

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CRIMINAL APPLICATION No. 2136 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  
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**VAGORIYA HARUNBHAI MOHAMMEDALI - Applicant(s)****Versus****STATE OF GUJARAT - Respondent(s)**

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**Appearance :**

MR MAHENDRA K PATEL for Applicant(s) : 1,  
MR RC KODEKAR ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA****Date : 24/10/2008****ORAL JUDGMENT**

1. Rule. Learned A.P.P. waives service for the respondent. The petitioner has, invoking Articles 226 and 227 of the Constitution, challenged the order dated 29.09.2008 in Criminal Appeal No.28 of 2008 whereby his appeal against the

order of learned J.M.F.C., Radhanpur forfeiting 12 oxen to the Government was confirmed.

2. There was no dispute about the fact that the petitioner was charged with and convicted of the offence of cruelty to animals and the cruelty consisted of carrying of 12 oxen in a truck which was double the number of permissible limit. Upon conviction of the petitioner on pleading guilty, the petitioner was punished with fine of Rs.8,200/- and there was no dispute about the fact that it was the first conviction of the petitioner. Under those circumstances, forfeiture of the oxen was an additional and disproportionate punishment, though technically it can be imposed under the provisions of section 29 of the Prevention of Cruelty to Animals Act, 1960. In view of the business of the petitioner, nature of alleged cruelty and the attitude of the petitioner, the impugned order in appeal as well as the original order dated 01.07.2008 of JMFC, Radhanpur are required to be set aside. Accordingly, they are set aside and the original application Ex.4 of the petitioner in Criminal Case No.306 of 2008 is allowed with the direction that 12 oxen seized from the petitioner shall be handed over to the petitioner with intervention of police sub-inspector concerned of Radhanpur Police Station from the custody of the institution to which interim custody of the animals was entrusted. Rule is made absolute accordingly with no order as to costs.

Sd/-

( **D.H.Waghela, J.** )

(KMG Thilake)