

IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

CRLMC No.260 of 2021

Sk. Sabir Alli

....

Petitioner

Mr. Piyush Ku. Mishra, Advocate

-Versus-

State of Odisha and Another

....

Opposite Parties

Mr. P.K. Rout, AGA

Mr. T.K. Sahu, Advocate
for Sankalpa Seva Trust

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF ORDER:12.10.2022

1. The petitioner challenges the impugned order dated 7th January, 2021 passed in Criminal Revision No.09 of 2020 by the learned Additional Sessions Judge, Karanjia for having confirmed the order dated 15th December, 2020 in CMC No.111 of 2020 of the learned S.D.J.M., Karanjia who declined to release a vehicle seized in connection with Karanjia P.S. Case No.214 dated 6th November, 2020 registered under Section 379 IPC and Section 11 (d), (e) & (f) of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as 'the PCA Act') solely on the ground that it was previously involved in a similar case and for having violated the conditions of the court imposed earlier.

2. Mr. Mishra, learned counsel for the petitioner submits that the seized vehicle should have been released in favour of the petitioner subject to such terms and conditions he being the owner but it was declined by the learned courts below simply for the reason that it had previously been seized in connection with Karanjia P.S. Case

No.160 dated 2nd September, 2020. On the other hand, Mr. Rout, learned AGA submits that since the condition imposed in the earlier case while releasing the vehicle was violated rightly therefore the learned courts below refused to release it in favour of the petitioner as there was every likelihood of the same being again used in the illicit transportation of animals in contravention of the provisions of the PCA Act. Similarly, Mr. Sahu, learned counsel for the Trust justified the impugned orders of the learned courts below.

3. It would be apposite to make a mention of the relevant provisions of Rule 5 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 (in short 'the Rules') dealing with the subject which are extracted below:

“5. Execution of bond-(1)The Magistrate when handing over the custody of animal to an infirmary, pinjrapole, SPCA, Animal Welfare Organization or Gaushala shall determine an amount which is sufficient to cover all reasonable cost incurred and anticipated to be incurred for transport, maintenance and treatment of the animal based on the input provided by the jurisdictional veterinary officer and shall direct the accused and the owner to execute a bond of the determined value with sureties within three days and if the accused and owner do not execute the bond, the animal shall be forfeited to infirmary, pinjrapole, SPCA, Animal Welfare Organization or Gaushala.

(2) XXX XXX XXX

(3) XXX XXX XXX

(4) Where a vehicle has been involved in an offence, the Magistrate shall direct that the vehicle be held as a security.

5) In case of offence relating to transport of animals, the vehicle owner, consignor, consignee, transporter, agents and any other parties involved shall be jointly and severally liable for the cost of transport, treatment and care of animals.

(6) XXX XXX XXX

(7) XXX XXX XXX

(8) If the owner and the accused do not have the means to furnish the bond, the Magistrate shall direct the local

authority to undertake the costs involved and recover the same as arrears of land revenue.”

4. It is made to understand that as per Rule 5(4) of the Rules, the Magistrate shall direct the vehicle involved in the commission of any offence under the PCA Act to be held as a security. Rule 5(5) of the Rules specifies that the accused and all the parties including the transporter shall be jointly and severally liable for the cost of transport, treatment and care of animals. Though, the accused and the owner shall be liable to execute bond with sureties as per Rule 5(1) of the Rules but the liability is again joint and several in view of Rule 5(5) thereof for the purpose of bearing the expenses towards transport, treatment and care of the animals. Furthermore, in case the bond is not executed, the Magistrate shall direct the local authority to undertake the cost involved and recover it as arrears of land revenue. For the liability being joint and several, which may be enforced against any of the parties, if the vehicle owner is willing or when he may be directed to furnish a bond in terms of Rule 5(1) of the Rules, in the considered view of the Court, there would not be any need to detain the vehicle as a security. In any case, there is no bar as such in the PCA Act and Rules against release of the vehicle involved in an offence relating to transportation of animals. A vehicle seized under the PCA Act cannot be allowed to lie idle in the premises of the PS exposed to vagaries of the climate if one of the parties involved is ready and willing to deposit the security. In such view of the matter, the Court is of the opinion that the seized vehicle could be released subject to such conditions in accordance with Rule 5 of the Rules on execution of a bond to meet the security. Any such detention without reason and purpose is definitely to damage the vehicle and diminish its value directly affecting the interest of the petitioner. According to the Court, once involved in a similar case at an earlier

point of time should not be a ground to detain the vehicle. In fact, the further use of the vehicle vis-à-vis transportation of animals may be obviated by imposing stringent conditions while directing its release. On such ground, detention of a vehicle is no solution, when it is only to be held as a security with a purpose to realize the expenses to be borne in the transport, treatment and care of the animals.

5. In fact, a decision of this Court in the case of **Jiba Bikash Parishad Vrs. State of Odisha and another** reported in 2021(II) OLR 1016 is cited at the Bar which is with respect to a case under the PCA Act. The judgment legal classicus on the subject relating to animal cruelty is the case of **Animal Welfare Board of India Vrs. A. Nagaraja and others** reported in (2014)7SCC547, wherein, the Supreme Court discussed in detail about the PCA Act being a welfare legislation and its purpose and objective with reference to the Directive Principles of State Policy. The Apex Court, in the decision (supra), even expanded the realm of 'the right to life' envisaged in Article 21 of the Constitution. No doubt, a court should be alive to the spirit of the law but while dealing with matters of present nature, the competing interests of the parties involved are to be taken care of which are often evenly poised.

6. The Court is also reminded of the decision of the Apex Court in the case of **Sunderbhai Ambalal Desai Vrs. State of Gujarat** reported in AIR 2003 SC 638, wherein, general directions were issued on disposal of the articles seized in criminal cases lying unattended to and without any purpose. The above dictum should be followed without fail unless there is any specific statutory interdiction against release of seized articles. Regard being had to the instant case which is based on previous involvement of the vehicle, the Court is of the conclusion that it should have been released in favour of the

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petitioner subject to confirmation about his ownership and of course by imposing suitable conditions.

7. Accordingly, it is ordered.

8. In the result, the petition under Section 482 Cr.P.C. at the behest of the petitioner stands allowed. As a logical sequitur, the impugned order dated 7th January, 2021 passed in Criminal Revision No.09 of 2020 by the learned Additional Sessions Judge, Karanjia is set aside. Consequently, the learned S.D.J.M., Karanjia is hereby directed to ensure interim release of the vehicle bearing registration No. WB-29A-6296 seized in connection with Karanjia P.S. Case No.214 dated 6th November, 2020 pending disposal of C.T. No.613 of 2020 by imposing conditions befitting the facts and circumstances of the case and on execution of a security bond in compliance of Rule 5 of the Rules and as per the guidelines or advisories or instructions issued from time to time by the Animal Welfare Board of India.

(R.K. Pattanaik)
Judge

TUDU