking release/ return of 23 oxen for interim custody, ordered the said oxen to be returned to the 2nd respondent herein, subject to the condition of his executing a bond for a sum of Rs.10,00,000/- with one surety and producing the said oxen before the Court, as and when ordered. The operative portion of the said order of the learned Magistrate reads, verbatim, as under:

“In the result, the petition is allowed and the schedule property is ordered to be returned to the petitioner on his executing a bond for Rs.10,00,000/- with one surety with a direction to produce the same before court as and when ordered. The SHO, Jeelugumilli Police Station is hereby directed to return the property to the petitioner under proper identification and acknowledgment. The SHO is further directed to take photographs of the 23 oxen and file it before court soon after return the oxen to the petitioner.”

2. I have heard the submissions of *Sri K.S.Murthy*, learned counsel appearing for the petitioner/ 3rd party, and of *Sri S.Suman*, learned counsel representing *Sri G.Bandaiah*, learned counsel appearing for the respondents 2 to 4. The respondents 3 and 4 in this revision case are accused 1 and 2 in the above said crime. The parties in this revision shall hereinafter be referred to

as petitioner/ 3rd party and the 2nd respondent/ claimant, as arrayed in this revision, for convenience and clarity. I have perused the material record.

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

A1 and A2 are the Driver and Cleaner of the lorry bearing Registration No.TS 12 UA 8444. When 23 oxen were being transported in the said lorry from Jaheerabad village to a place in Srikakulam District, the Sub Inspector of Police, Jeelugumilli Police Station-(LW8) intercepted the lorry on Jeelugumilli-Jangaredddigudem High Way Road near Tahasildar's Office, at Jeelugumilli village and Mandal, and found that the animals are being transported without a veterinary certificate and for sale for slaughtering and converting them into meat. At the time when the lorry was intercepted, it was allegedly found that the bulls were loaded tightly on account of lack of space in the lorry. On the same day, i.e., on 06.04.2017, at about 5.30 AM, he took the said accused into custody along with the lorry and 23 oxen and seized the lorry with the oxen under the cover of a mediator's report. He handed over the said oxen for safe custody to the Secretary, A.P. Cow Protection Federation, Avupadu village, Nallajarla Mandal, West Godavari District. The crime was registered for the offences punishable under Section 194 of the MV Act, Section 11(1)(a)(d) of Prevention of Cruelty to Animals Act, 1960, Sections 5, 6, 10, 11 of A.P. Prohibition of Cow Slaughter and Animals Preservation Act, 1997. He conducted further investigation and filed a charge sheet against the said accused opining that the accused are liable to be punished for the said offences.

4. In this backdrop, the 2nd respondent herein/ claimant filed petition in CrI.M.P.No.537 of 2017 under Section 457 of the Code before the Court of the said learned Magistrate seeking release/ interim custody of the 23 oxen. The case of the 2nd respondent in support of the said request and the submissions

made on his behalf, in brief, are as follows: 'He is the absolute owner of the oxen. He has got valid bills evidencing the purchase of the 23 oxen. The same were seized by the police in the above said crime. If they are kept in the police station, they may die due to starvation and lack of proper attendance and care. The learned Magistrate, by the orders impugned in this revision ordered for interim custody of the 23 oxen and directed the police to give interim custody of the said oxen to the 2nd respondent on his executing a personal bond for Rs.10,00,000/- with one surety. The said order is a well reasoned order and is sustainable both under facts and in law. The revision filed by a third party-petitioner herein is misconceived and is not maintainable. The same is filed by suppressing and misrepresenting the facts in order to mislead the Court. The petitioner approached this Court with unclean hands and its present attempt is only to pollute the stream of justice. As the petitioner is attempting to touch the pure fountain of justice with tainted hands, the revision case is liable to be dismissed. The petition is filed to harass this respondent and make him run from pillar to post. As per the settled legal position, the interim custody of the animals can be given to the eligible owner after considering the following aspects: (i) The nature and gravity of the offence alleged; (ii) whether the accused was earlier found guilty of the offence under the Act; (iii) whether the owner or the agent, who is selling the oxen for agricultural purpose, is facing prosecution under the Act for the first time; (iv) the condition in which the animals were found at the time of seizure; (v) livelihood of the owner of the cattle; (vi) the health condition of the animals etcetera. In all cases, where the answers to the questions are not adverse to the claimant, the request for interim custody shall be considered as a better claim. The 2nd respondent/ claimant never involved in any other case earlier. In the case on hand, the investigating agency did not verify the background of the 2nd respondent, who is the claimant and owner of the cattle,

and the other respondents/ accused 1 and 2. The Investigating Officer jumped to the conclusion that the oxen are being transported for slaughtering without any basis for such a conclusion. There are no grounds for such an assumption. The police Officer having received the order of the Court below, whereby interim custody of the oxen was given to the 2nd respondent herein, sought one week time for complying with the said orders. However, the police failed to comply with the said order with an intention to harass this 2nd respondent and his family members who are dependent upon him. In the mean time, the petitioner herein filed the present revision and obtained interim orders. Since the date of seizure of the oxen, they are in the custody of A.P. Cow Protection Federation. The oxen were purchased for a valuable consideration for agricultural purpose and sale to ryots for agricultural purpose. If the same are sold for slaughtering, they do not fetch the value for which they were purchased, since the purchase was made for agricultural use. If the oxen are sold in shandy for agricultural purpose, they fetch more money and profit. Therefore, the said fact makes it manifest that purchase is only for agricultural purpose and use and not for slaughtering. Selling oxen for agricultural use is not a crime. It is a well known fact that the recent relevant Central Rules related to Cow slaughter were stayed by the Supreme Court. There are no grounds to conclude that the oxen are being transported for slaughtering. On account of the present case filed by the petitioner herein, the 2nd respondent, who is the lawful owner of the cattle, is deprived of his valuable right to possess the cattle and enjoy the fruits of the labour of the oxen. He was deprived of the right to property, which is guaranteed under the Indian Constitution. This 2nd respondent is prepared to abide by the conditions in the orders of the learned Magistrate. He is further prepared to make a deposit of a further sum of Rs.10 or 15 lakhs. He is prepared to abide by any conditions that may be imposed by this Court while confirming the orders of the learned

Magistrate passed for granting interim custody of the oxen to the petitioner. If only the prosecution proves its case beyond reasonable doubt as required under law, the case may eventually end in conviction of the accused. However, till the disposal of the case, on merits, this respondent, who is the owner of the cattle, cannot be deprived of the right to possess the same and deal with the same in the normal manner. The oxen are in a very healthy condition. Such oxen in good health condition will not be sold for slaughtering. The case law being relied upon by the petitioner is not relevant to the facts of the present case and those cited cases are distinguishable on facts.'

4.1 Learned counsel appearing for the 2nd respondent while reiterating the above stated case of the 2nd respondent placed reliance upon the following decisions:

(i) Placing reliance on the decision in Mohammed Shafi v. State of AP¹, it is stated that in this cited case this Court granted interim custody of the cattle with the following conditions:

(1) He buffaloes seized by the police shall be given to the interim custody of the petitioner on his executing a bond for keeping the cattle with him without disposing of them either to others or for any other purpose by providing the required feed to all the buffaloes and

(2) Under any circumstances, he shall not send them to the slaughter house till the disposal of the case.

It was also pointed out by the learned counsel for the 2nd respondent that in the cited decision this Court also held that the police have no preferential right and that the Magistrate can exercise jurisdiction to handover the interim custody of the animals to the owner, who claims custody of the cattle, after imposing conditions that the owner shall not dispose them of to any one or sell them to slaughter house till the disposal of the case and feed them well during the interim custody.

¹ 2006 (1) ALD (CrI.) 846 (AP)

(ii) In *Manager, Pinjrapole Deudar v. Chakram Moraji Nat*², the Supreme Court held as follows:

“In view of the above discussion and provisions of Section 451 CrPC, it appears to us that unless the owner of the animal in respect of which he is facing prosecution, is deprived of the custody (which can be done only on his conviction under the Act for the second time), no bar can be inferred against him to claim interim custody of the animal.

In the said cited decision, the High Court took the relevant facts into consideration and confirmed the orders of the Additional Sessions Judge directing handing over of custody of the animals to the owners. Confirming the said orders of the High Court, the Supreme Court dismissed the appeals.

4.2 Learned counsel for the second respondent/ claimant also submitted that in view of the ratios in the decisions, the order of the learned Magistrate is liable to be confirmed, if necessary, by imposing further conditions, having regard to the facts of the case and that the revision of the petitioner is liable to be dismissed.

5. Per contra, the learned counsel for the petitioner/third party would contend as follows:

The learned Magistrate of II class ought not to have released and granted interim custody of the 23 oxen to the 2nd respondent/ claimant who claimed to be the owner of the said cattle. The learned Magistrate failed to take into account the facts, which are germane for consideration and also the settled legal position obtaining and applicable to the facts of the case. Admittedly, 23 oxen are being transported in one vehicle, which is not suitable for such transportation. The said vehicle is not having facilities for loading and unloading besides bedding on the floor and sides of the vehicle. It is not a vehicle identified as an animal carrier. No precautions as required under law

² (1998) 6 Supreme Court Cases 520

were taken for the safety of the animals. The Rules governing transportation of the animals were not followed while transporting the 23 oxen by placing them tightly and one over the other in one vehicle. Carrying (23) animals in one vehicle itself would show that the animals are being carried for slaughtering. If the animals are intended for future agricultural use, an attempt to transport 23 animals would not have been made, that too, in a vehicle, which is unsuited for such transportation. Loading of (23) animals in one lorry undoubtedly subjects them to pain and suffering during transportation. The provisions of Prevention of Cruelty to Animals Act, 1960, A.P. Prohibition of Cow Slaughter and Animals Preservation Act, 1977 and Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Rules, 1980, provide for obtaining a certificate before the animal is slaughtered. Unless the animal is not economical for breeding or for any kind of agricultural operations or for giving milk or bearing an offspring, as the case may be, such certificate for slaughtering shall not be issued. The oxen are presently lodged in a very safe and secure place, viz., Goshala of A.P. Cow Protection Federation and are being taken good care of by the Federation. The said animals were vaccinated and a veterinary doctor examined the health condition of the animals; and, the Cattle Welfare Officer, Nallajerla, issued a certificate, dated 03.07.2017, to the effect that it will take some time for the animals to come out of the pressure exerted upon them while transporting all of them in one vehicle and that the animals have to be attended under doctor's advice for forty days. Hence, in the facts and circumstances of the case, the learned Magistrate committed a grave error in ordering to give interim custody of the oxen to the 2nd respondent. The said order is contrary to settled legal position and the guidance in the decisions of the Supreme Court. Hence, the petitioner is obliged to file the present revision seeking to set aside the orders of the learned Magistrate. There is no merit in any one of the contentions of

the 2nd respondent/ claimant. The provisions of law and the Rules are observed only in their breach. The preservation of cattle in the continued care and custody of the Federation till the disposal of the criminal case, on merits, is just and fair in the facts and circumstances of the case.

5.1 In support of the said contentions, learned counsel for the petitioner placed reliance on the following decisions:

(1) State of UP v. Mustakeem³. In this cited decision, the ratio laid down verbatim reads as under:

“The State of Uttar Pradesh is in appeal against the direction of the Court directing release of the animals in favour of the owner. It is alleged that while those animals were transported for the purpose of being slaughtered, an FIR was registered for alleged violation of the Provisions of Prevention of Cruelty to Animals Act, 1960, and the specific allegation in the FIR was that animals were transported for being slaughtered, and the animals were tied very tightly to each other. The Criminal Case is still pending. On an appeal for getting the custody of the animals was filed. The impugned order has been passed. We are shocked as to how such an order could be passed by the learned Judge of the High Court in view of the very allegations and in view of the charges, which the accused may face in the Criminal Trial. We therefore set aside the impugned order and direct that these animals be kept in the Goshala and the State Government undertakes to take the entire responsibility of the Preservation of those animals so long as the matter is under trial.”

(ii) In Mohd. Moinuddin v. State of AP.⁴, and Bhagyanagar Goseva Sadan v. Public Prosecutor, State of Andhra Pradesh⁵, having regard to the facts and the legal position, this Court declined to grant interim custody to the claimants and directed the cattle to be lodged in Goshala.

³ Criminal Appeal No.283 to 287 of 2002, dated 22.02.2002

⁴ CrI. Revision Case No.1181 of 2010, dated 17.07.2010

⁵ 2000 (1) ALD (CrI.) 102 (AP)

(iii) A Division Bench of this Court in Public Interest Litigation No.206 of 2015 noted that this Court, by orders dated 15.02.2016, issued the following directions on the issue of interim custody of animals.

1) The Registrar General, High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh is directed to circulate copies of order of Supreme Court in State of Uttar Pradesh v. Mustakeem & Others and the orders of this Court in Criminal Revision Case No.1181 of 2010 dated 7.7.2010 to all the Subordinate Courts in the States of Telangana and Andhra Pradesh.

2) The two State Governments through the concerned authorities shall issue appropriate orders to the Assistant Public Prosecutors/Additional Public Prosecutors/Public Prosecutors and investigating agencies to sensitize them the relevant statutory provisions and orders of Supreme Court of India in State of Uttar Pradesh v. Mustakeem & Others and the orders of this Court in Criminal Revision Case No.1181 of 2010 dated 7.7.2010.

3) The respective Governments shall file status reports on action taken as per directions of this Court dated 31.8.2015.”

Eventually, the Division Bench of this Court, having regard to the submissions made on behalf of the States of AP and Telangana and the status reports filed, observed that no further orders are required to be passed at that stage and disposed of the PIL with certain observations.

6. I have given earnest consideration to the facts and submissions. I have carefully gone through the provisions of the enactments, Rules and also the decisions cited.

7. The case of the 2nd respondent/ claimant is that he purchased 23 oxen for huge consideration and that he is having valid bills evidencing the said purchase and that if the oxen are allowed to remain unattended in the police station and in police custody they may die due to starvation. His further claim before this Court is that the same were purchased for agricultural purposes and uses and also for sale in future to Ryots for the same purposes and uses and not for slaughtering. The learned counsel for the 2nd respondent further contends

that the 2nd respondent/ owner of the cattle is only the competent person to feed and maintain the oxen and take care of them and as such, it is necessary to release the oxen to him as per the orders of the learned Magistrate. He further stated that the release of oxen to the owner is necessary as they are required for agricultural purpose and use and also for sale to farmers for the same purpose. The case of the petitioner, an Animal Rescue Organisation, is that the bulls shall be lodged in a Goshala of A.P. Cow Protection Federation, Avupadu village, until the disposal of the Criminal case. As noted, the petitioner while pointing out the violations and breaches of the provisions of law and the Rules and also the peculiar facts of the case seeks to cancel and set aside the orders of the learned Magistrate whereby interim custody of the oxen was directed to be given to the 2nd respondent/ claimant. The admitted fact is that 23 oxen were seized when they were being transported in one vehicle by tightly loading them one over the other by endangering their lives. They were being transported in a vehicle unfit for such transportation without caring for their welfare and well being and by ignoring the pain and suffering they will be put to during such transpiration in one vehicle. Further, while transporting the oxen, none of the required precautionary measures were taken and the statutory guidelines, which are required to be followed, were not followed. It is not the case of the 2nd respondent/ claimant that he obtained necessary fitness certificates for the oxen in the required form for the purpose of transportation or that he has taken other precautions to ensure that the animals are not subjected to unnecessary pain and suffering during transportation. His only submission is that he is the owner and, therefore, he is entitled to have interim custody of the animals. He further affirms that the oxen are purchased for agricultural use and not for slaughtering. It is to be first noted that it is not disputed that 23 oxen were being transported in a vehicle, which is not identified as an animal carrier and which is not

maintained in such a way as not to cause injury, pain or suffering to animals. The vehicle admittedly is not having suitable breast bars and beddings on the floor as well as sides. The (23) oxen were loaded in the vehicle by violating the space regulations. No certificate as required under the provisions of the Rules was obtained before transporting the cattle. No first aid, watering and feeding arrangements were made as required. The manner in which the 23 oxen were being transported in one vehicle and the violations resorted to while transporting them and the facts and circumstances of the case do not support, *prima facie*, the contentions of the claimant.

8. Some of the statutory guidelines that are to be followed and certain precautions that are to be taken while transporting the animals are as follows:

- (i) The average space provided per cattle in a vehicle shall not be less than two square metres.
- (ii) Suitable rope and platforms should be used for loading and unloading cattle into and off the vehicles.
- (iii) Watering arrangements en-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 counsel for the petitioner submits that there was no sufficient floor area in the vehicle and also sufficient bedding on the floor of the vehicle for carrying the animals and that in a vehicle like the one involved in the crime, it is impermissible to carry 23 oxen at a time and that the vehicle is

totally unsuited for transportation of even the permitted number of oxen and that the Guidelines in the Rules are observed only in their breach than in observance. As contended by the learned counsel for the petitioner, no prudent purchaser, who purchased the cattle for valuable consideration for agricultural use or for sale to other ryots for agricultural use will resort to such careless acts and violations of law while transporting the oxen. The very fact that the animals were being transported in such a manner should have weighed with the learned Magistrate. However, the learned Magistrate without considering the legal position obtaining and having just referred to the provisions of Section 457 of the Code and his powers to return the cattle, ordered for return of the cattle. He simply ignored the precedential guidance in the decisions of the supreme Court and of this Court and thus exhibited least concern, inspite of the fact that the contention of the prosecution is that there is a *prima facie* case in support of the charge that the persons concerned are guilty of cruelty towards animals, which are seized in the case. The fact of the matter is that the oxen are now safely lodged in a Goshala and are being attended to and taken good care of by the organizers of the Goshala. It is borne out by the record that a Veterinary doctor already examined the oxen and vaccinated them and that the Cattle Welfare Officer, Nallajerla, issued a certificate, dated 03.07.2017, to the effect that it will take some time for the animals to come out of the pressure exerted upon them while transporting all of them in one vehicle and that the animals have to be attended under doctor's advice for forty days. Therefore, the safety of the oxen is already ensured. Further, the learned counsel for the petitioner also submits that any conditions imposed in the orders of this Court would be duly complied with by the revision petitioner and that necessary steps would also be taken, if so directed, for insuring the lives of the 23 oxen for abundant caution and such a course inures for the benefit of the ultimate successful party. Thus, the petitioner also

undertakes to take steps to get insured the lives of the animals, if required and if so directed by the Court.

9. On the above analysis and on detailed and thoughtful consideration of the facts and circumstances, this Court finds that the order granting interim custody of the animals to the 2nd respondent/ claimant is wholly unsustainable under facts and in law and that the petitioner made out valid and sufficient grounds calling for interference with the said order of the learned Magistrate and for granting the relief claimed in the revision case.

10. In the result, the Criminal Revision Case is allowed and the order, dated 08.05.2017, of the learned Special Judicial Magistrate of II Class, Jangareddigudem, passed in CrI.M.P.no.537 of 2017 in Crime No.54 of 2017 of Jeelugumilli Police Station of West Godavari District, is accordingly set aside, with a direction to continue to keep the 23 oxen in the same Goshala of A.P. Cow Protection Federation, Avupadu village. However, the said Federation shall continue to maintain the said cattle by taking necessary care and all precautions, which are required to be taken, by ensuring the maintenance of the 23 oxen in good and healthy condition. However, the petitioner shall take steps, within two weeks from the date of receipt of a copy of this order, for getting the lives of the 23 oxen insured for a sum of Rs.10 lakhs (Rupees Ten lakhs only) for a period of one year by following the procedure and approaching the competent authority for the said purpose. The trial Court shall endeavour to dispose of the main case, as expeditiously as possible and preferably within a period of three months from the date of receipt of a copy of this order, however, in strict accordance with the procedure established by law and uninfluenced by the observations, if any, in this order, which are made at this intermediary or interlocutory stage only for the limited purpose of disposal of this revision case.

Pending miscellaneous petitions, if any, shall stand closed.

17th July, 2017

M. SEETHARAMA MURTI, J

Note:- Furnish copy by 20.07.2017
(B/ o)
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