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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 3607/2023**

MOHAZZAM@MOHD MOHZIM

.....Petitioner

Through: Mr. Salman Khurshid, Senior Advocate with Mrs. Naghma Imtiaz, Mr. Ahmed Zargham, Mr. Saif Naseem, Ms. Mariya Mansuri and Ms. Shivani Pawar, Advocates.

versus

SANJAY GANDHI ANIMAL CARE CENTRERespondent

Through: Mr. Uday Bedi, Ms. Varisha Sharma, Ms. Shivani Agarwal, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

09.05.2025

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1. The present petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973¹ (corresponding to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023²), assails the order dated 14th September, 2023³, passed by the Additional Sessions Judge-04 and Special Judge (NDPS), South-East, Saket Courts, New Delhi in Cr. No. 62/2023. By the impugned order, the Revisional Court, dismissed the revision petition preferred by the Petitioner challenging the order dated 17th October, 2022, passed by Metropolitan Magistrate. Although the Revisional Court concurred with the final view taken by the Magistrate, however, it differed with the reasoning adopted by

¹ "Cr.P.C."

² "BNSS"



the Trial Court.

2. The facts, as necessary for adjudication of the present petition, are briefly summarised as follows:

2.1 Pursuant to information received from one Mr. Gaurav Gupta, member of the NGO ‘People for Animals’⁴ alleging cruelty to exotic birds and animals, a raid was conducted at the Petitioner’s shop. Several exotic birds and animals were seized during the raid and subsequently handed over to the Respondent, Sanjay Gandhi Animal Care Centre, *vide* DD No. 34A dated 13th October, 2014.

2.2 On 15th October, 2014, the Petitioner moved a *Superdari* application before the Metropolitan Magistrate⁵ seeking release of the seized birds and animals. By orders dated 20th October, 2014, 13th October, 2014 and 03rd November, 2014, the MM directed birds to be released to the Petitioner, subject to appropriate conditions. These directions were challenged by Mr. Gaurav Gupta (on behalf of PFA) by way of Criminal Revision Petition No. 49/2014 before the learned ASJ-02, South-East District, Saket Courts, which was dismissed on 10th March, 2015, affirming the orders of the Trial Court.

2.3 Aggrieved by the dismissal of the revision petition, PFA approached this Court by way of CrI. M.C. No. 2051/2015. This Court allowed the petition, set aside the orders of the MM and the Revisional Court, and directed cancellation of the *Superdari*. The Trial Court was also directed to expedite the proceedings. Upon conclusion of trial, the Petitioner was acquitted by judgment dated 2nd March, 2019, and direction was issued for release of the seized property to the rightful claimant/owner, in accordance

³ “Impugned order”

⁴ “PFA”



with law.

2.4 Seeking compliance with the aforesaid directions, the Petitioner moved an application before the Trial Court for release of the birds and animals. The said application was allowed by order dated 5th September, 2022, and the Respondent was directed to release the seized birds and animals. The compliance report to this effect confirmed that 122 birds were returned to the Petitioner.

2.5 Thereafter, the Petitioner filed an application before the Trial Court complaining that as against a total of 294 birds and animals seized originally, only 122 birds were returned to him. In the absence of any medical records or post mortem reports, the Petitioner alleged the Respondent illegally sold off the birds and animals and are liable to pay fine as per *Superdari* bond. The Respondent, on the other hand, submitted that given the lapse of nearly eight years since the initial seizure in 2014, a number of the birds had died in the interim, primarily due to illness and natural causes.

2.6 Taking note of the rival contentions, the MM passed an order dated 17th October, 2022, dismissed the Petitioner's application with following observations:

"Ld. Counsel submits that in 2014 certain exotic birds and animals were seized by the Police Authorities and were handed over to the Sanjay Gandhi Animal Care Center. But only few of those birds have been received back by the accused Moazzam till 06.09.2022. On the last date he alleged that the remaining birds and animals might have been sold by the shelter.

Today, Ld. Counsel for Moazzam submits that it is his presumption that the animal shelter might have sold the birds and animals in question. He produces nothing to support his arguments.

He further submits that the shelter must have provided the post-

⁵ "MM"



mortem and medical reports of the birds and animals which are missing and have been claimed by the shelter to have died. He further submits that there is no clue as to where the birds and animals have been buried since 2014. He submits that the animal shelter is liable to pay cost for all the birds and animals as per. Zoo rate to the accused and fine be imposed upon them as per Superdari Bond i.e. Rs. 2 lacs, which have died under their care and supervision.

Ld. Counsel for the shelter of animals and birds submits that they have returned all the birds and animals which were under their supervision as per order dated 05.09.2022. All the birds and animals were returned after satisfying the accused of their well being. Ld Counsel submits that since 2014 many birds and animals have died due to natural causes. The birds and animals which had died during the period, information pertaining to their death has been provided regularly to the seizing authority. It is further submitted that the care for these birds and animals was done by the care center free of cost for the whole period.

The Court is of the view that there are not rules and regulations which provide for post-mortem I medical I burial of the said birds and animals to be documented and to be provided to the seizing authority I accused person. The court is satisfied by the submission of the counsel for the care center. No further action is required from the care center to be taken with respect to said birds and animals.

Hence, the matter is disposed off accordingly.”

[Emphasis supplied]

2.7 Aggrieved by the dismissal of his application, the Petitioner preferred Criminal Revision Petition No. 62/2023, which has been decided by the impugned order dated 14th September, 2023. The Revisional Court declined to grant substantive relief to the Petitioner, but disagreed with the reasoning adopted by the Magistrate. The relevant extract of the order reads as follows:

“17.At the very outset, it would be germane to refer to the observation dated 17.10.2022 of the Ld. Trial Court whilst disposing of the application of the revisionist:

"The Court is of the view that there are not rules and regulations which provide for postmortem/ medical/burial of the said birds and animals to be documented and to be provided to the seizing authority/accused person. The court is satisfied by the submission of the counsel for the care center. No further action is required from the care center to be taken with respect to said birds and animals."



18. This Court finds it difficult to concur with the above observation of the Ld. Trial Court. In this context, it would be pertinent to refer to the Rule 7 of Recognition of Zoo Rules, 2009 as amended vide GSR 657 (A), dt. 2-8-2013, which is reproduced hereunder:

"7. Post-mortem and disposal of carcasses of animals:

- (1) Every animal died in the zoo shall be subjected to a detailed postmortem examination by registered veterinarian to determine conclusively the cause of the death.*
- (2) The findings of the post-mortem examination referred to in subparagraph (1) shall be recorded in such format as may be prescribed by Central Zoo Authority and in this regard and shall be maintained for a period of not less than six years.*
- (3) In the event of the post mortem being inconclusive and no specific reason for death is identified, the zoo authorities shall send the samples of the tissues and organs, blood, viscera etc. for further examination to the qualified diagnostic laboratory having adequate specialization for further investigation and identifying the cause of death.*
- (4) Every zoo shall ensure that the carcasses of the animals, after the post-mortem has been conducted, is disposed off by burying or burning in a manner that does not have any adverse impact on Recognition of Zoo Rules, 2009 with (Amendment) Rules, 2013 Legislation, Policy, Guidelines and Strategy the hygiene and cleanliness of the zoo:*

Provided that the carcasses of large cats shall be disposed off by burning in the presence of the Director of the zoo or any officer in the next rank to him and authorized by him in this behalf: Provided further that the carcasses of animals died due to Anthrax or such other communicable diseases shall not be opened and subjected to post-mortem, as a safeguard against spread of the disease. These shall be buried intact."

19. It would also be pertinent to refer to the definition of a Zoo under the Wildlife (Protection) Act, 1972:

- (39) "zoo" means an establishment, whether stationary or mobile, where captive animals are kept for exhibiting to the public or ex-situ conservation and includes a circus and off-exhibit facilities such as rescue centres and conservation breeding centres, but does not include an establishment of a licensed dealer in captive animals*

20. A perusal of the record would reveal that SGACC has represented itself to be a registered Animal Welfare Organization and a pinjarapole and recognized by Animal Welfare Board of India and is involved in rescue of cattle and other animals, their upkeep and treatment in addition



to other regular animal welfare activities. By virtue of the above mentioned activities of SGACC and taking into account the fact that it takes care of rescued birds and animals and provides shelter to them, it can be inferred that the establishment of SGACC also falls within the ambit of the definition of a 'zoo' as defined in Section 2 (39) of Wildlife (Protection) Act, 1972. Therefore, in terms of Rule 7 of Recognition of Zoo Rules, 2009, it was incumbent upon SGACC to conduct postmortem examination by a registered veterinarian to determine conclusively the cause of death of birds and animals under its care. Instead, the Center has recorded that the animals had died due to shock or due to high fever or due to natural causes. There is no basis to arrive at such a conclusion without a conclusive postmortem report, as mandated by the relevant provisions of law.

21. To elaborate, the reasons for not returning certain birds and animals was furnished vide letters dated 25.10.2014 and 07.11.2014 sent by SGACC to SHO/IO PS Lajpat Nagar. Copy of the said letters were filed during arguments in the present criminal revision petition. A perusal of the letters would reveal that due to atmosphere of 23.10.2014 (Deepawali), 38 birds, 04 parrots and 05 rabbits were seen dead in the morning of 24.10.2014. It was further submitted that due to same atmosphere of the night of 06.10.2014, 02 cats and few birds died in the night with shock. This has been the consistent stance of SGACC that the remaining birds could not be returned as they were dead. **However, this stance cannot be countenanced inasmuch as the underlying reason for their death has not been adduced on record. it would be an act of supererogation to emphasize that as per the abovementioned Rule 7, it was incumbent upon SGACC to furnish the postmortem report evincing proof of death of these birds and animals, which has clearly not been so furnished in the present matter. It is on this score that the Ld Trial Court seems to have erred. However, since it is apparent that, as per SGACC, the remaining birds have died, no order can be passed to hand over the seized case property to the IO to be released to the applicant/revisionist.**

22. As far as reparation is concerned, the revisionist could not cite any provision whereby compensation or cost can be paid to him by the respondent. This fact also assumes significance in light of the fact that such a claim was never made before the Ld. Trial Court, and such a claim was raised at a first instance before this Court only. Therefore, no order can be passed as to costs or compensation. The revisionist, however, is at liberty to pursue remedies available in law qua the respondent SGACC for flouting of the Wildlife (Protection) Act, 1972 and the Recognition of Zoo Rules, 2019.

CONCLUSION

23. Ergo, in view of the aforesaid discussion, this Court finds no infirmity in the impugned order dated 17.10.2022 passed by, Ld. MM, South-East,



Saket Courts, New Delhi, so far as the conclusion of dismissing the application is concerned. However, this Court differs with the reasoning proffered by the Ld. Trial Court. In the ultimate analysis, the present criminal revision petition filed by the revisionist is hereby dismissed.

24. TCR, if any, alongwith copy of this order be sent to Ld. Trial Court for necessary information/ compliance.

25. Revision file be consigned to record room after due compliance.

26. Order be uploaded on official website of District Courts ” (sic)

[Emphasis supplied]

3. Mr. Salman Khurshid, Senior Counsel appearing for the Petitioner, submits that while the Revisional Court correctly recognised the statutory obligations of the Respondent under the Wildlife (Protection) Act, 1972⁶ and the Recognition of Zoo Rules, 2009,⁷ the refusal to grant consequential relief renders the entire exercise academic. It is contended that despite a clear breach of statutory duty, the Respondent has not been held accountable, and the Petitioner, who was ultimately acquitted, has been left remediless.

4. Mr. Khurshid argues that Petitioner, a licensed and *bona fide* trader in exotic birds and animals was falsely implicated. It is urged that the Petitioner’s livestock, valued both monetarily and for breeding purposes, was wrongfully withheld and ultimately misappropriated under the garb of protective custody. The Petitioner was not only deprived of the seized animals without cause, but the Respondent has failed to produce any documentation justifying the deaths of a majority of the seized animals. It is submitted that the Respondent, having admitted that only a fraction of the birds was returned and the rest had allegedly died in custody, was under a binding legal obligation as a ‘zoo’, to conduct post-mortem examinations and preserve medical records in accordance with Rule 7 of the Recognition

⁶ “Wildlife Protection Act”

⁷ “Recognition of Zoo Rules”



of Zoo Rules. The failure to do so, Mr. Khurshid argues, amounts to wilful non-compliance with statutory obligations and warrants consequences.

5. Mr. Khurshid further contends that the Respondent's bare assertion, that animals died due to natural causes, shock, or environmental factors, cannot be accepted in the absence of veterinary evidence. The lack of transparency, documentation, or timely disclosure, it is submitted, creates a presumption of mishandling, neglect, or, at the very least, administrative apathy. It is urged that the Respondent is liable to compensate the Petitioner for the loss of his livestock, either under the principles of public trust and strict liability or through a direction to initiate appropriate proceedings under the Wildlife Protection Act or Prevention of Cruelty to Animals Act, 1960.⁸

6. On the other hand, Mr. Uday Bedi, counsel for the Respondent, argues the Petitioner never raised any claim regarding compensation or production of post-mortem reports at the initial stage before the MM. He emphasises that such prayers surfaced for the first time only before the Revisional Court, and thus, cannot be entertained at this belated stage. The Respondent maintains that all allegations of wrongdoing, including those pertaining to the alleged sale or misappropriation of the animals, are entirely unfounded and without evidentiary support. Furthermore, no definitive proof or record has been placed on the judicial file concerning either the age or the natural lifespan of the seized birds and animals. Mr. Bedi refers specifically to a letter dated 6th September, 2022, executed by the Petitioner, wherein the Petitioner acknowledged receipt of 122 birds and animals without raising any objection, protest, or grievance concerning their condition or number. He argues that this acquiescence at the time of taking custody materially



contradicts the Petitioner's allegations of misappropriation and extortion. He argues that the Petitioner did not lead any evidence before the Trial Court to substantiate any claim of unlawful disposition or commercial exploitation by the Respondent. He categorically rejects such allegations as baseless conjectures unsupported by any tangible material. Lastly, Mr. Bedi highlights that the Petitioner's acquittal under the Prevention of Cruelty to Animals Act was not one founded upon a merits-based exoneration but was rather predicated on technical considerations, thus not amounting to an unequivocal vindication of his conduct.

7. The Court has given thoughtful consideration to the rival submissions and carefully examined the record. At the outset, it bears emphasis that the primary grievance advanced by the Petitioner against the impugned order pertains to the Revisional Court declining to grant relief in the nature of monetary compensation or costs concerning birds and animals not returned by the Respondent. It is pertinent to note that the prayer or reparation was conspicuously absent before the Court of MM and raised for the first time in revision proceedings. It is well-settled that a revisional court ordinarily refrains from entertaining new factual claims or reliefs not previously canvassed before the trial court. On this account alone, the Revisional Court was justified in declining to grant compensation or costs to the Petitioner.

8. Notwithstanding the procedural bar to awarding such relief, the Revisional Court nonetheless engaged in a detailed analysis of the statutory duties' incumbent upon the Respondent under the Wildlife Protection Act, and Recognition of Zoo Rules. Pertinently, the Court categorically found that the Respondent, being a registered Animal Welfare Organisation,

⁸ "Prevention of Cruelty to Animals Act"



routinely involved in animal rescue, care, and rehabilitation, clearly falls within the definition of a 'zoo' under Section 2(39) of the Wildlife Protection Act. Consequently, Rule 7 of the Recognition of Zoo Rules, imposes a statutory obligation upon the Respondent to conduct comprehensive post-mortem examinations through a registered veterinarian to determine and document conclusively the cause of death of every animal or bird under its care, and thereafter dispose of the carcasses in accordance with prescribed procedure. The Revisional Court correctly highlighted this significant lapse by the Respondent, observing that mere recording of general reasons, such as death from shock or natural causes, without documentary evidence or credible veterinary examination, fell short of statutory requirements.

9. The explanation provided by the Respondents regarding the death of seized birds and animals, though plausible, remains unsubstantiated due to their own procedural shortcomings. This may raise valid concerns about transparency and compliance with statutory duties. However, while such non-compliance might provide a basis for initiating appropriate regulatory proceedings, it does not automatically entitle the Petitioner to monetary compensation under criminal proceedings, in absence of any specific enabling provision under the statute. Recognizing this, the Revisional Court rightly accorded liberty to the Petitioner to initiate appropriate proceedings before a competent forum, wherein questions of damages or compensation could be adjudicated comprehensively, taking into account evidentiary proof of loss, causation, negligence, and compliance with statutory norms.

10. Thus, upon a holistic assessment, this Court finds the impugned order of the Revisional Court to be correct, adequately reasoned, and consistent



with judicial propriety. It is pertinent to highlight that the Petitioner's claim for compensation inherently involves adjudication of complex and highly disputed factual issues, including, but not limited to, the precise cause of death of the animals and whether the Respondent acted negligently or breached its statutory obligations. In the absence of definitive post-mortem reports or other reliable evidence, this Court, exercising jurisdiction under Article 226 of the Constitution read with Section 482 CrPC, is not the appropriate forum to adjudicate upon these factual controversies. Therefore, the Petitioner's grievance regarding the loss incurred due to non-return of certain birds and animals must necessarily be pursued through appropriate civil or statutory remedies, where claims can be thoroughly tested and conclusively established. Consequently, the Revisional Court's order warrants no interference by this Court in the exercise of its extraordinary jurisdiction.

11. For clarity, it is reiterated that nothing stated herein shall impede the Petitioner's right to seek redressal before the appropriate forum as already indicated by the Revisional Court. The Petitioner is thus at liberty to pursue all available remedies in law to address grievances regarding the Respondent's failure to adhere strictly to the obligations under the Wildlife Protection Act and Recognition of Zoo Rules.

12. In light of the above observations, the present petition is disposed of.

SANJEEV NARULA, J

MAY 9, 2025/ab