



PRAYER in Crl.O.P.No.2470/2021: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to call for the records to Crl.M.P.No.1715 of 2020 in Crime No.1873 of 2020 common order dated 06.11.2020 passed by the learned Judicial Magistrate, Kangayam, Avinashi (FAC) and set aside the same and direct the respondent to hand over the 13 bulls to the petitioner.

For Petitioner : Mr.R.Thirumoorthy
[in both Crl.O.Ps]

For Respondent : Mr.A.Damodaran
[in both Crl.O.Ps] Additional Public Prosecutor

For Intervenor : Mr.K.M.Subramaniam
[in both Crl.O.Ps]

COMMON ORDER

These Criminal Original Petitions have been filed challenging the common order of the learned Judicial Magistrate, Kangayam, Avinashi (FAC) made in Crl.M.P.Nos.1718 & 1715 of 2020.

2. These petitioners are also the petitioners in Crl.M.P.Nos.1718 & 1715 of 2020. The case of the prosecution is that on 06.10.2020 on receipt of information during the regular vehicle checkup at Odakkadu, Salem to Kovai by-pass road, the accused transported 66 cattle



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[29 buffaloes + 37 buffaloes] in two Lorries bearing Registration Nos.AP 39 TF 4992 and RJ 14 GJ 0055 by violating the Rules and Regulations for transporting the cattle; the cattle were jam packed and they were not provided with proper fodder or water and they have been taken to slaughter house; on the complaint given by one Karthikeyan, a case has been registered against the accused for the offences under Sections 11(1)(a), 11(1)(d), 11(1)(h) of the Prevention of Cruelty to Animals Act, 1960, Section 237 IPC and Section 177 of Motor Vehicles Act, 1988; petitioners have filed the petition seeking for the interim custody of the cattle [66 cattle] and the same was not given; instead the interim custody of the cattle was given to one Kabilanandhi Goushalai. Aggrieved over that, these petitions have been filed.

3. The learned counsel for the petitioners submitted that the petitioners transported the cattle only for the purpose of agriculture, the cattle were not subjected to cruelty. The order of the learned Judicial Magistrate, Kangayam, Avinashi (FAC) should be set aside and the interim custody of the cattle should be given to the petitioners.



4. The learned counsel for the intervenor / Kabilanandhi

Gosalai has filed a counter by stating that the petitioners did not file any proof to show that the cattle have been transported for the purpose of agriculture; the cattle are well maintained by Kabilanandhi Gosalai by providing with water, fodder including grass; excepting a few cattle which died on various dates i.e. 27.12.2020, 28.12.2020, 08.01.2021 and 10.01.2021 other cattle are safe; all the cattle have been loaded in a vehicle just for the purpose of taking them to slaughter house; the petitioners have themselves stated that the cattle were transported only for the said purpose; since the petitioners have done cruelty to the animals, the Court has rightly granted the custody of the animals to Kabilanandhi Gosalai.

5. The learned Additional Public Prosecutor for the respondent submitted that the manner in which the cattle were transported would show that they have taken only for slaughter purpose; the cattle were brought from other States and they have been transported to various States like Kerala and Andhra Pradesh for slaughtering purpose; if the cattle are handed over to the petitioners they will not maintain them properly and



hence the order of the learned Judicial Magistrate, Kangayam, Avinashi (FAC) should be confirmed.

6. The records would show that the petitioners are named accused in this case. Though it is claimed that the petitioners have been transported the cattle for the purpose of agriculture, no documents have been produced to show the same. The learned counsel for the petitioners relied on the judgment of this Court held in ***Crl.R.C.No.73 of 2022 [Ginjala Naga Appala Raju vs. State]***. In support of his contention while deciding the interim custody even if the owner is facing the prosecution the custody can be given. In the said judgment, it is seen that the judgment of the Hon'ble Supreme Court held in ***Manager, Pinjrapore Deudar and another vs. Chakram Moraji Mat and others*** reported in ***(1998) 6 SCC 520*** has been referred. In the said case, the Hon'ble Supreme Court has laid down factors which should be considered while ordering the interim custody of the cattle. It is held as under:-

“In a case where the owner is claiming the custody of the animal, 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



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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 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 animals to the owners.”

7. The cattle have been transported in two vehicles and for which, two cases have been registered against the very same petitioners. The cattle were transported in a congested manner in a long route. In the case cited by the petitioners the cattle have been transported from Thanjavur to Pollachi for agricultural purposes and they have been transported in a congested manner without the knowledge of its owner. But the case in hand



the owners are the accused, who were present in the vehicle when the cattle were transported. The cramped manner in which the cattle were transported in the vehicle and the destination to travel on other States would show that they were not transported for agricultural purposes. At the time when the complaint was given the cattle were found to be starving without food and water. The petitioners did not have any explanation as to why the cattle were transported in a jam packed manner.

8. The intervenor, who has also filed the petition for interim custody have assured for the safety maintenance, Court had considered its safety to hand over the vehicle to Kabilanandhi Gosalai rather than to the petitioners. No certificate has been produced for transporting the custody as claimed by the petitioners. Since the condition of the cattle when they were seized and the manner in which they have been transported would not favour the petitioners to get the interim custody of the cattle. The learned Judicial Magistrate, Kangayam, Avinashi (FAC) has rightly evaluated the circumstances and had chosen to grant the custody of the



cattle to the intervenor / Kabilanandhi Gosalai. Hence, I find no reason for interference.

9. With the above observations, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

05.12.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

sri

To

1.The Judicial Magistrate,
Kangayam, Avinashi (FAC).

2.The Sub Inspector of Police,
Perundurai Police Station.

3.The Public Prosecutor,
Madras High Court,
Chennai.



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Crl.O.P.Nos.2828 & 2470 of 2021
and Crl.M.P.Nos.1567 & 1358 of 2021



R.N.MANJULA, J.

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Crl.O.P.Nos.2828 & 2470 of 2021
and Crl.M.P.Nos.1567 & 1358 of 2021

05.12.2022

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