

R.Sakthivel Vs. State

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Court : Chennai

Decided On : Jul-04-2014

Judge : T.S.Sivagnanam

Appellant : R.Sakthivel

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED : 04.07.2014
CORAM: THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
CRL.R.C.Nos.1025, 1026; 1093, 1106 &1107 of 2013 & connected M.Ps
Crl.R.C.Nos.1025 & 1026 of 2013 R.Sakthivel ..Petitioner versus 1.State by
Inspector of Police Chavady Police station Coimbatore District.

2.Chinnadurai 3.Ayyappan Sangothri Coseva Samithi Paramarippu Illam (R3
impleaded as per order in M.P.No.1/13 dt 21.5.2013) ..Respondents
Crl.R.C.No.1093 of 2013 Sheela Subramanian Member, People for Cattle in India
..Petitioner versus 1.Siva Kumar 2.The Inspector of Police Nazarathpet Police
Station.

3.Indian Institute of Animal Welfare Venkatapuram, Thiruvallur District rep.

By its Member Mr.R.Ramarajan (Impleaded as R3 as per order in M.P.No.2 of
2013 dt 25.9.2013) ..Respondents Crl.R.C.Nos.1106 & 1107 of 2013 Sheela
Subramanian Member, People for Cattle in India ..Petitioner versus 1.Govind .R1

in Crl.R.C.No.1106/2013 2.Tamilraj @ Dhamma Naicker .R1 in Crl.R.C.No.1107/2013 3.The Inspector of Police Nazarathpet Police Station.R2 in both Crl.R.Cs 4.Indian Institute of Animal Welfare Venkatapuram, Thiruvallur District rep.

By its Member Mr.R.Ramarajan (Impleaded as R3 as per order in M.P.Nos.2 of 2013 dt 25.9.2013) .R3 in both Crl.R.Cs Common Prayer in Crl.R.C.Nos.1025 & 1026 of 2013 : Criminal Revision Cases are filed under Section 397 r/w 401 of the Criminal Procedure Code, against the orders passed by the Judicial Magistrate No.VII of Coimbatore in Crl.M.P.Nos.4763 & 4762 of 2013 dated 31.7.2013 and to return 24 cattle to the petitioner as interim custody.

Common Prayer in Crl.R.C.Nos.1093, 1106 & 1107 of 2013 : Criminal Revision Cases are filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for records in CMP.Nos.4130, 4131 & 4132 of 2013 dated 21.8.2013 on the file of the Learned Judicial Magistrate No.1, Poonamallee and set aside the same.

For Petitioner : Mr.S.Doraisamy (Crl.R.Cs.1025 & 1026/13) For Petitioners : Mr.S.Rajendirakumar (Crl.R.Cs.1093, 1106 & for M/s Norton & Grant 1107/13) For Respondents :MrC.Iyyapparaj, -R1 (Crl.R.Cs.1025 & 1026/13) Govt.Advocate (crl.side) No appearance- R2 Mr.S.Rajendirakumar - R3 for M/s Norton & Grant For Respondents :Mr.R.Muniyapparaj - R1 (Crl.R.Cs.1093,1106, for Mr.Vargees Amal Raj 1107/2013) Mr.C.Iyyapparaj, G.A.-R2 Govt.Advocate (Crl.side) Mr.A.Velmurugan R3 C O M M O N

ORDER

Sine common questions of law arose for consideration in all these Criminal Revision Cases, they were heard together and are disposed of by this common order.

2.The petitioners in Crl.R.C.Nos.1025 of 2013 and 1026 of 2013, are aggrieved by the order in Crl.M.P.Nos.4763 & 4762 of 2013 respectively dated 31.7.2013, by which the request made by the petitioners for return of 24 cattle for interim custody came to be rejected.

3.The petitioner in Crl.R.C.Nos.1093, 1106, 1107 of 2013 is one Ms.Sheela Subramanian, Member of People for Cattle in India.The fiRs.respondent in these Revisions claims to be the owners of the cattle and the third respondent is the Indian Institute of Animal Welfare, in whose care and custody, the cattle are at present handed over.

The petitioners in these Revisions challenged the order passed in C.M.P.Nos.4130, 4131, 4132 of 2013 dated 21.8.2013, whereby the learned Magistrate directed the cattle be handed over to the fiRs.respondent for interim custody, subject to certain conditions.

4.Mr.S.Duraisamy, learned counsel appearing for the Revision Petitioners in Crl.R.C.Nos.1025, 1026 of 2013, submitted that the Courts below did not consider the claim made by the petitioners in a proper prospective and failed to note that there is no prohibition in releasing the cattle to the petitioners by applying Section 29 of the Prevention of Cruelty to Animals Act (Act).The learned counsel further submits that the petitioners are the owners of the cattle and they have not violated any of the provisions of the Act nor committed inhuman treatment to the animals; that no cattle was injured while transporting and the transport was arranged to take them to some other place for agricultural purpose.

Further, it is submitted that there is no previous conviction and hence the petitioners should be granted interim custody of the cattle.

Further, the learned counsel submitted that the third respondent in whose care and custody cattle have been given now has absolutely no jurisdiction to make any objection and that he is not entitled to be heard.

5.The learned counsel referred to the allegations made in the F.I.R.and submitted that the said allegations are totally vague.

In support of his contention, the learned counsel placed reliance on the decision of the Honble Supreme Court in the case of MANAGER, PINJRAPOLE DEUDAR AND ANR v.

CHAKRAM MORAJ.NAT AND OTHERS [1998 CRI.L.J.4082].The learned counsel also referred to the decision of the Honble Supreme Court in the case of BHARATH AMRATLAL KOTHARI & ANR v.

DOSUKHAN SAMADKHAN SINDHI & ORS [CDJ 2009 SC1982].., and submitted that the Honble Supreme Court in the said case issued directions to return of goats and sheep to the owneRs.subject to certain conditions.

The learned counsel further referred to the decision of this Court in the case of BLUE CROSS OF INDIA v.

S.A.ABBAS MANTHIRI & ANR in Crl.R.C.No.476 of 2013 dated 21.6.2013, and submitted that Special Leave Petition filed by the petitioner therein before the Honble Supreme Court in Special Leave to Appeal (Crl.) Nos.6027-6029 of 2013, was dismissed by the Honble Supreme Court on 26.8.2013.

Further, it is submitted that if the guidelines laid down by the Honble Supreme Court in the case of PINJRAPOLE DEUDAR (supra).is applied to the case on hand, the petitioner is entitled to get interim custody of the cattle as he is the owner of the animals and has not been found guilty of the offence under the Act earlier and that the cattle were in health condition.

6.Mr.C.Iyyappa Raj, learned Government Advocate (crl.side) appearing for the fiRs.respondent submitted that the cattle are at present under the care and custody of the third respondent and a status report was also filed during February 2014 and at that point of time, one Co.had died, one was serious and two cows were sick and the area in which the cattle have been kept is about an extent of 1 acre and 80 cents and there is also a compound wall and a small hut.

7.Mr.A.Velmurugan, learned counsel appearing for the third respondent in all the cases submitted that the cattle are hale and healthy, the death of the cattle was duly reported, the cattle are maintained under good condition and the order passed by the Court below is fully justified.

8.Mr.S.Rajendran Kumar, learned counsel appearing for the petitioner Ms.Sheela Subramanian, Member of People for Cattle in India, after elaborately referring to

the entire facts which lead to the seizure of the cattle, submitted that the decision relied on by the petitioner in CrI.R.C.No.851 of 2013 dated 16.7.2013, has been stayed by the Honble Supreme Court in Special Leave (Criminal) M.P.Nos.24783 of 2013 by order dated 09.12.2013 and the matter is still pending before the Honble Supreme Court.

9.The learned counsel after referring to Section 11, Section 29 and Section 35 of the Act and Rule 46, 47, 49 and 96 of the Transport Rules, submitted that stringent conditions have been laid down under the provisions of the Act and Transport Rules and the owners of the cattle have treated the cattle with utmost cruelty and they are not entitled for interim custody.

Further, by referring to the observations made in the order passed by the learned Judicial Magistrate dated 21.8.2013 in C.M.P.Nos.4130 to 4132 of 2013, it is submitted that the Court has referred to the certificates which did not accompany the cattle and in terms of Rule 47, the certificates should accompany the consignment and therefore any other certificate obtained during enquiry cannot absolve the petitioner of the offence.

In support of his contention, the learned counsel referred to the following decisions in the case of PREMA VEERARAGHAVAN v.

STATE OF MADRAS [2002 (2) Crimes 32].; NASEERULAH v.

STATE & ANR [CDJ 2013 MHC1960; ARUN PRASANNA V.

STATE & ORS [2013-2-L.W.(CrI.) 709].; (iv)RADHA RAJAN v.

GOVT.

OF TAMILNADU & 3 ORS [W.P.(Md.No.14848 of 2012 (unreported) dt 6.2.2013].and LAXMI NARAIN MODI V.

UNION OF INDIA & ORS.[2013 LEGAL EAGLE (SC) 574].10.Mr.R.Muniyapparaj, learned counsel appearing for the fiRs.respondent in CrI.R.C.Nos.1093, 1106, 1107 of 2013, submitted that the order of the Court below dated 21.8.2013, directing interim custody to his clients is perfectly valid as they are the owner of

the cattle.

Further, it is submitted that the owners of the cattle have produced the bill, the certificate of fitness for travel as certified by the Veterinary Doctor in respect of all the consignments and therefore, there is no ground to prosecute them. Further, it is submitted that none of the respondents have earlier been convicted for any similar offence and the Revision Cases at the instance of the petitioner itself is not maintainable.

Further, the Courts below while granting interim custody to the respondents (owners) passed stringent conditions and all the conditions have been complied with and even prior to such an order, the cattle have been entrusted to the third respondent, which is illegal.

Even though the cattle have been handed over to the third respondent, that will not confer any right on them.

Further, it is submitted that after the cattle were seized, they were transported to 'Goshala' in the same condition.

Further, the death of one of the cattle was not intimated to the respondents who is the owner of the cattle.

The learned counsel also placed reliance on the decision of the Hon'ble Supreme Court in the case of *PINJRAPOLE DEUDAR* (supra).¹¹ Heard the learned counsel for the parties and perused the materials placed on record.

¹² The controversy in these cases is as to whether the owners of the cattle from whom the cattle were seized are entitled for interim custody.

Undoubtedly, the power to grant of interim custody is discretionary and while the discretion should be exercised on sound principles.

Complaints were given by the people who care for the cattle stating that the cattle have been transported in utter disregard to the provisions of the Act and Transport Rules and that the owner of the cattle having violated the provisions of the Act and

Rules, are not entitled to interim custody.

It is the contention that the cattle which have been now seized by the Police have been transported in violation of Rule 47 of the Transport of Animal Rules, 1978.

It is submitted that as per the Rules, valid certificate by a qualified Veterinary Surgeon stating that the cattle is fit for travel and not suffering from any infectious diseases and that they have been vaccinated, has to accompany each consignment, however, the owner of the cattle did not comply with the same.

Further more, the transporter is bound to refuse to transport the cattle without the certificate and he has also violated the Rules.

Further more, in terms of Rule 49, the consignment should bear a label in red colour, name, address and licence number of the consignor and the consignee, the number and type of cattle being transported and the quantity of ration and food provided.

Further, it is stated that ordinary goods carriage shall not carry more than 10 adult cattle or 15 calves, on broad gauge not more than six adult cattle or ten calves on a meter gauge and if transported by goods vehicle, not more than six cattle.

Admittedly, in these cases, the number of cattle which have been transported in each vehicle is about 24 cattle and prima facie it is clear that it is in violation of Rule 56(c) of the Transport of Animal Act, 1978.

Therefore, prima facie, if the owner of the cattle have violated the said Rule and transported more than six cattle in a goods vehicle, they cannot be stated to have complied with the other requirements.

Further, it is stated that no food was provided to the cattle and the vehicle was not fitted with special type of tail board, no anti-slip floor was provided and such other matters.¹³ It is further submitted that the Animal Welfare Board of India, addressed all Animal Welfare organisations informing them that Rule 96 of the Transport of Animal Rules must be strictly followed by Animal Welfare Organisations especially when animals which have been seized during

transportation for not violating the Transport Rules or being moved out from their shelters.¹⁴ The owner of the cattle have placed much reliance on the decision of the Hon'ble Supreme Court in the case of PINJRAPOLE DEUDAR (supra). The said appellant before the Hon'ble Supreme Court was challenging the order passed by the High Court of Gujarat, declining to grant interim custody of the animals to the owner therein.

The animals namely sheep and goats were transported in a goods vehicle, seized by the Police and the learned Judicial Magistrate directed the animals to be handed over to Pinjrapole.

The owners of the animals being aggrieved by such order preferred revision to the Sessions Court which allowed the revision and directed the custody of the animals to be given to the owners pending trial.

The Pinjrapole carried the matter in Revision to the High Court and they were disposed of declining to interfere with the order passed by the Sessions Court.

Challenging the correctness of the High Court order, the Pinjrapole were the appellants before the Hon'ble Supreme Court.

The Hon'ble Supreme Court, after taking into consideration of Sections 4, 9, 11, 12, 29, 32 to 34 of 1960 Act, referred to Section 35 of the Act, by virtue of which the Pinjrapole claimed interim custody.

The Hon'ble Supreme Court pointed out that unless the owner of the animal in respect of which he is facing prosecution is deprived of the cattle, which can be done only on his conviction under the Act, for the second time no bar can be inferred against him to claim interim custody of the animal.

While rejecting, the plea raised by the Pinjrapole for interim custody, it was pointed out the options available to the Magistrate under section 35(2) of the Act, vests discretion to give interim custody of the animal to the Pinjrapole and such direction may be issued by exercising discretion and he is not bound to handover the animal to Pinjrapole and that where the owner is claiming custody of the animal, the Pinjrapole has no preferential right.

It was further held that in deciding whether the interim custody of the animal be given to the owner who is facing prosecution or to the Pinrapole, the following factors will be relevant.

".10....(1)the nature and gravity of the offence alleged against the owner; (2) whether it is the fiRs.offence alleged or he has been found guilty of offences under the Act earlier; (3) if the owner is facing the fiRs.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....".

15.While observing that 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, but, it has to be seen whether the Pinjrapole is functioning as an independent organisation, whether it has a good record of taking care of the animals and on facts, the Hon'ble Supreme Court declined to interfere with the order passed by the High Court, affirming the order granting interim custody to the owners of the animals.

16.When a similar challenge was made by the Blue Cross of India before this Court, this Court in Cri.R.C.No.476 of 2013 dated 21.6.2013, after referring to the decision of the Hon'ble Supreme Court, in the case of PINJRAPOLE DEUDAR (supra).dismissed the Revision Petition by observing that comparing the deprivation of liberty to the animal for the short duration and comparing the deprivation of livelihood to the human being, the Court was of the view that depriving the livelihood option is more cruel and therefore it should be avoided.

The Special Leave Petition filed against the said decision before the Hon'ble Supreme Court was dismissed.

17.The learned counsel pointed out that there are equal number of cases where the Courts have declined to grant interim custody to the owner of the cattle and referred to the decisions in the case of PREMA VEERARAGHAVAN (supra) and NASEERULLAH (supra).18.It is noteworthy to point out at this juncture that the

inspection report submitted by the Assistant Commissioner of Police, Tiruppur (North) during February, 2014, states that about 43 animals are there in an extent of 1 acre and 80 cents and one Co.had died, one was serious and two cows were sick.

The reasons for the death are sickness is not forthcoming.

Is it attributable to the owner of the cows as they were improperly transported or such other issues?.

is a question to be considered after the Veterinary Doctors give their opinion.

In the same report, it is stated that there is no Veterinary Doctor and that the organisation started very recently, but the owner says that it has started about five years back.

On the side of the animal lovers/activists, it is submitted that all cattle are taken good care and they have been provided good food, Veterinary Doctors have been visiting to camp and where ever necessary, medicines are administered and the cattle are safe.

19.

After considering the rival submissions and after taking into consideration from the relevant provisions of the Act and the Transport Rules and the decisions rendered by the Courts, it is to be noted that a rigid formula cannot be adopted in all these cases where the power of granting interim custody is a discretionary power conferred on the Court.

The discretion should be exercised based on sound principles and not on vagaries.

The discretion should be exercised by assigning reasons and such reasons should be proper and germane.

It is no doubt true that the right of the owner of the cattle cannot be affected in any manner and the welfare organisations such as the respondents or the animal

lovers and activists cannot claim a superior right than the owner of the cattle, yet as public spirited citizens they are entitled to voice their grievance when cruelty is meted out to these animals and when provisions of Act are violated and when there is a serious infringement of the Transport Rules etc. In fact in these cases, complaints have been given by those persons who are interested in effectively implementing the provisions of the Acts and Rules and to avoid cruelty to animal.

Their object is laudable and appreciated.

However, the Court which is a judicial forum has to exercise its discretionary power within the framework of law, for which section 35 is the provision which speaks for grant of interim custody.

20. As held by the Hon'ble Supreme Court, sub section (2) of Section 35 of the Act vests with the Magistrate discretion to give interim custody of the animal to the Pinjrapole, sub-section (2) does not say that the Magistrate has send the animals to the Pinjrapole.

Therefore the Hon'ble Supreme Court held that the expression ".shall be sent".

is part of the discretion to be given by the Magistrate and if in his discretion he decides to give interim custody to the Pinjrapole, he may do so, but he is not bound to do the same and in the event the owner claims interim custody, the Pinjrapole can have no preferential right, while deciding whether interim custody of the animal be given to the owner who is facing prosecution.

In such circumstances, the relevant factors to be considered while exercising discretion were laid down by the Hon'ble Supreme Court.

21. Among the said fact ORS. it is not in dispute that the owners who are before us in these cases are the fiRs. offenders and they have not been found guilty for offence under the Act earlier.

Therefore, in the form of the guidelines issued by the Hon'ble Supreme Court, the owners should have a better claim for the animals.

There is no specific medical record produced or placed before this Court as regards the conditions of the animals.

Certain photographs have been shown before this Court by the People for Cattle in India, but the same cannot be taken into consideration at this stage of the matter and it is for the Court at the time of trial to examine all those issues.

22.The next aspect to be seen as to whether the possibility of the animals have been again subjected to cruelty and the nature of gravity of offence alleged against the owner.

The allegation is regarding the improper transportation and the cattle were packed sardines in a truck far more than the permitted limit of six.

These factors will be taken into consideration by the Court during the couRs.of trial and decide whether the owners are guilty of the offences alleged.

Thus, if the guidelines issued by the Hon'ble Supreme Court are applied to the facts, this Court is of the view that the owners of the cattle would have a preferential right than the 'Goshala' for having interim custody of the cattle.

23.Therefore, by taking note of the decisions of the Hon'ble Supreme Court, this Court is of the view that the order passed by the Court below in C.M.P.Nos.1430, 1431 and 1432 of 2013 dated 21.8.2013 calls for no interference.

Accordingly, the Criminal Revision Cases challenging the same stands dismissed.

24.In so far as the Revision Cases in Crl.R.C.Nos.1025 and 1026 of 2013, in each case, 24 cattle have been seized and they are in the custody of the third respondent.

From the impugned order, it is seen that among the 24 cattle, some of the animals are cows, which cannot be slaughtered as per the Government Order in G.O.Ms.No.1235 dated 26.5.1987.

The Court below dismissed the Petition filed by the owner by taking note of the decision of this Court in the case of NASEERULLAH (supra).In the said case, this

Court took into consideration the fact that after the cattle were seized and handed over to the organisation, 21 cattle died.

The post mortem reports were perused and it was found that the injuries are directly attributable to the manner in which they were transported.

In such circumstances, this Court refused to interfere with the order passed by the Magistrate, rejecting the claim made by the owner of the cattle for interim custody.

However, in the instant case, no such material has been placed before the Court to out rightly reject the claim of the owner of the cattle for its return.

However, it is said that among the cattle few of them are cows.

If such is the case, then the petitioners namely Mr.R.Sakthivel and Mr.M.Subramani, are not entitled for interim custody of the cows which shall remain with the third respondent till the conclusion of the trial.

In the result, (i) CrI.R.C.Nos.1025 & 1026 of 2013 are partly allowed and the impugned orders set aside and there will be a direction to return the cattle, to the petitioners except cows, subject to the stringent conditions that the learned Magistrate may impose in his discretion.

The cows shall be retained by the third respondent till the conclusion of the trial and if ultimately the petitioners are held guilty of the offences alleged, the amount spent by the third respondent for the upkeep of the cattle and cows shall be recovered from the petitioners.(ii)For all the reasons assigned, CrI.R.C.Nos.1093, 1106 and 1107 of 2013 are dismissed.

(iii) The respondent Police and other authorities concerned should bear in mind that there is a statutory requirement to strictly enforce the compliance of the provisions of the Transport of Animal Rules, 1978, more particularly Rule 47 which deals with issuance of certificate by a qualified Veterinary Surgeon as regards the fitness of the cattle for travel etc., and Rule 96 which deals with issue of certificate before transportation.

Consequently, connected Miscellaneous Petitions are closed.

rpa 04 .07.2014 Index :Yes/No Internet:Yes/No T.S.SIVAGNANAM, J.

rpa To 1.The learned Judicial Magistrate No.VII of Coimbatore.

2.The learned Judicial Magistrate No.1, Poonamallee.

3 The Inspector of Police, Chavady Police station Coimbatore District.

4.The Inspector of Police, Nazarathpet Police Station.

Pre-Delivery Common Order In CRL.R.C.Nos.1025, 1026; 1093, 1106 &1107 of
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