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CRL.RC.No.199 of 2023

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Dated :07.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.RC.No.199 of 2023

Alavudeen

.. Petitioner

Vs.

The State, represented by its
Inspector of Police
Perumanallur Police Station,
Tiruppur District
Crime No.2041 of 2020

.. Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of the Code of Criminal Procedure to call for the entire records comprised in Crl.M.P.no.1763 of 2020 in Crime No.2041/2020 and set aside the order dated 30.12.2020 made by the learned Judicial Magistrate, Avinashi (FAC), Tiruppur District and direct to release the 29 cows and 4 numbers of Buffaloes, seized by the respondent.

For Petitioner : Mr. Vimal B.Crimson

For Respondent : Mr. V. Meganathan
Govt. Advocate (crl.side)



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ORDER

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This Criminal Revision Case has been filed against the dismissal of the petition filed by the petitioner in Crl.MP.No.1763 of 2020, dated 30.12.2020 by the learned Judicial Magistrate, Avinashi (FAC), Tiruppur District and set aside the same.

2. The learned counsel for the petitioner submitted that the petitioner is the owner of 29 cows and 4 buffaloes and he had purchased them from various farmers in the market at Erode and arranged a transport agency to deliver the live stocks in prescribed manner, but the transport agency transported the livestock in violation as per the procedure established. Subsequently, after registration of FIR in Crime No.2041 of 2020 against the lorry driver only, the petitioner came to know that the live stocks were transported in violation of Section 11(1), (a), (h), (d) of Prevention of Cruelty to Animals Act, 1960 and the case has been registered under the abovesaid act and also under section 177 of Motor Vehicles Act, 1988. Pursuant to which, the 33 nos. of live stocks were detained by the respondent police and the same were kept under the custody of private cattle barn “Kabilainandi Gosalai” situated in Periyaveerasangili, Vijaymangalam, Perundurai, Erode District.



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Therefore, he filed a petition before the Judicial Magistrate, Avinashi (FAC), Tiruppur District seeking interim custody of 29 cows and 4 buffaloes, but the court below dismissed the petition by invoking Section 29(3) of the Prevention of Cruelty to Animal Act, 1960 and gave a finding that as per the above said Act, the owner is not entitled to custody of the animals. He further submitted that Section 29(3) of the Act is applicable in the case, when a person is found guilty and convicted under the said Act, but in the instant case, the case is pending investigation and trial also not yet commenced. Hence he prayed to set aside the impugned order and seeking to grant interim custody of the animals.

3. The learned Govt. Advocate (crl.side), on the other hand, supporting the impugned order, submitted that the trial court has rightly dismissed the petition seeking custody of animals on the ground that 4 buffaloes and 29 cows were transported in lorry bearing Regn.No.AP 39 W 4353 against Rule 46 to 63 of Transport of Animals Rules 1978 and as per the above Rule, the court below rightly invoking section 29(3) of Prevention of Cruelty to Animals Act, dismissed the petition seeking interim custody of the animals. Thus, he objected to grant interim



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custody of animals to the petitioner.

4. Heard both sides and perused the materials available on record.

5. On perusal of records, the fact reveals that on 28.11.2020, while 29 cows and 4 buffaloes, totaling 33 animals were transported in a vehicle bearing Registration No.AP 39 W 4353, the police intercepted the vehicle and found that the animals were transported in violation of Rules for transporting animals. Hence, a case was registered in Crime No.2041 of 2020 for the offences punishable under section 11(1), (a), (h), (d) of Prevention of Cruelty to Animals Act, 1960 and under section 177 of Motor Vehicles Act, 1988. Pursuant to which, the vehicle was seized and the animals were kept under the custody of private cattle barn “Kabilainandi Gosalai” situated in Periyaveerasangili, Vijaymangalam, Perundurai, Erode District. Further, on perusal of records, it reveals that the petitioner, after registration of the FIR in Cr.No.2041 of 2020, alone came to know about the animals were transported in violation of the Prevention of Cruelty to Animals Act and thereby the driver committed the offences u/s. 11(1), (a), (h), (d) of



Prevention of Cruelty to Animal Act, 1960 and under section 177 of Motor Vehicles Act, 1988 and the driver was arrayed as accused in Cr.No.2041/2020 and the petitioner is not arrayed as accused.

6. According to the petitioner, he is no way connected with the offences alleged and it is the transport agency without prior intimation to the petitioner, transported the animals as alleged by the respondent. In the circumstances, the petitioner prayed before this Court seeking interim custody of the animals.

7. Furthermore, the trial Court, has passed the impugned order, misunderstanding Section 29(3) of Prevention of Cruelty to Animals Act which runs as follows;

- 1. Power of Court to deprive person convicted of ownership of animal – (1) If the owner of any animal is found guilty of any offence under this Act, the court, upon his conviction thereof, may, if it thinks fit, in addition to any other punishment, make an order that the animal with respect to which the offence was committed shall be forfeited to Government and may, further, make such order as to the disposal of the animal as it thinks fit under the circumstances.*



2. *No order under sub-section (1) shall be made unless it is shown by evidence as to a previous conviction under this Act or as to the character of the owner or otherwise as to the treatment of the animal that the animal, it left with the owner, is likely to be exposed to further cruelty.*
3. *Without prejudice to the provisions contained in sub-section (1), the court may also order that a person convicted of an offence under this Act shall, either permanently or during such period as is fixed by the order, be prohibited from having the custody of any animal of any kind whatsoever, or, as the court thinks fit, of any animal of any kind or species specified in the order.*

The above provisions has to be complied with when a person is convicted after found guilty of the offence under the above said Act. In this case, FIR has been registered recently and final report has not yet been filed and trial not yet commenced. Obviously, the petitioner was not convicted for the offence under the above said Act. In the circumstances, invoking section 29(3) of the said Act, refusing the claim of the petitioner seeking interim custody of the animals is unsustainable.



8. Considering the above facts and circumstances of the case and taking note of the reasons stated above, this court is inclined to grant interim custody of the animals to the petitioner.

9. Accordingly, the impugned order passed by the learned Judicial Magistrate, Avinashi (FAC), Tiruppur District is hereby set aside. The respondent is directed to grant interim custody of 29 cows and 4 buffaloes to the petitioner on compliance of the following conditions:

- i. the petitioner shall show the proof of ownership of 29 cows and 4 buffaloes;*
- ii. the petitioner shall execute a bond for a sum of Rs.3,00,000/- (Rupees three lakhs only) before the Judicial Magistrate, Avinashi (FAC), Tiruppur District.*
- iii. the petitioner shall keep the animals in healthy and good condition and shall produce the animals as and when required before the Judicial Magistrate, Avinashi, Tiruppur District and before the respondent police.*



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10. In the result, the impugned order is hereby set aside and the Criminal Revision Case is allowed with the above terms and conditions.

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Index :yes/no

Internet:yes/no

msr

To

1. The Inspector of Police
Perumanallur Police Station,
Tiruppur District
2. The Judicial Magistrate, Avinashi (FAC), Tiruppur District
3. The Public Prosecutor, High Court, Madras.



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V. SIVAGNANAM, J.

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