

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.199 of 2021

AND

CRLMC Nos. 828, 215, 219, 220, 740 &780 of 2021

Jiba Bikash Parisad *Petitioner*
(*In all the cases*)
Mr.Sidharth Luthra, Sr. Advocate
-versus-
State of Odisha and another *Opposite Parties*
(*In all the cases*)
Mr. Ashok Parija, Advocate General
Mr.B.Tripathy, Advocate for O.P.No.2

CORAM: JUSTICE B. P. ROUTRAY

ORDER
21st October, 2021

Order No.

08.

1. All these cases are relating to release of seven vehicles seized in connection with Khandapada P.S. Case No.168 dated 26th June, 2020, registered for alleged commission of offences under Sections 379/411/294/353/332/506/34 of the I.P.C. and Section 11 of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to 'the PCA Act').

2. The facts of the cases are that, the informant, who is a Sub-Inspector of Police, while performing his duties seized seven trucks/containers bearing Registration Nos. OD-04-0099, OR-07L-1226, OR-09G-5453, OR-22D-5594, OR-09G-8735, OR-01K-5396 and WB-25F-5505 as were transporting 88 cattle (45 cows and 43 bullocks) illegally in closed containers in a cruel and wretched condition. Most of the cattle were bleeding at the feet being tied to the padlock and some of them have died. The

informant seized all the seven vehicles along with cattle, arrested the drivers and helpers and lodged the F.I.R. leading to registration of Khandapada P.S.Case No.168 dated 26th June, 2020.

3. Pending trial of the cases, the respective owners of the vehicles prayed for release of their vehicles in terms of the provisions contained in Sections 451 & 457 of the Cr.P.C..

4. The prayer was rejected by the learned J.M.F.C., Khandapada. Against the same, the owners preferred respective revision applications. In all such revision applications, directions were issued to release the vehicles in favour of the respective owners subject to satisfaction of the conditions.

5. CRLMC No.199 of 2021 is preferred against the order dated 25th January, 2021 of the learned Sessions Judge, Nayagarh passed in Criminal Revision No.15 of 2020, wherein the truck bearing Registration No.OR-09G-8735 was directed to be released in favour of the concerned owner with condition inter alia that, the owner shall furnish cash security of Rs.50,000/- and property security/indemnity bond of Rs.5,00,000/-. In the said vehicle, seven cattle were allegedly transported.

CRLMC No.828 of 2021 is preferred against the order dated 25th January, 2021 of the learned Addl. Sessions Judge, Nayagarh passed in Criminal Revision No.05-16 of 2021- 2020, wherein the truck bearing Registration No.OR-01K-5396 was directed to be released in favour of the concerned owner with condition inter alia that, the owner shall furnish cash security of Rs.50,000/- and

property security/indemnity bond of Rs.5,00,000/-. In the said vehicle, fifteen cattle were allegedly transported.

CRLMC No.215 of 2021 is preferred against the order dated 25th January, 2021 of the learned Sessions Judge, Nayagarh passed in Criminal Revision No.17 of 2020, wherein the truck bearing Registration No.OD-04-0099 was directed to be released in favour of the concerned owner with condition inter alia that, the owner shall furnish cash security of Rs.50,000/- and property security/indemnity bond of Rs.5,00,000/-. In the said vehicle, twelve cattle were allegedly transported.

CRLMC No.219 of 2021 is preferred against the order dated 25th January, 2021 of the learned Sessions Judge, Nayagarh passed in Criminal Revision No.19 of 2020, wherein the truck bearing Registration No.OR-09G-5453 was directed to be released in favour of the concerned owner with condition inter alia that, the owner shall furnish cash security of Rs.50,000/- and property security/indemnity bond of Rs.5,00,000/-. In the said vehicle, seven cattle were allegedly transported.

CRLMC No.220 of 2021 is preferred against the order dated 25th January, 2021 of the learned Sessions Judge, Nayagarh passed in Criminal Revision No.21 of 2020, wherein the truck bearing Registration No.OR-22D-5594 was directed to be released in favour of the concerned owner with condition inter alia that, the owner shall furnish cash security of Rs.50,000/- and property security/indemnity bond of Rs.5,00,000/-. In the said vehicle, nineteen cattle were allegedly transported.

CRLMC No.740 of 2021 is preferred against the order dated 25th January, 2021 of the learned Addl. Sessions Judge, Nayagarh passed in Criminal Revision No.07-20 of 2020, wherein the truck bearing Registration No.WB-25F-5505 was directed to be released in favour of the concerned owner with condition inter alia that, the owner shall furnish cash security of Rs.50,000/- and property security/indemnity bond of Rs.5,00,000/-. In the said vehicle, seven cattle were allegedly transported.

CRLMC No.780 of 2021 is preferred against the order dated 25th January, 2021 of the learned Addl. Sessions Judge, Nayagarh passed in Criminal Revision No.06-18 of 2021- 2020, wherein the truck bearing Registration No.OR-07L-0126 was directed to be released in favour of the concerned owner with condition inter alia that, the owner shall furnish cash security of Rs.50,000/- and property security/indemnity bond of Rs.5,00,000/-. In the said vehicle, twenty one cattle were allegedly transported.

6. Present petitioner is a registered society working as a temporary shelter house for rescued animals and represented by its Secretary Mr. Duryodhan Parida.

7. Mr. Sidharth Luthra, learned Senior Advocate submitted that the Petitioner is a registered Society working for bona-fide causes of animals to protect them against cruel treatment and insensitive dealings. It is also submitted that the cattle were transported violating the provisions of the PCA Act as well as The Transportation of Animals Rules, 1978, The Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 and the guidelines issued by the Animal

Welfare Board of India. But the learned revisional court have directed for release of the vehicles without adhering to those statutory provisions. Sub Rule 4 of Rule 5 of 2017 Rules mandates to keep every seized vehicle involved in the offences under the PCA Act as security pending trial. Sub Rule-5 further prescribes that, the owner of the vehicle, transporter and others shall be jointly and severally liable for the cost of transport, treatment and care of the animals and the revisional court has failed to appreciate such liability of the owners before directing for release of the vehicles. It is also submitted that the Petitioner-Organization being a registered Society for Prevention of Cruelty to Animals (SPCA) has taken charge of the custody of those rescued cattle for their care and maintenance.

8. The Opposite Party – Owners of the vehicles on the other hand while supporting the impugned orders of the revisional courts, submitted that no purpose would be served by keeping the vehicles unused exposing to sun and rain. This will no way be beneficial to either party. It is also submitted that when the revisional courts have directed for deposit of property security or indemnity bond along with cash security, the orders directing release of the vehicles cannot be termed as illegal in any event.

9. The learned Advocate General by supporting petitioner's contention submitted in course of hearing that, it is mandatory for the courts to consider the provisions under the PCA Act and the Rules while considering prayer for release of the seized vehicle involving offences under the PCA Act. He further submitted that

the orders of the revisional courts are bad for non-consideration of those mandatory provisions.

9. Admittedly, the alleged offences include the offence under the PCA Act. The PCA Act has been enacted with the objective to prevent infliction of unnecessary pain and suffering to animals. Chapter II of the said Act speaks for establishment of Animal Welfare Board of India, its constitution as well as functions and Chapter III prescribes prevention of different cruel treatments to animals and penalty for the same and Chapter V stipulates the offences. Section 35 prescribes about treatment and care of animals and Section 38 gives power to make rules. The Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017, which has been framed by exercising power under Section 38 of the PCA Act, deals with the procedure for custody of rescued animals, the cost of care and keeping of animals pending litigations, their status upon disposal of litigation and disposition. Rule 5 of the said Rules reads as follows:-

“5. Execution of bond.—(1) The magistrate when handing over the custody of animal to an infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala shall determine an amount which is sufficient to cover all reasonable cost incurred and anticipated to be incurred for transport, maintenance and treatment of the animal based on the input provided by the jurisdictional veterinary officer and shall direct the accused and the owner to execute a bond of the determined value with sureties within three days and if the accused and owner do not execute the bond, the animal shall be forfeited to infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala.

(2) The infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala having the custody of the animal may draw on from the bond on a fortnightly basis the actual reasonable cost incurred in caring for the animal from the date it received custody till the date of final disposal of the animal.

(3) The magistrate shall call for the accused and the owner to execute additional bond with sureties once eighty per cent, of the initial bond amount has been exhausted as cost for caring for the animal.

(4) Where a vehicle has been involved in an offence, the magistrate shall direct that the vehicle be held as a security.

(5) In case of offence relating to transport of animals, the vehicle owner, consignor, consignee, transporter, agents and any other parties involved shall be jointly and severally liable for the cost of transport, treatment and care of animals.

(6) In cases where a body corporate owns the animal, the Chief Executive Officer, President or highest-ranking employee of the body corporate, the body corporate and the accused shall be jointly and severally liable for the cost of transport, treatment and care of the animal.

(7) In cases where the Government owns the animal, the Head of the Department and the accused shall be jointly and severally liable for the cost of transport, treatment and care of the animal.

(8) If the owner and the accused do not have the means to furnish the bond, the magistrate shall direct the local authority to undertake the costs involved and recover the same as arrears of land revenue.”

10. The Animal Welfare Board of India that has been constituted under the PCA Act has issued different guidelines/advisories/instructions from time to time to different authorities. Its instructions dated 3rd May, 2018 prescribe the cost of care and

maintenance of cow and cattle at the minimum rate of Rs.200/- for each animal for health examination, Rs.20/- for transport and Rs.200/- for daily maintenance per animal for each day.

11. The Hon'ble Supreme Court of India in its order dated 7th May, 2014 passed in Civil Appeal No.5387 of 2014 have observed that, "PCA Act is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. It is trite law that, in the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. Courts also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke-screen and discover the true state affairs. Court can go behind the form and see the substance of the devise for which it has to pierce the veil and examine whether the guideline or the regulations are framed so as to achieve some other purpose than the welfare of the animals. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the constitutional principles, Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. Court has also a duty under the doctrine of parents patriate to take care of the rights of animals, since they are unable to take care of themselves as against human beings."

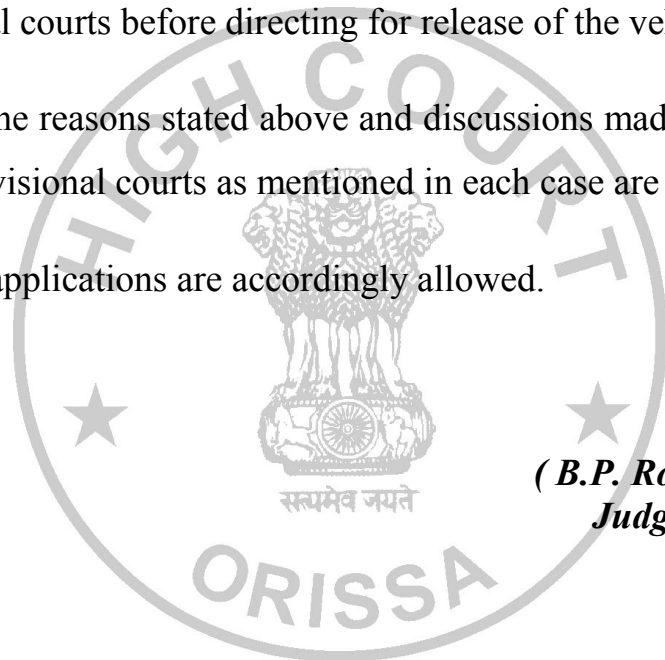
12. In another case, where one claimant, namely, Sayed Samim Quadari approached this Court in Criminal Revision No.333 of 2019 praying for interim release of the vehicle that was transporting the cattle illegally in a similar manner involving offences under the PCA Act, this Court by order dated 29th May, 2019 directed the learned S.D.J.M., Angul to consider the matter afresh for release of the vehicle. The same was challenged by the complainant before the Hon'ble Supreme Court of India. The Supreme Court in its order dated 5th July, 2019 passed in Special Leave Petition (Criminal) No.6472 of 2019 observed that, “.....xxxxx.....We have gone through the order passed by the High Court. The High Court remitted the matter to the Court below to consider application under Section 457 of the Cr.P.C. filed by the petitioners for release of truck afresh on its own merits. We have no doubt that while considering the application, the Magistrate shall also take into consideration the provisions of the Prevention of Cruelty to Animals (Case and Maintenance of Case Property Animals) Rules, 2017. We do not find it a fit case to entertain the special leave petition. Subject to the above observations, the special leave petition is disposed of.”

13. In the instant case, the revisional courts while directing the interim release of the vehicles have not taken into consideration the provisions enshrined in the PCA Act and 2017 Rules. The revisional courts appear to be ignorant of the provisions in the Act and Rules. Such provisions enshrined under the PCA Act and Rules are mandatory to be considered, specifically Rule 5 of the 2017 Rules, before deciding the prayer for interim release of the vehicle involved in offences under the PCA Act. The revisional

courts have neither considered those relevant provisions nor the cost incurred by the petitioner for maintenance and care of the rescued animals. The learned revisional courts have also not considered the report of the MVI in respect of the seized vehicle which reveals some discrepancy in the chassis number of the vehicle. The petitioner, who is a registered SPCA, has categorically submitted that he has incurred expenses while keeping those cattle for their maintenance and care as well as health examination. This has also not been considered by the revisional courts before directing for release of the vehicles.

15. For the reasons stated above and discussions made, the orders of the revisional courts as mentioned in each case are set aside.

16. The applications are accordingly allowed.



(B.P. Routray)
Judge