

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.1030 of 2017**

***Jitendra Swain***

....

***Petitioner***

Mr. Gyanaloka Mohanty, Advocate

*-versus-*

***State of Odisha and others***

....

***Opposite Parties***

Mr. Iswar Mohanty, A.S.C.

**CORAM:**

**JUSTICE M.S. RAMAN**

**ORDER**

**11.11.2022**

**Order No.**

06.

1. This petition under Section 482 of Cr.P.C. has been filed on 28<sup>th</sup> March, 2017 with a prayer to quash the order dated 16<sup>th</sup> February, 2017 passed by the learned 2<sup>nd</sup> Addl. Sessions Judge, Baripada in Criminal Revision No.27 of 2016.

2. The impugned order reveals that the learned 2<sup>nd</sup> Addl. Sessions Judge, Baripada while setting aside the order of the learned S.D.J.M., Baripada, directed release of 47 numbers of cattle in *zima* of the revision petitioner—Md. Basir (opposite party No.2). The present opposite party No.3, namely, Biswajit Das Mohapatra, was the Informant in Jharpokharia P.S. Case No.107 dated 7<sup>th</sup> November, 2016, registered under Sections 279, 353, 506 of I.P.C., Section 11(1)(a)(d) of the Prevention of Cruelty to Animal Act, 1960 and Section 7 of the Odisha Prevention of Cow Slaughter Act.

3. This Court *vide* order dated 16<sup>th</sup> December, 2019 made the following observation:-

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Opposite party no.3 in course of patrolling intercepted a vehicle and found illegal transportation of 47 number of bullocks for which he lodged an F.I.R. before the IIC,

Jharpokharia P.S. The F.I.R. was registered against Driver of the container – Abdul Zabbar.

It is the contention of the learned counsel for the appellant that those cattle were left in his zima who was the Secretary of Maa Bharati Go Seva Kendra, Balasore on the assurance by the police people that cost of maintenance of the cattle would be paid. But in the revision filed by Md. Basir-opposite party no.2 herein, those cattle were ordered to be released which is illegal.

In the petition U/s.482 of the Cr.P.C., it is categorically stated that the opposite party no.3, informant-ASI of Police had applied and in his favour he cattle were released. The said fact is not correct with regard to certified copy of the order of the revisional court, impugned here.

Fact remains that the appellant is the zimadar in whose favour 47 numbers of cattle were released by the police in course of the investigation. Opposite party no.3 is the ASI of Police who had intercepted the vehicle containing 47 numbers of cattle. Opposite party no.2 is the revisional petitioner in whose favour the revisional court has ordered to release the cattle.

Learned counsel for the appellant files the photocopy of an order dated 24.12.2013 in Criminal Misc. Case No.47517 of 2013 in the case of *Sardar Khan and another vrs. State of Bihar and others* of the High Court of Judicature at Patna to contend that the petitioner has right to prefer the revision as aggrieved.

Carefully gone through the cited decision. In this proceeding U/s.482 of the Cr.P.C., it is not known as to the stage of proceeding of the trial court as well as the condition of the cattle left in zima during investigation and subsequent to the impugned revisional order.

Recording of a finding without hearing the opposite party nos.2 and 3 would be prejudicial to them.

In view thereof, it is felt just and proper to issue notice to the opposite party nos.2 and 3 to the effect that the case may be finally disposed of at the stage of admission.

The petitioner is to file requisites for issuance of notice by Registered Post with A.D. within one week. Notice be made returnable within four weeks.

Send for the photocopy of the lower court record from the court of SDJM, Baripada in G.R. Case No.1297 of 2016 corresponding to Jharpokharia P.S. Case No.107 dated 7.11.2016.

List this case on 19.02.2020”

4. When the matter is taken up today, Mr. Mohanty, learned counsel for the petitioner submitted that he has no

instructions in the matter and, accordingly, does not wish to press this matter.

5. In view of such submission, this CRLMC stands disposed of as not pressed.

6. A copy of this order be communicated to the Court below forthwith.

***(M.S. Raman)***  
***Judge***

*MRS*

