

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL RC No.792 of 2018

R.Fayashkhan

... Petitioner/ petitioner

Vs.

1.State Rep by

The Inspector of Police
Sulur Police Station
Coimbatore District
(Crime No.237/2018)

2.Vellingiri Goushala,

Rep. by its Manager, Nandakumar,
Coimbatore.

... Respondents/ Respondents

Criminal Revision petition has been filed under Sections 397 and 401 of the Code of Criminal Procedure, to call for the records and set aside the common order dated 27.04.2018 made in C.M.P.No.889/2018 (On the file Judicial Magistrate, Sulur, Coimbatore District) and direct the 2nd respondent to hand over the 19 cattle's to the petitioner/owner.

For Petitioner : Mr.C.Vijayakumar

For R1 : M/s.S.Thankira

Government Advocate (Crl. side)

For R2 : Mr.K.Thirukumaran

O R D E R

This revision petition has been filed by the petitioner seeking to set aside the order dated 27.04.2018 passed in C.M.P.No.889/2018, wherein and whereby the learned Judicial Magistrate, Sulur, Coimbatore District dismissed the petition filed by the petitioner under Sections 451 & 457 of Cr.P.C for interim custody of the 19 cattle was dismissed.

2.The case of the petitioner is that the petitioner is the owner of 19 cattle, which were purchased through the mediator namely one Ilayaraja S/o.Kuppusamy, Maramangalathu Patti, Salem District, by paying valuable consideration. After purchasing the cattle, the cattle

were transported through Lorry in order to delivery the same at Pollachi Market. During the transportation of the cattle, the defacto-complainant namely Byragi Kamalraju Swamigal, who is the General Secretary of the Hindu Makkal Katchi, Tamil Nadu has lodged a complaint against the petitioner, on that basis, the respondent-police registered a complaint.

3.It is stated that the respondent-police registered a case under Sections 11(1)(a), 11(1)(d), 8(1) & 8(2) of the Prevention of Cruelties to Animals Act, 1960 and under Sections 96 & 98(4) of Transport of Animals Rules 1978 and Section 429 of IPC and seized the entire cattle and hand over them to the 2nd respondent Vellingiri Goushala, Coimbatore. The petitioner filed the petition on the ground that there is no sufficient space for the 2nd respondent to maintain the cattle and the 2nd respondent did not follow the procedures prescribed under the Act and the said cattle were kept in the open space, the petitioner sought for return of the cattle. After elaborate consideration, the lower Court dismissed the petition, against which the present petition has been filed by the petitioner.

4. The learned counsel for the petitioner would submit that the petitioner is owner of the cattle and the said cattle were transported in order to sell the same in the cattle market. However, based on the false complainant filed by the defacto-complainant, the Police have registered a case and seized the entire cattle and subsequently, handed over the same to the second respondent. Further, the learned counsel for the petitioner would submit that the 2nd respondent is not properly maintaining the cattle. Thus, he sought for allowing the revision by directing the respondents to handover the cattle to the petitioner.

5.The learned counsel appearing for the 2nd respondent would submit that the petitioner is an habitual offender and already two FIRs are pending against him for transportation of the cattle to the flush trade market. The learned counsel would further submit that the said bullocks and cattle were maintained by the 2nd respondent by collecting donations from the various persons. The claim made by the petitioner is not genuine. Thus, the learned counsel for the 2nd respondent sought for dismissal of the revision case.

6. The learned Public Prosecutor did not dispute the submission made by the learned counsel for the 2nd respondent/intervener that two cases are pending similar in nature against the petitioner.

7. Heard the submissions made on either side and perused the materials available on record.

8. From a perusal of the materials available on record, it is seen that the Court below has rightly dismissed the petition on the ground that there is no proper explanation on the side of the petitioner as to whether the cattle were transported through seized vehicle from one place to another place with proper care and protection as per the Rules prescribed by Transport of Animals Rules 1978. It is further seen that already two cases similar in nature are pending against the petitioner. Considering the facts and circumstances of the case, this court does not find any error in the order passed by the Courts below. In this regard, a reference could be placed in the Judgment in 2015(4) MLJ Page 38 (S. Muralidharan Vs. Nogaraj and another), wherein it has been held by this Court as follows;

" we find that the accused transported the cattle to burchery without following the rules and regulations. The cattle were being transported continuously from District to District without even providing fodder or water. The transportation is done in total violation of the legal provisions. The object of the prevention of Cruelty to Animals Act 1960, is only to prevent animals from being put to cruelty. Further, stringent action should be taken as against those who violates the laws in future. The vehicles which are used for the commission of this kind of offence should be dealt with under the Motor Vehicles Act.....;

9. The above decision would squarely be applicable to the present facts of the case.

10. In the result, the Criminal Revision is dismissed. The judgment and decree passed by the learned Judicial Magistrate, Sulur, Coimbatore District in C.M.P.No.889/2018 dated 27.04.2018 is confirmed.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

gmd/vsg1

To

1.The Judicial Magistrate,
Sulur, Coimbatore District.

2.The Inspector of Police
Sulur Police Station
Coimbatore District.

3.The Public Prosecutor,
Madras High Court,
Madras.

CRL RC No.792 of 2018

ASK(25/10/2018)



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