

Chinnasamy Vs The State and Others

Court: Madras High Court

Date of Decision: June 11, 2015

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 451, 457

Penal Code, 1860 (IPC) - Section 428, 429

Prevention of Cruelty to Animals Act, 1960 - Section 11, 11(1)(d), 29, 29 (1), 29(3)

Hon'ble Judges: B. Rajendran, J

Bench: Single Bench

Advocate: M. Saravanakumar, for the Appellant; T. Arul, Government Advocate, Advocates for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B. Rajendran, J

The petitioner has filed the above Criminal Revision Petition challenging the order dated 21.6.2013 passed by the Court below rejecting the application filed by the petitioner under Sections 451 and 457 of Cr.P.C. for return of cattle.

2. The petitioner herein is the accused. The petitioner is running a slaughter house. One Arun Prasanna S/o. Ganesan lodged a complaint before the

1st respondent police on 29.5.2013 against the petitioner herein that he was running an illegal slaughter house without any permission and was in

possession of 25 calves and that animal meat and skins of cattle were kept in unhygienic conditions. Therefore, the calves, meat and skins were

seized and the custody of the cattle were handed over to the second respondent herein. While so, the second respondent herein filed an application

in CMP. No. 2957 of 2013 seeking for a direction to the petitioners herein to provide maintenance to the cattles to which he is entitled to under

Section 35 (4) of the Prevention of Cruelty to Animals Act, 1960 and the same was allowed by fixing a sum of Rs. 2,300/ per day towards

maintenance. The said order was not challenged by the petitioner and the same has become final. Subsequently, the learned Magistrate ordered for

auction of seized skins and a sum of Rs. 7,200/- was deposited into the Court by the successful bidder. The second respondent herein filed an

application seeking payment to make over the expenses meted out to maintain the calves and the same was allowed on 21.6.2013 and the

petitioner did not challenge the said order and the same has become final.

3. While so, the revision petitioner filed an application in CMP. No. 2908 of 2013 seeking for return of calves and the same was dismissed by the

trial Court. Therefore, the petitioner has filed the above revision seeking to set aside the conditions imposed in CMP. No. 2957 of 2013.

4. The learned counsel for the petitioner submitted that without giving an opportunity of being heard, the Court below passed a non speaking

order. The learned counsel further submitted that the trial Court passed the order by exceeding its limit by imposing conditions. It is submitted that

the since the petitioner is the owner of the cattle, the Court below ought to have returned the cattle to him.

5. The learned Government Advocate appearing for the respondent police submitted that since the trial is pending, cattle cannot be returned. The

learned Government Advocate further submitted that the petitioner has not complied with the direction imposed by the Court regarding payment of

maintenance amount. Therefore, the learned Government Advocate prays that the revision has to be dismissed.

6. Learned counsel for the second respondent submitted that as the petitioner was running an illegal slaughter house showing utter disregard to the

Prevention of Cruelty to Animals (SLAughter House) Rules, 2001, cattle have been recovered from them. The learned counsel further submitted

that if the cattle are handed over to the petitioner, it would amount to further exposure of the animal to cruelty. The learned counsel also submitted

that the second respondent is maintaining the seized cattle by providing best possible food, water and medicines and by equipped work force.

Therefore, he is entitled to be reimbursed by the owner of the cattle for the said expenses.

7. Heard the learned counsel for the petitioner, the learned Counsel for the second respondent and the learned Government Advocate (Criminal

side) and perused the materials available on record.

8. At the outset, the revision petition cannot be maintained for the simple reason that the revision petitioner himself has categorically admits that he

is running slaughtering house in the milking house. The petitioner has not produced any evidence to show that he has got licence to do slaughter in

the house. Further, since the second respondent herein, is maintaining the cattle, a sum of Rs. 7,200/- has been fixed by the trial Court towards

maintenance but the same has not been complied with by the petitioner till date. Therefore, the Court below rightly rejected the petition filed by the

petitioner. Since the petitioner is running a slaughtering house without valid permission, no lenience can be shown against the petitioner.

9. In this context, it is useful to refer the judgment of this Court dated in Naseerulah Vs. State and G. Subramaniya Karthick, (2013) 1 LW(Cri)

614 : (2013) 2 MLJ(Cri) 556 , wherein it is held thus:-

7. At the outset, when we see the case, the petitioner had carried 24 cows in one vehicle. The photographs which has been produced at the time

of hearing the revision, show that the injuries caused to the animals because of the cramp nature as they were all kept in one lorry. Before dealing

with this subject, first of all, we can deal with various enactments, rules and regulations which are already provided insofar as to the transportation

of the cattle and safeguard of the cattle. Section 11 of the Prevention of Cruelty to Animals Act, 1960, elaborately deals with various cruelty meted

out to animals and Section 11(1)(d) specifically deals with the injuries caused during transportation of animals. Chapter III, Section 11 deals with

cruelty to animals generally which reads as follows:

11. Treating animals cruelly.-(1) If any person-

(a) beats, kicks, overrides, overdrives, overloads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or

causes or, being the owner permits, any animal to be so treated; or

(b) [employs in any work or labour or for any purpose any animal which, by reason of its age or any disease], infirmity, wound, sore or other

cause, is unfit to be so employed, or being the owner, permits any such unfit animal to be so employed; or

(c) wilfully and unreasonably administers any injurious drug or injurious substance to [any animal] or wilfully and unreasonably causes or attempts

to cause any such drug or substance to be taken by [any animal]; or

(d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or

suffering; or

(e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the

animal a reasonable opportunity for movement; or

(f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or

(g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or

(h) being the owner of [any animal], fails to provide such animal with sufficient food, drink or shelter; or

8. Further, we have got the Transport of Animals rules, 1978 enacted in exercise of powers conferred under Section 38 (2)(h) of the Prevention of

Cruelty to Animals Act, 1960. In the rules, Rule 56 stipulates the conditions as to how the cattle should be transported in such a manner without

causing any injury or discomfort to the animals. Rule 56(c) specifically stipulates that no goods vehicle shall carry more than six cattle. In fact, Rule

56 also empowers that the cattle should be transported with all precautions viz.,

(a) specially fitted goods vehicles with a special type of tail board on padding around the sides should be used;

(b) ordinary goods vehicles shall be provided with anti-slipping material, such as coir matting or wooden board on the floor and the superstructure,

if low, should be raised;

(c) no goods vehicle shall carry more than six cattle;

(d) each goods vehicle shall be provided with one attendant;

(e) while transporting the cattle, the goods vehicle shall not be loaded with any other merchandise; and

(f) to prevent cattle being frightened or injured, they should preferably face the engine.

11. Further, Rule 97 of the Transport of Animals Rules, 1978, stipulates cancellation of permit or authorisation for permit in the event of non-

compliance or contravention of any of the rules contained in these rules for transport of animals. Again Section 29 of the Prevention of Cruelty to

Animals Act, 1960 deprives the person convicted under the provisions of the Act from claiming ownership in respect of the animals involved in

such crime. It is common knowledge that invariably the persons admitted the offences and paying a paltry fine and thereafter they seek for return of

vehicle as well as animals claiming to be the owner. On a careful reading of Section 29 (1) of the above said Act would clearly indicate that having

committed the offence he should not be permitted to utilise the very animals which he had subjected to inhumane practices and especially, without

giving any protection for them. In the present case, where 24 cows have been taken in one vehicle. In this connection, this Court has also guided

by the judgment of this Court made in CrI.R.C. No. 1534 of 2001 reported in Prema Veeraraghavan Vs. State and Another that is also a case

where 18 buffaloes were carried in one vehicle on 24.10.2001. The petitioner is an Export Consultant under Committee for the Purpose of

Control and Supervision of Experiments on Animals (CPCSEA), Government of India, filed a complaint that they were charged under Section 428

and 429 I.P.C. and Section 11 of Prevention of Cruelty to Animals Act, 1960, the lorry and 18 buffaloes were seized. In fact, one of the buffaloes

was found dead even at the time of seizure. Thereafter, the applicant filed an application seeking for return of balance of the buffaloes. The lower

Court ordered for return of the buffaloes. Aggrieved against the same, a revision was filed challenging the order of release. In the revision, this

Court in CrI.R.C. No. 1534 of 2001 has categorically held that when invoking Section 29(3) of the Prevention of Cruelty to Animals Act, 1960,

the second respondent owner would not be entitled to the custody of the buffaloes. In fact, this Court has clearly held that that section provided the

animal could not be given to any of the persons who are accused of the offence. The relevant portions of the above order is extracted as under:

4. On considering the submission made by the counsel for the parties and on perusal of the Case Diary, it is notified that the second respondent

would not be entitled to the custody of the buffaloes in view of Section 29(3) of the Prevention of Cruelty to Animals Act.

5. The above section would provide that the custody of the animal could not be given to any of the persons, who are accused of the offence.

6. On going through the Case Diary and other records, it is clear that 18 buffaloes were packed in a lorry in violation of the Transport of Animal

Rules, 1978. The buffaloes were kept jam-packed with a rope fastened through their nose and out of 18 buffaloes, one died. So it is clear that the

offence has been committed under the Prevention of Cruelty to Animals Act.

7. Even according to the first respondent in the petitioner before the lower Court, he only arranged for the transport of the buffaloes to be taken to

Andhra Pradesh for agricultural purpose. It is the contention of the petitioner that these buffaloes were to be taken to Kerala for butchering.

8. Under Rules 47 to 56 of the Transport of Animal Rules, 1978, no goods vehicle should carry more than six cattle and there should be a valid

certificate by a qualified Veterinary Surgeon that the animals are fit to travel and each consignment should bear a label showing the name and

address of the consignor and the consignee. Admittedly, in this case, 18 buffaloes were transported in a single lorry without any certificate in

violation of the rules.

9. Moreover, the second respondent, who claimed to be the owner of buffaloes and arranged for the transport of the said buffaloes, is also a party

to the said offence and he has also been arrayed as an accused. Under those circumstances, the second respondent is not entitled to the interim

custody of the buffaloes.

12. In this connection, Section 429 of I.P.C. also can be taken note of. In this case, Section 429 of I.P.C. provides punishment for mischief by

killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees with imprisonment for a term which may extend to two years,

or with fine, or with both. The said section is a cognizable one. If we read Section 429 of I.P.C., the word used in the Section is even maiming the

cattle and it is also included Cow or Ox. Here we come across in one vehicle more than 20 cows or buffaloes were transported and in that

process, namely the people who have taken it in the vehicle or during the transport, one animal is being attacked by another which shows only the

inhumane attitude and inducement of the said person transporting the animals. Therefore, even the maiming or injury caused because of the illegal

transportation therefore, the owner can be hauled up. Unfortunately, when all these provisions are there, we find that these people transported

these animals to butchery without following the rules and regulations. Taking into consideration that the prices are different from State to State. In

fact, most of the cases, cattle are being transported continuously for a period of 48 hours crossing inter-State border without even providing

fodder or water. They are mostly taken only for slaughtering house in Kerala. They are transported in complete violation of the legal provisions,

that too, right under the nose of the authority who is duty bound to implement such laws. The object of the Prevention of Cruelty to Animals Act,

1960, is only to prevent animals from being put to cruelty and that it is imperative to implement both these Acts by the authorities concerned. I only

fervently hope that hereafter these laws which are provided for preventing cruelty to animals will be implemented in the strict sense. The lower

Courts in Tamil Nadu shall take note of these provisions and also see that as to how the offenders should be punished properly. Therefore, the

finding of the lower Court that the petitioner is not entitled for return of the cattle is well founded and correct. At the same time, another painful

thing has happened in this case and that has also to be taken note of. Subsequent to the cattle being handed over to the second respondent, they

have maintained it for six months and during that period 21 cattle also died. The post mortem certificate have been produced. In all the cases, they

have sustained injuries during illegal transportation. In fact, in one case, gangrene has set in and it has been operated from spreading further and the

injuries of the nature sustained only during illegal transportation was the cause of the death. Here is the fittest case where Court has to come to the

rescue of the animals and prevent cruelty meted out to the poor animals and the watchful thing of society which are taking care of the animals

should be encouraged to stop this offence. Stringent action should be taken as against those who violates the laws in future. Even the vehicles

which are used should be dealt with under the Motor Vehicles Act concerned and punishment has to be imposed.

10. Admittedly, in this case, the petitioner is running a slaughtering house without having valid licence. The second respondent is maintaining the

cattle by providing food, water and medicines to the cattle. Hence, a sum of Rs. 7,200/- has been rightly fixed by the trial Court towards

maintenance. But the petitioner has not even paid the said amount so far. Therefore, the petitioner cannot claim any right over the property, namely,

cattle. Since the petitioner is running a slaughtering house without valid permission, no lenience can be shown against the petitioner.

11. For all the above stated reasons, I do not find any reason to interfere with the reasoned order passed by the Court below. Accordingly, this

revision is dismissed. Consequently, connected miscellaneous petition is closed. The trial Court is directed to complete the main case itself as

expeditiously as possible.