

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. 35 of 2021

Dhyan Foundation, A society dedicated to the cause of Animal Welfare, a Registered Trust Having Registration no. Doc. No. 2235, Addl. Book No. 4 On 27/5/2002 and also recognized by Animal Welfare Board of India, having registration no. ND 054/2019, having its office at Dhyan Foundation Gaushala, A-80, South Ex-11, New Delhi-110049, through its authorized representative Ms. Mahima Jaini D/o Keshav Jaini, R/o Garden Estate, Gurugram, Harayana, Currently residing at Dhyan Foundation Devipur BSF (Rescues) Cattle Farm, Tripura.

-----Petitioner(s)

Versus

- 1.The State of Tripura represented by secretary cum commissioner to the Government of Tripura
- 2.Suman Hussain, Melaghar, Indira Nagar, PO Melaghar, PS Melaghar Sepahijala Tripura
- 3.Nur Miah Melaghar, Indira Nagar, PO Melaghar, PS Melaghar Sepahijala Tripura

-----Respondent(s)

BEFORE

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

सत्यमेव जयते

For Petitioner(s)	:	Mr. Harish Pandya, Adv. Ms. Shreya Agarwal, Adv.
For Respondent(s)	:	Mr. S.Ghosh, Addl. PP. Mr. Asutosh De, Adv.
Date of hearing	:	29.09.2021
Date of delivery of Judgment	:	08.10.2021
Whether fit for reporting:		Yes.

JUDGMENT

[1] By means of filing this criminal revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, the petitioner which is a recognized animal welfare organization has challenged the legality and propriety of the impugned order dated 27.07.2021 passed by the Chief Judicial Magistrate, Sepahijala Judicial District at Sonamura in case No. Misc. 255 of 2021 whereby the learned CJM released nine cows in favour of respondent No.3 who claimed to be the owner of the said cows which were seized by police during their transportation from Melaghar to Sonamura on 26.07.2021 in a cruel and gruesome manner in breach of the provisions of the Prevention of Cruelty to Animals Act, 1960 and the Rules made thereunder.

[2] The factual background is as under:

Biswanath Chakraborty, Sub-Inspector of police, Sonamura Police Station, lodged a written complaint with the Officer-in-Charge of his Police station alleging, inter alia, that on 26.07.2021 at around 7 O'clock in the evening while he was performing duty in an area within the jurisdiction of his police station along with his accompanying police staff, he noticed that a vehicle bearing registration No.TR-01-K-1531 was carrying nine cows from Melaghar to Sonamura. Pursuant to his direction, the

police team accompanying him stopped the vehicle. It was found that space in the vehicle was too inadequate to carry 09 cows together. Moreover, there was no arrangement of water and fodder for those animals during their journey. The Police Officer, therefore, seized the vehicle along with the cows in presence of witnesses by preparing a seizure list and after seizure, he handed over the cows to the petitioner namely Dhyan Foundation, Devipur, which is an Animal Welfare Organization recognized by the Animal Welfare Board of India.

[3] The impugned order dated 27.07.2021 of the learned CJM demonstrates that since the allegations disclosed a non-cognizable offence punishable under sub-section (1) of Section 11 of The Prevention of Cruelty to Animals Act, 1960, the Officer in charge of Sonamura police station sought for permission of learned CJM to investigate the case against accused Suman Hussain, driver of the offending vehicle [Respondent No.2 herein] in terms of sub-section(2) of Section 155 Cr.P.C. The learned CJM having been satisfied that materials placed before him made out a prima facie case of offence punishable under clauses (a) and (d) of Section 11 of the Prevention of Cruelty to Animals Act, 1960, accorded

permission to the police officer to investigate the offence and submit report in court in accordance with law.

[4] Knowing about the seizure of his cows, Nur Miah who is respondent No.3 herein, also filed a petition in the court of the Chief Judicial Magistrate claiming ownership of the seized cattle. He produced a purchase memo in the court. Learned CJM, having been convinced about the authenticity of his claim, directed release of the seized cattle in favour of said Nur Miah on his furnishing an indemnity bond of Rs.2,00,000/- supported by adequate property documents on condition that said cattle would not be disposed of by the respondent until further order of court. By the same order the learned CJM also directed the investigating officer to make an enquiry as to whether said Nur Miah [**respondent No.3**] was actually the owner of the seized cows.

[5] Aggrieved by and dissatisfied with the said order passed by the learned CJM, the petitioner who had taken over the custody of the said animals after their seizure has approached this court for setting aside the impugned order passed by the learned CJM mainly on the following grounds:

- (i)The learned Magistrate did not appreciate the fact that the petitioner being an animal welfare organization

and the custodian of the seized animals had a preferential right to be heard before the learned court passed the order releasing the animals in favour of Md. Nur Miah who claimed to be the owner of the said cattle.

(ii) Even though no case was registered against said Nur Miah, learned CJM should have appreciated the fact that in terms of sub-section (2) of Section 11 of The Prevention of Cruelty to Animals Act, 1960, the owner shall be deemed to have committed offence, if he fails to exercise reasonable care and supervision with a view to prevention of such offence.

(iii) Learned CJM did not consider the fact that when there is an accusation of illegal transportation of animals in violation of The Prevention of Cruelty to Animals Act, 1960 and the Rules made thereunder, release of the animals in favour of the accused transporter or the owner during the pendency of the trial was completely illegal.

[6] After the present petition was filed, by an interim order dated 03.09.2021 passed by this court, the impugned order of the learned CJM was stayed and notice was issued to the respondents to file their reply.

[7] No written reply has been filed on behalf of the state respondent No.1. Respondents No.2 who is the driver of the

offending vehicle and Respondent No.3 who is the owner of the seized cows, have submitted their written response.

[8] In their written response, respondents 2 and 3 have stated that the cows were purchased for domestic purpose from Garji Agri Produce Market Committee and as a proof of purchase, they had a valid sale receipt and purchase memo which were produced before the trial court on the basis of which the learned CJM released the cows in favour of respondent No.3 who is the actual owner of the cows. It was also asserted by the said respondents in their written objection that despite receiving the release order from the court, the investigating officer did not take any effort for releasing the cows in favour of respondent No.3.

[9] Respondent No.3 further asserted that Dhyan Foundation which is the petitioner in the present case does not have any infrastructure for proper care and custody of animals. They have kept the animals under open sky and there is no shelter to protect the said animals from heat and rain. It has also been alleged by the said respondents that each of the cows have been insured by said Dhyan Foundation and they realize the whole amount of insurance in the event of death of an animal in their custody.

Respondents have urged the court for rejecting the criminal revision petition filed by the petitioner and return their cows.

[10] Heard Mr. Harish Pandya, learned advocate appearing along with Ms. Shreya Agarwal, learned advocate for the petitioner. Also heard Mr. Ashutosh De, learned counsel appearing for respondents No.2 and 3 and Mr. S.Ghosh, learned Addl. PP representing the State respondent.

[11] In the course of his arguments, counsel appearing for the petitioners have referred to various provisions of the Prevention of Cruelty to Animals Act,1960 and the Rules made thereunder. It is contended by Mr.Pandya, learned advocate of the petitioner that under the Prevention of Cruelty to Animals Act, 1960, various rules have been framed to prevent cruelty to animals during transport and slaughter, to regulate the animal markets and to curb trans-border cattle smuggling. Counsel submits that Section 38 of the Prevention of Cruelty to Animals Act, 1960 has empowered the Central Government to make rules to carryout the purposes of the Act and in exercise of such power, the Central Government has framed, amongst others, the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals)Rules, 2017. It is contended by learned counsel that since learned Chief Judicial

Magistrate has found by the impugned order that the materials placed before him made out an offence under the Act, he should have treated the seized animals as case property and the learned Magistrate should not have passed an order for release of the said animals ignoring the provisions of Rules 3 of The Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017.

[12] Counsel submits that under Rule 3 of the said Rules, such seized animals can only be kept in the custody of an infirmary, pinjarapole, SPCA, Animal Welfare Organization or Gaushala during the pendency of the litigation. It is also contended by learned counsel that in no circumstances, the seized animals which are case property animals under the Act, can be released during the pendency of the litigation because Rule 8 of the aforesaid rules categorically provides that if the accused is convicted or pleads guilty, the Magistrate shall deprive him of the ownership of such animals and the animals shall be forfeited to the infirmary, pinjarapole, SPCA, Animal Welfare Organization or Gaushala already having the custody of the said animals.

[13] Counsel further submits that even though the owner[Respondent No.3] could not be spotted by police when the

commission of the offence was detected, he shall be treated as an accused in view of sub-section(2) of Section 11 of the Prevention of Cruelty to Animals Act, 1960 which provides that for the purpose of sub-section(1) of Section 11 of the Act, an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to prevention of such offence. Counsel submits that the whole purpose of the law shall be frustrated if the custody of the animals which have been subjected to cruelty is handed over to the accused persons even if they claim ownership of the animals.

[14] In support of his stand, counsel has relied on the decision of the Gauhati High Court in **the judgment dated 21.09.2020 in Case No.Crl.Petn.452 of 2020[Dhyan Foundation vs. State of Assam and 2 Ors]** wherein the high court has held that the act and rules nowhere provide that seized animals can be released in favour of the owner. It has been held by the High Court that the order of the learned Magistrate whereby the seized cows were ordered to be released on Jimma in favour of their owner was de hors the provisions of the Act and Rules and therefore, such order of the Magistrate was set aside by the high court and the

matter was remanded to the trial court for fresh consideration in terms of the law laid down in this regard.

[15] Counsel has further relied on the **decision dated 05.02.2020 of the Apex Court in Raguram Sharma and Anr. vs. Thulsi and Anr. [Crl. Appeal. No.230 of 2020 arising out of SLP(Crl.)No.11726 of 2019]** wherein the Apex Court has held that if a prima facie case of causing cruelty to the animals is made out against the accused, interim custody of the animals ought not to be handed over to the accused. If the accused are finally found to be not guilty, then the issue of custody of the animals will logically be dealt with in accordance with the concerned rules or regulations.

[16] Counsel of the petitioner has also relied on another **decision dated 22.02.2002 of the Apex Court in Crl. Appeal No.283, 287 of 2002** wherein the Apex Court set aside the release order of the animals on the ground that there were specific allegations in the FIR with regard to cruelty committed to those animals and the criminal case was still pending. Counsel appearing for the petitioner argues that facts of the present case being similar, the impugned order passed by the learned Magistrate is liable to be set aside and the petitioner may be allowed to retain the custody of the seized cows.

[17] Mr.S.Ghosh, learned Addl. PP representing the state submits that the Gaushala of the petitioner is not properly maintained and the cattle are not safe in their custody. Counsel therefore, urges the court to issue appropriate direction to the petitioner to undertake appropriate measures for treatment and care of the animals in their custody.

[18] Mr.A.De, learned advocate appearing for respondents 2 and 3 on the other hand argues that the respondents have annexed some photographs to their written objection which clearly demonstrate that the petitioner does not have any infrastructure for taking proper care of the animals which have been entrusted to their custody. Counsel submits that the animals are left under open sky in heat and rain. A good number of cows are dying almost on every day for lack of proper care and treatment. Counsel submits that the trial court rightly released the animals in favour of Respondent no. 3 who proved his ownership before the trial court. According to Mr.De, learned advocate, since there is no illegality in the order passed by learned CJM, the present criminal revision petition is liable to be rejected.

[19] I have examined the record and considered the submissions of the counsel of the parties. Before The Prevention of

Cruelty to Animals Act, 1960 came into operation, the Prevention of Cruelty to Animals Act, 1890 enacted during the British rule was in force. When the deficiencies in the Act of 1890 were noticed and pointed out, Government of India constituted a committee to suggest measures for removal of those deficiencies from the Act of 1890. Pursuant to the recommendations of the committee, the Act of 1890 was replaced by the present Act of 1960 incorporating various provisions to prevent infliction of unnecessary pain or suffering on animals. Under the said Act, various rules have been made which include, amongst others, The Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017.

[20] The Act of 1960 deals with cruelty to animals in Chapter III of the Act. Under Section 11 in Chapter III, various instances of cruelty to animals have been identified. Overloading of animals in a vehicle is treated as a cruelty under clause(a) of sub-section(1) of Section 11 and conveyance or transportation of animals in a manner painful to them has been made an offence under clause(d) of sub-section(1) of Section 11 of the Act.

[21] The allegations appearing in the complaint lodged by Biswanath Chakraborty, a police officer of Sonmaura police station

make out a prima facie case against the accused driver of the offending vehicle as well as the owner who is deemed to be an accused in terms of sub-section (2) of Section 11 of the Act that they overloaded 09 cows in a small vehicle during their transportation from Melaghar to Sonamura and the manner in which those animals were transported was very painful to them. Learned trial court was also of the view that going by the allegations in the complaint, the accused were prima facie guilty of causing cruelty to those animals for which he permitted the investigating officer to carry out investigation in a non-cognizable offence. Despite such finding, the learned trial court released the animals in favour of respondent No.3 who claimed to be the owner of those animals.

[22] Section 29 in Chapter VI of the Act empowers the court to deprive a person of the ownership of animal if he is convicted for an offence under the Act. Under sub-section(1) of Section 29, it is provided that if the owner of any animal is found guilty of any offence under this Act, the court, upon his conviction may make an order that the animal with respect of which he has committed the offence shall be forfeited to the government. The Prevention of Cruelty to Animals(Care and Maintenance of Case

Property Animals) Rules,2017 under Rule3 provides that the Magistrate may direct the seized animals to be housed at any infirmary, pinjarapole, SPCA, Animal Welfare Organization or Gaushala during the pendency of the litigation and Rule 8 provides that if the accused is convicted or pleads guilty, the Magistrate shall deprive him of the ownership of the animal and forfeit the seized animals to the infirmary, pinjarapole, SPCA, Animal Welfare Organization or Gaushala already having the custody of the said animals. A conjoined reading of these provisions would lead to the conclusion that during the pendency of a criminal case for offence committed under the Act, the custody of the animals ought not to be given to the accused until the case ends in his acquittal.

[23] Under the Prevention of Cruelty to Animals Act, 1960, the Animal Welfare Board of India has been established by the Central Government in exercise of power conferred under Section 4 of the Act. It appears from the documents submitted by the petitioner that the Animal Welfare Board of India, by a certificate of recognition dated 22.01.2019, has recognized the petitioner as an Animal Welfare Organization. As discussed, various allegations have been brought against the petitioner by the respondents with regard to care and treatment of the animals in their custody. This

court is not going to make any observation on those allegations without sufficient materials having been made available before this court. The petitioner has denied all the allegations made by the respondents. Counsel appearing for the petitioner has contended that respondents have made such unfounded allegations with a malafide intention to secure release of the animals.

[24] State has been made a party in the case as respondent no.1. Under The Prevention of Cruelty to Animals (Establishment And Regulation of Societies for Prevention of Cruelty to Animals) Rules, 2001, every district must have a Society for Prevention of Cruelty to Animals(SPCA) to function for the welfare of animals within the state. SPCA has duties and powers under sub-rule(3) of Rule 3 of the said rules to aid the government, the Animal Welfare Board of India and the local authorities to enforce the provisions of the Prevention of Cruelty to Animals Act, 1960. If the allegations brought against the petitioners with regard to maintenance of their gaushala are found to be true, the State Government may intervene through such agencies created under the Act and Rules and take appropriate remedial measures.

[25] As far as the impugned order is concerned, grievance of the petitioner is that no opportunity of hearing was provided to

the petitioner before passing the said order though it was brought to the notice of the court that the seized animals were handed over to the custody of the petitioner. As a result, petitioner which is a recognized animal welfare organization, could not raise its grievance including the legal provisions before the court to protect the interest of those animals which were subjected to cruelty by respondents 2 and 3.

[26] As discussed, the Act and Rules provide that custody of the animals, in respect of which an offence under the Act has been committed, should not be given to the accused pending litigation. Rather, the right of the owner shall stand forfeited if he is convicted or if he pleads guilty to the offence. Section 11(2) of the Act in unambiguous term provides that owner shall be deemed to have committed an offence, if he fails to exercise reasonable care and supervision for preventing cruelty to his cattle. The accused in this case was allegedly transporting the animals under the instruction of the owner. Situated thus, sub-section (2) of Section 11 of the Act will have application in the case.

[27] For the reasons stated above, impugned order dated 27.07.2021 passed by the Chief Judicial Magistrate, Sonamura in case No.Misc.255 of 2021 is set aside with a direction to the trial

court to decide the matter afresh in accordance with law after providing reasonable opportunity of hearing to the parties including the present petitioner. Since the long vacation intervenes, parties are directed to appear before the trial court on 10.11.2021 and thereafter, the trial court shall decide the matter as expeditiously as possible. Till then, status quo with regard to the custody of the seized animals shall be maintained.

[28] Before parting with the case, it would be appropriate to say that mass awareness about the Prevention of Cruelty to Animals Act, 1960 and the various rules made there under and creation of appropriate infrastructure is necessary for proper implementation of the said Act and Rules. The Transport of Animals Rules, 1978, besides making provisions for fodder, drinking water and compulsory certification of fitness, provides different space requirement for different classes of animals during their transportation in order to prevent infliction of pain and sufferings to such animals. Strict adherence to the said rules is necessary to protect the animals from various infections, injury and other harms during transportation. Various organizations and agencies created under The Prevention of Cruelty to Animals Act and Rules made there under must ensure that the

provisions of the said Act and rules are implemented in letter and spirit.

[29] In terms of the above, this Criminal Revision Petition stands allowed and the matter is disposed of.

Send a copy of the judgment to the Chief Judicial Magistrate, Sepahijala Judicial District, Sonamura forthwith for compliance.

JUDGE



सत्यमेव जयते