**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CRM-M-17996-2018**
**Date of decision: 30.05.2018**

Inderpal and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

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**CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU**

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Present: Mr. Nihul Pratap Singh, Advocate
for the petitioners.

Mr. Vikas Chopra, DAG, Haryana
for respondent No.1.

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**MAHABIR SINGH SINDHU, J. (ORAL)**

Present petition has been filed under Section 482 of the Criminal Procedure Code ('Cr.P.C.' - for short) for quashing of the impugned order dated 21.03.2018 passed by learned Additional Sessions Judge, Faridabad vide which revision filed by respondent No.2 against the order dated 05.12.2015 passed by learned Chief Judicial Magistrate, Faridabad has been disposed off with the direction to approach the learned Illaqa Magistrate and move an application for directing the present petitioners to hand over the calf to him.

Mr. Saleem Ahmed, Advocate puts in appearance on behalf of respondent No.2 by filing power of attorney, which is taken on record.

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Reply by way of affidavit of Mr. Jai Parkash, HPS, Assistant Commissioner of Police, N.I.T. Faridabad filed on behalf of respondent No.1, copy thereof has been supplied to the opposite side.

That allegations in the FIR No.575 dated 22.11.2015 under Section 379 of the Indian Penal Code ("IPC"-for short) registered at Police Station Suraj Kund on the basis of complaint of petitioner No.1 are as under:-

That he is resident of village Anangpur, Mohalla Domka and on 20.11.2015 their four buffaloes were tied in the premises. At about 1:00 a.m. in the night, when he got up to answer the call of nature then buffaloes were found missing. He tried to find out the buffaloes around his house, but could not trace. It is further alleged that some unknown persons have taken their buffaloes and the physical description of the buffaloes is that, two, out of four are having round horns, long tales, healthy body and are of black colour. The other two buffaloes are having long horns and long white tale. Consequently, he requested to register the report regarding theft of buffaloes and after taking appropriate action the buffaloes be got recovered.

During investigation, one buffalo was recovered from respondent No.2-Esha, which was identified by complainant-petitioner No.1 and was released on *Superdari* by learned Illaqa Magistrate vide order dated 4.12.2015 having the similar identity mark as alleged by complainant-petitioner No.1. It transpires that after release of the respondent No.2 on bail, he moved an application for conducting of the DNA test of recovered buffalo. The DNA report was submitted in favour

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of the respondent No.2 and consequently, an application was moved by the Investigating Officer for discharge of respondent No.2 as well as his co-accused Sahin and resultantly, both were discharged by learned Illaqa Magistrate vide order dated 26.02.2016. Thereafter an application for *Superdari* of the said buffalo was moved by respondent No.2 and which was allowed by learned Additional Chief Judicial Magistrate, Faridabad vide order dated 15.03.2016. Thereafter another application was moved for issuance of direction to the concerned SHO to handover the custody of buffalo in question to respondent No.2 and the same was allowed by learned Chief Judicial Magistrate, Faridabad vide order dated 16.09.2016. Aggrieved against the order dated 16.09.2016, the petitioner No.1 filed a criminal revision No.61 dated 22.09.2016 which was allowed by learned Additional Sessions Judge, Faridabad vide order dated 06.12.2016 on three counts i.e. **(1)** That once the Illaqa Magistrate had released the buffalo in question on *Superdari* in favour of petitioner No.1 vide order dated 04.12.2015, then he had no jurisdiction to release the same on superdari in favour of respondent No.2 on the basis of DNA report. **(2)** That no notice of the application for *Superdari* filed by respondent No.2 was issued to petitioner No.1 and thus the same was violative of principles of natural justice **(3)** That civil suit between the parties is pending regarding the buffalo in question.

Thereafter the respondent No.2 filed a criminal revision No.63 dated 13.10.2017 against the order dated 05.12.2015 passed by learned Chief Judicial Magistrate, Faridabad and the same was allowed while passing the impugned order dated 21.03.2018 and operating part of

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the same is as under:-

> "Keeping in view the above facts, the present revision petition is hereby disposed of with the direction that revisionist shall approach the learned Illaqa Magistrate and move an application for directing Laxman and Inder Pal (respondent No.2) to hand over the child of buffalo to him by impleading Laxman and respondent No.2 as party in the said application. Thereafter, the said application shall be disposed of by learned Illaqa Magistrate/Chief Judicial Magistrate, Faridabad preferably within a period of two months from the date of filing of the application."

The present revision petition came up for hearing on 01.05.2018 and notice of motion was issued for today i.e. 30.05.2018 and during the course of hearing, it has been pointed out by learned counsel for the parties that in pursuance of impugned order dated 21.03.2018 the learned Chief Judicial Magistrate, Faridabad has passed the fresh order dated 22.05.2018 and copy of the same is retained on the record and marked as 'Annexure X' and relevant part of the same is as under:-

> "From the afore-said observations of learned Appellate Court, it is clear that applicant has been held owner after receipt of D.N.A. Report. The contention of learned respondents counsel that applicant was not held owner of the afore-said cattle is erroneous and devoid of merit as in the aforesaid order it is clearly mentioned that applicant in fact is the owner of child of Buffalo. In view of above observations, the applications in hand is hereby allowed. The respondents are directed to hand over the custody of cattle of Buffalo within 5 days from today. The S.H.O. Concerned is directed to ensure compliance of the order. A copy of this order be sent to S.H.O. concerned for compliance. Report of S.H.O. is

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awaited for 30.05.2018."

Perusal of the same reveals that application filed by respondent No.2 for releasing the buffalo in question was allowed and present petitioners were directed to handover the custody of the same within five days and the SHO was directed to ensure that compliance of the order. It is further stated at the bar that in terms of order dated 22.05.2018 the custody of the buffalo has already been handed over to respondent No.2.

The above factual position is duly acknowledged by learned counsel for the petitioner. In view of the facts and circumstances discussed hereinabove, it is apparently clear that a fresh order dated 22.05.2018 has already been passed by learned Chief Judicial Magistrate, Faridabad. Faced with the above situation, learned counsel for the petitioners has fairly stated in view of the fresh order this petition has been rendered infructuous.

In view of the facts and circumstances discussed hereinabove the present petition is rendered infructuous and ordered accordingly. However, liberty is granted to the petitioners to challenge the order dated 22.05.2018, if so advised.

**( MAHABIR SINGH SINDHU)**
**JUDGE**

**30.05.2018**
**Gaurav Sorot**

1. Whether reportable? **Yes**
2. Whether reasoned / speaking? **Yes**

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