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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.73 of 2022

Ginjala Naga Appala Raju

... Petitioner

Vs.

State rep by its

The Inspector of Police,

Avinashi Police Station,

Tirupur District.

Crime No.834 of 2021.

... Respondent

PRAYER: The Criminal Revision Case is filed under Section 401 r/w 397 of the Code of Criminal Procedure, to call for the entire records comprised in Crl.M.P.No.2057 of 2021 in Crime No.834 of 2021 and set aside the order dated 19.08.2021 made by the learned Judicial Magistrate, Avinashi, Tirupur District and direct to release the 33 Nos of Buffalo (Cow).

For Petitioner : Mr.Vimal B.Crimson

For Respondent : Mr.L.A.J.Selvam,
Government Advocate [Crl. Side]

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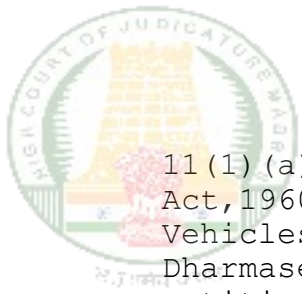
O R D E R

(The case has been heard through Video Conferencing)

This Criminal Revision Petition has been filed by the petitioner/property owner seeking to the set aside the order dated 19.08.2021 made by the learned Judicial Magistrate, Avinashi, Tirupur District in Crl.M.P.No.2057 of 2021 dismissing the petition filed under Section 451 r/w 457 Cr.P.C seeking interim custody of the cattles.

2. The brief facts of the case is as follows :-

On information during the regular vehicle check up at 6.00. p.m near Thekkkalur S.P.Apperals Company, the Sub-Inspector of Police, Avinashi intercepted the lorry bearing Reg.No.AP-26-X-5688 and found 33 Cattles were loaded in it and transported from Thanjavur to Pollachi without proper ventilation, food and without any medical certificate. A case has been registered in Crime No.834/2021 for the offence U/S



11(1)(a), 11(1)(d), 11(1)(h) of Prevention of Cruelty to Animals Act, 1960, Sec. 429, 511 of IPC and under Section 177 of Motor Vehicles Act. The seized cattle were entrusted with M/S Indhu Dharmaseva Trust, which runs a Kabilainandi Gosalai. The petitioner had filed Crl.M.P.No.2057 of 2021 before the Judicial Magistrate, Avinashi, seeking interim custody of the above said cattle and the same was objected by Kabilainandi Gosalai by filing intervening petition in Crl.M.P.No.2194 of 2021 and also filed Crl.M.P.No.2146 of 2021 seeking interim custody of cattle.

3. The learned Judicial Magistrate relying on the judgment of this Court in the case of Naseerulla Vs Inspector of Police, Connoor & another (Crl.R.C.No.777 of 2010 dated 14.03.2013), dismissed the petition filed by the petitioner stating that he has not filed any documents to prove his ownership and allowed the petitions filed by Kabilainandi Gosalai, against which the present revision has been filed.

4. Learned counsel appearing for the petitioner would submit that petitioner purchased 33 Cows (Buffaloes) in a Cattle market and transported it in a lorry having top open for ventilation from Thanjavur to Pollachi via Coimbatore for agricultural and farming purpose and the cattle were provided with adequate fodders. While enroute the respondent had intercepted the vehicle and registered a case and had seized the cattle. He would submit that the cattle are now retained at Kabilainandi Gosalai. He would submit that the petitioner being the owner, maintained the cattle properly and transit them as per the rules. The petitioner is unable to use them in his cattle farm.

5. The learned counsel would further submit that the petitioner being the owner of the cattle has not committed any cruelty to the animals, he had handed over the animals for transporting from Thanjavur to Pollachi and it was transported in violation of provisions of Prevention of Cruelty to Animals Act without the knowledge of the petitioner. The petitioner has not been found guilty for the offence under the Act earlier and he has not suffered any conviction. The petitioner undertakes that the cattle will be maintained properly and will not be subjected to cruelty and the petitioner is prepared to produce them either before the respondent or before the Court as and when required for and he is also prepared to furnish adequate surety for the same.

6. He would also submit that there is no legal bar for returning the cattle to the owner of the cattle. He would further submit that in similar matters, the Courts have, while deciding whether the interim custody of the animals can be



given to the owners who is facing prosecution has found the following factors to be relevant :- (1) the nature and gravity of the offence alleged against the owner; (2) whether it is the first offence alleged or he has been found guilty of offences under the Act earlier; (3) if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution; (4) the condition in which the animal was found at the time of inspection and seizure; (5) the possibility of the animal being again subjected to cruelty."

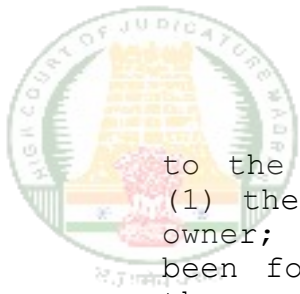
7. The learned counsel would further submit that in the similar circumstances, the Gujarat High Court in Spl.Crl.A.No.8243 of 2020 dated 06.05.2021 had ordered release of cattle in favour of the owner imposing certain conditions.

8. Mr.L.A.J.Selvam, learned Government Advocate (crl.side) would submit that the lorry bearing Reg.No.AP-26-X-5688 was intercepted by the respondent/police and it was found transporting 33cows (female buffaloes) in violation of provisions of Prevention of Cruelty to Animals Act, 1960. He would submit that on enquiry, the driver had stated that the cattle belongs to the petitioner and they were transported from Thanjavur to Pollachi to the cattle farm of the petitioner.

9. Heard the learned counsels and perused the materials available on record.

10. Since, it was found that 33cows (buffaloes) were transported in a congested manner in violation of the provisions of the Prevention of Cruelty to Animals Act, 1960, the respondent has registered a case. The petitioner had filed application for return of cattle and the learned Magistrate relying on the judgment in the case of Naseerulla Vs Inspector of Police, Connoor & another had dismissed the application. It is also stated by the petitioner that due care of the cattle will be taken by him and they will be produced before the respondent or before the Court as and when required for.

11. In the case of Manager, Pinjrapore Deudar and another v. Chakram Moraji Mat and others reported in (1998) 6 SCC 520 the Hon'ble Apex Court has held "In a case where the owner is claiming the custody of the animal, the pinjrapole has no preferential right. In deciding whether the interim custody of the animal be given to the owner who is facing prosecution, or



to the pinjrapole, the following factors will be relevant : (1) the nature and gravity of the offence alleged against the owner; (2) whether it is the first offence alleged or he has been found guilty of offences under the Act earlier; (3) if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution; (4) the condition in which the animal was found at the time of inspection and seizure; (5) the possibility of the animal being again subjected to cruelty. There cannot be any doubt that establishment of the pinjrapole is with the laudable object of preventing unnecessary pain or suffering to animals and providing protection to them and birds. But it should also be seen: (a) whether the pinjrapole is functioning as an independent organization or under the scheme of the Board and is answerable to the Board; and (b) whether the pinjrapole has a good record of taking care of the animals given under its custody. A perusal of the order of the High Court shows that the High Court has taken relevant factors into consideration in coming to the conclusion that it is not a fit case to interfere in the order of the learned Additional Sessions Judge directing the State to hand over the custody of the animals to the owners."

12. In this case as stated above, the petitioner is the owner of 33 cows (female buffaloes), he had handed it over to the transporter for transporting it from Thanjavur to his cattle farm in Pollachi. The cattle have been transported in violation of the provisions of Prevention of cruelty to Animals Act without the knowledge of the petitioner, the petitioner has not suffered any previous conviction. The cows are not taken for slaughtering and they have been taken to the farm of the petitioner at Pollachi. The petitioner has agreed to file an affidavit of undertaking that the animal will not be subjected to cruelty and they will be produced before the trial Court as and when required.

13. In such circumstances, this Court is of the opinion the learned Magistrate can be directed to handover the interim custody of the cattle 33 cows (buffaloes) to the petitioner on certain conditions. Accordingly, the Criminal Revision Petition is allowed and the impugned order, dismissing the petition for return of property in CrI.MP.No.2057 of 2021, dated 19.08.2021, passed by the learned Judicial Magistrate, Avinashi, Tirupur District, is hereby set aside and that the interim custody of the cattles (33 buffaloes) shall be handed over to the petitioner, subject to the following conditions:

(i) The petitioner shall execute a bond for a sum of Rs.75,000/- with two sureties for a like sum to the satisfaction of learned Judicial Magistrate,



Avinashi, Tirupur District.

(ii) The petitioner shall take individual photographs of the Cows (33 buffaloes) and hand it over to the Magistrate.

(iii) The petitioner is further directed to file an affidavit of undertaking that the cattle will be maintained properly and will not be treated cruelly and it will be transported in a safe manner and used only for agricultural purpose and if necessary they will be produced before the learned Magistrate

or before the respondent as and when required or either during investigation or during trial.

14. With the above direction, the criminal revision stands allowed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vri/shk
To

1. The Judicial Magistrate, Avinashi, Tirupur District.
2. The Inspector of Police,
Avinashi Police Station,
Tirupur District.
Crime No.834 of 2021.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.Vimal B.Crimson, Advocate Sr.NO. 5851
Crl.R.C.No.73 of 2022

SPD(CO)
A.SK(10.02.2022)