

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

263

CRM-M-10513-2016

Date of Decision: December 10, 2018

Yusuf @ Isub

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:-HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This petition is for quashing of the order dated 20.02.2016, Annexure P-5 passed by Judicial Magistrate 1st Class, dismissing the application of the petitioner for releasing 11 camels on superdari as well as the order dated 05.03.2016 (Annexure P-7) vide which revision petition filed by the petitioner was dismissed.

Brief facts of the case as per the FIR No. 42 dated 18.02.2016, registered under Section 11 of Prevention of Cruelty to Animals Act, 1960 are that the police party received a secret information that one Maksood along with his companion is taking camels in the truck bearing registration No. HR-74-6266 from Tijara (Rajasthan) side and their legs were tied mercilessly. On receiving such information, the police laid a barricade and stopped the truck and 11 camels were recovered, which were tied with ropes in a bad and cruel manner. The Driver of the truck Maksood alongwith Alim and Salim were arrested and the truck and the camels were taken in police custody.

Therefore, the petitioner moved an application for releasing the camels on superdari. Another application was moved by a Society named as 'People For Animals Society' stating that the Society can take care of the animals.

The petitioner contested the said application. The trial Court, vide impugned order dated 20.02.2016, dismissed both the applications and directed the SHO Police Station, Ferozpur (Jhirka) to keep the animals in safe custody and take proper care and provide veterinary aids to the camels with the assistance of any Welfare Society/NGO.

The petitioner thereafter preferred a revision petition and the same was also dismissed vide order dated 05.03.2016. The operative part of the order read as under:-

“7. The Hon'ble Supreme Court of India, in Criminal Appeal Nos. 283-287/2002 (arising of SLP (Crl.) Nos. 2790, 2793, 2795, 2797, 2800/1999) in case titled as State of U.P. Vs. Mustakeem & Ors, decided on 22.2.2002 has held as under:-

“Leave granted.

The state of Uttar Pradesh is in appeal against the direction of the Court directing release of animals in favour of the owner. It is alleged that while those animals were transported for the purpose of being slaughtered and an FIR was registered for alleged violation of the provisions of Prevention of Cruelty to Animals Act, 1960 and the specific allegations in the FIR was that the animals were transported for being slaughtered, and the animals were tied very tightly to each other. The criminal case is still pending. On and appeal for getting the custody of the animals were filed, the impugned order has been passed. We are shocked as to show 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 the animals be kept in the Goshala and the state Government

undertakes to take the entire responsibility of the preservations of these animals so long as the matter is under trial.

8. The aforesaid findings given by the Hon'ble Supreme Court of India in the cases mentioned above are squarely applicable to the facts and circumstances of the present case.

In the present case, admittedly, an FIR bearing No. 42 dated 18.02.2016, under Section 11 of Prevention of Cruelty to the Animals Act, 1960 and Sections 429 & 120 of IPC, has been registered at Police Station Ferozepur Jhirka, against Maksood, Aleem, Salim & Isub and the camels-in-question have been taken into police possession in the said case. As per the version of the said first information report, on 18.02.2016, ASI Kuldeep Singh along with EASI Jugal Kishore, HC Manoj Kumar, Constable Pawan Kumar were present on Tijara Turn, Ferozepur Jhirka.

9. There is nothing on record to suggest at this stage that the aforesaid version of the police as mentioned in the aforesaid FIR is incorrect. There is also nothing on record to suggest at this stage that aforesaid ASI Kuldeep Singh or EASI Jugal Kishore, or HC Manoj Kumar, or Constable Pawan Kumar or the SHO Police Station Ferozepur Jhirka was/is having any ill will or grudge against the applicant-revisionist Yusuf or any of the aforesaid accused on the basis of which it can be said that a false Fir has been registered. The applicant-revisionist Yusuf failed to show that he was/is having any valid permit or licence issued by a competent authority to purchase, sell or transport the camels-in-question. It was contended by learned PP that when the camels were recovered by the Police they were smuggling for their lives as they were tied with ropes in a cruel matter and mercilessly and were dumped one over another. Perusal of photographs of camels-in-question reveals that the camels were loaded in the truck mercilessly in a cruel manner. It was submitted by learned PP that three camels have died on account of injuries sustained by them during transportation as they were being carried in a cruel manner. Copies of post mortem reports of the camels who have died are also placed on record by learned PP.

Since the camels were being carried in a cruel matter and three camels have died on account of injuries sustained by them during transportation, therefore, it cannot be held at this stage that the camels-in-question were purchased by the applicant-

revisionist Yusuf for the purpose of agriculture or for pulling of cart, rather the matter in which the camels-in-question were found/recovered suggests/that the same were being carried for the purpose of slaughtering. Therefore, there is possibility of the camels being slaughtered in case the camels-in-question are released on superdari in favour to the applicant-revisionist Yusuf. In such circumstances, It is not safe to release the case property of the aforesaid case i.e. Camels in question in favour of the applicant-revisionist Yusuf.

10. In these circumstances and in view of the aforesaid findings of the Hon'ble Supreme Court of India in the cases mentioned above, this Court is of the view that the camels-in-question should not be released on superdari in favour of the applicant-revisionist Yusuf.

11. Moreover, learned counsel for the revisionist could not point-out any illegality in the order under challenge. Such type of orders passed by learned trial Court giving valid reasons of its decision should not ordinarily be set aside while exercising the limited powers of revision.

12. Keeping in view of the above discussion, there is no merit in the present revision petition and hence, the same is hereby dismissed. A copy of this order to be sent to the learned trial Court. Revision file be consigned to record room after due compliance.

Sd/-

Announced in open Court.
5.3.2016

(Raj Kumar Yadav)
Additional Sessions Judge
Mewat 05.03.2016"

The petitioner has filed the present petition challenging the aforesaid orders and praying for releasing the animals in his favour.

The counsel for the petitioner has relied upon the receipts Annexure P.8 (colly.) to submit that the petitioner had purchased the camels from different persons as detailed in para 10 of the petition. The counsel submits that the the purchase was made in a proper and legal manner through the authorized agent and the camels were being

transported when the police arrested the Driver and other persons and taken in possession the truck as well as the animals.

Learned counsel for the petitioner has relied upon an order dated 01.03.2016 passed in CRM-M-2177 of 2016. The operative part of the order reads as under:-

“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 CRM-M-2177 of 2016 (O&M) 7 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.

(FATEH DEEP SINGH)
JUDGE”

March 01, 2016

Learned counsel for the petitioner has submitted that the only reason given by the authorities below is that the police apprehended on the ground that the animals were being transported for the purpose of slaughtering, however, there is nothing in the FIR to support the allegations in this regard.

Reply has been filed by way of an affidavit of Deputy Superintendent of Police, Ferozepur Jhirka and as per the reply, it is submitted that when the truck in dispute was stopped, it was found that the camels were tied together in a cruel manner and later on 03 camels died and 11 camels were handed to one Gajender Singh resident of Badha Tehsil and District Palwal and presently the camels are kept in Mewat Chhetra Goshala, Ferozepur Jhirka.

A perusal of the affidavit shows that no evidence has been collected that the camels were being transported for the purpose of slaughtering, though there is mentioning in para 10 and 12 of the reply to

this effect.

Heard learned counsel for the parties.

Prima facie the petitioner is in a position to show that he has purchased the animals from the persons mentioned in reply, nothing is stated that Investigating Officer has verified this fact by recording the statements of the concerned persons. Even otherwise, in view of the judgment dated 01.03.2016, passed in Anwer's case (supra), it was held by in this Court that by not handing over the animals to their owner would amount to violation of the Section 29 of the Act as it could tantamount to passing an order forfeituring of the animals, therefore, both the impugned orders are set aside and it is directed that superdari of camels be handed over to the petitioner on furnishing solvent surety to the satisfaction of trial Court.

The petition stands disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

December 10, 2018

neeraj

Whether speaking/reasoned Yes/No

Whether reportable Yes/No