

2022 SCC OnLine Gau 1534

In the High Court of Gauhati<sup>±</sup>  
(BEFORE ROBIN PHUKAN, J.)

Md. Sirajul Islam  
*Versus*

State of Assam Rep. by the PP

Crl. Rev.P./429/2022

Decided on October 20, 2022

Advocates who appeared in this case:

Advocate for the Petitioner : Mr. T Chutia

Advocate for the Respondent : PP, Assam

The Judgment of the Court was delivered by

ROBIN PHUKAN, J.:— Heard Mr. R.L. Chutia, learned counsel for the petitioner and also heard Mr. D. Das, learned Additional P.P. for the State respondent.

2. In this petition, under Sections 397/401 read with Section 482 Cr.P.C., the petitioner has challenged the legality, propriety and correctness of the order, dated 28.07.2022, so passed by the learned Addl. Chief Judicial Magistrate, Golaghat, in connection with Dergaon P.S. Case No. 80/2022. It is to be noted here that vide impugned order, the learned Court below has dismissed the petition filed by the petitioner seeking custody of 24 Nos. of cattle, which were seized in connection with the aforementioned case.

3. The factual background, leading to filing of the present petition, is briefly stated as under:—

“On 17.05.2022, S.I. Pranjal Prakash Chakravarty of Dergaon P.S. lodged one F.I.R. to the Officer-In-Charge, Dergaon P.S., to the effect that on that day, at about 06.00 P.M., acting on a tip of, they have apprehended one Truck, bearing Registration No. AS-01-LC-8797, at Amguri Tiniali and also found carrying 24 Nos. of cattle therein. And the driver of the vehicle namely-Md. Karimuddin and the helper of the vehicle namely-Md. Ahadul Islam, when asked for, failed to produce valid documents of the said cattle, and as such, it is suspected that the cattle were stolen to slaughter house. They also found that the cattle were being carried in congested manner in the vehicle without sufficient space, and thereby subjected them to cruelty. Accordingly, the S.I. had seized the Truck, 24 numbers of cattle with five numbers of vehicle key, preparing seizure list. Upon the said F.I.R., Dergaon P.S. Case No. 80/22, under Section 13 of Assam Cattle Preservation Act, 2021, read with Section 11 of the Prevention of Cruelty to Animals Act, 1960 was registered and endorsed S.I. Debananda Saikia to investigate the same. The Investigating Officer(I.O.) then visited the place of occurrence, examined the witnesses and arrested the driver and helper of the vehicle and forwarded them to the court and handed over the cattle to a Gosala situated at Halmiramukh, as per order of the learned Chief Judicial Magistrate, Golaghat and released the seized vehicle along with the keys to the registered owner as ordered. Thereafter, the petitioner preferred one petition, being petition No. 2415/22, under section 451/457 Cr.P.C. before the Court of learned Addl. Chief Judicial Magistrate, Golaghat seeking custody of the 24 numbers of cattle, and after hearing both the parties, the learned Court below, vide impugned order 28.07.2022, had dismissed the petition”.

4. Being aggrieved, the petitioner approached this Court by filing the present

petition on the grounds that there is no legal bar in releasing the seized cattle in the custody of the petitioner, who is the owner of the said cattle and that he had purchased the same from Dergaon cow-buffalo market, under Dergaon Municipality, after payment of necessary dues and he has proper documents and that he was carrying them to Nagaon, and that the learned court below had failed to appreciate the law in this regard in its proper perspective and that being the owner of the cattle, he has preferential right to receive the same in custody. Therefore it is contended to allow the petition.

5. Mr. Chutia, the learned counsel for the petitioner, submits that the impugned order passed by the learned Addl. C.J.M, Golaghat, suffers from manifest illegality and impropriety and the same is not sustainable in law and that there is no embargo in the Assam Cattle preservation Act, 2021 in transporting cattle from one district to another district within the state and no permit is required in this regard and therefore, it is contended to allow the petition.

6. Referring to a Judgment and Order of this court in CrI. Rev.P.321/2022, dated 17.08.2022, Mr. Chutia, further submits that in the said case this Court, was pleased to grant interim custody of the seized cattle(s) to the petitioner of that case pending trial, imposing some conditions and the case of the present petitioner is also squarely covered by the aforesaid judgment and order, and therefore, it is contended to grant similar relief. Mr. Chutia also referred to an order of Hon'ble Supreme Court in *Meher Banu Begum v. The State of Assam*, dated 04.03.2022, in Special Leave to Appeal (CrI.) No. (s) 9997/2021, arising out of impugned final judgment and order dated 17.11.2021 in CRP No. 41 passed by this court, where in Hon'ble Supreme Court had ordered for releasing the cattle in favour of the petitioner, the prayer, which was rejected by this court.

7. On the other hand, Mr. D. Das, the learned Additional P.P., for the State respondent, producing the case diary before this court, submits that here the ownership of the petitioner is not disputed, but, in view of the provision of Assam Cattle Preservation Act, and in view of the provision of Prevention of Cruelty to Animals Act, the seized cattle(s) cannot be released in favor of the petitioner till disposal of the case and the impugned order suffers from no infirmity or illegality requiring any interference of this court. Therefore, it is contended to dismiss this petition.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned order, dated 28.07.2022, passed by the learned Addl. C.J.M, Golaghat. Also, I have gone through the case diary produced by Mr. Das, the learned Addl. P.P. And it appears that the I.O. had already completed investigation and submitted charge sheet against accused Md. Kamaluddin, driver of the vehicle and Md. Ahadul Islam, helper of the vehicle, to stand trial in the court under section 13 of The Assam Cattle Preservation Act, 2021, read with Section 11 of the Prevention of Cruelty to Animals Act, 1960. Also I have carefully gone through the Judgment and Order dated 17.08.2022, passed by this court in Criminal Revision Petition No. 321/2022, and the order of Hon'ble Supreme Court in *Meher Banu Begum v. The State of Assam*, dated 04.03.2022, in Special Leave to Appeal (CrI.) No. (s) 9997/2021, arising out of impugned final judgment and order dated 17.11.2021 in CRRP No. 41 passed by this court. It is to be noted here that in the said case Hon'ble Supreme Court had ordered for releasing the cattle in favour of the petitioner, though upheld the order of rejection of the prayer of the petitioner seeking custody of the cattle by this court. But, subsequently, Hon'ble Supreme Court, vide order dated 26.09.2022 in Miscellaneous Application No. 1620/2022 in SLP(CrI) No. 9997/2021, had clarified the position by holding that the question whether the petitioner Meher Banu Begum is entitled to custody of the said cattle would be decided based upon the decision in the trial.

9. It is to be noted here that the petitioner had annexed eight numbers of receipts of purchasing 24 numbers of cattle(s) issued by Dergaon Town Cow-Bufalo market, with the petition as Annexure-3 series. And the same have not been disputed by the respondent side, which goes to show that the petitioner is the owner of the same as he had purchased the same from Dergaon Town Cow/Bufalo Market. Despite, the learned Court below has dismissed the petition on the ground that Section 11(5) of Assam Cattle Prevention Act has set a bar in releasing the seized cattle in zimma, and that section 11(9) of the said Act, on conviction the vehicle or any conveyance or bank guarantee and the cattle so seized shall be forfeited to the state.

10. It is to be noted here that section 11(5) provides that "On receipt of the report, the Judicial Magistrate 1<sup>st</sup> Class may, on his being satisfied that there is enough material to presume that a prima-facie offence under this Act has been committed, release the seized materials including vehicle/conveyance except cattle on furnishing of a bank guarantee, equal to the value of the material or vehicle/conveyance, to the satisfaction of the Court, pending disposal of the criminal proceedings instituted in respect of the alleged offence".

11. A careful perusal of the aforesaid section reveals that the word 'may' used in the aforesaid Section is not mandatory and discretion is left with the learned Court below, but, the learned Court below has failed to consider the same. Further, it appears that the learned Court below has failed to record its satisfaction that there is enough material to presume that a prima-facie offence under the Assam Cattle Preservation Act, 2021, has been committed or intended to be committed. The case was registered under Sections 13 of the Cattle Preservation Act and 11 of the Prevention of Cruelty to Animals Act. To attract Section 13 of the Assam Cattle Preservation Act, one has to contravene the provision of Sections 4, 5, 6, 7 & 8. A bare perusal of the impugned order reveals that no such satisfaction is recorded by the learned Court below. Without recording such satisfaction, it cannot be said that the impugned order so passed by the learned Court below, withstand the test of legality, propriety and correctness.

12. This Court in Criminal Revision Petition No. 321/2022, vide Judgment and Order dated 17.08.2022, had directed to release the seized cattle(s) in the interim custody of the petitioner of said case pending trial, imposing some conditions on the basis of judgment of Hon'ble Supreme Court in the case of *Manager, Pinjrapole Deudar v. Chakram Moraji Nat* reported in (1998) 6 SCC 520. While dealing with custody of animals, seized under the Prevention of Cruelty to Animals Act, Hon'ble Supreme Court, in the said case, held as under:—

"In view of the above discussion and provisions of Section 451 Cr.P.C., it appears to us that unless the owner of the animal in respect of which he is facing prosecution, is deprived of the custody (which can be done only on his conviction under the Act for the second time), no bar can be inferred against him to claim interim custody of the animal."

13. It is further held in the said case that:—

"Now advertent to the contention that under Section 35(2), in the event of the animal not being sent to infirmary, the Magistrate is bound to give the interim custody to Pinjrapole, we find it difficult to accede to it. We have noted above the options available to the Magistrate under Section 35 (2). That sub-section vests in the Magistrate the discretion to give interim custody of the animal to Pinjrapole. The material part of subsection (shorn of other details) will read, the Magistrate may direct that the animal concerned shall be sent to a Pinjrapole. Sub-section (2) does not say that the Magistrate shall send the animals to Pinjrapole. It is thus evident that the expression "shall be sent" is part of the direction he decides to give

interim custody to Pinjrapole. It follows that under Section 35(2) of the Act, the Magistrate has discretion to hand over interim custody of the animal to Pinjrapole but he is not bound to hand over custody of the animal to Pinjrapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, Pinjrapole has no preferential right. In deciding whether the 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. There cannot be any doubt that establishment of Pinjrapole is with the laudable object of preventing unnecessary pain or suffering to animals and providing protection to them and birds. But it should also be seen, (a) whether the Pinjrapole is functioning as an independent organization or under the scheme of the Board and is answerable to the Board; and (b) whether the Pinjrapole has good record of taking care of the animals given under its custody. A perusal of the order of the High Court shows that the High court has taken relevant factors into consideration in coming to the conclusion that it is not a fit case to interfere in the order of the learned Additional Sessions Judge directing the State to hand over the custody of animals to the owner."

14. While interpreting Section 35(2) of the Prevention of Cruelty to Animal Act, Hon'ble Supreme Court, in the case of *Shri Chatrapati Shivaji Gaushala v. State of Maharashtra*, Criminal Appeal No. 1719 of 2022, had further observed as under:—

"As the court noted, the said provision does not contain a mandate that the Magistrate shall send the animal to a pinjrapole. Under that provision, the Magistrate has a discretion to hand over interim custody of the animal to a pinjrapole, but is not bound to do so."

15. Again in the case of *Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi*, reported in (2010) 1 SCC 234, in paragraph No. 17, Hon'ble Supreme Court had held as under:—

"17. This takes the Court to answer the question whether respondent Nos. 1 to 6 are entitled to relief of interim custody of goats and sheep seized pursuant to filing of complaint No. IIC.R. 3131 of 2008 registered with Deesa City Police Station. The fact that respondent Nos. 1 to 6 are owners of the goats and sheep seized is not disputed either by the appellant No. 1 or by the contesting respondents. Though the respondent No. 8 has, by filing counter reply, pointed out that the officials of Panjarapole at Patan are taking best care of the goats and sheep seized in the instant case, this Court finds that keeping the goats and sheep in the custody of respondent No. 8 would serve purpose of none. Admittedly, the respondent Nos. 1 to 6, by vocation, trade in goats and sheep. Probably a period of more than one and half years has elapsed by this time and by production of goats and sheep seized before the court, the prosecution cannot prove that they were subjected to cruelty by the accused because no marks of cruelty would be found by this time. The trade in which respondent Nos. 1 to 6 are engaged, is not prohibited by any law. On the facts and in the circumstances of the case this Court is of the opinion that respondent Nos. 1 to 6 would be entitled to interim custody of goats and

sheep seized in the case during the pendency of the trial, of course, subject to certain conditions."

16. Keeping the ratios, laid down in the aforementioned cases in mind, while the impugned order of the learned court below is examined in the light of facts and circumstances on the record, this court left unconvinced that the same withstands the test of legality, propriety and correctness. Therefore, the submissions, so advanced by the learned counsel for the respondents cannot be acceded to.

17. In the given facts and circumstances on the record and also in view of the discussion and finding herein above, I find that the present case is squarely covered by the aforesaid judgment and order of this court, dated 17.08.2022, in Criminal Revision Petition No. 321/2022, and as such, the petitioner is entitled to similar relief, granted to the petitioner of the aforesaid case.

18. Accordingly, it is provided that the seized 24 numbers of cattle(s) shall be released in the interim custody of the petitioner pending trial, on the following terms and conditions that:—

- (i) They shall not be subjected to any cruelty.
- (ii) They shall be produced before the learned trial Court as and when directed.
- (iii) They shall be maintained and taken care of in the same condition in which he received them.
- (iv) They shall not be sold or handed over to anyone else.
- (v) The petitioner shall execute a bond of Rs. 3,50,00/lac, before the learned trial Court.
- (vi) The petitioner shall appraise the learned trial Court as to the place where they shall be kept and maintained.
- (vii) In case of death of any cattle, the petitioner shall inform the learned trial Court about the same without delay.
- (viii) Health inspection and identification and ear tagging of the cattle, if not done earlier as per Rule 3(a) of the Preservation of Cruelty to Animal (Care and Maintenance of Case property Animal) Rules 2017, has to be done before releasing them in custody of the petitioner.
- (ix) The petitioner shall clear all dues, which the respondent No. 2 is legally entitled to, for maintaining them till the date of release from the date of giving custody to it.

19. In view of the issues raised in this petition, I deem it proper and also appropriate to direct the learned trial Court to make endeavor to dispose of the case within a reasonable period.

20. In terms of above, this criminal revision petition stands disposed of. The parties have to bear their own costs. The Case Diary be returned.

† Principal Bench at Guwahati