

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12378 of 2019

Arising Out of PS. Case No.-285 Year-2018 Thana- MADANPUR District- Aurangabad

=====

BIJENDRA KUMAR SINGH @ VIJENDRA KUMAR SINGH, Son of
Sarvanand Singh Resident of Village - Milki, P.S. - Udbant Nagar, Distt -
Aurangabad.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Shambhu Sharan Singh, Advocate
For the Opposite Party/s : Mr. Binod Kumar, Advocate
For the Informant : Mr. Prashant Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

8 01-03-2021 Heard Mr. Shambhu Sharan Singh, learned

counsel for the petitioner and Mr. Prashant Kumar,

learned counsel for the informant, who has *suo motu*

appeared for opposing this application for release. The

State is represented by Md. Aslam Ansari, learned APP.

A written report was lodged by the informant,

Shri Santosh Kumar Singh, who claims himself to be a



member of Bhartiya Gaurakshak Samaj Seva Sangathan that on 24.11.2018, while he was coming back from Aurangabad, he saw a pick-up van bearing registration no. BR03GA-7225, plying on the National Highway No. 2 in which cattle had been kept in an abominable condition, which reflected cruelty towards those animals. Information in that regard was given to the Officer-In-Charge of the concerned Police Station on mobile telephone, pursuant to which the vehicle was intercepted by the Police. In the vehicle, five adult cows and two calves were found to be loaded. The cattle, according to the allegation, were loaded in the vehicle in a cramped condition and their nostrils were tied to each other. *Prima facie*, it appeared to the informant that the cows and calves were being smuggled. The persons boarding the vehicle disclosed their names and claimed to be the owner of cattle (petitioner) and owner and driver of the vehicle. They are said to have made a disclosure before the Police that the cattle was being taken to Hazaribagh.



There was no provision for fodder or water on the vehicle or for that matter of any first aid treatment in the case of emergency. There was no certificate of the concerned authority permitting transportation of cattle. It was the assessment of the informant that the cattle loaded on the vehicle were looking very scared and frightened.

On the basis of the aforesaid written report, a case vide Madanpur P. S. Case No. 285 of 2018 was registered for investigation on 24.11.2018 for the offences under Sections 428 and 429 of the Indian Penal Code; Sections 4, 4(B) (2) of Bihar Preservation and Improvement of Animals Act, 1955; Sections 20 /11 of the Prevention of Cruelty to Animals Act, 1960; Section 125 (E) of the Central Motor Vehicle Rules, 1989; and Sections 96, 97 and 98 of the Transport of Animals Amendment Rules.

It has been submitted on behalf of the petitioner that the cattle was purchased by him from



Gheghtha Animal Fair for a consideration amount and the same was being transported to Hazaribagh. It was also disclosed by the petitioner that his uncle runs a Goshala. Two of the cows at the time of transportation were parturient, whereas the others were milching.

An application was preferred by the petitioner for the release of the cattle but the same appears to have been refused by the Chief Judicial Magistrate, Aurangabad *vide* order dated 14.12.2018.

The learned Chief Judicial Magistrate took note of Section 3 of the Prevention of Cruelty to Animal (Care and Maintenance of Case Property Animals) Rules, 2017 but does not appear to have ensured that the seized cattle be housed in any infirmary, pinjrapole, SPCA Animal Welfare Organization or any Gaushala, during the pendency of the application. According to the case record, the cattle were entrusted on Jimmanama to a Constable. There also does not appear to be any effort on the part of the courts below to have ensured proper



upkeep and care of the cattle. No directions appear to have been issued with respect to creating any fund or identifying the source of money which will be used for the upkeep and maintenance of the cattle.

The revisional court also appears to have extracted Section 3 of the Prevention of Cruelty to Animal (Care and Maintenance of Case Property Animals) Rules, 2017 but has not acted in accordance with the Rules, which enjoins the Court to direct the animals / cattle to be housed at an infirmary, pinjrapole, SPCA Animal Welfare Organization or Gaushala during the pendency of the litigation.

The apathy shown by both the courts below is highly un-understandable. If both the Courts were convinced that the cattle was not being transported properly; rather in a cruel manner, it was only required by the Courts before whom the facts were placed to have directed for the cattle being kept at a proper place. It appears that both the Courts were only swayed by the



appearance and opposition of the informant who demonstrated a keen interest in getting the application for release rejected.

While opposing the prayer for release of the cattle, there is no offer on behalf of the informant who is a member of a cow protection organization to even remotely suggest that the seized cattle be directed to be placed in infirmary, pinjrapole, SPCA Animal Welfare Organization or Gaushala for its safety during the pendency of the litigation.

The learned counsel appearing for the informant has drawn the attention of this Court to Rules 3 (b), 4, 5 and 8 of the Prevention of Cruelty to Animal (Care and Maintenance of Case Property Animals) Rules, 2017 (hereinafter called the Rules of 2017) and has submitted that according to such Rule (Rule 8), which talks about the status of animal upon disposal of litigation, mandates that if an accused is convicted or pleads guilty, the Magistrate shall deprive him of the



ownership of the animal and forfeit the seized animal to the infirmary, pinjrapole, SPCA Animal Welfare Organization or any Gaushala already having custody for their proper adoption. If the accused is found not guilty of all the charges, the seized animals shall be returned to the accused or the owner of the animal and the unused portion of any bond amount executed shall be returned to the person who might have executed the bond. Rule 5 speaks about the execution of bond referred to above. The Magistrate while handing over the custody of the seized animal / cattle to an infirmary, Goshala etc., would be required to determine the amount which would be sufficient to cover all reasonable costs incurred and anticipated to be incurred for transport, maintenance and treatment of the animals based on the input provided by the jurisdictional veterinary officer and is also required to direct the accused or the owner to execute a bond of the determined value with sureties within three days and if



the accused or the owner does not execute the bond, the Magistrate has the power to direct for forfeiture of the animal to the infirmary etc. The bond has to be drawn up upon the fortnightly basis on the actual / reasonable cost incurred in caring of the animal from the date such bodies would receive the custody and till the date of final disposal of the case.

Nothing seems to have been done by the courts below while dealing with the application for release or while exercising revisional jurisdiction against the order of the Chief Judicial Magistrate refusing to release the cattle.

Mr. Prashant Kumar, learned counsel for the informant submits that from the reading of rules 3, 5 and 8 of the Rules, referred to above, there is no way in which any Court can direct for release of the cattle to its owner during the pendency of the case. Such release can only be ordered if the accused is not found guilty of the charges but not otherwise. In case of conviction, the



only option before the Magistrate is to deprive the convicted owner of the ownership of the animal and forfeit the same to anyone of the care taking institutions, viz. infirmary, pinjrapole, SPCA Animal Welfare Organization or Gaushala etc.

The aforesaid interpretation does not appear to be correct.

The Prevention of Cruelty to Animal (Care and Maintenance of Case Property Animals) Rules, 2017 though is a separate rule specially dealing with the maintenance of case property in the shape of seized cattle but that cannot be read in exclusivity i.e. to the exclusion of the provisions contained in Chapter XXXIV of the Code of Criminal Procedure (Sections 451 to 459).

In support of the proposition suggested by the learned counsel for the informant, certain case laws have been cited; which are being listed hereinbelow:

" (1) Narad Joshi v. State of Uttarakhand 2014



(2) UC 1590

(2) Mohd. Moinuddin v. The State of MP, 2010

(2) ALD (cri) 682

(3) Prema Veeraraghavan v. State 2002 (2)

RCR (cri) 225

(4) Dhyan Foundation v. The State of Assam &
Ors. Cri. Pet. 452 / 2020

(5) Dhyan Foundation v. The State of Bihar
Cr.WJC No. 263 / 2017

(6) Haji @ Ikhlaq Gaffar Dabawala v. The State
of Maharashtra, Cr. Application No. 1044 / 2015"

An order of Hon'ble Supreme Court, passed in Criminal Appeal No. 230 of 2020, arising out of SLP (Crl.) No. 11726 of 2019, also has been brought on record by the learned counsel for the informant wherein a revisional order passed by the Madras High Court directing for granting interim custody of the cattle to the owner was under challenge. In the aforesaid case, the accused persons were found to have been transporting



18 buffaloes and 19 bulls in a truck which was closed from all sides and was air tight, making it difficult for the cattle to breath. There was absolutely insufficiency of food and water or any medial facility by way of first aid. One of the animals had died during the transportation out of suffocation.

The High Court of Madras granted interim custody of the animals to the concerned persons after imposing conditions, namely that the accused shall appear before the trial court and produce the original bills to prove his ownership; he shall file an undertaking that the cattle would be maintained properly and will not be treated in any cruel manner and shall be transported in a safe manner. It shall be used only for agricultural purposes and if necessary, shall be produced before the trial court as and when required. The petitioner therein was also directed to take the individual photograph of cattle and produce the same before the trial court.

Relying on the provisions contained in Rule 56



of Transport of Animals Rules, 1978, which required specific precaution of transporting cattle from one place to another and not having found the same to have been followed in that case specially when the maximum number of animals which could be transported in a vehicle was 6 and against which requirement, 37 animals were being transported and that such incident at the hand of the accused was not a solitary incident but such acts were repeated several times, the Supreme Court came to the conclusion that the accused persons were found *prima facie* guilty of showing cruelty towards animals. In this context, it was observed that interim custody of animals ought not to have given to the accused persons. If the accused are finally found to be not guilty, then it was directed that the issue of custody of the animals would be logically dealt with in accordance with the rules and regulations, but at that stage, the Supreme Court was of the view that the accused persons were not entitled to the interim custody



of the animals.

It is also relevant here to note that the Hon'ble Supreme Court, in keeping with the spirit behind the enactment of the Rules for prevention of cruelty to animals specially when they are relegated to the status of case property, it was directed that the profile of the accused persons and the identity of the cattle be ascertained and such determination of profile of the accused and the identity of the cattle shall be carried out only in accordance with law and would be subject to the final orders to be passed by the concerned Court in the case of crime in question.

On the strength of the aforesaid decision of the Hon'ble Supreme Court, learned counsel for the informant has sought to oppose the present application also.

The learned counsel for the petitioner, on the other hand, submits that the facts in the case which has just been referred to are absolutely different from the



facts of the present case.

37 cattle were being transported in the aforementioned case of Madras in which one of the animals had died of suffocation. The petitioner is only alleged to have been carrying 5 adult cows with two calves and there were three other persons on the vehicle. The assumption of cruelty because of the nostrils of the animals were tied together, it has been argued, was highly unjustified.

The issue of ownership was completely bypassed by the courts below even when slips / bills for purchase of those cattle had been shown to the authorities right from the time of the institution of the case till the time that the revision application preferred by the petitioner against the order refusing to release the cattle was passed.

From a perusal of the facts and on hearing of the arguments advanced on behalf of the parties, what really concerns this Court is that both the courts below did not at all advert to the relevant provisions of the



rules which mandated the cattle to be kept in an infirmary or other safe place and allocating the funds by way of directing for furnishing of bond, in the first instance of 80 percent of the expected expenditure likely to be incurred in the safe and proper upkeep of the cattle. A peculiar decision was taken by the Courts in allowing the cattle to be retained on Jimmanama by private persons and Constables of the Police Department.

No report has been obtained from any jurisdictional veterinary nor any health report has been obtained. What has also bothered this Court is the extreme and unusual interest of the informant in opposing such application for release but without showing any commensurate sympathy or concern for the cattle.

The resultant situation is disheartening.

If the efforts of the informant were really public spirited or in the interest of the cattle which were seized



because of his efforts, the yeoman services provided by him to the State administration could be creditworthy. But if the purpose is different, it, for sure, raises alarm bell.

This Court is absolutely unhappy in the manner in which the courts below have handled the application of release of the life stock. There is no discussion with respect to the ownership or of having come to the definite *prima facie* finding that cruelty was perpetrated on the animals whilst they were being transported to Hazaribagh from the animal market from where those were purchased. Merely because certain provisions were shown to the Court by an extra-spirited informant, the application appears to have been rejected. Till date, there is nothing on record to satisfy this Court that the requirements under the Rules, which have been quoted by the informant or by the Courts which have passed orders was ever followed. What is the status of health of the cattle which has been seized and given on



Jimmanama is not known. Who is spending money on their upkeep is also in complete obscurity.

This is not the manner in which the cruelty to animals could be prevented. It is a lopsided effort of the informant as well as the Courts in ensuring the implementation of the rules referred to above.

This Court is also averse to note that there is no report about those cattle as to their condition today whether they are alive or dead.

Under the aforesaid circumstances, this Court quashes the order passed by the Chief Judicial Magistrate, Aurangabad as also the revisional order dated 08.01.2019 and remits the case to the Court of learned Chief Judicial Magistrate to look into these aspects of the matter and then deal with the application of release of the cattle, which shall be filed afresh by the petitioner.

While disposing off such application, the court below shall take into account all the requirements under



the Rules.

The Court also directs to conclude the final proceedings as expeditiously as possible, preferably within a period of four months from the date of production/receipt of a copy of this order.

The petition stands disposed off with the aforesaid observation and direction.

(Ashutosh Kumar, J)

Skm/-
Praveen-II

U		T	
---	--	---	--

