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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1192 of 2022

Gau Gyan Foundation 'Rudrashram Petitioner
Gaushala'

Mr. Vinay Saraf, Advocate & Associates
Mr. Nilaya Kanta Rout, Advocate

-Versus-

The State of Odisha and Another Opposite Parties
Mr. S.S. Mohapatra, ASC
Mr. Sk. Zafarulla, Advocate for O.P. No.2

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:07.02.2023

1. The petitioner has preferred the instant petition assailing the legality and judicial propriety of the impugned order dated 26th April, 2022 passed in Criminal Revision No.11 of 2022 by the learned Sessions Judge, Bhadrak confirming the order dated 8th April, 2022 of the learned S.D.J.M., Bhadrak in Misc. Case No.75 of 2022 whereby release of the cattle was allowed in favour of opposite party No.2 on the grounds inter alia that the same is not tenable in law and hence, deserves to be interfered with and quashed with the consequential directions issued as the nature and circumstances of the case may require in exercise of the Court's inherent jurisdiction.

2. It is contended by the petitioner that Bhandaripokhari P.S. Case No.94 of 2022 was registered under Sections 379 and 411 read with 34 IPC, Section 11(1)(a),(d) & (f) of the Prevention of Cruelty to Animals Act,1990 (hereinafter referred to as 'the PCA Act') and Section 7 of the Orissa Prevention of Cow Slaughter

Act,1960 and in that connection, some cattle were rescued while being transported in a goods carrier vehicle bearing registration No.AP-16-TJ-24849 for the purpose of illegal slaughtering without proper care and arrangement of water, food and medical aid. It is further contended that the local police handed over the cattle to the petitioner for immediate care and maintenance as they were in extremely weak and miserable condition and during that time, no health inspection, identification and marking of such animals was conducted as per Rule 3(a) of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 (in short 'the Rules'). In the meantime, according to the petitioner, opposite party No.2 filed Misc. Case No.75 of 2022 (Annexure-5) before the court of the learned S.D.J.M., Bhadrak for release of the cattle in his favour claiming himself as its owner and therein an intervention application/objection (Annexure-6) was filed by them, however, despite such an intervention, order dated 8th April, 2022 was passed releasing the seized cattle and custody in favour of the applicant and being aggrieved of and dissatisfied, Criminal Revision No.11 of 2022 was filed before the learned Sessions court which however yielded no result leading to the passing of the impugned order dated 26th April, 2022 (Annexure-3).

3. Heard Mr. Saraf, learned counsel for the petitioner, Mr. Mohapatra, learned counsel for the State and Mr. Zafarulla, learned counsel for opposite party No.2.

4. Mr. Saraf, learned counsel for the petitioner submits that the impugned order under Annexure-3 confirming release of the cattle allowed by the court of 1st instance vide Annexure-10 is illegal, unjust and against the spirit of law and without judicial application of mind and therefore, it is liable to be set aside. It is contended that the impugned order under Annexure-3 has

defeated the objects of various animal welfare laws and failed to ensure the safety of the cattle which needed proper care and management. According to Mr. Saraf, the provisions of Sections 11 and 35 of the PCA Act have not been taken cognizance of by the learned courts below and order under challenge is also contrary and not in conformity with Rules 3, 4 and 5 of the Rules. It has been forcefully argued by Mr. Saraf that the PCA Act is a special enactment with provisions towards care and custody of seized animals during the pendency of the litigation and as a matter of fact, Rules 3 and 4 of the Rules are to be read carefully with a purposive interpretation and it is axiomatic that during the pendency of the litigation, custody of the animals seized has to be given to an infirmary, pinjrapole, SPCA, Animal Welfare Organization or Gaushala and therefore, in the present case, the cattle could not have been released in favour of opposite party No.2 and hence, the same cannot be sustained in law. While contending so, Mr. Saraf relied upon the following decisions, such as, **Laxmi Narain Modi Vrs. Union of India (Uoi) and Others (2013) 10 SCC 227**; **Dhyan Foundation Vrs. The State of Assam and Others** (decided in Criminal Petition No.452 of 2020 and disposed of on 21st September, 2020); **State of U.P. Vrs. Mustakeem and Others** (Criminal Appeal Nos.283-287 of 2002 dated 22nd February, 2002) and host of authorities. Mr. Saraf, learned counsel for the petitioner further submits that the Apex Court in **Manager, Pinjrapole Deudar and Another Vrs. Chakram Moraji NAT & Others AIR 1998 SC 2769** misread the provisions dealing with interim custody in juxtaposition to confiscation/forfeiture as the Rules only prescribed custody of animals as a temporary measure pending litigation, inasmuch as, the petitioner did not claim any ownership rights over the cattle or its confiscation which can only be considered at the time of conclusion of trial. The provisions, such as, Rule 5 of the Rules CRLMC No.1192 of 2022

with regard to the liability of the owner of the cattle to deposit the expenses towards its daily sustenance and the Circular dated 3rd May, 2008 issued by the Animal Welfare Board of India have been drawn to the attention of the Court by Mr. Saraf while explaining the purpose and objective of the PCA Act and Rules framed thereunder contending that impugned order under Annexure-3 is palpably wrong, perverse and therefore, liable to be set aside.

5. On the other hand, Mr. Zafarulla, learned counsel for opposite party No.2 justified the impugned order under Annexure-3 confirming the order under Annexure-10 and release of the seized cattle in favour of opposite party No.2 as he had purchased and was transporting it in a vehicle to a registered firm in the name and style of 'Faizan Diary Firm' in support of which necessary proof was submitted. It is contended that there has been due compliance of the provisions of the Rules and as the cost was deposited by opposite party No.2 in the account of the petitioner towards expenses incurred in the maintenance of the cattle from the date of taking its zima and on execution of indemnity bond with other conditions, such release was directed by the learned S.D.J.M., Bhadrak which was rightly confirmed in revision and therefore, the impugned order under Annexure-3 calls for no interference.

6. Heard the viewpoint of Mr. Mohapatra, learned ASC.

7. The aim and objective of the PCA Act is to prevent infliction of unnecessary pain or suffering on the animals and for that, necessary provisions have been made therein and under the Rules. Section 11 of the PCA Act deals with the punishment in case animals are treated with cruelty. Section 35 of the said Act relates to the manner in which the animals are to be treated and cared

for by the orders of the Court. In confirmity with the objective of the law, procedure is in place with regard to the custody of animals pending litigation, cost of care and keeping of such animals and also the liability of the accused owner who are to execute bond and to bear the expenses to be borne for the maintenance and upkeeping of the animals besides its transport, maintenance and treatment based on the inputs provided by the jurisdictional Veterinary officer and failing to do so, its forfeiture to the infirmary, pinjrapole, SPCA, Animal Welfare Organization or Gaushala as the case may be.

8. Learned S.D.J.M., Bhadrak considering the claim of opposite party No.2 that the cattle were being transported to a diary firm after having been purchased on payment of due consideration and deposit of an amount of Rs.54,000/- in the account of the petitioner towards the cost and maintenance borne while having its zima directed release and custody of the seized cattle in his favour being the owner and person entitled to its possession as an interim measure pending litigation which was found favour with the learned Sessions court which while referring to the case of **Manager, Pinjrapole, Deudar** (supra), which is to the effect that when the owner is claiming custody of the animals, pinjrapole has no preferential right in the matters of interim custody, reached at a decision that the same is inconsistent with Rule 3(b) of the Rules which provides only the Magistrate, the authority in that regard to retain it in the infirmary, pinjrapole, SPCA, Animal Welfare Organization or Gaushala and while concluding so, preferred the PCA Act over the Rules citing the judgment of **Ispat Industries Limited Vrs. Commissioner Customs, Mumbai 2006 (9) SCALE 652** which relates to interpretation vis-à-vis the provisions of the Act and Rules and the former to prevail upon the latter when the same is ultra vires to the Act.

9. As to the PCA Act, the law is with regard to ensuring the animals, a proper care and treatment and dealing with its cruelty and the provisions to prevent the same and also the penal consequences. The aim and object of the Act is to intervene in the cases of exploitation of the animals, when they are being treated with cruelty. In fact, what would be cruelty in a given fact situation has been described in Section 11 of the PCA Act carrying the punishment for the same. The Act does not prescribe any specific bar against interim release and custody of the animals rescued and recovered in favour of its owner. In fact, authority has been provided to a Magistrate to detain the cattle at an infirmary, pinjrapole, SPCA, Animal Welfare Organization or Gaushala which is discretionary in nature in view of Rule 3(b) of the Rules, a provision related to custody of such animals pending litigation. Furthermore, the accused and the owner shall have to execute a bond of a determined value with surety and in case, the same could not be furnished, the animals shall be forfeited to the infirmary, pinjrapole, SPCA, Animal Welfare Organization or Gaushala as revealed from Rule 5 of the Rules. The accused and the owner of a transport vehicle and all others and any of the parties involved shall be jointly and severally liable for the cost of transport, treatment and care of the animals as per sub-rule (5) of Rule 5 of the Rules. The scheme of the PCA Act is to provide proper care and treatment to the animals when the accused and such other persons are guilty of its cruelty. The Act and Rules also make provisions and pave the way for discharge of animals if ultimately found fit and certified by the jurisdictional Veterinary officer. According to the Court, during the intervening period when the litigation is before the court, interim custody may be decided either in favour of the owner or such other persons including a Gaushala, if it is not incorrect with the conclusion

deduced from on a sincere reading of the provisions of the PCA Act and the Rules.

10. In what manner, the animals when ill-treated and orders to be passed by a court, as earlier mentioned, is dealt with in Section 35 of PCA Act. Mr. Saraf, learned counsel for the petitioner also referred to the Transport of Animals Rules, 1978 and Amendment Rules, 2001 in respect thereof in order to apprise the Court the manner of transportations of animals like dogs, cats, monkeys etc., such rules having been framed in exercise of powers under Section 38(2)(h) of PCA Act by the Central Government. The purpose of highlighting upon the above provisions is that animals are to be treated without cruelty in a manner while being housed, transported and also disposed of in the manner specified under the Rules. In fact, provisions have been made towards disposal of the animals only if they are found fit after being rescued or on a satisfaction certified by the jurisdictional Veterinary officer that the animals do not suffer from any disease but by the orders of the court. At the same time, the purpose of PCA Act is not to detain animals for long and the provisions are in place to ensure its disposal provided they are fit and unlikely to be subjected to cruelty. To say that, the owner is not entitled to take custody of the animals or deprive him of such custody pending litigation, in the considered view of the Court, is not envisaged in the PCA Act which is a law enacted with an intent and purpose to prevent cruelty to animals which may be denied only upon satisfaction that it could again be met with cruelty.

11. In so far inconsistency in Rule 3(b) vis-à-vis Section 35 of PCA Act is concerned, the learned Sessions court held it so after referring to the decision in **Manager, Pinjrapole, Deodar** (supra). The said rule, whether, ultra vires to Section 35(2) of PCA Act, according to Mr. Zafarulla, learned counsel for opposite party

No.2 is beyond the consideration of the Court which can only be challenged invoking its writ jurisdiction. The Court, however, with due respect does not find any such conflict since because by such provisions, the Magistrate has been provided the power to deal with animals and may direct it to be housed at infirmary, pinjrapole, SPCA, Animal Welfare Organization or Goshala and may even direct disposal and its destruction, if found to be suffering from incurable disease. Both the provisions are to be read in harmony so as to advance the objective of the PCA Act. Section of 29 of the PCA Act no doubt deprives the owner of the animal from receiving it in the event of his conviction. However, to read into it, the bar or prohibition against interim release or custody during the pendency of litigation would be too far to stretch. Such disposal of animals in view of Section 29(1) of the PCA Act shall be made provided the owner has a previous conviction, or *as to the character of the owner is such that if it is left with him likely to be exposed to further cruelty* (italicized by the Court to emphasize). On a meticulous reading of the above part of the provision highlighted, it leads to a conclusion that the animals may even be released in favour of the owner despite a conviction if there is no previous antecedent or he does not have any such past conduct or official record of his character which may influence the court not to handover the animals as there may be a possibility of being further exposed to cruelty. Nowhere, the statute prescribes restriction against release of animals in favour of the owner either during the pendency of the litigation or even in the event of conviction of the owner unless a case is made out as per Section 29(2) of the PCA Act. Rule 8(1) of the Rules that upon the accused convicted or pleaded guilty to be deprived of ownership of the animal shall have to be read conjointly with Section 29 of the PCA Act and in case of deprivation, the Magistrate may pass orders as to its forfeiture to the infirmary,

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pinjrapole, SPCA, Animal Welfare Organization or Gaushala already having custody for proper adoption or other means of disposition. Therefore to claim that there is an absolute bar against interim release of the animals in favour of the owner pending litigation or at the end of trial on conviction is not to be assumed which is also not contemplated in the PCA Act and Rules. Rather discretionary power has been conferred on the Magistrate to deal with such release of animals depending on the facts and circumstances of each particular case and may even exercise the jurisdiction to direct its release in favour of the owner even though he is prima facie responsible for treating the animals in a manner which amounts to cruelty under the PCA Act on a subjective satisfaction that such release is unlikely to subject the animals to further cruelty. In **Laxmi Narain Modi** (supra), the Supreme Court had the occasion to deal with the performance of the Committees constituted for implementation of the Legislations with regard to the transportation of animals, maintenance of slaughter houses etc. as per the guidelines framed by Ministry of Environment and Forest (MoEF) and therein extracted the manner in which the animals is to be transported while even being taken to the slaughter houses. The main objective of the guidelines is to ensure that the animals at the time of transportation to the slaughter houses and while being kept thereat are not treated with cruelty. So, therefore, what emerges from such regulations is that the animals are to be properly treated with care and disposed of without being any cruelty suffered by them. Mr. Saraf, learned counsel for the petitioner referred to the decision in **Dhyan Foundation and Raghuram Sharma**(supra) to contend that the disposal of the animals in favour of the petitioner in the present case could not have been allowed. But, in the humble view of the Court, said decision is not an authority to say that animals are not to be released, as in

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that case, the earlier order was reviewed and that too without giving an opportunity to the Zamidar. In **Raghuram Sharma and Another Vrs. C. Thulsi and Another** (Criminal Appeal No. 230 of 2020 disposed of on 5th February, 2020), the Apex Court declined custody of the cattle by the accused considering his involvement and past conduct subject to being satisfied with the profile of the interim custodian as well as after ensuring about the identity of the cattle, etc. with directions for the trial court to conclude the hearing within a stipulated time. Again it cannot be held as an authority to conclude absolute bar against release in favour of the accused owner. It entirely depends on the conduct and character of the accused responsible for the cattle which suffered cruelty in his hand and interim custody may be disallowed if the court reaches at a conclusion that further cruelty may result if they are to remain with him. The disposal of the animals is not prohibited either at the instance of its owner and it would amount to an offence and he would be punishable, if it established that at the time of such disposal, such animals suffered pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment. The judgment in **Animal Welfare Board of India Vrs. A. Nagaraja and Others (2014) 7 SCC 547** of the Apex Court is an authority dealing with the case of cruelty subjected to animals in the context of utilizing them in traditional sports, one of such which is held at Jallikattu and other forms of Bull race which causes considerable pain and stress to the animal. The aforesaid decision is a legal classicus on the point wherein all the aspects of the provisions of the PCA Act have been elaborately discussed and deliberated upon keeping in view the International Convention and declaration of the UN and expanded the constitutional right to animals guaranteed under Article 21 of the Constitution. There is no denial to the fact that animals are not being treated fairly and at times disposed of with cruelty and

therefore, the law has been enacted and brought into force so as to prevent it and also to penalize the persons responsible for the same even though the accused is the owner. However, release or otherwise of the animals either interim or final depends on the conduct of the accused-owner and in case of previous conviction or any such bad past conduct with a profile, such release may be denied. In **Krushni Goseva Sangh and Another Vrs. State of Maharashtra and Others 1988 Mh.L.J. 293**, the Bombay High Court held that since no provision is made in the Act (with reference to Maharashtra Animal Preservation Act, 1977) and in that case, held that recourse could be taken to Section 451 Cr.P.C. for the custody and disposal of animals pending trial and the competent court is expected to pass orders keeping in view the object of the Legislation, inasmuch as, a direction cannot be issued which may defeat the very object of the Act; that rather orders should be for preservation and protection of the cow or scheduled animals. So what is collated from the above discussion is that if the Special statute does not prohibit interim release, custody can be allowed in favour of the accused subject to a condition that it must not be in derogation to the spirit of law. In **Jivdaya Pashupakhshi Saurakshan and Sanwardha Sanstha Vrs. State of Maharashtra MANU/MH/1200/2009** while dealing with the custody of the bullocks seized being transported and denied to the dealer who claimed for it, the Nagpur Bench of Bombay High Court declined to release the animals in his favour as there was nothing pointed to show that during its interim custody, the appellant therein was found not taking care of the same. So many other authorities have been relied upon by Mr. Saraf, learned counsel for the petitioner which is no doubt informative and enlightened the Court but it is of the view that no law is laid down in any of the cases denying release or absolute ban for the accused owner in taking custody of the animals during the

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pendency of litigation. In **Jiba Bikash Parishad Vrs. State of Odisha and Another** (CRLMC No. 199 of 2021 and batch of cases decided on 21st October, 2021), this Court held that the provisions of the PCA Act since have not been followed and also the provisions of the rules framed thereunder interfered with the decision of the revisional court and set it aside which had allowed the release of the animals confirming the order of the court of first instance exercising power under Section 451 Cr.P.C. There is no quarrel over the position of law that the provisions of the PCA Act and Rules are to be scrupulously followed and observed not in deviation and to defeat and frustrate the purpose of the law but to advance the spirit of law.

12. In the case at hand, opposite party No.2 claimed himself as the owner of the cattle but was found to be transporting it in a vehicle without proper care and treatment. The impugned order suggests that opposite party No.2 had produced money receipt to show the purchase of cattle on payment of consideration and also having a dairy farm in support of which submitted its certificate of registration and on ensuring a deposit of Rs.54,000/-, the animals were released from custody. When the cattle were found to be transported in the vehicle without care and proper treatment, the learned S.D.J.M., Bhadrak should have called for a report or enquired into the profile of opposite party No.2 as to if he is having past misconduct or conduct of such nature and in case the animals are released in his favour, whether, they would be treated without cruelty, the aspect which was not duly examined and not only that, proper verification and identification of the animals as it seems was not carried out at any time before being handed over to him. The purpose of the PCA Act demands such an exercise to be undertaken not only at the end of trial but presupposes it during pendency of litigation for the purpose of

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interim release. The spirit of the PCA Act and the objective of the law shall have to be understood and appreciated in its proper perspective, at all stages of the proceeding, otherwise, any such custody during the pendency of the litigation could further cause cruelty to the animals which would certainly frustrate the purpose for which it is enacted. In the instant case, all such due care and caution was needed before release of the cattle in the custody of opposite party No.2. So therefore the Court is of the view that necessary conditions are required to be put in place so as to ensure that the cattle are not subjected to cruelty while being in the custody of the accused opposite party No.2. In other words, with the interim arrangement in place, further directions are necessarily to be issued, which run thus:

i) the learned court of first instance shall call for a report from the local PS regarding the profile of opposite party No.2 to ascertain his past and present conduct in dealing with animals and also current status vis-a-vis cattle in custody;

ii) to enquire about the credentials of opposite party No.2 about him running the diary firm where the cattle was shifted and presently housed;

iii) to employ the means to ensure proper verification and identification of the cattle and to enquire if any other healthy animal(s) having been handed over to opposite party No.2 in place of cattle while allowing interim release and to pass orders of restoration, if necessary;

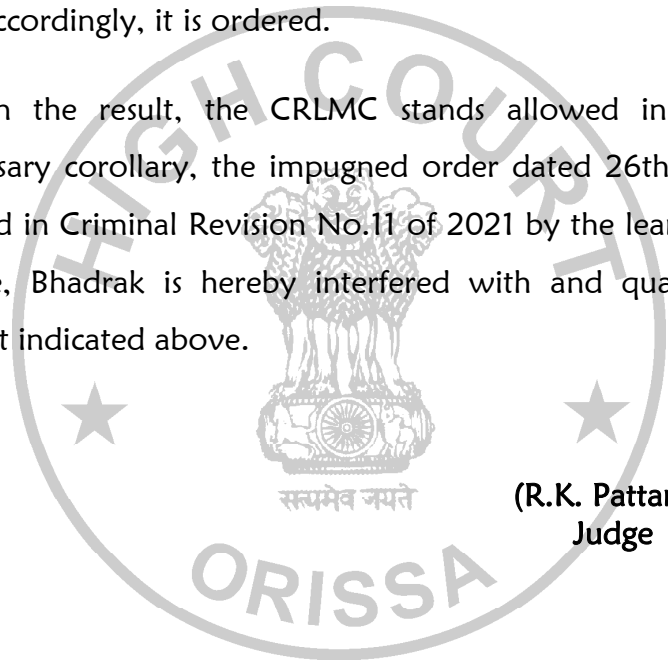
iv) to impose such other conditions as absolutely necessary to ensure proper care and custody of animals whose

disposal would be subject to the result in the proceeding pending before it.

13. To carry out the above exercise, the proceeding in Misc. Case No.75 of 2022 is directed to be restored in file and if the learned S.D.J.M., Bhadrak reaches at a definite conclusion that the interim release of the cattle has defeated the purpose or has not lived up to the expectation it desired and as contemplated under the PCA Act, he shall pass necessary orders just and expedient in the interest of justice.

14. Accordingly, it is ordered.

15. In the result, the CRLMC stands allowed in part. As a necessary corollary, the impugned order dated 26th April, 2022 passed in Criminal Revision No.11 of 2021 by the learned Sessions Judge, Bhadrak is hereby interfered with and quashed to the extent indicated above.



(R.K. Pattanaik)
Judge

UKSahoo/TUDU