

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.918 of 2022

Sk. Nura Mohammad @ Mahammad Petitioner
Mr. P. Swain, Advocate

-Versus-

State of Odisha Opposite Party
Mr. T.K. Praharj, SC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
28.09.2022

Order
No.
03.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State.
2. In the present case, the challenge is as to the impugned order dated 21st March, 2022 passed by the learned District and Sessions Judge, Jajpur in Criminal Revision No.02 of 2022 on the grounds *inter alia* that release of the vehicle was declined without any justification even though it was involved in the transportation cattle for which FIR was lodged and thereafter, Jajpur Sadar P.S. Case No.12 dated 12th January, 2022 was registered under Section 429 read with 34 IPC and Section 11 (d) of the Prevention of Cruelty to Animals Act, 1960.
3. Learned counsel for the petitioner submits that the petitioner is the owner of the vehicle and while claiming so, he refers to smart card of registration certificate, a copy of which is at Annexure-2 which is not in dispute from the side of the State and challenged the impugned order under Anenxure-3 on the ground that despite the fact that despite a procedure as prescribed as Rules 3(b) of the Prevention of Cruelty to Animals (Care and Maintenance

of Case Property Animals) Rules, 2017 (in short 'the Rules') to the effect that the animals to be housed at infirmary, pinjrapole, SPCA, Animal Welfare Organization or Gaushala during the pendency of the litigation, it was not duly followed rather the cattle were handed over to and in favour of private individuals and since there is no compliance of the said rule, the impugned order under Anenxure-3 is not sustainable.

4. On the other hand Mr. Praharaj, learned counsel for the State submits that the vehicle was allegedly found transporting cattle and cattle were hand over to the named volunteers of Nandagoan Gaushala Ashram which is registered with the State Government and Government of India and therefore, no wrong was committed by the IO in ensuring its delivery.

5. Considering the submission of learned counsel for the State that the cattle were delivered to the volunteers of the organization named above and there has been prima facie compliance of Rule 3(b) of the Rules, the Court is of the view that the objection which has been raised by the petitioner who is the owner of the vehicle in question cannot be sustained. However, while seeking release of the vehicle bearing registration No.OD-34-N-3729, the learned counsel for the petitioner submits that he is prepared to execute any such bond with surety as prescribed in the Act and Rules. In fact, under Rule 5(5) of the said Rule, in case of offence which relates to transport animal, the vehicle owner and others shall be jointly and severally liable for the cost of transport, treatment and care of animals. In such view of the matter, the petitioner who happens to be the owner of the vehicle in question shall have to comply the aforesaid statutory requirement while seeking its release in terms of Section 457 Cr.P.C. In fact, the revisional court declined to release the vehicle by refereeing to Rules 5(4) of the Rules which stipulates

that the vehicle so involved in an offence under the said Act, the Magistrate shall direct that the vehicle should be held as a security. However, in the Act or Rules, there is no bar against release and any such release shall have to be subject to the conditions and should not be denied referring to Rule 5(4) of the Rules. In view of the above, the Court is of the view that the vehicle which is lying idle inside the P.S. premises since the time of seizure and exposed to sun and rain should immediately be released in favour of the petitioner subject to executing bond with surety and complying Rule 5(5) of the Rules.

6. Accordingly, it is ordered.

7. In the result, the CRLMC stands allowed. Consequently, the impugned order under Anenure-3 passed by the learned District and Sessions Judge, Jajpur in Criminal Revision No.02 of 2022 is hereby set aside. Consequently, the learned S.D.J.M., Jajpur is directed to release the vehicle bearing registration No.OD-34-N-3729 seized in connection with C.T. Case No.62 of 2022 corresponding to Jajpur Sadar P.S. Case No.12 of 2022 in favour of the petitioner subject to execution of bond with surety and compliance of Rule 5(5) of the Rules, cost and assessment of which, shall be determined by the court as per and in accordance with the Rules and Government instructions.

8. An urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge

