

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CRIMINAL APPLICATION No. 1387 of 2008****With****CRIMINAL MISC.APPLICATION No. 16543 of 2008****For Approval and Signature:****HONOURABLE MR.JUSTICE D.H.WAGHELA****Sd/-**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
? **1 & 2 YES; 3 to 5 NO**

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DOSUKHAN SAMDAKHAN SINDHI - Applicant(s)**Versus****STATE OF GUJARAT & 7 - Respondent(s)**

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Appearance :

MR MUKUL SINHA for Applicant(s) : 1 - 6.

MR RC KODEKAR ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,

MR VIRAT G POPAT for Respondent(s) : 2,

MR NS SHETH for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**Date : 30/12/2008****CAV JUDGMENT**

1. The petitioners, claiming to be cattle breeders engaged in the business of breeding and trading sheep and goats from Rajasthan, have approached this Court to challenge

the order dated 05.07.2008 of learned Additional Chief Judicial Magistrate, Deesa in Criminal Misc. Application No.296 of 2008 whereby the application for returning their sheep and goats was rejected, but the cattle were ordered to be taken back from Rajpur-Deesa Panjrapole and to transfer them to any other panjrapole outside the district of Banaskantha. The parties having agreed and requested for final hearing and disposal of the matters, they are admitted and service of Rule is dispensed with.

2. According to the petitioners, petitioner No.6 was transporting from Sanjar in Rajasthan to Ahmedabad the petitioners' sheep and goats by six trucks after taking permit from the transport authority and for selling them at the market at Ranip in Ahmedabad. The journey started from a point seven kilometres inside Rajasthan and the trucks were driven to Dhanera to Deesa to Palanpur in Gujarat and they were to reach Ahmedabad via Sidhpur and Mehsana and the total distance of about 250 kms. was to be covered in 4 to 5 hours including a break near Nandasan village for feeding the cattle. Around 1515 sheep and goats totally valued at Rs.30,30,000/- were being so transported in the night of 16.6.2008 on National Highway No.8 when the trucks were stopped in the early hours of 17.6.2008 near Palanpur and were taken back towards Deesa where they were handed over to Rajpur-Deesa Panjrapole managed by respondent No.2. The cattle of the petitioners in six trucks alongwith 600 more sheep and goats carried in two other trucks were also seized by the respondents with the help of police and the trucks were forcibly taken to the panjrapole while the drivers of the trucks were arrested. While the trucks were so taken over and driven by the drivers

brought by respondent No.2, one of the trucks over-turned and six goats died on the spot.

2.1 Thereafter, an FIR was lodged by respondent No.2 and it was registered as Deesa City II-C.R.No.3131 of 2008 wherein the date and time of offences are shown to be 17.6.2008 at 03.30 and the date and time of information is stated to be 17.6.2008 at 1900. According to that FIR, offences under section 279 of IPC and section 11 (1) (d) under the Prevention of Cruelty to Animals Act, 1960 and Sections 5, 6 and 8 of the Bombay Animal Preservation Act, 1954 were committed by transporting total 1974 sheep and goats without permit and in a cruel manner due to which 99 animals had already died. It is stated by the complainant-respondent No.2 that, upon an advance information, he was, with three others, waiting in a watch on the highway near Jalaram Cross Road when, at 2.00 o'clock in the early hours of 17.6.2008, the trucks in question had passed and they were intercepted by them and as the trucks did not stop at their instance, they chased the trucks in a car and informed the police by their mobile phones. Therefore, the police barricaded the road at a point ahead and seeing the police at that point, drivers of the truck stopped near Aroma Circle and escaped. On an average, more than 200 animals, mostly goats, were being carried in each vehicle and it was learnt from the drivers who were caught by the complainant that the cattle were being transported to Ranip cattle market for being slaughtered. Thus, the trucks and the cattle were taken to the panjrapole run by respondent No.2, the complainant, where 1875 sheep and goats were unloaded and 99 were found to have died on the

way. It is practically admitted in the FIR itself that the trucks, the cattle and the drivers were kept in the panjrapole by and at the instance of the complainant while Mr.J.K.Bhatti, Police Sub Inspector, Deesa had recorded and registered the FIR.

2.2 Another FIR was lodged on 17.6.2008 at 1430 hours at Palanpur Police Station by Govind R.Rabari, showing himself as accused person for the offence punishable under section 279 of IPC on the basis that while he was driving one of the aforesaid trucks carrying the cattle, at the instance of respondent No.2, he had lost control of the truck due to overweight of cattle and the truck had turned on its side when six cattle had died and the truck was damaged.

3. It is alleged by the petitioners that respondent No.2 along with his headstrong associates illegally grabbed the consignment of sheep and goats by illegally stopping the trucks near Palanpur and forcing them to be taken to Deesa. It is alleged that not a single sheep or goat had died in the truck but large number of them were shown in the FIR to have died to straightaway appropriate them. It is also alleged that respondent No.2 had planned the entire operation of looting the trucks and the local police at Deesa were working hands in glove in tandem. Therefore, one of the petitioners had filed the complaint with Superintendent of Police at Palanpur on 17.6.2008 itself about forcible and violent taking over of the trucks and the cattle along with Rs.500 by respondent No.2. A regular criminal case was filed by that petitioner in the Court of learned Chief Judicial Magistrate, Palanpur and it was registered as Criminal Inquiry No.237 of 2008 on 18.6.2008 for

the offences punishable under sections 395, 506 (2), 427 and 34 of IPC. It is, *inter alia*, alleged in the complaint that the persons accused therein, including respondent No.2, had, with the help of police, taken over the trucks and beaten the drivers while thousands of rupees carried on the trucks were looted. According to the complaint, sheep and goats worth Rs.45,48,000/- and cash of Rs.1,11,000/- were looted by the accused persons. Learned Chief Judicial Magistrate has made an order below the complaint directing the District Superintendent of Police of Palanpur to make a report within seven days about investigation conducted pursuant to the earlier complaint dated 17.6.2008 of the complainant.

4. Thereafter, the petitioners made an application under sections 451 and 457 of Cr.P.C. for custody of the cattle, below which the impugned order was made denying custody of the animals to the petitioners. During hearing of that application, the Trust run by respondent No.2 was given sufficient opportunity of being heard and adjournments were granted on the ground that the application of the investigating officer to keep the cattle in question in custody of respondent No.2 was rejected by order dated 27.6.2008 and that order was challenged in a revision application in which an injunction was also sought from the Sessions Court. It is recorded in the impugned order that learned advocate for respondent No.2 tried to browbeat the Court after submitting that any citizen of India had the right to stop any illegal activity and the applicants, petitioners herein, were not dealers in cattle, but the cattle were carried to Ahmedabad for slaughter. It was recorded as a finding of fact that, in the facts of the case, the search and seizure of the sheep and goats was not carried out

by any police officer or in accordance with the provisions of section 102 of Cr.P.C., but the complainant appeared to have taken the law in his own hands and lodged the complaint thereafter. Even the Police Sub Inspector Mr.J.K.Bhatti had unloaded the cattle at Rajpur-Deesa Panjrapole and sought *ex-post facto* permission therefor under section 35(2) of the Act, and such unauthorized actions could not be approved. However, in view of the complaints and counter-complaint with allegations of loot and in view of the facts that reputation of the panjrapole of the respondent was bad and *prima facie* cruelty was committed by carrying excessive number of cattle in a truck, the impugned order rejecting the application for custody of the cattle was made with the direction that the cattle should be shifted within two days to another panjrapole in a nearby district. That was, however, not done till an interim order herein was made on 24.10.2008 in the following terms:

"After hearing of the petition at some length, it was submitted by learned counsel Mr.Popat, appearing for respondent No.2 and acceded by learned counsel for the petitioner that pending hearing of the petition and final orders that may be made, order dated 05.07.2008 of learned Additional Chief Judicial Magistrate, Deesa was required to be properly and fully implemented. Accordingly, regardless of any other pending proceedings or orders of the other Courts, respondent No.2 shall, within a period of one week, i.e. on or before 31.10.2008, shift in the proper and legal manner the sheep and goats, 1325 in number, to Panjrapol at Patan. The shifting and transportation shall be carried out by respondent No.2 under the supervision and in presence of the investigating officer of Deesa City Police Station or such other officer as may be entrusted responsibility

by him. Respondent No.2 and the officer of Deesa police station, supervising the shifting of the cattle, shall make proper identification and Panchnama at the time of loading the cattle and at the time of unloading the cattle at Patan Panjrapol and submit a short report through learned A.P.P. on the next date of hearing. This interim arrangement is worked out and agreed upon without prejudice to the rights and contentions of the parties. The parties will be permitted to argue and take appropriate contentions in respect of the number of cattle which are alleged to have perished or to be missing after the initial seizure by the police. S.O. to 18.11.2008."

5. The net outcome of the proceedings so far was that, as against the claim of total 2115 sheep and goats being transported, 1325 sheep and goats were shifted to the panjrapole at Patan after more than 4 months and they were withheld in the meantime by respondent No.2. After the cattle being shifted as aforesaid, the manager of Patan Panjrapole has made an application for being joined as respondent and made further prayer to pay maintenance charges @ Rs.12/- per day per head of cattle or permit them to keep them during pendency of the matter which is obviously an indirect objection to the cattle being released to the petitioners.

6. The respondent No.2 has, by filing an affidavit, *inter alia*, submitted that he is Secretary and In-charge of Rajpur-Deesa Panjrapole which is actively involved in preservation of sick and infirm cattle. It is a public trust constituted with the object of nourishing old and infirm or strayed cattle and impeding illegal and unauthorised slaughtering of animals which are illegally transported to

slaughter houses. There are more than 500 cases wherein the deponent is a complainant or wherein the cattle is given to the panjrapole of the deponent. That he was once brutally attacked by certain butchers and his panjrapole was also targeted to see that he discontinued his activities. According to him, 1974 sheep and goats were seized on 16.6.2008 and, out of them, almost 100 were found dead inside the trucks due to overloading. Since the police officer concerned was not willing to file a complaint in that regard, the deponent had filed FIR being II-C.R.No.3131 of 2008 before Deesa City Police Station and, on 19.6.2008, the police had informed the J.M.F.C. concerned that the muddamal (cattle) was with his panjrapole. When learned J.M.F.C. rejected the request of the police to hand over custody of animals to the deponent, that order was challenged by the deponent as well as the State in a revision application wherein the order of learned Magistrate was stayed. It is further deposed that Hon'ble Governor had recognized the panjrapole of the deponent as one of the panjrapoles where animals were to be kept after their seizure; and the Government has also issued circular dated 29.1.2000 for that purpose. It is stated that the deponent had, in the year 2003, received Mahavir International Award for movement against cruelties towards animals and thereafter in May 2008, he was given Mahavir Award for his work in the field by Her Excellency Smt. Pratibha Patil, the President of India. It is further stated that, at present, more than 10,000 animals are being nourished by the panjrapole of the deponent and his role in the field of protection of animal rights was required to be appreciated. It may be noted here that the aforesaid circular dated 29.1.2000 was relating to care of cows and calves.

7. Against the above backdrop of facts and contentions, it was argued for the petitioners that they have not committed any offence, as alleged, under section 11 (1) of the Act or under sections 5, 6 or 8 of the Bombay Animal Preservation Act. That offence under section 11 (1) (d) could be committed only if any person conveys or carries, whether in or upon any vehicle, any animal in such manner or position as to subject it to unnecessary pain or suffering and, in any case, the maximum punishment for the first offence could be fine of 50 rupees. For the purpose of constituting such offence, an owner could be deemed to have committed the offence if he has failed to exercise reasonable care and supervision for preventing the offence. And, nothing in section 11 could apply to commission or omission of any act in the course of destruction or preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by infliction of unnecessary pain or suffering. With that legal background, it was submitted that the animals in question were transported on a journey spanning only 4 to 5 hours, without violating the provisions of the Transport of Animals Rules, 1978. It was submitted that the offences alleged against the petitioners were not cognizable and the provisions of sections 5, 6 and 8 of the Bombay Animal Preservation Act did not apply at all to the sheep and goats. It was also submitted that since the petitioners were ordinary cattle breeders or traders of sheep and goats, they had a fundamental right under the Constitution to do their business and that right cannot be illegally undermined by an unauthorised person or even the State by just alleging offences and taking away the property and stock-in-trade of the petitioners. It was submitted that the petitioners had already

incurred huge losses and expenses on account of the wholly illegal and unauthorised acts and activities of the respondent and the petitioners were entitled to be compensated therefor under public law.

8. As against the above submissions for the petitioners, it was submitted for the respondent that the trucks were intercepted and seized by or at the instance of police officers on the highway while the animals were transported in violation of the Transport of Animals Rules, 1978. When the livestock was very likely to be taken to slaughter house, the Court was not required to return the muddamal to the owners, but they were required to be preserved in a panjrapole as, at the end of trial, an order for their confiscation could be made. It was submitted that the petitioners could have filed a revision application to challenge the impugned order and the present petition under Articles 226 and 227 of the Constitution was not maintainable. It was submitted that any police officer was entitled to seize the livestock under section 34 of the Act if it were illegally transported for slaughter and that under section 35 (1) of the Act, the animals could be kept in panjrapole without obtaining permission from the magistrate. It is held by this Court in ***Jiv Daya Mandal Panjrapol v. State of Gujarat [2008 (1) GCD 268]*** that loading of animals in a vehicle beyond its capacity is itself cruelty upon animals. It was prayed that even if the animals were to be ordered to be released, it should be on very stringent conditions of not selling, transporting or slaughtering them and of producing them as and when directed by the Court concerned, under a bank guarantee or cash security of the amount equivalent to the value of the livestock and with conditions to ensure their proper

preservation. Learned A.P.P. appearing for the State, has submitted, without any affidavit being filed by any police officer, that the Court may make appropriate final order in respect of the remaining sheep and goats and if the complaint of respondent No.2 were found by this Court to be untenable and if no cognizable offence were made out, it may be quashed in exercise of inherent jurisdiction of this Court under section 482 of Cr.P.C., in order to end the criminal proceedings. It was specifically clarified by him that the State would have no objection if the Court were to impose appropriate amount of fine upon the petitioners, to end the proceedings, if any non-cognizable or cognizable offence were found by this Court to have been committed by the petitioners.

9. Before discussing the judgments cited at the bar, it would be advantageous to extract relevant provisions of the Act. The Prevention of Cruelty to Animals Act, 1960 is enacted with the avowed object of preventing infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to the prevention of cruelty to animals. Chapter III of the Act entitled "Cruelty to Animals Generally" defines in section 11 the offence of treating animals cruelly. Relevant part of section 11 reads as under:

"11(1) If any person-

(a) to (c)

(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) to (g)

(h) being the owner of any animal, fails to provide such animal with sufficient food, drink or shelter; or

(i)& (j)

(k) offers for sale or, without reasonable cause, has in his possession any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment; or

(l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner;

(m) to (o)

he shall be punishable, in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees, and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both.

(2) For the purpose of sub-section (1), an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence:

Provided that where an owner is convicted of permitting cruelty by reason only of having failed to

exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) *Nothing in this section shall apply to-*

(a) *to (d) ...*

(e) *the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering.*

S.12 ...

S.13 Destruction of suffering animals

(1) *Where the owner of an animal is convicted of an offence under section 11, it shall be lawful for the court, if the court is satisfied that it would be cruel to keep the animal alive, to direct that the animal be destroyed and to assign the animal to any suitable person for that purpose, and the person to whom such animal is so assigned shall, as soon as possible, destroy such animal or cause such animal to be destroyed in his presence without unnecessary suffering, and any reasonable expense incurred in destroying the animal may be ordered by the court to be recovered from the owner as if it were a fine.*

Provided that unless the owner assents thereto, no order shall be made under this section except upon the evidence of a veterinary officer in charge of the area.

(2) *When any magistrate, commissioner of*

police or district superintendent of police has reason to believe that an offence under section 11 has been committed in respect of any animal, he may direct the immediate destruction of the animal, if in his opinion, it would be cruel to keep the animal alive.

- (3) Any police officer above the rank of a constable or any person authorised by the State Government in this behalf who finds any animal so diseased or so severely injured or in such a physical condition that in his opinion it cannot be removed without cruelty, may, if the owner is absent or refuses his consent to the destruction of the animal, forthwith summon the veterinary officer in charge of the area in which the animal is found, and if the veterinary officer certifies that the animal is mortally injured or so severely injured or in such a physical condition that it would be cruel to keep it alive, the police officer or the person authorized, as the case may be, may, after obtaining orders from a magistrate, destroy the animal injured or cause it to be destroyed, in such manner as may be prescribed.
- (4) No appeal shall lie from any order of a magistrate for the destruction of an animal.

S.29 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, if 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.*
- (4) No order under sub-section (3) shall be made unless-*
 - (a) it is shown by evidence as to a previous conviction or as to the character of the said person or otherwise as to the treatment of the animal in relation to which he has been convicted that an animal in the custody of the said person is likely to be exposed to cruelty;*
 - (b) it is stated in the complaint upon which the conviction was made that it is the intention of the complainant upon the conviction of the accused to request that an order be made as aforesaid; and*
 - (c) the offence for which the conviction was made was committed*

in an area in which under the law for the time being in force a licence is necessary for the keeping of any such animal as that in respect of which the conviction was made.

- (5) Notwithstanding anything to the contrary contained in any law for the time being in force, any person in respect of whom an order is made under sub-section (3) shall have no right to the custody of any animal contrary to the provisions of the order, and if he contravenes the provisions of any order, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.
- (6) Any court which has made an order under sub-section (3) may at any time, either on its own motion or on application made to it in this behalf, rescind or modify such order.

30. Presumption as to guilt in certain cases.

If any person is charged with the offence of killing a goat, cow or its progeny contrary to the provisions of clause (l) of sub-section (1) of section 11, and it is proved that such person had in his possession, at the time the offence is alleged to have been committed, the skin of any such animal as is referred to in this section with any part of the skin of the head attached thereto, it shall be presumed until the contrary is proved that such animal was killed in a cruel manner.

31. Cognizability of offences.

Notwithstanding anything contained in the Code of Criminal Procedure, 1898(5 of 1898), an offence punishable under clause (1), clause (n) or clause (o) of sub-section (1) of section 11 or under section 12 shall be a cognizable offence within the meaning of

that Code.

32. Power of search and seizure.

(1) If a police officer not below the rank of sub-inspector or any person authorized by the State Government in this behalf has reason to believe that an offence under clause (1) of sub-section (1) of section 11 in respect of any such animal as is referred to in section 30 is being, or is about to be, or has been, committed in any place, or that any person has in his possession the skin of any such animal with any part of the skin of the head attached thereto, he may enter and search such place or any place in which he has reason to believe any such skin to be, and may seize such skin or any article or thing used or intended to be used in the commission of such offence.

(2) If a police officer not below the rank of sub-inspector, or any person authorized by the State Government in this behalf, has reason to believe that phooka or doom dev or any other operation of the nature referred to in section 12 has just been, or is being, performed on any animal within the limits of his jurisdiction, he may enter any place in which he has reason to believe such animal to be, and may seize the animal and produce it for examination by the veterinary officer in charge of the area in which the animal is seized.

33. Search warrants.

(1) If a magistrate of the first or second class or a presidency magistrate or a sub-divisional magistrate or a commissioner of police or district superintendent of police, upon information in writing, and after such inquiry as he thinks necessary, has

reason to believe that an offence under this Act is being, or is about to be, or has been committed in any place, he may either himself enter and search or by his warrant authorize any police officer not below the rank of sub-inspector to enter and search the place.

- (2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall, so far as those provisions can be made applicable, apply to searches under this Act.

34. General power of seizure for examination.

Any police officer above the rank of a constable or any person authorized by the State Government in this behalf, who has reason to believe that an offence against this Act has been or is being, committed in respect of any animal, may, if in his opinion the circumstances so require, seize the animal and produce the same for examination by the nearest magistrate or by such veterinary officer as may be prescribed, and such police officer or authorized person may, when seizing the animal, require the person in charge thereof to accompany it to the place of examination.

35. Treatment and care of animals.

- (1) The State Government may, by general or special order, appoint infirmaries for the treatment and care of animals in respect of which offences against this Act have been committed, and may authorize the detention therein of any animal pending its production before a magistrate.
- (2) The magistrate before whom a prosecution for an offence against this

Act has been instituted may direct that the animal concerned shall be treated and cared for in an infirmary, until it is fit to perform its usual work or is otherwise fit for discharge, or that it shall be sent to a pinjrapole, or, if the veterinary officer in charge of the area in which the animal is found or such other veterinary officer as may be authorized in this behalf by rules made under this Act certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed.

- (3) An animal sent for care and treatment to an infirmary shall not, unless the magistrate directs that it shall be sent to a pinjrapole or that it shall be destroyed, be released from such place except upon a certificate of its fitness for discharge issued by the veterinary officer in charge of the area in which the infirmary is situated or such other veterinary officer as may be authorized in this behalf by rules made under this Act.
- (4) The cost of transporting the animal to an infirmary or pinjrapole, and of its maintenance and treatment in an infirmary, shall be payable by the owner of the animal in accordance with a scale of rates to be prescribed by the district magistrate, or, in presidency-towns, by the commissioner of police:

Provided that when the magistrate so orders on account of the poverty of the owner of the animal no charge shall be payable for the treatment of the animal.

- (5) Any amount, payable by an owner of an animal under sub- section (4) may be

recovered in the same manner as an arrear of land revenue.

- (6) If the owner refuses or neglects to remove the animal within such time as a magistrate may specify, the magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.*
- (7) The surplus, if any, of the proceeds of such sale shall, on application made by the owner within two months from the date of the sale, be paid to him.*

36.

37.

38. Power to make rules.

- (1) The Central Government may, by notification in the Official Gazette, and subject to the condition of previous publication, make rules to carry out the purposes of this Act.*
- (2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules providing for all or any of the following matters, namely:-*
 - (a) to (g) *
 - (h) the precautions to be taken in the transport of animals, whether by rail, road, inland waterway, sea or air and the manner in which and the cages or other receptacles in which they may be so transported.*
- (3) If any person contravenes, or abets the contravention of, any rules made under this section, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment*

for a term which may extend to three months, or with both.

In exercise of the above powers, the Transport of Animals Rules, 1978 are framed and the following rules may be relevant:

"CHAPTER VI

TRANSPORT OF SHEEP AND GOATS

64. *Rules 65 to 75 shall apply to the transport of sheep and goats by rail or road involving journeys of more than six hours.*

65 to 74

75 (1) *Goods vehicles of capacity of 5 or 4.5 tons, which are generally used for transporting animals, shall carry not more than forty sheep or goats.*

(2) *In the case of large goods vehicles and wagons, partition shall be provided at every two or three metres across the width to prevent the crowding and trapping of sheep and goats.*

(3) *In the case of ewes, goats or lambs or kids under six weeks of age, separate panels shall be provided."*

10. Referring to the precedents on the points in issue, it was submitted that, as held in ***Manager, Pinjrapole Deudar and Another v. Chakram Moraji Nat and Others [(1998) 6 SCC 520]***, unless the owner of the animal in respect of which he is facing prosecution, is deprived of the custody on his conviction under the Act for the second time, no bar could be inferred against him to claim interim custody of the animal. In deciding whether interim custody of the animal be given to the owner

who is facing prosecution, or to the pinjrapole, the following factors will be relevant:

- (1) *the nature and gravity of the offence alleged against the owner;*
- (2) *whether it is the first offence alleged or he has been found guilty of offences under the Act earlier;*
- (3) *if the owner is facing the first 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;*
- (6) *whether the pinjrapole is functioning as an independent organization or under the scheme of the Board and is answerable to the Board; and*
- (7) *whether the pinjrapole has a good record of taking care of the animals given under its custody.*

The pinjrapole being prepared to keep the animals in custody without charging any money for their maintenance cannot be a correct criterion for giving custody to the pinjrapole, particularly when the Court has to decide the competing claims of the owner and the pinjrapole for their custody.

Judgment of this Court in ***Jiv Daya Mandal Panjrapol v. State of Gujarat [2008 (1) GCD 268]*** was rendered with the factual background of 16 offences of similar nature having been registered against the owner of the animals. It was, however, held that carrying of 241 sheep and goats in 2 tempos itself suggested cruelty on animals. Order dated

22.2.2002 of the Supreme Court in ***State of U.P. v. Mustakeem [2002 (3) GLH (U.J.) 8]*** was cited to point out that the Court was shocked when animals were ordered to be released to the owner despite specific allegation that the animals were transported for being slaughtered and were tied very tightly to each other. The direction issued by the Supreme Court to keep the animals in Goshala indicated that the animals in question may be cows and calves and none of the provisions of the Act appeared to have been referred. In ***Rahimbhai Adambhai Tarakvadiya v. State of Gujarat [2007 (2) GLH 611]***, this Court permitted release of muddamal sheep and goats and the conditions to deposit Rs.15 lakh and pay maintenance cost of the animal to the panjrapol for custody of the muddamal were set aside. The Court permitted the petitioner to take appropriate remedy against the concerned responsible persons for the loss of goats, if any. In ***Mukeshbhai N. Kamdar v. State of Gujarat [2005 (3) GLH 216]***, the panjrapole was directed to handover custody of the animals with the observations that the owner of the livestock had a better claim and another prosecution pending against him could not be equated with previous conviction.

11. Considering the facts and submissions in light of the express legal provisions and the precedents stated hereinabove, it clearly appears that the offences as alleged in the FIR registered as II-C.R.No.3131 of 2008 under section 279 of IPC and section 11 (1) (d) of the Act or sections 5, 6 and 8 of the Bombay Animal Preservation Act were not made out except for the fact that excessive number of animals were carried in the vehicles due to which they were subjected to unnecessary pain and suffering. In absence of even an allegation of any

previous case or conviction for similar offence, the offence was punishable with fine which may extend to 50 rupees. Since it is alleged that they were being transported for being slaughtered and that is denied by the petitioners, the petitioners could not have the defence of the offence having been committed in the course of destruction or preparation for destruction of the animals as food for mankind. However, by no stretch, it was a case for an order after conviction of forfeiture of the animals to the Government or for disposal of the animals by way of giving their permanent custody to respondent No.2. On the other hand, the complainant had no legal authority to carry out any search or seizure under sections 33 and 34 of the Act even as the alleged offence under section 11 (1) (d) was not a cognizable offence for which the police could have legally intervened in such a manner and such large number of livestock and property of the petitioners worth lakhs of rupees could not have been handed over to the complainant. The facts of the case and the procedure followed by the Police Sub Inspector of Deesa, Mr.J.K.Bhatti, clearly indicated some elements of extortion with the help of police. Admitted chasing of the trucks by the complainant, respondent No.2, stopping them on the highway by the police and then taking over control of the trucks and carrying the whole fleet to the panjrapole of the complainant by substituted drivers were acts of extraordinary highhandedness without the backing of any legal provision. None of the actors in the episode were prepared to take the responsibility of loss of about 800 animals in the process and it was sought to be explained away by irrational argument that they were dying in the process of transportation or dying natural death during the custody of respondent No.2.

12. It was at one stage argued on behalf of respondent No.2 that he was prepared to pay the price of the remaining animals, but the highest price could be Rs.1,000/- per animal and not Rs.2,000/- which was claimed to be the market price by the petitioners. That offer could be viewed as an indirect attempt at confiscation of the illegally seized animals and dictating the price of the surviving animals. Such strategy and actions initiated by the original complainant and abetted by the police officers concerned could only be deprecated and clearly amount to violation of the fundamental rights of the petitioners. Admittedly, the powers of search and seizure conferred by the provisions of sections 32, 33 and 34 of the Act were not exercised and the search and seizure of the animals in the facts of the present case was not in accordance with those provisions.

13. Since it is clear from the above facts that the petitioners were not liable to pay anything more than Rs.50/- by way of fine, even if they were convicted after trial of a non-cognizable case, the State was under an obligation to protect the fundamental rights of the petitioners under Article 19 of the Constitution and the police officers had the duty to protect private property of the petitioners from being taken over by respondent No.2. But the respondent No.2 appeared to have assumed the power of search and seizure with the help of the police and caused unnecessary loss, damage, detention of the cattle and deprivation for the petitioners. Not only the respondent No.2 but the police officers concerned have appeared to have been carried away by their zeal to save the animals from being slaughtered which is not *per se* an illegal activity, even as one may hold any personal views about non-

violence and animal welfare. Therefore, in the name of cruelty to animal in their transportation, the animals could not legally be saved from assumed ultimate slaughter by practically confiscating them. Nor would it be just and practical to release the animal under such conditions as would make their maintenance and possession utterly unprofitable, if not impossible. Court should not make further cruelty to the animal inevitable by imposing such cumbersome conditions as were suggested by the respondent.

13.1 On the other hand, in view of the obvious and undisputably high-handed actions of the respondent resulting into violation of petitioners' fundamental right and admitted loss of about 30% of their livestock due to the actions which are not authorized by law, they are entitled to compensation by way of a public law remedy.

As held by the Supreme Court in ***Nilabati Bahera v. State of Orissa [(1993) 2 SCC 746]***:

"10.It may be mentioned straightaway that award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort....."

"14.it is sufficient to say that the decision of this Court in Kasturi Lal [AIR 1965 SC 1039] upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for

contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation....."

In ***Maharaj v. Attorney General of Trinidad and Tobago [(1978) 2 All ER 670]***, the Privy Council while interpreting Section 6 of the Constitution of Trinidad and Tobago held that though not expressly provided therein, it permitted an order for monetary compensation, by way of redress for contravention of the basic human rights and fundamental freedoms. Lord Diplock speaking for the majority went on to observe as under:

"Finally, their Lordships would say something about the measure of monetary compensation recoverable under Section 6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone."

In ***Simpson v. Attorney General [(1994) NZLR 667]***, the Court of Appeal in New Zealand, dealt with the issue in a very elaborate manner by reference to a catena of authorities from different jurisdictions. It considered the applicability of the doctrine of vicarious liability for torts, like unlawful search, committed by the police officials which violate the New Zealand Bill of Rights Act, 1990. While dealing with the enforcement of rights and freedoms as guaranteed by the Bill of Rights for which no specific remedy was provided, Hardie Boys, J. observed, after referring to ***Nilabati Behra*** (supra), thus:

"The old doctrine of only relegating the aggrieved to the

remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system, which aims to protect their interests and preserve their rights".

The Supreme Court, in **Rudul Sah v. State of Bihar [(1983) 4 SCC 141]**, observed as under:

"10.In these circumstances of the case, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21, which guarantees the right to life and liberty, will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation....."

14. In the above facts and circumstances and since the parties have requested the Court to exercise its jurisdiction under Article 226 of the Constitution as well as section 482 of Cr.P.C., the petition is disposed as partly allowed with the following directions:

- (1) The petitioners shall each pay in the trial Court Rs.50/- by way of fine for the offence punishable under section 11 (1) (d) of the Act;
- (2) The FIR registered as II-C.R.No.3131 of 2008 at Deesa City Police Station and the proceedings pursuant thereto, including the orders for interim

custody of the animals and the revision applications preferred therefrom shall stand quashed;

- (3) Respondent No.2 shall pay, by way of compensation and costs, to each of the petitioners the sum of rupees seventy five thousand, without prejudice to their rights and contentions in the criminal proceeding initiated by way of Criminal Inquiry Case No.237 of 2008 and stated to be pending before learned Chief Judicial Magistrate, Palanpur. Respondent No.2 shall further pay, on behalf of the owners, cost of maintenance and treatment of the animals in question to respondent No.3 in accordance with the provisions of sub-section (4) of section 35. All these amounts shall be paid by respondent No.2 within a period of one month, i.e. latest by 30.01.2009;
- (4) The surviving animals in care and custody of respondent No.3 under the aforesaid interim order shall be handed over to the original owners and petitioners in such proportion as the original number of seized animals bears to the number of surviving animals. The animals to be returned to each of the petitioners or owners should be roughly 70% of the number of animals originally seized;
- (5) Respondent No.1, the State of Gujarat, shall take appropriate departmental action for illegal or unauthorized actions, if any on the part of any police officer, and if upon enquiry it *prima facie* appears that any police officer has participated in a

cognizable offence, appropriate criminal proceeding should be initiated against such officer;

- (6) Since respondent No.2 was at one stage claimed to have been authorized and designated as "Hony. Animal Welfare Officer" by the Animal Welfare Board of India, a copy of this judgment shall be served upon the Animal Welfare Board of India, Ministry of Environment and Forests, Government of India, 13/1 Third Seaward Road, Valmiki Nagar, Thiruvamiyr, Chennai-600 041; and
- (7) The petitioners shall take over the custody and care of the surviving animals within two weeks and the police officer in charge of the police station at Patan shall supervise delivery of the animals to the petitioners by respondent No.3 in such manner that the animals are not subjected to further cruelty in their transportation within the area of his jurisdiction. And the petitioners shall not commit any offence under the Act in respect of the surviving animals and submit an undertaking to that effect to the police officer in charge of the police station at Patan.

15. The petition is disposed as partly allowed with the above directions and Rule is made absolute accordingly. The criminal miscellaneous application does not survive and stands disposed.

Sd/-
(**D.H.Waghela, J.**)

Upon pronouncement of the above judgment, learned counsel Mr.Virat Popat, appearing for respondent No.2, and learned counsel Mr.N.S.Sheth, appearing for respondent No.3, requested to stay the operation of this judgment and order for a period of four weeks to facilitate approaching the higher forum by the respondent. There being no justification for granting such request, it is rejected.

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)