

Naseerulah Vs. State

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Court : Chennai

Decided On : Mar-14-2013

Judge : B.Rajendran

Appellant : Naseerulah

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

14. 03.2013 CORAM: THE HONOURABLE MR.JUSTICE B.RAJENDRAN
CRL.R.C.No.777 of 2010 Naseerulah .. Petitioner Vs. 1.State by:- Sub-Inspector of Police, Coonoor. 2.G.Subramaniya Karthick, Secretary, Tamil Nadu Ecological Animal Protection Society(TEAPS), No.47, Vijayanagar Palace Road, Ooty

001. .. Respondents (Impleaded the second respondent as per order of this Court dated 18.08.2010 in M.P.No.1 of 2010) PRAYER: Criminal Revision is filed under Section 397 and 401 of Cr.P.C., against the order in C.M.P.No.2710 of 2010, dated 23.06.2010 passed by the learned Judicial Magistrate, Coonoor dismissing the petition for return of property and seeks to set aside the same prays for return of the seized animals. For Petitioner : M/s.A.Madhumathi For Respondent 1 : Mr.R.Prathap Kumar Government Advocate (Crl. side) For Respondent 2 : Mr.M.Santhana Raman *** ORDER This Criminal Revision Case has been filed against the order of dismissal of the application seeking for return of property viz., seized animals.

2. The case of the petitioner is that the petitioner is the owner of 24 cows. While he was transporting the same in one lorry bearing Registration not TN-25-4577, the lorry and the cows were seized by the police on 16.04.2010 alleging commission of offence punishable under Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960. According to him, he has not committed any offence and he is the legitimate owner of the property viz., cows. He further stated that as the vehicle has been returned to the owner, the cows should be returned to him. He undertakes to produce the cows before the Court as and when required. This application was stoutly resisted not only by the Public Prosecutor but also by the intervenor/complainant viz., the second respondent herein who is impleaded as party viz., the Secretary, Tamil Nadu Ecological Animal Protection Society (TEAPS).

3. The main contention of the second respondent/intervenor/ complainant was that the owner has transported the cows numbering 24 in one lorry in an inhumane condition. Further, there is a specific allegation that the cows were transported for slaughtering. Out of 24 cows, one cow was pregnant. Therefore, the petitioner has violated all norms, rules and regulations in transporting the animals. According to him, the petitioner has violated the provisions of Section 11(1)(d) of the Prevention of Cruelty to Animals Act. He has also violated the Transport of Animals Rules, 1978 enacted in exercise of powers conferred under Section 38(2)(h) and Rule 56 (c) of the Prevention of Cruelty to Animals Act, 1960, and also committed offence punishable under the Indian Penal Code as also Section 8 of the Tamil Nadu Animal Preservation Act, 1958. Even he has also committed offence punishable under the Motor Vehicles Act and therefore, the custody of the cattle should not be given back to the petitioner/owner, especially, when there is an embargo under Section 29 of the Prevention of Cruelty to Animals Act, 1960, which deprives of a person convicted under the provisions of the Act from claiming ownership. Therefore, the lower Court was correct in dismissing the application and this revision ought to be dismissed. He also relies upon the judgment of this Court in Crl.R.C.No.1534 of 2001, dated 22.01.2002 reported in 2002 (1) CTC 672.(Prema Veeraraghavan v. State by the Inspector of Police, K-10, Koyambedue P.S., Chennai and another) whereby it was specifically rejected the plea of a person who has committed the offence cannot be entrusted with the property even though

he may be the owner of the property, especially, in this case where there is a clear violation of Acts and inhumane treatment meted out to the animals and it is specifically transported for butchery which is prohibited. He also brought to the notice of this Court the subsequent event that in this case even though 24 cows were seized by the police as early as on April, 2010, they were badly injured and they were exhausted. They were all suffocated and one of the animals died there itself and after that in the course of six months when it was in the custody of the second respondent, 21 of them died due to injuries and internal bleedings caused because of the inhumane transportation. Therefore, the subsequent event also has to be taken note of by this Court. For which, he has also produced the post-mortem certificate of the animals conducted by the Veterinary Surgeon. In this background, he also contend that sufficient safeguard has to be made and issued by this Court prohibiting such violations which occurred regularly and especially meted out to the poor, unfortunate animals which cannot speak for themselves.

4. Learned Public Prosecutor also would mainly contend this is a fittest case where the Court can take judicial notice that 24 cows were transported in one lorry in an inhumane manner and subsequently, 21 of them died. Such activity has to be nibbed in the bud and not only the the owners of the animals but also the vehicle owners should be stringently punished. Further, he would contend that the order of dismissal by the lower Court is reasonable and correct.

5. Heard all the parties concerned. By consent, the main revision itself is taken up for final disposal.

6. This is a pathetic case which has been brought forward to the notice of the Court by the second respondent who is the complainant. In this case, it is brought to the notice of the Court that 24 cows were transported in one lorry bearing Registration not TN-25-4577 on 16.04.2010 and on a complaint of violation of Section 11(1)(d) of the Prevention of Cruelty to Animal Act, 1960. The vehicle and the animals were seized and that animals were kept in safe custody with the second respondent. The grievance of the revision petitioner was that the lower Court has failed to entertain his application when he sought for return of the property viz., the cows and dismissed it. Hence, he has come forward with this

revision.

7. At the outset, when we see the case, the petitioner had carried 24 cows in one vehicle. The photographs which has been produced at the time of hearing the revision, show that the injuries caused to the animals because of the cramp nature as they were all kept in one lorry. Before dealing with this subject, first of all, we can deal with various enactments, rules and regulations which are already provided insofar as to the transportation of the cattle and safeguard of the cattle. Section 11 of the Prevention of Cruelty to Animals Act, 1960, elaborately deals with various cruelty meted out to animals and Section 11(1)(d) specifically deals with the injuries caused during transportation of animals. Chapter III, Section 11 deals with cruelty to animals generally which reads as follows: "11. Treating animals cruelly.-(1) If any person- (a) beats, kicks, overrides, overdrives, overloads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animal to be so treated; or (b) [employs in any work or labour or for any purpose any animal which, by reason of its age or any disease], infirmity, wound, sore or other cause, is unfit to be so employed, or being the owner, permits any such unfit animal to be so employed; or (c) wilfully and unreasonably administers any injurious drug or injurious substance to [any animal] or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by [any animal]; or (d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or (e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or (f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or (g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or (h) being the owner of [any animal], fails to provide such animal with sufficient food, drink or shelter; or "

8. Further, we have got the Transport of Animals rules, 1978 enacted in exercise of powers conferred under Section 38 (2)(h) of the Prevention of Cruelty to Animals Act, 1960. In the rules, Rule 56 stipulates the conditions as to how the cattle should be transported in such a manner without

causing any injury or discomfort to the animals. Rule 56(c) specifically stipulates that no goods vehicle shall carry more than six cattle. In fact, Rule 56 also empowers that the cattle should be transported with all precautions viz., (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; and (f) to prevent cattle being frightened or injured, they should preferably face the engine.

9. Therefore, the Rule 56 specifically provides for precautions including having one attendant for every six cattle and also padding around the sides should be used and anti-slippery material should be used. Then Section 8 of the Tamil Nadu Animal Preservation Act, 1958 provides for punishment with imprisonment for a term which may extend to 3 years or fine which may extend to One thousand rupees or with both to a person who inter alia maims or renders useless any animals with an intent to make, or knowing that he is likely to make such animal fit for slaughter under the provisions of this Act. Section 4 of the said Act also deals with the prohibition of slaughtering the animals without certificate. In fact, Section 2(a) defines animal means bull, bullock, cow, calf, he-buffalo or she-buffalo or buffalo calf. Section 4 (3)(a) provided only certificate can be issued when the animal is over ten years of age and is unfit for work and breeding; or the animal has become permanently incapacitated for work or breeding due to injury, deformity or any incurable disease only then they shall be permitted for slaughtering. Apart from that, there is a Government Order of the Tamil Nadu Government in G.O.Ms.No.1715, Agriculture Department, dated 30.08.1976 under which there was a ban imposed to cow slaughtering in the interest of milk production and improvement of rural economy. This Government Order subsequently directs the slaughter of cows, heifers (cow) be banned in all slaughter houses in Tamil Nadu. A notification is made as per the Government Order in G.O.Ms.No.1235, Home (Police XII) Department, dated 26 May 1987 empowering the powers under Section 13(3), 32 and 34 of the Prevention of

Cruelty to Animals Act, 1960, empowering the Society for Prevention of Cruelty to Animals Inspectors to exercise the powers. The said society which has been recognised by the Tamil Nadu Animal Welfare Board has empowered under this Act to enforce the Prevention of Cruelty to Animals Act more effectively and it was published in the Government gazette subsequently.

10. Apart from these specific Acts regarding the prevention of cruelty to animals, Section 177 of the Motor Vehicles Act stipulates punishment for the offences in respect of contravention of the provisions of the Motor Vehicles Act with a fine which may extend to 100 to 300 for first offence and for any second or subsequent offence. Section 19(c) of the Motor Vehicles Act itself stipulates that the licensing authority can disqualify the person who is holding the driving licence or revoke such license if a person is using or has used a motor vehicle in the commission of a cognizable offence. Section 20 also confers power on the Court to disqualify a person who is convicted of an offence under this Act or of an offence in the commission of which a motor vehicle was used, from holding driving license for such period. When the vehicle is used for transporting the animals in such unhygienic condition and without any proper safeguard and in violation of the transport rules, then the driver of the vehicle also can be punished under Section 20 because the vehicle was used for committing the offence under the Act.

11. Further, Rule 97 of the Transport of Animals Rules, 1978, stipulates cancellation of permit or authorisation for permit in the event of non-compliance or contravention of any of the rules contained in these rules for transport of animals. Again Section 29 of the Prevention of Cruelty to Animals Act, 1960 deprives the person convicted under the provisions of the Act from claiming ownership in respect of the animals involved in such crime. It is common knowledge that invariably the persons admitted the offences and paying a paltry fine and thereafter they seek for return of vehicle as well as animals claiming to be the owner. On a careful reading of Section 29 (1) of the above said Act would clearly indicate that having committed the offence he should not be permitted to utilise the very animals which he had subjected to inhumane practices and especially, without giving any protection for them. In the present case, where 24 cows have been taken in one vehicle. In this connection, this Court has also guided by the

judgment of this Court made in Crl.R.C.No.1534 of 2001 reported in 2002-1-CTC-627 (Prema Veeraraghavan v. State by the Inspector of Police, K-10, Koyambedue P.S., Chennai and another) that is also a case where 18 buffaloes were carried in one vehicle on 24.10.2001. The petitioner is an Export Consultant under Committee for the Purpose of Control and Supervision of Experiments on Animals (CPCSEA), Government of India, filed a complaint that they were charged under Section 428 and 429 I.P.C. and Section 11 of Prevention of Cruelty to Animals Act, 1960, the lorry and 18 buffaloes were seized. In fact, one of the buffaloes was found dead even at the time of seizure. Thereafter, the applicant filed an application seeking for return of balance of the buffaloes. The lower Court ordered for return of the buffaloes. Aggrieved against the same, a revision was filed challenging the order of release. In the revision, this Court in Crl.R.C.No.1534 of 2001 has categorically held that when invoking Section 29(3) of the Prevention of Cruelty to Animals Act, 1960, the second respondent owner would not be entitled to the custody of the buffaloes. In fact, this Court has clearly held that that section provided the animal could not be given to any of the persons who are accused of the offence. The relevant portions of the above order is extracted as under: "4. On considering the submission made by the counsel for the parties and on perusal of the Case Diary, it is notified that the second respondent would not be entitled to the custody of the buffaloes in view of Section 29(3) of the Prevention of Cruelty to Animals Act.

5. The above section would provide that the custody of the animal could not be given to any of the persons, who are accused of the offence.

6. On going through the Case Diary and other records, it is clear that 18 buffaloes were packed in a lorry in violation of the Transport of Animal Rules, 1978. The buffaloes were kept jam-packed with a rope fastened through their nose and out of 18 buffaloes, one died. So it is clear that the offence has been committed under the Prevention of Cruelty to Animals Act.

7. Even according to the first respondent in the petitioner before the lower Court, he only arranged for the transport of the buffaloes to be taken to Andhra Pradesh for agricultural purpose. It is the contention of the petitioner that these buffaloes

were to be taken to Kerala for butchering.

8. Under Rules 47 to 56 of the Transport of Animal Rules, 1978, no goods vehicle should carry more than six cattle and there should be a valid certificate by a qualified Veterinary Surgeon that the animals are fit to travel and each consignment should bear a label showing the name and address of the consignor and the consignee. Admittedly, in this case, 18 buffaloes were transported in a single lorry without any certificate in violation of the rules.

9. Moreover, the second respondent, who claimed to be the owner of buffaloes and arranged for the transport of the said buffaloes, is also a party to the said offence and he has also been arrayed as an accused. Under those circumstances, the second respondent is not entitled to the interim custody of the buffaloes." 12. The facts in that case squarely applies to the fact of the present case. Therefore, also the lower Court was correct in dismissing the application. In fact, the power of Court to deprive person convicted of ownership of animal under Section 29 of the Act was also dealt with by the Supreme Court in a judgment reported in (2007) 15 SCC 588. State of M.P. Vs. Islam, wherein, the Supreme Court has categorically held that as per Section 29(1) of the Act, undoubtedly, confers jurisdiction on the Court, in the event the offender stands convicted, to pass an order of forfeiture of the animals in favour of the Government. But, a close scrutiny of language used therein, Section 29(1) stands appears to be restricted and subject to the provisions contained in sub-section (2) of Section 29 specifically lays down three specific conditions. The three specific conditions are as follows:- a) It is shown by evidence as to a previous conviction under this Act. b) as to the character of the owner or otherwise, as to the treatment of the animal. c) that the animal, if left with the owner, is likely to be exposed to further cruelty. In this case, the Court should be guided by this principle that there should be an evidence that when the owner is already convicted of a previous offence of same nature or when there is an evidence that the character of the owner is as to which he treats the animal in a bad manner or animal is left with the owner is exposed to further cruelty. In this case, admittedly, there is an evidence that the cattle have been taken to Kerala for butchering purposes. When there is a specific ban in regard to slaughtering of cow and further more, there were lot of injuries caused and the post-mortem certificate

issued by the doctor clearly indicates that there are injuries and the veterinary doctor has also been examined at the time of the seizure also and that when clear cut evidence is available, naturally, the custody cannot be given. Apart from this, as rightly pointed out by the learned Counsel for the respondent that there could be some guidelines issued to the lower Courts as well as the authorities concerned in respect of the transport of such animals. In this case, we are also governed by Section 32 of the Prevention of Cruelty to Animals Act, 1960 which confers the power of search and seizure for the the police officers in contravention of the provisions of the Act. An argument was made that the offence under Section 11(1)(d) is a non-cognizable offence within the meaning of Code of Criminal Procedure. But Section 102 of Cr.P.C. which is extracted below clearly empowers the police officer to seize any material with regard to any offence which include the offence under Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960. In this connection, a ruling of the Gujarat High Court reported in 1998 CrI.J.

1337 (Panjrapole, Deodar and etc., v. Chakaram Moraj Nat, Maldhari and another) wherein it is clearly stated that under Section 102 of Cr.P.C. the police has power to seize animals also. The following may be usefully extracted: "18. Though at the first instance, the contention raised by Mr.Tirmizi appears to be attractive, in my view, it has no substance. Section 102 of the Cr.P.C. empowers the Police Officer to seize any property which may be alleged or suspected to have been stolen or which may be found under the circumstances which create suspicion of the commission of an offence. Section 102 reads as follows: Section 102: Power of police officer to seize certain property. (1) Any police officer may seize any property which may be alleged or circumstances which create suspicion of the commission of any offence. (2) Such police officer, if subordinate to the officer in charge of a police station shall forthwith report the seizure to that officer. (3) Every police officer action under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same. The words 'any offence' employed u/S.102 shows unmistakably that even though there may be commission of non-cognizable

offence, the police may seize any property found under the suspicious circumstances. Sub-section (2) of Section 102 provides that, such officer, subordinate to the officer in charge of the police station, shall forthwith report the seizure to that officer. Sub-clause (3) provides that, every police officer acting under sub-clause (1) shall forthwith report the seizure to the Magistrate having the jurisdiction. Thus, the police officer has a power to seize animal on suspicion of commission of an offence committed under the Act of 1960 or under the other ancillary provisions, irrespective of the fact that they are non-cognizable offences. On such seizure, the police officer is required to forthwith report to the Magistrate having the jurisdiction. The Court is required to pass an appropriate order with respect to the custody of the animal under the provisions of Section 451 of the Cr.P.C. Thus, in my view, irrespective of the fact that, except offences under clause (i), (n) or (o) of Sub-section (1) of Section (11) or 12 of the Act of 1960, rest of the offences are non-cognizable, the police has a power to seize the animal under Section 102 of the Cr.P.C. and the Magistrate will be competent to pass an order u/s.451 of the Cr.P.C." 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. In the result, this Criminal Revision Case is dismissed. Note: The Registry is directed to circulate a copy of this order to all the Courts below for necessary reference. srm

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