

Arun Prasanna Vs. the State

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Court : Chennai

Decided On : Apr-23-2013

Judge : S.Palanivelu

Appellant : Arun Prasanna

Respondent : The State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

23. 04-2013 CORAM THE HONOURABLE MR. JUSTICE S.PALANIVELU CRL.RC.No.320 of 2013 and M.P.No.1 of 2013 Arun Prasanna .. Petitioner Versus 1.The State Rep.by Sub-Inspector of Police, Chenglepet Taluk Police Station (Cr.No.1399 of 2012) .. Respondent/Respondent 2. Durgavaraprasad Tamrapu .. Respondent/Petitioner 3. Kumari Nambi .. Respondent/Defacto Complainant Revision filed u/s.397 r/w 401 Cr.P.C., against the order of Judicial Magistrate No.2 Chenglepet in C.M.P.No.106/2013 in Cr.No.1399 of 2012 returning 15 Milch cows to the 2nd respondent. For Petitioner : Mr.S.Rajendrakumar for M/s. Norton and Grant For Respondents : Mr.C. Emalias Additional Public Prosecutor ORDER The revision petitioner is member of Managing Committee of the Society for Prevention of Cruelty to Animals constituted by the District Collector, Chennai vide Roc.not C2/38263/2009, dated 14.11.2012 and is interested in the safety of animals in question. The petitioner and the defacto complainant have lodged complaint on 22.12.2012 before the 1st respondent police. Pursuant to which 1st respondent police registered a case in Cr.No.1399 of 2012 u/s 11(1) D and H of

Prevention of Cruelty to Animals Act 1960, and seized the cattle that were being transported illegally by the 2nd respondent/accused by name DurgavaraPrasad Tamrapu, who is the owner of the cattle.

2. The 2nd respondent filed an application before the Court below for interim custody of the cattle and after hearing the defacto complainant and accused, the learned Judicial Magistrate has inclined to to deliver interim custody of 15 cows along with their calves to the 2nd respondent on the following conditions: "... .. The petitioner/owner of the property has to execute a bond for Rs.10,00,000/- (Rupees Ten lakh only) with one surety for a likesum. Moreover, the petitioner shall take photograph of the above said cows with calves in front and side views and produce three sets of photographs in the court duly signed by the petitioner/owner of the property and police and Head Ministerial Officer of this Court . (One photograph will be kept in the case bundle one photograph kept by the petitioner/owner of the property and another will be kept in the CD file of concerned police). The petitioner shall produce the milch animal (cows) as and when required by this Court." 3. The learned counsel for the petitioner would submit that as per the provisions of PCA Act, the accused/owner is not entitled to take custody of the animals, that under the Transport of Cattle Rules, every consignment of cattle should bear the name of consignor and the consignee, but in this case the trucks did not carry the name of the consignor and consignee, that the cattle that were being illegally transported did not have necessary certificate from a veterinarian about its fitness to undertake to travel and that the animals are under medical treatment and no prejudice will be caused to the respondents if interim custody is granted to the petitioner.

4. The learned counsel for the petitioner has also drawn attention of this Court to the Rule 56 of the Transport of Animal Rules, which stipulates conditions as to how the cattle should be transported, which are as follows: "(a) Specially fitted goods vehicles with a special type of tail board on padding around 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 low, 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; (f) to prevent cattle being frightened or injured, they should preferably face the engine."

5. The learned Judicial Magistrate has granted interim custody to the accused/owner based on the provisions under section 451 and 457 of Cr.P.C., and the procedures laid down in *Sunderbhai Amabalal Desai v. State of Gujarat* [2003

(1) CTC 175, which is not applicable to the case on hand involved in the Prevention of Cruelty to Animals Act, 1960. Sections 29(1) and

(3) of the Act deal with the power of Court to deprive person convicted of ownership of animal, which goes thus: "29.(1) If the owner of any animal is found guilty of the offence under this Act, the Court upon his conviction thereof, may, if it thinks fit in addition 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 as to the disposal of the animal as it thinks fit under the circumstances.

(2)

(3) without prejudice to the provision 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." As per the above Act, the accused/owner is not entitled to take custody of the animals.

6. The cattle were entrusted with M/s. Sri Ramanuja Ghoshala for maintenance temporarily. A member of Indian Institute of Animal Welfare wrote a letter on 15.3.2013 to the Sub-Inspector of Police, Chenglepet, that they have received 13 cattle from Tmt. Jayashree for treatment and maintenance, that in spite of good treatment, one cow died and presently 8 cows 1 buffalo was there and two cows are kept in Muththupandy farm for treatment. The petitioner has produced the proceedings of the collector of Chennai dated 14.11.2012 in which Society for

Prevention of Cruelty of Animals was reconstituted by appointment of Members. In this proceedings the Managing committee consisting of five authorities and in which interested non-official individuals 4 members. The name of the petitioner figures first in the list of interested non official individuals.

7. In the above said circumstances, this Court is of the view that the petitioner is the competent person to take care of the welfare of the cattle and the cattle may be given custody to the petitioner till the disposal of the case with the following conditions: a) The cattle have to be photographed in 3 angles front, back and sideways; b) The photographs with negatives shall form part of the case. c) The petitioner shall produce the cattle as and when required by the Court.

8. With the above conditions the revision case is allowed setting aside the order of the learned Judicial Magistrate No.2, Chengalpattu, in Cr.M.P.No.106 of 2013 dated 20.2.2013. Connected Miscellaneous petition is closed. 23.04.2013 Internet : Yes Index : Yes ggs To 1. The Judicial Magistrate not II, Chengalpattu.

2. The Public Prosecutor, High Court, Madras. S.PALANIVELU, J.

ggs Order in: CRL.RC.No.320 of 2013 and M.P.No.1 o

23. 04.2013

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