

(1972) 05 CAL CK 0002

Calcutta High Court

Case No: Criminal Rev. Case No. 163/72

Saradindu Dutt

APPELLANT

Vs

State

RESPONDENT

Date of Decision: May 9, 1972

Acts Referred:

- Calcutta Police Regulations, 1968 - Regulation 108(e), 5(b)
- Criminal Procedure Code, 1898 (CrPC) - Section 54

Citation: 79 CWN 181

Hon'ble Judges: R.N. Dutt, J

Bench: Single Bench

Advocate: Biman Kanti Basu, for the Appellant; D.N. Ghosh for the State, for the Respondent

Judgement

R.N. Dutt, J.

On December 17, 1971, the Jorasanko police arrested two persons Lal Mohammad and Sk. Kamal u/s 54 of the Code of Criminal procedure suspected to have been involved in a cognizable offence. They had in their possession a cow. The police seized the same. Thereafter, the police produced the accused before the Additional Chief Presidency Magistrate who directed them to remain in police custody. The police further sought for the Magistrate's permission to keep the seized cow in a pound for the purpose of investigation. The learned Magistrate permitted the police to keep the cow in the pound. The petitioner subsequently filed an application for return of the cow and a calf which the cow had in the meantime given birth to in the pound. The learned Magistrate made an order for return of the cow and the calf to the petitioner on a bond of Rs. 600/-. The petitioner subsequently informed the Magistrate that he could not get return of the cow and the calf as the pound authorities were demanding pound fees and feeding charges for the period for Which the cow and the calf were kept in the pound. He, therefore, prayed for exemption from such payment. The learned Magistrate rejected the prayer for such

exemption. Subsequently, the petitioner made a similar prayer on March 23, 1972, but the learned Magistrate again rejected the prayer. The petitioner thereafter obtained this Rule.

2. Obviously, the pound authorities demanded the pound fees and the feeding charges under Regulation 5(b), Chapter XXIX of the Police Regulations, Calcutta. The pound fees or feeding charges are payable only in respect of animals which are impounded in the pound. But in the instant case the cow and the calf were not impounded in the pound. The cow was not found loitering in the street and nobody impounded the cow. The cow was found in possession of some persons suspected to have committed some criminal offence and the police seized the same obviously as part of the investigation in respect of the suspected cognisable offence and the cow was kept in the pound under orders of the Magistrate and not impounded. So, the fees payable under Regulation 5(b) of Chapter XXIX of the Calcutta Police Regulations are not payable in the instant case.

3. The question remains if the petitioner, who claims to be the owner of the cow, can be directed by the court to pay either the pound fees or the feeding charges in such cases. It seems to me that there is no law or rule or regulation under which the person, who claims the cow which is suspected to have been stolen from him, can be directed to pay such charges. I have said that the cow was kept in the pound under orders of the court. If that amounts to court's custody, then it will be for the court to meet the expenses for keeping the cow in the pound. Of course, the pound fees should not be charged but the feeding charges should be met, - I do not know - may be from the Magistrate's Contingent Fund. But if it does not amount to court's custody, then the expenses for keeping the cow in the pound will be part of the expenses of investigation and may be, the expenses will have to be met by the police under Regulation 108(e), Chapter 5 of the Calcutta Police Regulations. I am not in this case determining as to who the Magistrate or the police - should meet the feeding charges of the cow and the calf. But there is no doubt that the petitioner cannot be directed to pay the same as the condition for return of the cow and the calf to him on bond. In the result, the Rule is made absolute. The order of the learned Magistrate is set aside. The petitioner will get back the cow and the calf from the pound on production of the necessary bond accepted by the court and the pound authorities will take up the matter for reimbursement of the feeding charges of the cow and the calf with the Magistrate.

Let the records be sent down at once.