

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2017

DELIVERED ON : 28.03.2018

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.R.C.Nos.1082 to 1087 of 2017

Crl.R.C.No.1082 of 2017:

Mohammed Ubayadulla

... Revision Petitioner/
Petitioner

Vs.

1. State rep. by
Inspector of Police,
Arambakkam Police Station,
Tiruvallur District.
(Crime No.295 of 2017)

2.Karthick

.... Respondent/Complainant
... Respondent/Intervener

Crl.R.C.No.1083 of 2017:

Fayaz

... Revision Petitioner/
Petitioner

1. State rep. by
Inspector of Police,
Arambakkam Police Station,
Tiruvallur District.
(Crime No.295 of 2017)

2.Karthick

.... Respondent/Complainant
... Respondent/Intervener

Crl.R.C.No.1084 of 2017:

Kirubanandham

... Revision Petitioner

-vs-

1. State rep. by
Inspector of Police,
Arambakkam Police Station,
Tiruvallur District.
(Crime No.295 of 2017)

.... Respondent/Complainant

2.Karthick

... Respondent/Intervener

Cr1.R.C.No.1085 of 2017:

Fakrudeen

... Revision
Petitioner/Petitioner

-vs-

1. State rep. by
Inspector of Police,
Arambakkam Police Station,
Tiruvallur District.
(Crime No.295 of 2017)

.... Respondent/Complainant

2.Karthick

... Respondent/Intervener

Cr1.R.C.No.1086 of 2017:

Ajas Ahamed

... Revision
Petitioner/Petitioner

-vs-

1. State rep. by
Inspector of Police,
Arambakkam Police Station,
Tiruvallur District.
(Crime No.295 of 2017)

.... Respondent/Complainant

2.Karthick

... Respondent/Intervener

Cr1.R.C.No.1087 of 2017:

Aslam Khan

.... Revision Petitioner

-vs-

1. State rep. by
Inspector of Police,
Arambakkam Police Station,
Tiruvallur District.
(Crime No.295 of 2017)

.... Respondent/Complainant

2.Karthick

... Respondent/Intervener

Petitions filed under Sections 397 r/w 401 of Cr.P.C against the orders dated 28.07.2017 in C.M.P.Nos.2685 to 2689 of 2017 on the file of the learned Judicial Magistrate No.I, Ponneri, and to set aside the same.

For Petitioners
in all the Crl.R.Cs. : Mr.S.Doraisamy

For Respondent-1
in all the Crl.R.Cs. : Mr.R.Sekar, G.A.

For Respondent-2
in all the Crl.R.Cs : Mr.R.Ganeshkumar

COMMON ORDER

Since this batch of six Criminal Revision Cases filed by the respective petitioners arising out of the same issue, the facts which are necessary to be noticed for the disposal of these six revision cases are as follows.

2. According to the prosecution, on 18.06.2017, at about 5.00a.m., two vehicles bearing lorry registration No.AP-07-TA-9909 and AP-12-U-8057 were found carrying 26 country bulls and 25 country bulls respectively, by the respondent police. According to them, such transportation was taken place by violating the legal procedures pertaining to the said transportation of animals and also without even having a licence for such transport and handling of bulls.

3. It is the further case of the prosecution that, out of the total number of 51 bulls [26+25] because congestively they were dumped in two vehicles [lorries as stated above], they had sustained abrasive injuries and also suffocated a lot and because of which, one of the bull succumbed to suffocation and the Post mortem Report of that bull revealed that the said bull died because of suffocation as it was one of the bull along the 26 carried and transported in one vehicle, which was in utter violation of the relevant provision of the Transporting Rules and also violates the provisions of Prevention of Cruelty to Animals Act, 1960. Since the respondent police did not have necessary facilities to protect the animals during the pendency of the case, the animals were handed over to the Goshala by name Sri Krishna Goshala for interim custody.

4. Thereafter, it seems that, the petitioners herein [6 petitioners], being the owner of the bulls, had filed separate applications in the Crime No.295 of 2017 on the file of the Inspector of Police, Arambakkam police station, the first respondent herein seeking interim custody of the animals. When

the said applications were pending consideration, the second respondent herein, on behalf of the Sri Krishna Ghosala, filed intervening petition in each of the case i.e., in respect of each of the miscellaneous petitions filed by the owners of the bulls.

5. Before the learned Magistrate, each cases i.e., CMPs. filed by the owners and the connected CMPs. filed by the second respondent/intervener were taken up for hearing. Ultimately, having considered the claim of the owners of the cattle as well as the 1st respondent/State police and also the second respondent/intervener, i.e., Sri Krishna Ghosala. The Trial Court had dismissed all the petitions filed by the respective owners of the cattle, at the same time, allowed the petitions filed by the Goshala in each case.

6. Aggrieved over the said orders rejecting the petitions filed by the respective owners of the cattle seeking interim custody, they have approached this court by filing this batch of six Criminal Revision Cases.

7. Since the facts are same and arising out of the similar criminal miscellaneous petitions, all these six criminal revision cases have been heard jointly and are being disposed of, by this common order.

8. On behalf of the revision petitioners Mr.S.Duraisamy, learned counsel appeared and made submissions. The learned counsel argued that, as per the FIR, the allegation of the police was that, the bulls were transported through lorries with suffocation and that was the only allegation made against the drivers, who drove the vehicles. The owners of the cattle had not been shown as accused and no allegation has been made against them.

9. Learned counsel appearing for the revision petitioners would further submit that, the main allegation made by the prosecution was that, while transporting the cattle, those, who incharge of the transportation, had not followed Rule 56 of the Transportation of Animals Rules made in exercise of the powers conferred under Section 38(2)(h) of the Prevention of Cruelty to Animals Act, 1960.

10. Learned counsel would further submit that, as far as the petitioners are concerned, they are the owners of the cattle, who purchased these cattle at Andhra Pradesh from or through the market committee and for such purchase, they have necessary bills and while making the transportation, the persons who incharge of the transport, might have not strictly adhered to the aforesaid transportation rules and for the said reason, it cannot be construed that those cattle had been not properly maintained or those cattle had been driven to slaughtering house.

11. Learned counsel would further argue that, the second respondent Goshala being an NGO may be an authorised entity to voluntarily protect the cattle, animals and birds etc., provided, if the owners of such cattle are not able to provide adequate protection, fodder to the cattle.

12. Learned counsel would further submit that, the respondent police handed over the cattle to the second respondent NGO only as an interim custody, because, the police did not have the facility to maintain the cattle during the pendency of the case. Moreover, at that time, since no owners had been there in the spot, where the vehicles were intercepted and the whereabouts of the owners of the cattle were not known to the police, as an interim measure, the custody was handed over to the Goshala, the second respondent, by the police.

13. Learned counsel would further submit that when the owners of the cattle have come forward to claim the interim custody, the learned Magistrate must have looked into the factor that, if the interim custody is given to the owners of the cattle, would there be any likely hood of further cruelty to the animals, at the hands of the owners. In order of arrive at such a conclusion, the learned Magistrate must have a subjective satisfaction. According to the learned counsel for the petitioners, the learned Magistrate had no materials to come to such a conclusion, however, erroneously the learned Magistrate had rejected the claim of the owners for interim custody, through the impugned orders.

14. It is the further arguments of the learned counsel for the revision petitioners that, when the owners make such a claim that too by way of an interim custody, during the pendency of the trial, certain para meters have to be gone into by the Court. In this regard, the learned counsel appearing for the petitioners has relied upon the following judgements:

(1) Manager, Pinjrapole Deudar and another vs. Chakram Moraji Nat and Others reported in 1998 (6) SCC 520

(2) State of Madhya Pradesh vs. Islam and Others reported in 2007(15) SCC 588

(3) Bharat Amratlal Kothari and Another vs. Dosukhan Samadkhan Sindhi and Others reported in

2010 (1) SCC 234

(4) Mohamed Sherif vs State rep. by Inspector of Police in
Crl. R.C.No.963 of 2014 dated 07.10.2014

(5) Sanjay Gandhi Animal Care Centre vs. Saddam & another in
Crl M.C.No.779 of 2016

(6) Dhanasekaran vs. Sub Inspector of Police, Devakottai Taluk
Police Station, Devakottai, Sivagangi District in
Crl.R.C.(MD)No.338 of 2016 dated 08.06.2016.

(7) Baggi @ Chinnasamy vs. State rep. by The Inspector of
Police, Paramathi Police Station in Crl.R.C.No.1044 of 2016
dated 06.10.2016.

(8) Sirajulla vs. State rep. by Inspector of Police, Avinashi
Police Station, Avinashi in Crl.R.C.No.754 of 2014 dated
19.12.2014 and

(9) C.Anbu vs. The Sub Inspector of Police, Perundurai Police
Station, Perundurai in Crl.R.C.No.851 of 2013 dated
10.07.2013

15. Per contra, Mr.R.Ganesh Kumar, learned counsel for the second respondent Goshala would submit that, it is the definite case of the prosecution that all the 51 bulls were transported in two vehicles [two lorries]. In one lorry 26 bulls were transported and in another, 25 bulls were transported. Because of the congestion and suffocation, one of the bull died at the vehicle itself and the Post Mortem Report of the dead bull reveals that, the death caused due to suffocation. That apart, it was found a number of abrasive injuries in a number of bulls because of congestion.

16. In this regard, the learned counsel for the second respondent would rely upon Section 56 of the Transport of Animals Rules. According to him, Rule 56(c) mandates, no goods vehicles shall carry more than six cattle, since the Rules 56(C) specifically prohibits that more than six cattle. In the case in hand, since it is the transportation of 25 bulls in one vehicle and 26 bulls in another vehicle, it is the clear violation of Rule 56(c) resulted in heavy suffocation and abrasion injuries to the cattle and because of that atleast one bull died even at the time of interception by the police.

17. Learned counsel for the second respondent would further argue that, this factor itself would clearly show that the petitioners herein, though claimed to be owners of the cattle, have not taken even a minimum care to see that the cattle are being transported safely, if not strictly following Rule 56(c) of Transportation Rule made under the Prevention of Cruelty to Animals Act, 1960. This action on the part of the revision petitioners would go to show that, they transported the cattle not for any good purpose, but only for slaughtering them and that is the reason why they have not even taken the minimum care of transporting the cattle safely without suffocation or abrasion.

18. The learned counsel in order to strengthen his arguments or to substantiate the same, relied upon the judgement of a learned Single Judge of this Court reported in 2013(2) L.W.(Crl.) 709 and also judgement of yet another learned Judge of this Court in Crl.R.C.No.777 of 2010 in Naseerulah vs. State rep. by Sub Inspector of Police, Coonoor and another dated 14.03.2013 followed by Crl.R.C.Nos.505 of 2013 etc., batch in S.Muralidharan vs. Nogaraj and State rep. by Inspector of Police, Peerkankaranai Police Station, dated 27.07.2015. By heavily relying upon these judgements, the learned counsel for the second respondent would argue that the issue raised in these batch of revision cases is squarely covered by the said three decisions and therefore, the petitioners are not entitled to seek for interim custody. Hence, the order of dismissal made by the learned Magistrate, which are impugned herein, is sustainable.

19. Mr.R.Sekar, learned Government Advocate appearing on behalf of the first respondent State would submit that, it is the case of the prosecution that totally 51 cattle were transported in two vehicles and on seeing the condition of the cattle at the time of interception by the respondent police, they decided to hand over the custody to the second respondent Goshala as they had enough facilities to look after these animals as an interim measure. It is also a fact that, one bull died at the time of interception of vehicle and that itself shows that maximum cruelty was inflicted on the cattle, while transporting them and not even a minimum required moving space was given to the cattle, that is the reason why, as rightly pointed out by the learned counsel for the second respondent, abrasive injuries were found in number of cattle.

20. Learned Government Advocate would further submit that, since it is a clear violation of Rule 56(c) of the Transport of Animals Rules and also in violation of other penal provisions of I.P.C., cases had been registered against the

drivers, who drove the vehicles and the investigation was on. These petitioners, who claimed to be the owners of the cattle are not entitled to seek for interim custody of the cattle and therefore, the learned Magistrate has rightly dismissed their petitions.

21. I have considered the rival submissions made by the learned respective counsel appearing for the parties and also perused the materials placed before this Court.

22. It is the vehement contention made by both the learned counsel for the respondents to state that the transportation of 51 bulls in only two vehicles, is a clear violation of Rule 56(c) of Transport of Animals Rule, as stated above and in view of the said violation, the bulls suffered a lot as they were not only suffocated but also injured abrasively and the injury as well as the suffocation lead to death of one bull even during the transportation which was found by the police people at the time of interception of the vehicles. Therefore, if the custody is given to the present revision petitioners, who claimed to be the owners of the cattle, certainly, there is no guarantee that these petitioners would not indulge in such violation in future also.

23. In support of the case of the respondents, the learned counsel relied upon three judgements referred to above. In the first judgement dated 14.03.2013 in CriL.R.C.No.777 of 2010, in the case of Naseerulah vs. State rep. by Sub Inspector of Police, Coonoor and another, they relied upon the following passage which are extracted hereunder.

"8. Further, we have got the Transport of Animals rules, 1978 enacted in exercise of powers conferred under Section 38 (2) (h) of the Prevention of Cruelty to Animals Act, 1960. In the rules, Rule 56 stipulates the conditions as to how the cattle should be transported in such a manner without causing any injury or discomfort to the animals. Rule 56(c) specifically stipulates that no goods vehicle shall carry more than six cattle. In fact, Rule 56 also empowers that the cattle should be transported with all precautions viz.,

(a) specially fitted goods vehicles with a special type of tail board on padding around the sides should be used;

(b) ordinary goods vehicles shall be provided with anti-slipping material, such as coir matting or wooden board on the floor and the superstructure, if low, should be raised;

(c) no goods vehicle shall carry more than six cattle;

(d) each goods vehicle shall be provided with one attendant;

(e) while transporting the cattle, the goods vehicle shall not be loaded with any other merchandise; and

(f) to prevent cattle being frightened or injured, they should preferably face the engine.

9....

10....

11....

12. In this connection, Section 429 of I.P.C. also can be taken note of. In this case, Section 429 of I.P.C. provides punishment for mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees with imprisonment for a term which may extend to two years, or with fine, or with both. The said section is a cognizable one. If we read Section 429 of I.P.C., the word used in the Section is even maiming the cattle and it is also included Cow or Ox. Here we come across in one vehicle more than 20 cows or buffaloes were transported and in that process, namely the people who has taken it in the vehicle or during the transport, one animal is being attacked by another which shows only the inhumane attitude and inducement of the said person transporting the animals. Therefore, even the maiming or injury caused because of the illegal transportation therefore, the owner can be hauled up. Unfortunately, when all these provisions are there, we find that these people transported these animals to butchery without following the rules and regulations. Taking into consideration that the prices are different from State to State. In fact, most of the cases, cattle are being transported continuously for a period of 48 hours crossing inter-State border without even providing fodder or water. They are mostly taken only for slaughtering house in Kerala. They are transported in complete

violation of the legal provisions, that too, right under the nose of the authority who is duty bound to implement such laws. The object of the Prevention of Cruelty to Animals Act, 1960, is only to prevent animals from being put to cruelty and that it is imperative to implement both these Acts by the authorities concerned. I only fervently hope that hereafter these laws which are provided for preventing cruelty to animals will be implemented in the strict sense. The lower Courts in Tamil Nadu shall take note of these provisions and also see that as to how the offenders should be punished properly. Therefore, the finding of the lower Court that the petitioner is not entitled for return of the cattle is well founded and correct. At the same time, another painful thing has happened in this case and that has also to be taken note of. Subsequent to the cattle being handed over to the second respondent, they have maintained it for six months and during that period 21 cattle also died. The post mortem certificate have been produced. In all the cases, they have sustained injuries during illegal transportation. In fact, in one case, gangrene has set in and it has been operated from spreading further and the injuries of the nature sustained only during illegal transportation was the cause of the death. Here is the fittest case where Court has to come to the rescue of the animals and prevent cruelty meted out to the poor animals and the watchful thing of society which are taking care of the animals should be encouraged to stop this offence. Stringent action should be taken as against those who violates the laws in future. Even the vehicles which are used should be dealt with under the Motor Vehicles Act concerned and punishment has to be imposed."

24. The respondents also relied upon the judgements of the another learned Judge of this Court reported in 2013(2) L.W. Cr1. 709 cited supra, where they relied upon the following passages:

"4. The learned counsel for the petitioner has also drawn attention of this Court to the Rule 56 of the Transport of Animal Rules, which stipulates conditions as to how the cattle should be transported,

5. The learned Judicial Magistrate has granted interim custody to the accused/owner based on the provisions under section 451 and 457 of Cr.P.C., and the procedures laid down in *Sunderbhai Amabalal Desai v. State of Gujarat* [2003 (1) CTC 175] which is not applicable to the case on hand involved in the Prevention of Cruelty to Animals Act, 1960. Sections 29(1) and (3) of the Act deal with the power of Court to deprive person convicted of ownership of animal, .."

25. The first respondent also heavily relied upon the following paras of the judgement in *CrI.R.C.No.505 of 2013 etc.*, batch in the matter of *S.Muralidharan vs. Nogaraj* cited supra.

"11.....

The organisation taking care of the animals should be encouraged to stop this offence. When voluntary organisations come forward to save the life of cattle, can we accept the contention of owners of cattle that they are entitled for the custody of cattle as owners of cattle, who have not even had the basic courtesy to provide the basic amenities of providing fodder and water to the cattle while transporting the cattle in vehicles and who have inserted the chilly in the eyes of cattle and ultimately, due to the inhumane treatment meted out to the cattle, some cattle died due to suffocation and bleeding injuries.

12. For the foregoing discussions held and also in the light of the decision cited supra, the impugned orders of the Lower Court are liable to be set aside and accordingly, they are set aside. These Criminal Revision Cases are allowed. Consequently, connected Miscellaneous Petitions are closed. It is hereby made clear that the cattle shall be maintained in the Goshalas, in which they were already kept and maintained, till the disposal of the cases. The undertaking given by the respective defacto complainants that they are prepared to incur all the charges required now for the maintenance of cattle in the respective Goshalas, is recorded with appreciation. The first respondents connected with the case in *Cr.No.555 of 2013* are forthwith directed to return the cattle taken away by them viz., 60 cattle to the Goshala, by name, Venkateshwara Trust, Somangalam Village, Tambaram Taluk, within a period of 15 days from the

date of receipt of a copy of this order. The Lower Court shall decide at the time of disposal of the main cases regarding the maintenance to be provided by the alleged owners."

26. By relying upon these decisions of this Court as cited supra, the learned counsel for the respondents argued that this court since has taken consistent stand that, when there are violations of the Transport of Animals Rules and the Prevention of Cruelty to Animals Act, certainly, the interim custody in those cases were, preferably, given to the Ghosala or NGO's like the first respondent herein and not to the owners of the cattle.

27. However, Mr.S.Doraisamy, learned counsel appearing for the revision petitioners have relied upon a number of judgements of this court as stated above. For the purpose of deciding the issue raised in these Revision cases, this Court rely upon the three Supreme Court Judgements cited on behalf of the revision petitioners. The First judgement i.e., 1998(6) SCC 520 cited supra speaks about the right of the owners of the cattle to have the custody. Considering Section 35(2) of the Act, the Honourable Apex Court has given the following finding in the said case, which are usefully extracted hereunder:

"10. Now advertting to the contention that under Section 35(2), in the event of the animal not being sent to an infirmary, the Magistrate is bound to give the interim custody to a pinjrapole, we find it difficult to accede to it. We have noted above the options available to the Magistrate under Section 35(2). That sub-section vests in the Magistrate the discretion to give interim custody of the animal to a pinjrapole. The material part of the sub-section (shorn of other details) will read, the Magistrate may direct that the animal concerned shall be sent to a pinjrapole. Sub-section (2) does not say that the Magistrate shall send the animals to a pinjrapole. It is thus evident that the expression "shall be sent" is a part of the direction to be given by the Magistrate if in his discretion he decides to give interim custody to a pinjrapole. It follows that under Section 35(2) of the Act, the Magistrate has discretion to hand over interim custody of the animal to a pinjrapole but he is not bound to hand over custody of the animal to a pinjrapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, the

pinjrapole has no preferential right. In deciding whether the interim custody of the animal be given to the owner who is facing prosecution, or to the pinjrapole, the following factors will be relevant:

(1) the nature and gravity of the offence alleged against the owner;

(2) whether it is the first offence alleged or he has been found guilty of offences under the Act earlier;

(3) if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution;

(4) the condition in which the animal was found at the time of inspection and seizure;

(5) the possibility of the animal being again subjected to cruelty.

There cannot be any doubt that establishment of the pinjrapole is with the laudable object of preventing unnecessary pain or suffering to animals and providing protection to them and birds. But it should also be seen:

(a) whether the pinjrapole is functioning as an independent organization or under the scheme of the Board and is answerable to the Board; and

(b) whether the pinjrapole has a good record of taking care of the animals given under its custody.

A perusal of the order of the High Court shows that the High Court has taken relevant factors into consideration in coming to the conclusion that it is not a fit case to interfere in the order of the learned Additional Sessions Judge directing the State to hand over the custody of the animals to the owners."

(Emphasis is mine)

28. The second Supreme Court Judgement cited by the revision petitioners is 2007 (15) SCC 588 wherein, the Honourable Apex Court after taking into account Section 29 of the Act has held as follows:

8. Section 29 reads as below:

"29. Power of court to deprive person convicted of ownership of animal.-(1) If the owner of any animal is found guilty of any offence under this Act, the court, upon his conviction thereof,

may, if it thinks fit, in addition to any other punishment, make an order that the animal with respect to which the offence was committed shall be forfeited to Government and may, further, make such order as to the disposal of the animal as it thinks fit under the circumstances.

(2) No order under sub-section (1) shall be made unless it is shown by evidence as to a previous conviction under this Act or as to the character of the owner or otherwise as to the treatment of the animal that the animal, if left with the owner, is likely to be exposed to further cruelty."

9. Section 29(1) undoubtedly confers jurisdiction on the court, in the event the offender stands convicted, to pass an order of forfeiture of the animals in favour of the Government. But on a close scrutiny of the language used therein, Section 29(1) stands appears to be restricted and subject to the provisions contained in sub-section (2) noticed hereinbefore.

10. Sub-section (2) of Section 29 specifically lays down three specific conditions without which applicability thereof would not arise. The same being: (a) it is shown by evidence as to a previous conviction; or (b) as to the character of the owner or otherwise as to the treatment of the animal; or (c) that the animal, if left with the owner, is likely to be exposed to further cruelty.

11. While it is true that there is a report by the Veterinary Surgeon that the animals were not in a healthy condition but there is not an iota of evidence as regards the third condition noticed in the body of the abovenoted sub-section (2).

12. In that view of the matter, we are of the view that in the absence of any material on record, question of sustaining the order of the Ist Additional Sessions Judge would not arise. The High Court dealt with the matter in a manner proper and we see no reason to record a contra finding in the contextual facts."

29. The further judgement relied by the petitioners is in 2010(1) SCC 234 wherein paragraphs 17,18,19,45, 46,47 and 48 were pressed into service:

17. This Court notices with surprise that though Respondents 1 to 6 herein, who were original petitioners before the High Court, are

not accused of commission of any offence even remotely, even then the learned Single Judge of the High Court has convicted them under Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 and imposed a fine of Rs 50 on each of them. It hardly needs to be emphasised that those, who are not even remotely alleged to have committed offence/offences, cannot be convicted at all either at the trial or while exercising so-called wide jurisdiction under Article 226 of the Constitution.

18. The four accused named above were not parties to the petition filed by Respondents 1 to 6 nor had they approached the High Court for custody of goats and sheep seized. Therefore, conviction of Respondents 1 to 6 under Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 and imposition of fine of Rs 50 on each of them will have to be regarded as without jurisdiction, unauthorised, unwarranted and illegal and will have to be set aside.

19. From the final directions, given by the High Court in the impugned judgment, it is evident that the learned Single Judge has quashed the FIR registered as II-CR No. 3131 of 2008 with Deesa City Police Station and the proceedings pursuant thereto including the orders for interim custody of the animals and the revision application preferred therefrom. Respondents 1 to 6, who had filed writ petition before the High Court, are not accused. Therefore, they could not have prayed for and, in fact, have not prayed to quash the FIR registered as II-CR No. 3131 of 2008 with Deesa City Police Station and the proceedings pursuant thereto. Prayer for quashing the FIR could have been made only by the accused, who have been named above. But none of them had chosen to invoke jurisdiction of the High Court either under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution to get quashed the FIR registered as II-CR No. 3131 of 2008 with Deesa City Police Station against them and the proceedings pursuant thereto.

45. This Court further notices that the learned Single Judge has directed the Registrar of the High Court to serve a copy of the judgment impugned in the appeal upon Appellant 2 i.e. Animal Welfare Board of India, Ministry of Environment and Forests, Government of India, 13/1, Third Seaward Road, Valmiki Nagar, Thiruvamiyr, Chennai. As this Court is inclined to set aside most of the directions given by the learned Single Judge in the impugned judgment, the direction to serve a copy of the judgment on Appellant 2 i.e. Animal Welfare Board of India becomes redundant and, therefore, the same is also liable to be set aside.

46. This takes the Court to answer the question whether Respondents 1 to 6 are entitled to relief of interim custody of goats and sheep seized pursuant to filing of FIR No. II-CR No. 3131 of 2008 registered with Deesa City Police Station.

47. The fact that Respondents 1 to 6 are owners of the goats and sheep seized is not disputed either by Appellant 1 or by the contesting respondents. Though Respondent 8 has, by filing counter-reply, pointed out that the officials of Pinjrapole at Patan are taking best care of the goats and sheep seized in the instant case, this Court finds that keeping the goats and sheep in the custody of Respondent 8 would serve purpose of none. Admittedly, Respondents 1 to 6 by vocation trade in goats and sheep. Probably a period of more than one-and-half year has elapsed by this time and by production of goats and sheep seized before the court, the prosecution cannot prove that they were subjected to cruelty by the accused because no marks of cruelty would be found by this time. The trade in which Respondents 1 to 6 are engaged, is not prohibited by any law. On the facts and in the circumstances of the case this Court is of the opinion that Respondents 1 to 6 would be entitled to interim custody of goats and sheep seized in the case during the pendency of the trial, of course, subject to certain conditions."

30. If the above principles enunciated by the Honourable Supreme Court in the Judgements cited supra, are applied to the case in hand, the following position would emerge.

31. That if no allegation has been made against the owners of the cattle and only the drivers or transported persons have been arrived as accused by the prosecution, at the time of interception and seizure of the cattle, the owners cannot be found guilty and moreover that stage has yet to come in this case, as it is only in the investigation stage.

32. If the owner is claiming the custody of animal, it has been emphasised by the Honourable Apex Court that, the pinjrapole has no preferential right. The Honourable Apex Court has further held that, in deciding whether the interim custody of the animal to be given to the owner, who is facing prosecution or it is to be given only to pinjrapole, certain factors are considered to be relevant which are: (i) the nature and gravity of the offence against the owners, whether the offence alleged being a first offence, the condition of the animal found at the time of inspection and seizure and also possibility of the animal again be subjected to cruelty.

33. If these principles are the basis, based on which, the discretion vest with the Magistrate to give interim custody either to the owner of the cattle or to the pinjrapole has to be decided. The paramountcy attached with this basic conditions is that, if there is no allegation against the owner, they cannot be found guilty, whether such offence is first time offence and also is there any possibility of the animal being subjected to cruelty again.

34. If these paramount principles are fitted into in a given case, it is very easy to take a decision, of course, by the discretionary power of the learned Magistrate.

35. Here in the case in hand, it is the definite case of the prosecution that, they made allegation only against the two drivers, who driven the vehicle from which the cattle were seized. Secondly, there was no allegation against the owners of the cattle. Thirdly, the alleged cruelty inflicted on the cattle, even according to the prosecution, was said to have taken place during the transportation of the cattle and that is the reason why both the prosecution as well as the Ghosala lay emphasis on Rule 56(c) of the Transport of Animals Rule, i.e., transporting more than six cattle in a goods vehicles.

36. It is nobody's case on the side of the respondents to state that, the revision petitioners/owners of the cattle had directly indulged or inflicted in cruelty on the animals and

there is no record to show that these owners had been already found guilty of similar offence and in this offence, even if the owners are roped in, pursuant to the investigation, it would not be the second offence and would be only the first time offence.

37. In fact, that situation does not arise as of now, as there is no allegation against these owners/revision petitioners.

38. The only part of paramount principle left, as pointed above, is that, the possibility of the animal being again subjected to cruelty. In so far as this apprehension is concerned, such cruelty may not even take place in further transportation of cattle, if the owners decide to transport the cattle to some far off place, if the owners of the cattle are placed with strict conditions such as not to transport these cattle to any far off place and must produce the cattle as and when required by the Trial Court, even such apprehension of that part of the paramount principle as enunciated by the Honourable Apex Court, may not be well founded in this case.

39. In respect of the case cited by the respondents especially, in Crl.R.C.No.505 of 2013 etc., batch, the facts are entirely different. The learned Judge found that in those cases, the animals were taken to slaughtering houses. In Crl.R.C.No.777 of 2010, heavily relied upon by the respondent side, it has been made an observation that inspite of the provisions it was found that people transported these animals to butchery without following the Rules and Regulations and the learned Judge made an observation that the cattle are being transported from State to State continuously, for a period of 48 hours crossing inter State border without even providing fodder or water and they are mostly taken, only for slaughtering in Kerala. These kind of transportations are in complete violation of the legal provisions.

40. Only in that context, the learned Judge had come to a conclusion in those cases that, if the cattle are given back by way of interim custody to the owners, there is likelihood of repeating the same cruelty on the animals and therefore, applying the test of paramount principle as indicated in the judgements cited supra, the learned Judge has come to the conclusion in those cases that, the interim custody shall not be given to the owners, instead of, it shall be given only to the NGO's/Ghosalas.

41. Further, in the case in hand, the investigation is on and the trial is yet to be over and moreover, there is no

allegation against the owners of the cattle, therefore, the question of whether it is the first time offence or second time offence does not arise. Further, if stringent conditions are imposed to have a clutch on the owners of the cattle, ensuring no future cruelty while making transportation, such apprehension, being the third part of the paramount principle, also can be suitably met in this case.

42. Having taken into consideration the law laid down by the Honourable Supreme Court and also the totality of the situation of the present case, in the teeth of various judgements referred to above, this Court is of the clear view that the petitioners are entitled to seek interim custody, of course with stringent conditions.

43. In the result, the following orders are passed in these revision cases:

(i) That the impugned orders in each of these revision cases are set aside.

(ii) The interim custody of the cattle shall be given to the revision petitioners being the owners of the cattle in accordance with their claim in each of the petitions till the disposal of the main case on following conditions:

(a) That the revision petitioners/owners shall deposit a sum of Rs.3,000/- in respect of each of the bulls in the account of Crime No.295 of 2017.

(b) That apart, the revision petitioners shall execute a bond for a sum of Rs.7,000/- in respect of each of the bull to the satisfaction of the learned Judicial Magistrate No.I, Ponneri.

(c) The Revision Petitioners/owners shall give a written undertaking by filing an affidavit before the concerned Magistrate that they shall not sell the cattle without the prior permission of the trial Court.

(d) Further the revision petitioners shall give a written undertaking before the learned Magistrate that the cattle, if it is given interim custody to them, shall not be re-transported to any far of places without the permission of the said court.

(e) Also the revision petitioners shall undertake to produce the cattle before the said court as and when required.

44. With these conditions and directions, these Criminal Revision Cases are allowed to the term indicated above. There shall be no order as to the costs.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

smi

To

1.The Judicial Magistrate No.I, Ponneri.

2.-do-Thro The Chief Judicial Magistrate
Thiruvallur

3. The Inspector of Police,
Arambakkam Police Station,
Tiruvallur District.

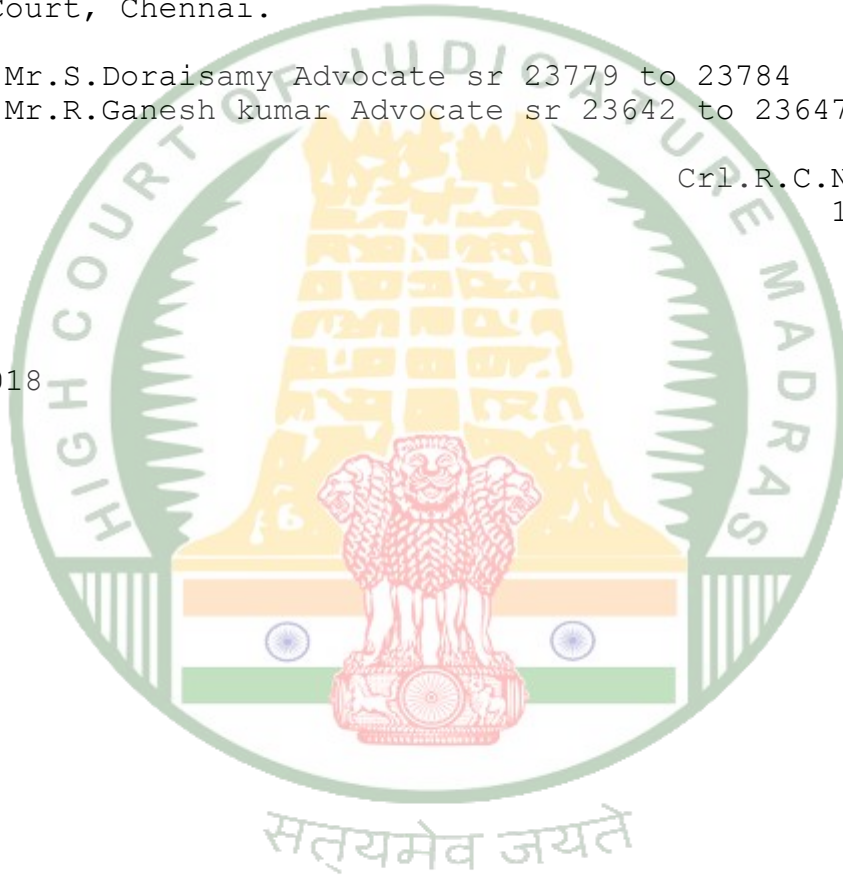
4. The Public Prosecutor,
High Court, Chennai.

+6 ccs to Mr.S.Doraisamy Advocate sr 23779 to 23784

+6 ccs to Mr.R.Ganesh kumar Advocate sr 23642 to 23647

Crl.R.C.Nos.1082 to
1087 of 2017

sks (co)
aa06/04/2018



WEB COPY