

(2016) 03 DEL CK 0105
In the Delhi High Court
Case No : Crl. M.C. 779/2016

Sanjay Gandhi Animal Care Centre

APPELLANT

Vs

Saddan and Others

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 429
Prevention of Cruelty to Animals Act, 1960 — Section 11

Citation : (2016) CriLJ 2993 : (2016) 4 JCC 2315 : (2016) 4 RCRCriminal 205

Hon'ble Judges : Suresh Kait, J.

Bench : Single Bench

Advocate : Geeta Luthra, Sr. Adv., Vaibhav Choudhary, Siddharth Nayak, Ambika Nijjar and Shreya Singh, Advocates, for the Appellant; Hifzur Rehman, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—1. By way of the present Petition filed under Section 482 Cr.P.C. petitioner seeks directions thereby modifying the order dated 16.11.2015 passed in Crl. Rev. P. 185/2015 to the extent that the release of animals must be conditional.

2. Further seeks directions to allow the custody of the animals pursuant to order dated 16.11.2015 subject to implementation of statutory recommendations of AWBI Circular dated 27.01.2016 and ensure the safety and well-being of the animals.

3. Ms. Geeta Luthra, Id. Sr. Counsel appearing on behalf of the petitioner has drawn the attention of this court to Annexure A/9 at Page 84 dated 27.01.2016 whereby, Animal Welfare Board of India wrote a letter to the Director of Prosecution, Govt. of NCT of Delhi thereby stated as under:

"1. The State must vehemently oppose the release of custody of animals to

owners / persons against whom allegations of cruelty or allegations of slaughter in respect to animals not permitted to be slaughtered, have been made. The State can do so on the basis of an order passed by the Hon''ble Supreme Court in the matter of State of UP v. Mustakeem on 22.02.2002. We enclose the order for your ready reference. A perusal of the same will reveal to you that the Hon''ble Supreme Court had expressed the view in that matter, that in a complaint of cruelty to animals, when there is apprehension of slaughter, the case property animals must not be given into the custody of the accused during the pendency of the trial.

In cases where the Courts are inclined to return the case property animals to the accused owners / persons, we recommend that the following conditions be sought to be imposed on the owners / persons in the order of release.

1. That the owner / custodian of the case property animal shall give an undertaking to the court by means of an affidavit stating-

(i) That the case property animals shall be kept within the jurisdiction of the Court. He shall give the exact address of and space availability at the place where such animals are going to be sifted and kept.

(ii) That detailed records relating to the feeding, treatment and vaccination for each animal shall be maintained and be furnished as and when required by the Investigating Officer or the Court or at the time of Inspection by any other authorized persons.

(iii) That in the eventuality of death of any animal which is case property, the concerned Investigating Officer, the Station Officer and the Court shall be informed within 6 hours of such death. That the post-mortem shall be conducted by the Jurisdictional Veterinary Doctor in the presence of the Investigating Officer and the body shall not be disposed off by the custodian prior to the same.

(iv) That no cruelty will be meted out to the case property animal under any circumstances.

(v) That the custodian shall not sell, transfer, ownership, gift or donate the animals to any person and will be solely responsible for their safekeeping.

(vi) That a personal bond of the amount being the current market value of the animals shall be deposited in the concerned police station which will be forfeited in case the animals are misused, missing or slaughtered.

(vii) That at the time of receiving the custody of the animals, custodian shall permit each case property animal to be microchipped for proper identification, by the Jurisdictional Veterinary Officer."

4. Ld. Sr. Counsel further submits that the petitioner has no objection if the custody of the animals is given to the owners / accused, however, to ensure the well-being of the animals, the following directions may be issued:

i. That before giving custody of the case property to the custodian / owners, the Investigating Officer shall physically verify the address given in the above-mentioned Affidavit and ascertain the possibility of housing the case property animals comfortably, in terms of space.

ii. That in the case of death of animal being case property, a post-mortem is conducted by the Jurisdictional Veterinary Officer and photographed for record.

iii. That at the time of giving custody of animals, detailed Panchnama must be made for each animal and the microchip number must be mentioned in the Panchnama.

iv. That apart for the purpose of care and protection of these animals, the Jurisdictional Veterinary officer be directed to conduct a weekly health check of each animal and submit a report to the concerned Investigating Officer.

v. Further that the Members of the State Animal Welfare board be urged to conduct regular inspections and submit their reports to the Investigating Officer.

5. Ld. Sr. Counsel submits that a electronic chip may be fitted on the animals and SHO, PS-Sarita Vihar be directed to keep surveillance on the animals so that any injury may not cause to the animals.

6. It is not in dispute that after registration of case FIR No. 868/2014 at PS-Sarita Vihar for the offences punishable under Sections 429 IPC read with Section 11 of the Prevention of Cruelty to Animals Act, 1960, the custody of the animals were with the petitioner. Thereafter, owners / accused of the animals moved an application for Superdari, same was dismissed vide order dated 22.01.2015 by recording as under:

"Hon"ble Supreme Court in Laxmi Narain Modi v. Union of India & Ors. , 2013 (10) SCC 227 laid down various guidelines inter alia for Transportation of Animals. In this case, the Court also prescribed the obligations of consignor and consignee for such a transport, and precautions to be taken during transit.

A studied perusal of the facts of this case vis-A -vis the observations of Hon"ble Higher Courts provides that application was not adhering to any of the rules prescribed for transportation of animals. Cruelty to camels stands confirmed by the concerned Doctor at duty at Sanjay Gandhi Animal Care Centre. In these circumstances, the Court shall decide whether the applicant is entitled to interim custody of the camels. Firstly, as per the doctor"s report, camels are under treatment and are unable to perform their usual work and cannot be transported; secondly, the camels are presently suffering with injuries on eyes, legs, and back near tail and are getting proper treatment everyday but are unable to be transported; thirdly the applicant failed to produce the original receipts of purchase of these camels; fourthly, the applicant was transporting old aged camels from Haryana to Uttar Pradesh where use of camels for agricultural purpose is doubtful and fifthly, the possibility of proper care and treatment of camels at small towns of Haryana or UP is quite bleak, leaving a doubt and

concern regarding the health of camels while in the custody of applicant.

Thus, keeping in view the aforesaid factors (which includes the consideration of all factors laid down by Hon''ble Supreme Court in Chakram''s case (supra), Court is of the opinion that no justified ground to release the Camels or hand over the interim custody of camels to applicant is made out. It is opined that mere undertaking of applicant that he shall not treat the camels with cruelty is not sufficient to safeguard the larger health interests of the ''ships of the Desert'' in the present case. It is also observed that imposition of conditions may also not serve the required purpose as the Court shall not be able to supervise the compliance of such conditions like not treating the animals with cruelty or their safe transportation.

Accordingly, the application seeking release of camels to applicant Saddam is hereby dismissed."

7. Being aggrieved, respondent no.1 challenged the aforesaid order in the Crl. Rev. Petition 185/2015, which was allowed in his favour. Being aggrieved the petitioner filed the present Petition.

8. It is pertinent to note here that Id. Revisional Court while considering the Revision recorded that Id. Trial Court has failed to consider the facts that animals were being taken by the respondent no. 1 to his native place for their use in agricultural work and also for the purpose of selling them in Animal Mandi at Hapur, UP. Id. Trial Court also ignored the valid receipts of purchase of those camels from Govt. approved Agency and had passed the impugned order on the basis of statement of complaint made in the FIR.

9. It is not in dispute that the informant of the FIR is the Manager of the Petitioner Centre. Accordingly, the said Centre had taken immediate custody of the animals.

10. The petitioner herein is the Centre which takes care of the well- being of the animals. But in this case, the total animals recovered were 15 in number and the petitioner had taken the custody of all the animals. However, it is admitted fact that 3 Camels had already died under the custody of the petitioner. Accordingly, Id. Revisional Court recorded that it were the officials of the petitioner who had, in fact, committed cruelty upon the poor camels and Id. Trial Court has failed to take note of the fact that camels in questions were not injured and the same were not mercilessly bundled into a single truck.

11. Id. Trial Court further failed to take note of the fact that the Doctor concerned who has rendered opinion regarding the physical and medical condition of the Camels himself was an employee of the petitioner / NGO and as such the element of biasness was bound to occur in his opinion. Accordingly, the said report was not prepared by any independent and neutral Veterinary Doctor.

12. The case of the prosecution is that on 15.12.2014, on a specific information received from one of the representatives of the petitioner/ NGO, a Truck bearing

NO. HR-55U-4369 was stopped within the jurisdiction of PS-Sarita Vihar where the same was found to be carrying 15 Camels in an inhumane condition and were transported in a cruel manner. Upon seizure, camels in question were got admitted at the Sanjay Gandhi Animal Care Centre (petitioner herein) where they were stated to be undergoing necessary treatment. Thereafter, respondent no. 1 being the owner of those Camels moved an application for Superdari before Id. Metropolitan Magistrate, which was declined vide order dated 22.01.2015.

13. So far as the non-production of original receipts by respondent no. 1 is concerned, it seems that the Id. Trial Court has not even asked the respondent no.1 to produce the same at any point of time whatsoever. If there was any doubt in the mind of the Id. Trial Judge related to the actual ownership of the animals in question, then definitely, the Id. Trial Judge could have asked respondent no.1 for production of original receipts which has not been done in the present case.

14. It is admitted case that respondent no. 1 has neither been convicted in the present case as on date nor he has been previously convicted for any offence of similar nature. Hence, there is no justification in denying him the custody of the animals as had been done by Id. MM.

15. I have no hesitation to say that Circular dated 27.01.2016 issued by Animal Welfare Board of India has no binding effect upon the prosecution and the Court as well. Therefore, the petitioner cannot interfere in the judicial process in like such cases.

16. In the case in hand, even the chargesheet has not been filed. The respondent no.1 has every right to take the custody of the animals which were impounded from him on the basis of allegations. He is innocent until convicted. The petitioner being an NGO has no locus to interfere in the matter in this fashion. Moreover, three Camels out of 15 have already died in the custody of the petitioner, to which they neither informed to the owner nor SHO concerned.

17. It is pertinent to note that on 04.02.2016, the petitioner assured the Court that the Camel in question shall be released to the respondent no. 1 on 09.02.2016 if they failed to obtain stay order against the order dated 16.11.2015. However, no stay was granted to the petitioner, despite, they failed to release the animals.

18. Vide order dated 09.02.2016 passed by Id. Metropolitan Magistrate, notice was issued to SHO, PS-Sarita Vihar apprising him about the aforesaid development and directed him to assist the respondent no. 1 for getting the Camels released as per the undertaking of the counsel for the petitioner. However, despite the specific directions issued by the Trial Court, the petitioner has not released the Camels till date. Thus, in this fashion, the petitioner / NGO arbitrarily interfered in the matter and took the custody of the Camels which they were not entitled in any manner.

19. Id. Revisional Court has passed a detailed order and accordingly directed the petitioner to release the Camels in favour of the respondent no.1.

20. As claimed by the petitioner that they have given proper treatment and take care of the animals whereas 3 Camels out of 15 have already died in their custody and to that effect neither they have given any information to the Investigating Officer nor to the owner. Thus, the petitioner behaving in the fashion as there is no control over it.

21. Moreover, without the permission of the Court and the information to the SHO concerned, the petitioner has shifted the animals from Delhi to Gurgaon. Thus, the petitioner has no respect to the law at the Courts as well.

22. Keeping in view the facts recorded above, it is established that despite the order passed by the Id. Revisional Court and subsequent orders passed by Id. Metropolitan Magistrate, the petitioner has not release the Camels, thus, I do not find any merit in the instant petition.

23. Accordingly, the petition is dismissed with cost of Rs.50,000/- to be paid in favour of the "Delhi Police Martyr Fund" within 2 weeks. Proof of the same shall be placed on record under prior intimation to the Investigating Officer concerned.

24. The SHO, PS-Sarita Vihar is directed to take adequate force and get the animals released from petitioner / NGO before 6 PM of 02.03.2016 and the Superdari will be handed over to the respondent no.1 in terms of order passed by Id. Revisional Court.

25. I hereby make it clear that petitioner / NGO shall not claim even a single penny from respondent no.1 for treatment or any purposes.

26. A copy of this order be given dasti under the Signatures of the Court Master.