

GAHC010074452021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./146/2021

DHYAN FOUNDATION
HAVING ITS REGISTERED OFFICE AT A-80, SOUTH EXTENSION, PART-2,
NEW DELHI-110049, REPRESENTED BY ITS AUTHORISED SIGNATORY,
SMT. TANKALA NAGA CHANDRANI, AGED ABOUT 43 YEARS, P/R/O PLOT
18, 2ND FLOOR, KANTAREDDY NAGAR, ATTAPUR, HYDERABAD-48 AND
P/R/A JANAKI BHAWAN, SANTIPUR, WARD NO. 6, CHANDRANATH
SARMAH PATH, P.O.-BISWANATH CHARIALI, DIST-BISWANATH, ASSAM-
784170

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:DIPEN BHUYAN
ASI OF POLICE
BISWANATH CHARIALI POLICE STATION
BISWANATH
ASSAM-784176

3:IMAN ALI
S/O OCHMAN ALI
R/O BHARALI CHAPORI
P.S.-JAMUGURIHAT
P.O.-NANDIKESWAR
DIST-SONITPUR
ASSAM-784180

4:DULLA UDDIN
S/O KARIMUDDIN
R/O KALIADINGA
P.S.-JURIA

DIST-NAGAON
ASSAM-782124

5:ABDUL HASIM
S/O SORHAB ALI
R/O PUTHIKHAITI
P.S.-RUPAHI
DIST-NAGAON
ASSAM-782125

6:ABDUL MALEK
S/O LATE ABDUL KHALEK
R/O ADHAKHUNDA PATHAR
P.S.-JURIA
DIST-NAGAON
ASSAM-782124

7:ALLAL UDDIN
S/O LATE ABDUL AJIJ
R/O GHEHUA SALSALI
P.S.-RUPRAHI
DIST-NAGAON
ASSAM-782125

8:BABUL ISLAM
S/O ABDUL RAHMAN
R/O KERANI BLOCK
P.S.-TEZPUR
DIST-SONITPUR
ASSAM-78402

Advocate for the Petitioner : MR. DITUL DAS

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGEMENT AND ORDER (CAV)

Date : 26-10-2022

Heard Mr. Harsh Pandya, learned Senior Counsel, assisted by Ms. S. Agarwal, learned counsel for the petitioner and also heard Mr. D. Das, learned Addl. Public Prosecutor for the State respondent No. 1 & 2 and Mr. T. Chutia, learned counsel for the private respondents, No. 3 to 8.

2. Legality, propriety and correctness of the order, dated 06.04.2021, passed by the learned Sub-Divisional Judicial Magistrate (M), Biswanath Chariali, in Biswanath Chariali P.S. Case No.33/2021, under Section 420/429/511 IPC, read with Section 11(a)(d)(h) of the Prevention of Cruelty to Animals Act, 1960, is challenged in this petition, under Section 397/401, read with section 482 of the Code of Criminal Procedure, 1973 by the petitioner- Dhyan Foundation. It is to be mentioned here that vide impugned order, the learned Sub-Divisional Judicial Magistrate (M), Biswanath Chariali, allowed custody of the seized 62 numbers of cattle, in favour of the private respondent Nos.3 to 8, by rejecting the prayer of the petitioner for interim custody.

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

“On 07.02.2021, at about 2:35 PM, the Officer-in-Charge, Biswanath Chariali Police Station had received one telephonic message from the Superintendent of Police, Biswanath Chariali to the effect that a large number of cattle were being carried by some goods carrying vehicles, covering the same with timbers to avoid the notice of police, from Gohpur towards Tezpur. Then the Officer-in-Charge had recorded a General Diary Entry, and instructed ASI Dipen Bhuyan for carrying out ‘Naka Checking’ at National Highway No. 15, in front of the police station. Accordingly, the ASI along with other colleague started ‘Naka Checking’ and at about 3:00 P.M., he found eight vehicles illegally carrying excessive number of cattle, by covering the same with timbers. On questioning of the persons carrying the cattle, and examining the connected documents it was found that they were illegally carrying large number of cattle, by throwing dust to the eyes of police. Then the persons carrying the cattle, all the eight vehicles along with 62 cattle were taken to the

police station for necessary action. Thereafter, ASI Dipen Bhuyan lodged one FIR with the Officer-in-Charge of Biswanath Chariali Police Station.

Upon the said FIR, the Officer-in-Charge of Biswanath Chariali P.S., registered a case, being Biswanath Chariali Case No.33/2021, under Section 420/429/511 of the IPC, read with Section 11(a)(d)(h) of the Prevention of Cruelty to Animals Act, 1960 and endorsed S.I. (P) Shyamal Neog to investigate the same. The I.O. then seized the cattle preparing seizure list, and thereafter, shifted the seized cattle to the Gaushala of the petitioner, situated at Karabil Bongali, Biswanath Chariali, on the request of the Officer-in-Charge of Biswanath Chariali P.S. on 07.02.2021, for safe custody. Since then, the petitioner has been taking care and maintenance of the seized cattle. Thereafter, the petitioner approached the Court of learned Sub-Divisional Judicial Magistrate (M), Biswanath Chariali, for interim custody of the seized cattle during the pendency of trial of the case, by filing the Petition No.103, dated 08.02.2021. Subsequently, the private respondent Nos. 3 to 8 also filed their individual petitions before the Court of learned Sub-Divisional Judicial Magistrate (M), Biswanath Chariali, praying for custody of the seized cattle. The learned Sub-Divisional Judicial Magistrate (M), Biswanath Chariali, after hearing the parties, passed the impugned order, dated 06.04.2021, by giving custody of all the seized cattle to the private respondent Nos. 3 to 8, thereby rejected the prayer for interim custody of the seized cattle.

4. Being highly aggrieved by the rejection order, the petitioner approached this Court, inter alia, on the following grounds, amongst others:-

(a) That, while passing the impugned order, the learned Magistrate has erred in law as well as in facts;

(b) That, the learned Magistrate had disregarded the objection raised by the petitioner, as well as the guidelines set by the Hon'ble Supreme Court as well as by this High Court, in giving the interim custody of the cattle to the respondent Nos.3 to 8;

(c) That, the learned Magistrate had ignored the settled position of law, including the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 and also the guidelines set by the Hon'ble Supreme Court vide order dated 05.02.2020, passed in **Raguram Sharma vs. C. Tulshi and another** (Criminal Appeal No.230/2020), wherein it is, *inter alia*, held that the interim custody of the animals ought not to be handed over to the accused, if there is allegation of cruelty in the FIR;

(d) That, the learned Magistrate had ignored the fact that as per Hon'ble Supreme Court, a container or a vehicle could not carry more than six cattle, whereas in the instant case, 62 cattle are being carried in eight small vehicles in contravention of Rule 56(c) of the Transport of Animals Rules, 1978;

(e) That, the seized cattle were subjected to cruelty which is very much evident from the FIR and also from the report submitted by the Investigation Officer of the case on 24.02.2021, to the learned SDJM (M), Biswanath Chariali, but, the learned trial Court has overlooked the same, while passing the impugned order;

(f) That, when there is specific violation of Rule 56(c) of the Transport of Animals Rules, 1978, and it amounts to cruelty to animals and hence, no other material is required to establish the point of cruelty to the cattle, so transported and thus, the seized cattle cannot be given the custody of the respondents;

(g) That, section 3 of the Prevention of Cruelty to Animals Act, 1960, cast a duty upon every person, having the care or charge of any animal, to take all reasonable measures, to ensure the well-being of such animal and to prevent infliction of unnecessary pain or suffering upon such animal, and in the present case, the respondent Nos. 3 to 8 have failed to perform such duties and as such the animals cannot be released in their custody;

5. The respondents' No. 3 to 8 has entered appearance and filed affidavit-in-opposition denying the assertions made in the petition. It is also stated that there is no legal bar in releasing the seized cattle in the interim custody of the owners either in the Prevention to

Cruelty to Animals Act or in the Prevention to Cruelty to Animals (Care and Maintenance of Case Property) Rules, 2017. Reference in this context is made to a decision of Hon'ble Supreme Court in **Manager, Pinjrapole Deudar & Ors. vs. Chakram Moraji Nat & Ors** reported in **MANU/SC/0557/1998**. It is also stated that there is no prima-facie evidence in the FIR about subjecting the cattle to cruelty and as such the learned court below had rightly rejected the prayer of the petitioner and that the petitioner has no *locus standi* to file the present petition and therefore, it is contended to dismiss the same.

6. Mr. Harsh Pandya, the learned Senior Counsel, being assisted by Ms. S. Agarwal, learned counsel for the petitioner submits that the impugned order suffers from manifest illegalities. Mr. Pandya has advanced two-fold argument arguments. Firstly, Mr. Pandya submits that there is no provision in the Act for releasing the seized cattle in the interim custody of the respondents pending trial while there was allegation in the FIR to show that the cattle were being subjected to cruelty. Mr. Pandya pointed out that the respondents have carried the cattle under the logs, and in contravention Rule 56 of the Transport of Animals Rules, in small vehicles and the learned court below has failed to consider the same. Secondly, Mr. Pandya submits that the impugned order was passed in contravention of the judgments of Hon'ble Supreme Court in (i) **Meher Banu Begum vs. The State of Assam & Another, dated 04.03.2022, in Special Leave to Appeal (Crl.) No.(s) 9997/2021**, arising out of impugned final judgment and order dated 17.11.2021, in CRP No. 41, passed by this court (ii) **Raguram Sharma vs. C. Tulshi and another (Criminal Appeal No.230/2020)**, and in (iii) **Shri Chatrapati Shivaji Gaushala vs. State of Maharashtra and Others, Criminal Appeal No. 1719 of 2022**, as well as by this court in Meher Banu Begum vs. The State of Assam & Another, in CRP No.41. Mr. Pandya further submits that in the said case **Meher Banu Begum** (supra) Hon'ble Supreme Court had ordered for releasing the cattle in favour of the petitioner, the prayer, which was rejected by this court, but later on, the same was clarified vide order, dated 26.09.2022, in Miscellaneous Application No. 1620/2022 in SLP(Crl.) No. 9997/2021, 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. Mr. Pandya, therefore, contended to set aside the impugned order and to allow the

prayer of the petitioner.

7. Per Contra, Mr. Chutia, the learned counsel for the respondents has supported the impugned order passed by the learned court below. Mr. Chutia, submits that the learned court below has released the seized cattle in the interim custody of the respondents having found no material of subjecting the cattle to cruelty by the respondents. Controverting the submission of Mr. Pandya, the learned counsel for the petitioner, in respect of the subjecting the cattle to cruelty by carrying them under the logs, Mr. Chutia submits that there is no such materials to suggest that the cattle were carried in the vehicle under the logs and as such the submission of the learned counsel for the petitioner is misleading. Mr. Chutia further submits that the ratio laid down by the Hon'ble Supreme Court in the cases so referred by learned counsel for the petitioner, are not applicable in all force to the facts herein this case. Mr. Chutia also relied upon the case of **Manager, Pinjrapole Deudar & Ors. vs. Chakram Moraji Nat & Ors** reported in **MANU/SC/0557/1998. Meher Banu Begum vs. The State of Assam & Another, dated 04.03.2022, in Special Leave to Appeal (Crl.) No. (s) 9997/2021**, to contend that in the said case Hon'ble Supreme Court has directed to release the seized cattle in favour of the petitioner. Mr. Chutia further submits that this court, sitting in revision cannot re-appreciate the facts, which have already been appreciated by the learned court below, and therefore, Mr. Chutia has contended to dismiss the petition.

8. On the other hand, Mr. D. Das, the learned Addl. P.P. for the state respondent, producing the case diary before this court submits that there is nothing in the case diary to show that the cattle were carried under the log, and no such logs were seized by the I.O. during investigation. Mr. Das further submits investigation of the case is still going on as reveals by the case diary.

9. Having heard the submission of learned Advocates of both sides I have carefully gone through the petition and the documents placed on record and perused the case diary produced by the learned Addl. P.P. In addition, I have carefully gone through the case laws

referred by learned Advocates of both sides and the impugned order passed by the learned court below.

10. It appears from the record that Biswanath Chariali Case No.33/2021, under Section 420/429/511 of the IPC, read with Section 11(a)(d)(h) of the Prevention of Cruelty to Animals Act, 1960 has been registered on the basis of one FIR lodged by one Dipen Bhuyan, ASI of Biswanath Chariali P.S. on 07.02.2021. It is stated in the said FIR that on that day, at about 2:35 PM, the Superintendent of Police, Biswanath Chariali informed over telephone about carrying large number of cattle in some goods carrying vehicles, covering the same with timbers to avoid the notice of police, from Gohpur towards Tezpur. Accordingly, 'Naka Checking' was carried out at National Highway No. 15, in front of the police station and at about 3:00 P.M., eight vehicles were found, illegally carrying excessive number of cattle, by covering the same with timbers. When the persons carrying the cattle were questioned and connected documents were examined then it was learnt that the persons were illegally carrying large number of cattle, by throwing dust to the eyes of police. Hence, the persons carrying the cattle, all the eight vehicles along with 62 cattle were taken to the police station for necessary action and were seized by the I.O. preparing seizure list.

11. It also appears from the impugned order that while releasing the cattle in the interim custody of the respondents, the learned court below had held that there is no materials in the FIR showing cruelty to seized animals and the learned court below further agreed to the submission of learned counsel for the petitioner that mere overloading of a vehicle with cows does not amounts to cruelty as per section 11(1)(a) or 11(1) (d) of the Prevention to Cruelty to Animal Act, 1960. The learned court below further held that there must be allegations in the FIR that due to such overloading some unnecessary pain or sufferings were made to the overloaded animals.

12. Section 11 of the Prevention of Cruelty to Animals Act, deals with treating animals cruelly. **Section 11(1)(a)** provides that:- If any person beats, kicks, over-rides, over-drives,

over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animals to be so treated.

Section 11(1)(d) provides that if any person 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.

13. Thus, having examined the impugned order, in the light of above facts and circumstances, it cannot be said that the same suffers from any illegality or impropriety. There is nothing in the FIR and also in the case diary to show that the cattle were carried in the vehicles in such a manner or position so as to cause unnecessary pain or suffering to them. It appears from the seizure list that 62 cattle were carried in eight vehicles. The vehicles were Mahindra Bolero Pickup, Mahindra Supre and Tata Mobile vehicles. There is no allegation in the FIR to suggest that said vehicles were not spacious for carrying the number of cattle seized there from nor there is materials to suggest that it causes unnecessary pain and suffering to the cattle.

14. Though Mr. Pandya, the learned counsel for the petitioner submits that the cattle were carried in the vehicle by covering them with logs, yet, there is no material either on the record or in case diary produced by the learned Addl. P.P. to support such a contention. Such logs have never been seized by police during investigation and the learned counsel for the respondents and also the learned Addl. P.P. have rightly pointed this out during argument.

15. Though Mr. Pandya has referred to Rule 56 of the Transport of Animals Rules 1978, yet, as discussed herein above, there is no materials to suggest that eight vehicles were not spacious enough to carry 62 cattle therein, let alone materials to suggest that it causes unnecessary pain and suffering to the cattle, as required to attract culpability of section 11(1)(a) and 11(1)(d) of the prevention to Cruelty to Animals Act.

16. Also I have carefully gone through the order of Hon'ble Supreme Court in **Meher Banu Begum vs. The State of Assam & Another**, dated 04.03.2022, in Special Leave to Appeal (Crl.) No.(s) 9997/2021, arising out of impugned final judgment and order dated 17.11.2021 in CRP 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, later on, the same was clarified vide order, dated 26.09.2022, in Miscellaneous Application No. 1620/2022 in SLP(Crl.) No. 9997/2021, 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. Mr. Pandya, the learned counsel for the petitioner, has rightly pointed this out during argument. Nevertheless, I find that the same would not come into aid of the petitioner in as much as the ratio laid down therein is restricted to its own facts. In the same footing the ratio laid down in the case of **Raguram Sharma (supra)** and in the case of **Shri Chatrapati Shivaji Gaushala (supra)** also would help the petitioner. Rather in the case of **Shri Chatrapati Shivaji Gaushala (supra)** 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 vs. State of Maharashtra and Others, 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.”

17. It is also to be mentioned here that Hon'ble Supreme Court in the case of **Manager, Pinjrapole Deudar & vs. Chakram Moraji Nat & Ors** reported in **MANU/SC/0557/1998**, 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.”

11.1. It is further held in the said case that:-

“Now adverting 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 sub-section (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.”

18. Again in the case of **Bharat Amratlal Kothari vs. Dosukhan Samadkhan Sindhi & Ors**, reported in **MANU/SC/1799/2009**, 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. II-C.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.”

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

20. It is to be mentioned here that while exercising revisional jurisdiction the High Court cannot substitute its view for that of the trial court if two views are possible. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of [Helper](#)

Girdharbhai vs. Saiyed Mohmad Mirsaheb Kadri and Ors., reported in **AIR 1987 SC 1782.**

21. In the given facts and circumstances on the record and also in view of the discussion and finding herein above, I find no merit in Criminal Revision Petition, and accordingly, the same stands dismissed. The parties have to bear their own cost.

JUDGE

Comparing Assistant