

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.08.2022

PRONOUNCED ON: 02.09.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD)No.660 of 2021
and CRL.M.P.(MD)No.7376 of 2021

Sunitha Christy : Petitioner/Defacto complainant

Vs.

1.The State represented by
The Inspector of Police,
Aviyur Police Station,
Aviyur,
Virudhunagar District.
(Crime No.73 of 2021)

: Respondent/Respondent/Complainant

2.Sakthi

: 2nd Respondent/Petitioner/3rd Accused

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 Cr.P.C, to call for the records pass an order to set aside the order of the learned Judicial Magistrate No.II, Virudhunagar District dated 25.08.2021 made in CrI.M.P.No.3899 of 2021 in connection with Crime No.73 of 2021 on the file of the Inspector of Police, Aviyur Police Station, Aviyur, Virudhunagar District forthwith.

For Petitioner : Mr.T.Sugadev

For Respondents : Mr.S.Manikandan
Government Advocate (Criminal Side)
for R1
Mr.A.Arputharaj for R2

ORDER

This Criminal Revision is directed against the order passed in CrI.M.P.No. 3899 of 2021 dated 25.08.2021 on the file of the Judicial Magistrate Court No.II, Virudhunagar, allowing the petition, filed under Section 451 Cr.P.C.

2. The petitioner is the defacto complainant and she lodged a complaint, on the basis of which, FIR came to be registered in Crime No.73 of 2021 dated 18.07.2021 against four persons including the second respondent herein for the offences under Section 429 IPC and Sections 11(1)(d) and 11(1)(e) of Prevention of Cruelty to Animals Act, 1960.

3. The case of the prosecution is that the defacto complainant with the assistance of the first respondent police intercepted a vehicle, namely, Ashok Leyland, bearing Registration No.TN-57-R-5565, wherein, 15 bulls and 11 cows were carried in a cruel manner, without valid license or permission for transportation and for slaughtering.

4. It is not in dispute that the above said 26 cattle were seized and as per the direction of the learned Judicial Magistrate, were entrusted to Goshala for safe custody.

5. The second respondent claims to be the owner of the said cattle has filed a petition under Section 451 Cr.P.C., in CrI.M.P.No.3899 of 2021 seeking orders claiming interim custody of the cattle. The first respondent police has raised objections for returning the cattle to the second respondent.

6. The learned Magistrate, after enquiry, has passed the impugned order dated 25.08.2021 granting interim custody to the second respondent by imposing certain conditions. Aggrieved by the said order, the defacto complainant has come forward with the present revision.

7. The learned counsel for the petitioner would submit that as per Tamil Nadu Animal Preservation Act, the animals defined therein which are under the age of 10 and also fit for work and breeding should not be used for slaughter, that there are so many procedures to be followed and only after obtaining necessary permission, the cattle shall be taken to slaughter house, that all the cattle in the present case are lesser than 10 years and fit for work and breeding, that three of the cattle were pregnant at that time, that as per the Transport of Animals Rules, the cattle should not be taken in a cruel manner and whatever the vehicle may be more than 6 cattle should not be taken, that the second respondent had tied the legs of the cows and taken them in a cruel manner and that the learned Magistrate, without considering all the above factors, had passed the impugned order mechanically.

8. The learned counsel for the petitioner would further submit that if any animals are seized from the person, who is accused of cruelty, as per the Prevention of Cruelty to Animals Rules, the animals should be kept away from him and custody should not be handed over to that person and that in case, if the cattle are handed over to the custody of the second respondent, he would definitely take them to the slaughter house and also will maintain in a cruel manner.

9. The learned counsel for the second respondent would submit that the learned Magistrate, after taking note of all the factors required to be considered under the relevant enactments and also following the judgment of the Hon'ble Supreme Court reported in **(2002) 10 SCC 283** regarding the disposal of the property, has rightly allowed the petition and that neither the petitioner nor the Goshala with whom the interim custody has *locus standi* to question the orders of the learned Magistrate and claim interim custody of the cattle.

10. The learned counsel for the second respondent would submit that though the learned Magistrate has granted interim custody to him, the custody of the cattle was not handed over to him by Goshala and while he was taking necessary steps to get the custody, the present revision came to be filed.

11. It is not in dispute that 15 bulls and 11 cows are now in the custody of Goshala, maintained by one Deepak Nethan of Russ Foundation Green Dale Forms, Thondamanpatti, Chathirapatti, Madurai.

12. The first respondent has filed a counter affidavit dated 29.09.2021 raising objections similar to that of the petitioner. In the counter affidavit, it has been stated that out of 11 cows recovered, three were pregnant at the time of seizure and two of them already delivered calves as on date, that the second respondent has not obtained any certificate for slaughter of the said animals under Section 4 of Tamil Nadu Animal Preservation Act and that the second respondent being owner of the cattle illegally transported for their personal gains, without considering the social cause and in violation of the laws and prayed for allowing the revision. But the first respondent has filed a status report signed by some officer on behalf of the Inspector of Police, Aviyur Police Station in August 2022, wherein, it has been stated that after completing the investigation, charge sheet has been laid on 18.11.2021 before the learned Judicial Magistrate Court No.II, Virudhunagar, that the trial Court has felt that the custody of the cattle can be handed over to the appropriate owner and allowed the petition with certain conditions, that if the conditions are violated by the owner, it would amount to contempt of Court and the owner of cattle can be punished and that granting interim custody of the cattle to the actual owner will

not affect the innocent cattle as the order of the Court protects them until the case is disposed of.

13. This Court is at loss to understand as to how such a different stand was taken by the first respondent police, now in the support of the second respondent.

14. In the present case, admittedly, 26 cattle (15 bulls and 11 cows) were transported in a single vehicle and most importantly by tying the legs of the cows and thereby they were forced to remain jam-packed.

15. No doubt, Rule 56 of the Transport of Animals Rules, 1978, contemplates that no goods vehicle shall carry more than six cattle and that specially fitted goods vehicles with a special type of tail board and padding around the sides should be used. Moreover, Rule 47 of the Transport of Animals Rules, 1978, mandates that a valid certificate by a qualified veterinary surgeon to the effect that the cattle are in a fit condition to travel by rail or road and are not suffering from any infectious or contagious or parasitic diseases and that they have been vaccinated against rinderpest and any other infectious or contagious or parasitic diseases, shall accompany each consignment.

16. In the case on hand, it is not the case of the second respondent that he was possessing such a certificate issued by a qualified veterinary surgeon to the effect that the 26 cattle are in a fit condition to travel by road and are not suffering from any disease.

17. Rule 53 of the Transport of Animals Rules, 1978, mandates that the cattle in advanced stage of pregnancy shall not be mixed with young cattle in order to avoid stampede during transportation and Rule 54 of the Transport of Animals Rules, 1978, contemplates that sufficient quantity of water and sufficient amount of feed and fodder shall be carried during the journey.

18. The petitioner in her revision petition has stated that she being a animal lover has visited the Goshala and ascertained the position of the animals, that three of the cows were in pregnant stage at that time and that cattle were being maintained in a good manner.

19. The learned counsel for the petitioner has relied on the decision of this Court in ***Krishnamoorthy vs. The Inspector of Police, M.Reddiyapatti Police Station and another*** in ***Crl.R.C.(MD)No.543 of 2022 dated 12.08.2022***, this Court, after considering the various decisions of this Court and the Hon'ble Supreme Court, has held that since the owner therein being *prima facie* guilty of

causing cruelty to the animals, is not entitled to get the custody of the cattle and the relevant passages are extracted hereunder:-

“9. *The learned counsel for the petitioner has relied on a judgment of this Court in Nazeer Vs. State rep.by The Inspector of Police, Chithode Police Station, Erode and others reported in (2017) 4 MLJ (Crl) 646, wherein, a learned Judge of this Court has permitted the petitioner therein to retain the custody of Buffaloes by imposing certain conditions and directed the petitioner to follow the rules, if he intends to transport the Buffaloes in future by road or any form of transport.*

10. *As rightly pointed out by the learned Judicial Magistrate, in two other decisions of this Court in Shakeer Ali Vs. State rep.by its The Inspector of Police, Karumathampatty Police Station, Coimbatore District and Ginjala Naga Appala Raju Vs. State Rep. by its The Inspector of Police, Avinashi Police Station, Thiruppur District, in Crl.R.C.No.965 of 2021 and Crl.R.C.No.73 of 2022, dated 21.01.2022 and 02.02.2022 respectively, another learned Judge of this Court has held that the petitioners therein had handed over the cattles to the transporter for transporting the same from Krishnagiri to his cattle farm in Pollachi in the first case and from Thanjavur to his cattle farm in Pollachi. Admittedly, in both the above cases, the cattles were not transported for slaughtering and hence, the cattles were ordered to be returned to the petitioners/owners of the cattles on interim custody.*

11. *At this juncture, it is necessary to refer the judgment of this Court in Naseerulah Vs. State by : Sub-Inspector of Police,*

Coonoor and another in Crl.R.C.No.777 of 2010, dated 14.03.2013.

“12. In this connection, [Section 429](#) of I.P.C. also can be taken note of. In this case, [Section 429](#) of I.P.C. provides punishment for mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees with imprisonment for a term which may extend to two years, or with fine, or with both. The said section is a cognizable one. If we read [Section 429](#) of I.P.C., the word used in the Section is even maiming the cattle and it is also included Cow or Ox. Here we come across in one vehicle more than 20 cows or buffaloes were transported and in that process, namely the people who has taken it in the vehicle or during the transport, one animal is being attacked by another which shows only the inhumane attitude and inducement of the said person transporting the animals. Therefore, even the maiming or injury caused because of the illegal transportation therefore, the owner can be hauled up. Unfortunately, when all these provisions are there, we find that these people transported these animals to butchery without following the rules and regulations. Taking into consideration that the prices are different from State to State. In fact, most of the cases, cattle are being transported continuously for a period of 48 hours crossing inter-State border without even providing fodder or water. They are mostly taken only for slaughtering house in Kerala. They are transported in complete violation of the legal provisions, that too, right under the nose of the authority who is duty bound to

implement such laws. The object of the Prevention of Cruelty to [Animals Act](#), 1960, is only to prevent animals from being put to cruelty and that it is imperative to implement both these Acts by the authorities concerned. I only fervently hope that hereafter these laws which are provided for preventing cruelty to animals will be implemented in the strict sense. The lower Courts in Tamil Nadu shall take note of these provisions and also see that as to how the offenders should be punished properly. Therefore, the finding of the lower Court that the petitioner is not entitled for return of the cattle is well founded and correct. At the same time, another painful thing has happened in this case and that has also to be taken note of. Subsequent to the cattle being handed over to the second respondent, they have maintained it for six months and during that period 21 cattle also died. The post mortem certificate have been produced. In all the cases, they have sustained injuries during illegal transportation. In fact, in one case, gangrene has set in and it has been operated from spreading further and the injuries of the nature sustained only during illegal transportation was the cause of the death. Here is the fittest case where Court has to come to the rescue of the animals and prevent cruelty meted out to the poor animals and the watchful thing of society which are taking care of the animals should be encouraged to stop this offence. Stringent action should be taken as against those who violates the laws in future. Even the vehicles which are

used should be dealt with under the [Motor Vehicles Act](#) concerned and punishment has to be imposed.”

*12. It is also necessary to refer the judgment of the Hon'ble Apex Court in **Raguramsharma and another Vs. C.Thulsi and another** (Crl.A.No.230 of 2020), dated 05.02.2020, wherein the Hon'ble Supreme Court has allowed the appeal and thereby setting aside the order granting interim custody of the cattles seized in Crime No.114 of 2019 on the file of the Archirapakkam Police Station and the relevant passages are extracted hereunder :*

“Ms. Sonia Mathur, learned Senior Counsel invited our attention to Rule 56 of the Transport of Animal Rules, 1978, which is to the following effect:

Rule 56. When cattle are to be transported by goods vehicle the following precautions are to be taken namely:

(a) Specially fitted goods vehicles with a special type of tail board and padding ground the sides should be used.

(b) Ordinary goods vehicles shall be provided with anti-slipping material, such as coir matting or wooden board on the floor and the superstructure, if law, should be raised.

(c) no goods vehicle shall carry more than six cattle.

(d) each goods vehicle shall be provided with one attendant.

(e) while transporting, the cattle, the goods vehicle shall not be loaded with any other merchandise; and

(f) to prevent cattle being frightened or injured, they should preferably, face the engine.

Thus, a container or a vehicle could not have carried more than six cattle but as the facts indicate, the number of animals which were transported was 37. The governing norms and principles were thus violated. It does not appear to be a single or a solitary incident. In subsequent FIR No.207 dated 04.09.2019, as against permissible norm of six cattle, the number of animals which were being transported was 47. The fact that this had adverse impact on the health of cattle is also clear inasmuch as in the present case, one buffalo died while being transported and in the subsequent case, six animals lost their lives.”

....

18. Considering the facts and circumstances of the case and also the fact that 36 Cows were transported in a single container and the way in which, they were kept jam-packed and also taking note of the facts that there was no water or food for the cattles during transportation, but are having green chillies for placing in the eyes of the Cows so as to make them stand for long travel and also the injuries suffered by some of the Cows and most of them are aged below 10 years and also the fact that the petitioner has not shown that he had taken the Cows for agricultural purposes, this Court is of the view that the petitioner is prima facie guilty of causing cruelty to the animals and as such, the impugned order, dismissing the petition cannot be found fault with.”

20. The above decision is squarely applicable to the case on hand.

21. In the present case also, as already pointed out, 26 cattle were transported in a single container and that too in a jam-packed condition.

22. It is also not the case of the second respondent that necessary water and food were taken, during the transportation. Moreover, according to the prosecution, all the cattle are aged below 10 years.

23. The main contention of the petitioner is that the cattle were transported for slaughtering purpose.

24. The second respondent in the affidavit filed in support of his application filed under Section 451 Cr.P.C., has stated that he purchased 11 cows and 15 bulls at Melur Santhai and while the same were being transported, the vehicle was intercepted and the cattle were seized. In the affidavit, the second respondent has stated that the cattle are required for day to day purposes, but he has not elaborated anything further. The second respondent has not shown the purpose, for which, he was taking the cattle at that time. It is not the case of the second respondent that he is doing agricultural operation or he is running a cattle farm.

25. As rightly contended by the learned counsel for the petitioner, the learned Magistrate, without considering the above objections, by observing that the first respondent police has taken formal objections, has granted the interim custody.

26. Considering the above and also the facts that the 26 cattle were transported in a single container and the way in which they were kept jam-packed, that all the cattle are aged below 10 years and that in the absence of any certificate obtained from veterinary surgeon that the above said cattle are fit enough to travel and in the absence of any permission to carry the cattle for slaughtering purpose, this Court is of the clear view that the second respondent is *prima facie* guilty of causing cruelty to the animals and as such, he is not entitled to get the interim custody of the cattle. Consequently, this Court concludes that the impugned order granting interim custody passed by the learned Judicial Magistrate No.II, Virudhunagar, is set aside and since the charge sheet has already been filed, the learned Judicial Magistrate is directed to proceed with the trial and dispose of the case. In case, if the second respondent is finally found to be not guilty, then the issue of custody of the cattle will be dealt with in accordance with the concerned Rules and Regulations.

27. In the result, this Criminal Revision is allowed and the impugned order of the learned Judicial Magistrate No.II, Virudhunagar, in CrI.M.P.No.

3899 of 2021 dated 25.08.2021 is set aside and the Goshala is directed to retain the cattle till the disposal of the case and is directed to file a report once in three months before the concerned Court. Consequently, connected miscellaneous petition is closed.

02.09.2022.

Index : Yes/No

Internet: Yes/No

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Inspector of Police,
Aviyur Police Station,
Aviyur, Virudhunagar District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

CRL.R.C.(MD).No.660 of 2021

K.MURALI SHANKAR, J.

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**Pre-Delivery order made in
CRL.R.C.(MD).No.660 of 2021**

02.09.2022