

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 25TH DAY OF MAY, 2010

BEFORE

THE HON'BLE MR.JUSTICE JAWAD RAHIM

CRIMINAL PETITION NO.7076/2010

BETWEEN:

1. BASAVARAJ,
S/O GUDDAPPA AGADI,
AGED ABOUT 67 YEARS,
OCC: AGRICULTURE,
R/O MOTEBENNUR, TQ: BYADAGI,
DIST: HAVERI.
2. CHANNABASAPPA,
S/O PUTTAPPA KULENUR,
AGED ABOUT 60 YEARS,
OCC: AGRICULTURE,
R/O MOTEBENNUR, TQ: BYADAGI,
DIST: HAVERI.
3. NANJUNDAYYA,
S/O GURAYYA HAVERIMATH
AGED ABOUT 58 YEARS
OCC: AGRICULTURE
R/O MOTEBENNUR, TQ: BYADAGI,
DIST: HAVERI.
4. SHIVANAGOUDA,
S/O BHARAMAGOUDA PATIL

Am

AGED ABOUT 65 YEARS
OCC: AGRICULTURE
R/O MOTE BENNUR, TQ: BYADAGI,
DIST: HAVERI.

5. MALLESHAPPA,
S/O NEELAPPA BATTALAKATTI
AGED ABOUT 60 YEARS
OCC: AGRICULTURE
R/O MOTE BENNUR, TQ: BYADAGI,
DIST: HAVERI.

6. BHIRARADDI @ BHIMANNA
S/O HANUMARADDI JANGAREDDER
AGED ABOUT 42 YEARS
OCC: AGRICULTURE
R/O MOTE BENNUR, TQ: BYADAGI,
DIST: HAVERI.

7. PANDAPPA
S/O NINGAPPA ARER
AGED ABOUT 58 YEARS
OCC: AGRICULTURE
R/O MOTE BENNUR, TQ: BYADAGI,
DIST: HAVERI.

8. VEERAPPANNA @ VIRUPAXAPPA
S/O HOLIYAPPA GUDAGUR
AGED ABOUT 55 YEARS
OCC: AGRICULTURE
R/O MOTE BENNUR, TQ: BYADAGI,
DIST: HAVERI.

9. NAGARAJ,
S/O PARAMESHWARAPPA BANAKAR
AGED ABOUT 46 YEARS, OCC: AGRICULTURE
R/O MOTE BENNUR, TQ: BYADAGI,
DIST: HAVERI.

... PETITIONERS

(BY SRI V.M SHEELAVANT, ADV.,)



AND:

TIPPANNA,
S/O RAMAPPA MAILANNANAVAR
AGED ABOUT 40 YEARS
OCC: AGRICULTURE,
R/O KANAVALLI TQ & DIST: HAVERI
... RESPONDENT
(BY SRI M.V.HIREMATH, ADV., AND SRI
V.S.KALASURMATH, ADVs.,)

THIS CRL.P IS FILED UNDER SECTION 482 CR.P.S
PRAYING TO CALL FOR RECORDS, ALLOW THIS PETITION
AND SET ASIDE THE ORDER DATED 18.12.2009 PASSED BY
THE SESSIONS JUDGE AT HAVERI IN
CRL.R.P.NO.165/2007 PRODUCED AT DOCUMENT NO.7
AND THE ORDER DATED 19.12.2007 PASSED BY ADDL.
CIVIL JUDGE (JR.DN) & JMFC HAVERI IN P.C.NO.168/2007
PRODUCED AT DOCUMENT NO.6 AND CONSEQUENTLY
RELEASE THE HE-BUFFALO SEIZED IN P.C.NO.168/2007
TO THE PETITIONERS.

THIS PETITION COMING ON FOR ORDERS THIS
DAY, THE COURT MADE THE FOLLOWING:

ORDER

In this revision, the order dated 18.12.2009 in
Crl.R.P.165/07 on the file of Sessions Judge, Haveri, is
questioned whereby the order passed by the learned trial
judge granting interim custody of a buffalo to the
respondent is confirmed.



2. Heard learned counsel on both sides.
3. The contextual facts are:

a) Respondent-Thammanna, a resident of Kanavali village lodged a private complaint under Section 200, Cr.P.C. seeking prosecution of the petitioner herein on the allegation, in the village, villagers had arranged a procession for performing the *pooja* and other rituals to the deity of Motebennur village. The buffalo was also part of the procession which was to be sacrificed on culmination of all the rituals to Goddess Dyamavva. He alleged the petitioner herein along with Bhojaraj Rudrappa Ballary, Guddappa Kariyappa Alur and Nagappa Honnammanavar intercepted the devotees and took away the buffalo in a tractor-trailer bearing No.KA-27/T-9696 to be sacrificed to the deity of Dyamavva. He alleged they had no right to do so as the buffalo belonged to the villagers of Kanavali village.

b) Along with the complaint, he filed an application under Section 94, Cr.P.C. seeking to issue of search



warrant to trace the animal and seize it from the illegal custody of the petitioner and his accomplices.

c) The jurisdictional magistrate on receipt of the private complaint, did not record the sworn statement, but referred it to the jurisdictional police for enquiry and report, exercising power under Section 156(3), Cr.P.C. However, the magistrate, examining the allegation in the application under Section 94, Cr.P.C., issued warrant to be executed by S.M.Katagi, advocate, court commissioner with the assistance of Circle Inspector of Police, Byadgi.

d) In pursuance to the commission warrant issued in terms of Section 94, Cr.P.C., the commissioner seized the buffalo found at Motebennur village and recorded it in the *Panchnama* on 18.12.2009 authenticated by witnesses. The seized animal was brought before court.

e) At this juncture, complainant Thippanna filed an application under Section 457, Cr.P.C. seeking interim custody. Similar application was also filed by the petitioner seeking interim custody.



f) Both the applications were heard and by the impugned order dated 19.12.2007, the petitioner's application was rejected, while allowing the application of Thippanna, granting him interim custody.

g) Assailing it petitioner was in Crl.R.P.165/07 before the learned sessions judge who found no favour and dismissed the same. Assailing both these orders, he has filed this appeal under Section 482, Cr.P.C.

4. Learned counsel for the petitioner would submit the order passed by the magistrate is illegal and unsustainable as it is passed without jurisdiction; he submits as on the date the impugned order was passed, there was no case pending either for enquiry or trial before the magistrate, and hence, he could not have issued the warrant for search and seizure of the animal under Section 94, Cr.P.C.

5. The second ground is, when the complaint is presented, it was incumbent on the part of the magistrate to take cognizance; since he had not done so, he had no jurisdiction to pass any further order like the one passed under Section 94, Cr.P.C. In other words, his contention



is, since the magistrate had, on receipt of the complaint, referred it for investigation by the jurisdictional police under Section 156(3), Cr.P.C., there was no case on his file and hence, no order could have been passed.

6. The last ground urged is, even if it is presumed the learned magistrate could pass the order under Section 94, Cr.P.C. to issue search warrant, such order has to be based on material proof that the property/live stock to be seized was the subject matter of theft or crime. Alternatively, he contends since the buffalo was seized from the possession of the applicant under Sections 451 and 457, Cr.P.C., he should have been granted interim custody.

7. Learned counsel for the respondent has opposed all grounds.

8. It is not in dispute that the 1st respondent is the complainant before the jurisdictional magistrate alleging theft of buffalo which, according to him, belonged to the residents of Kanavali village. Petitioners are arraigned as accused in the private complaint and it is alleged they had



taken away the buffalo for sacrificing it to the deity, Dyamavva of Motebennur village, against the interest of residents of village Kanavali. Records show there is *inter se* dispute between the villagers of Motebennur village about ownership of the buffalo. While the complainant alleges it belongs to Kanavali village, petitioners contend it belongs to Motebennur village. It is also not in dispute, on presentation of the complaint, the learned magistrate has not taken cognizance, but referred to the jurisdictional police for investigation, exercising power under Section 156(3), Cr.P.C. At that stage, he has passed the order under Section 94, Cr.P.C. to search and seize the buffalo.

9. The first ground against the impugned order is, since the magistrate had not taken cognizance on the basis of the private complaint, he could not have passed the order for search and seizure of the buffalo under Section 94, Cr.P.C. At this juncture, it is of relevance to extract the said provision. Section 94, Cr.P.C. reads thus:

"Search of place suspected to contain stolen property, forged documents, etc -
(1) If a District Magistrate, Sub-divisional



Magistrate or Magistrate of the first class, **upon information** and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is deposited in any place, he may by warrant authorise any police officer above the rank of a constable-

(a) to enter, with such assistance as may be required, such place,

(b) to search the same in the manner specified in the warrant,

(c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this section applies;

(d) to convey such property or article before Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose of it in some place of safety,

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or production of any such property or article knowing or having reasonable cause to suspect it to be stolen property or, as the case may be, objectionable article to which this section applies.

LR

- (2) The objectionable articles to which this section applies are-
- (a) counterfeit coin;
 - (b) pieces of metal made in contravention of the Metal Tokens Act, 1889 (1 of 1889), of brought into India in contravention of any notification for the time being in force under section 11 of the Customs Act, 1962 (52 of 1962);
 - (c) counterfeit currency note; counterfeit stamps;
 - (d) forged documents;
 - (e) false seals;
 - (f) obscene objects referred to in section 292 of the Indian Penal Code (45 of 1860);
 - (g) instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f)."

Therefore, for passing such order, it is not necessary that a case should be pending for enquiry or trial on the file of the magistrate. All that is required is, subject to the satisfaction of the magistrate concerned, that he has reason to believe the place is used for storing or deposit of stolen property or any objectionable material. There is no condition precedent in Section 94 that such power should be exercised only if there is any case pending on his file relating to commission of the offence punishable under the Indian Penal Code or any other law for the time being in



force. Therefore, the contention canvassed that such order could not have been passed is not worthy of acceptance.

10. Regarding the second ground that since the magistrate had not taken cognizance, there was no proceeding/enquiry pending on his file, it has to be held that the very presentation of the complaint before the magistrate and its receipt by him gives rise to the proceeding. During such proceeding, the magistrate may take the 'enquiry' upon himself, or refer the complaint for investigation by the local police. Therefore, proceedings commence on presentation of the private complaint to the magistrate and any mode that the magistrate deems fit is permissible.

11. With regard to the claim of the petitioners, it is seen on issuance of warrant, the buffalo has been seized by the commissioner with the assistance of police officers in terms of the order of the magistrate and the animal was produced before court. When such property/live stock is produced, the magistrate had to pass the order as required



under Sections 451 or 457, Cr.P.C. Since the petitioner and the complainant were applicants, the magistrate has weighed their claims, keeping in mind the pendency of the private complaint. In that, the magistrate was satisfied that the buffalo has been taken away from village Kanavali on 18.11.2007 to village Motebennur. The allegation in the complaint is that the animal was likely to be sacrificed to the deity, Dyamavva of Motebennur village. Therefore, the learned magistrate opined its preservation was necessary and hence, has granted interim custody to the complainant. In this view, the order passed by the magistrate cannot be faulted.

12. The order of the learned trial judge has been examined by the learned sessions judge in revision and he has also concurred with the finding of the trial court. I find no merit in the appeal. Hence, it is dismissed.

13. However, since the case is pending before the magistrate from 11.12.2007 in view of the stay obtained by the petitioners before the sessions judge, I direct the



magistrate to ensure further proceedings are taken up expeditiously and in accordance with law.

Sd/-
JUDGE

BS/SA*
vgh*