



GAHC010020012021

Page No.# 1/21



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

Case No. : CrI.Rev.P./41/2021

MEHER BANU BEGUM
W/O HAZARAT ALI AHMED, R/O PIPUL BARI PART-II (BOCHAKATA), P.O.-
KALAPANI, DIST-SOUTH SALMARA MANKACHAR (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:Dhyan Foundation
Having its registered office at A-80
South Extension
part-2
New Delhi-11004

Advocate for the Petitioner : MR I RAFIQUE

Advocate for the Respondent : ADDL. PP, ASSAM

Linked Case : CrI.Rev.P./44/2021

MEHER BANU BEGUM
W/O HAZARAT ALI AHMED
R/O PIPUL BARI PART-II (BOCHAKATA)
P.O.-KALAPANI
DIST-SOUTH SALMARA MANKACHAR (ASSAM)



VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:Dhyan Foundation
having Its registered office at A-80
South Extension
Part-2
New Delhi-110049

Advocate for : MR I RAFIQUE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case : Crl.Rev.P./45/2021

MEHER BANU BEGUM
W/O HAZARAT ALI AHMED
R/O PIPUL BARI PART-II (BOCHAKATA)
P.O.-KALAPANI
DIST-SOUTH SALMARA MANKACHAR (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:Dhyan Foundation
Having its registered office at A-80
South Extension
part-2
New Delhi-110049

Advocate for : MR I RAFIQUE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case : Crl.Rev.P./47/2021

MEHER BANU BEGUM AND ANR



W/O HAZARAT ALI AHMED
R/O PIPUL BARI PART-II (BOCHAKATA)
P.O.-KALAPANI
DIST-SOUTH SALMARA MANKACHAR (ASSAM)

2: SAMUD HASAN
S/O HAZI MASROOR
R/O TAKHTAPUR ALLA URF NANKAR MAINATHER
MORADABAD
MORADABAD
UTTAR PRADESH
VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:DHYAN FOUNDATION
TO BE REPRESENTED BY ITS AUTHORISED SIGNATORY
SRI KOLLANGUDU VENKATESWARAN KANNAN
AGED ABOUT 32 YEARS
PRESENT ADD FOR COMMUNICATION-DURGA MANDIR
GOALPARA TOWN
DIST-GOALPARA
ASSAM
PIN-783123

Advocate for : MR I RAFIQUE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

Linked Case : Crl.Rev.P./42/2021

MEHER BANU BEGUM
W/O HAZARAT ALI AHMED
R/O PIPUL BARI PART-II (BOCHAKATA)
P.O.-KALAPANI
DIST-SOUTH SALMARA MANKACHAR (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM



2:Dhyan Foundation
Having its registered office at A-80
South Extension
part-2
New Delhi-110049

Advocate for : MR I RAFIQUE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case : Crl.Rev.P./46/2021

MEHER BANU BEGUM
W/O HAZARAT ALI AHMED
R/O PIPUL BARI PART-II (BOCHAKATA)
P.O.-KALAPANI
DIST-SOUTH SALMARA MANKACHAR (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:Dhyan Foundation
Having its registered office at A-80
South Extension
part-2
New Delhi-110049

Advocate for : MR I RAFIQUE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case : Crl.Rev.P./49/2021

MEHER BANU BEGUM
W/O HAZARAT ALI AHMED
R/O PIPUL BARI PART-II (BOCHAKATA)
P.O.-KALAPANI
DIST-SOUTH SALMARA MANKACHAR (ASSAM)



VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:Dhyan Foundation
Having its registered office at A-80
South Extension
part-2
New Delhi-110049

Advocate for : MR I RAFIQUE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case : Crl.Rev.P./85/2021

MEHER BANU BEGUM
W/O HAZRAT ALI AHMED
R/O PIPULBARI PART-II (BOCHAKATA)
P.O.-KALAPANI
DIST-SOUTH SALMARA MANKACHAR (ASSAM)

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:DHYAN FOUNDATION
HAVING ITS REGISTERED AT A-80 SOUTH EX-II
NEW DELHI-110049
REPRESENTED BY ITS AUTHORIZED SIGNATORY SMT. TANKALA NAGA
CHANDRANI
AGED ABOUT 44 YEARS
HAVING ADDRESS AT DHYAN FOUNDATION GOALPARA BSF (RESCUES)
GAUSHALA
DUS BHUJA
SRI SURYA PAHAR
P.O.-DUBAPARA
DIST-GOALPARA
ASSAM
PIN-783101



Advocate for : MR I RAFIQUE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

Linked Case : CrI.Rev.P./86/2021

MEHER BANU BEGUM
W/O HAZRAT ALI AHMED
R/O PIPULBARI PART-II (BOCHAKATA)
P.O.-KALAPANI
DIST-SOUTH SALMARA MANKACHAR (ASSAM)

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:DHYAN FOUNDATION
HAVING ITS REGISTERED AT A-80 SOUTH EX-II
NEW DELHI-110049
REPRESENTED BY ITS AUTHORIZED SIGNATORY SMT. TANKALA NAGA
CHANDRANI
AGED ABOUT 44 YEARS
HAVING ADDRESS AT DHYAN FOUNDATION GOALPARA BSF (RESCUES)
GAUSHALA
DUS BHUJA
SRI SURYA PAHAR
P.O.-DUBAPARA
DIST-GOALPARA
ASSAM

Advocate for : MR I RAFIQUE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

:: BEFORE ::

HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing: : 24.09.2021.

Date of Judgment : 17.11.2021

JUDGEMENT AND ORDER (ORAL)

All the criminal revision petitions are taken up jointly for disposal as the petitions have arisen out of the same issue and fact.

2. Heard Mr. I. Rafique, learned counsel appearing for the revision petitioner. Also heard Mr. P.S. Lahkar, learned Addl. P.P., Assam and Mr. D. Das, learned counsel appearing for the private respondent Dhyan Foundation.

3. The cases under reference have altogether in the same backdrop and on similar circumstances different cases have been registered which can be discussed as below:

On 24.11.2020, at about 10 PM on receiving source information, police officials along with his team went to Kalijhar NH-31 and apprehended truck being UP-78/CN2725 and on search being made into the truck, recovered 10 numbers of bulls carried in the truck without any valid documents and driver of the said vehicle fled away and no any document could be traced in the vehicle for carrying such bulls. On the facts, an FIR was lodged by police officials which was registered as Howly P.S. Case No.481/2020 under Section 120(B)/379 IPC R/W Section 11 (1) (a) (b) (d) and (e) of the Prevention of Cruelty to Animals Act, 1960.

4. On 19.12.2020, on the basis of secret information that a truck was carrying cows illegally from West Bengal towards Assam, the police conducted a naka checking at Simultapu at about 1:00 P.M., a truck bearing Regn. No.NL-01-AD-3926

was intercepted at NH-31C, at Simultapu and it was found that 25 male cows were loaded on the truck and the driver of the truck could not produce any valid document against the loaded cows. Accordingly, the FIR was lodged 19.12.2020 by the police officials which was registered as Gossaigaon P.S. Case No.589/2020, under Sections 379/411/289 of the IPC, read with Section 11(1)(a)(d)(e)(h) of the Protection of Cruelty to Animal Act. the cattle and the vehicles were seized.

5. During investigation of the said case, on 24.12.2020, as per secret information, another truck bearing Regn. No.AS-25-EC-3254, carrying 20 male cows was apprehended and the driver of the truck fled away. The truck along with the cattle were also seized. Then on 26.12.2020, on secret information, another truck bearing Regn. No.UP-12-AT-6696, carrying 22 buffalos were apprehended. On the same day, the truck bearing Regn. No. UP-21-BN-9641, illegally carrying 35 male cows, the truck bearing Regn. No.UP-78-BT-8683, illegally carrying 25 buffalos and the truck bearing Regn. No.WB-59-C-3713, illegally carrying 35 cows were apprehended but the drivers of the truck Nos. UP-12-AT-6696 and UP-21-BN-9641 fled away. However, the trucks with the loaded 117 cattle (70 male cows and 47 buffalos) were seized in connection with the case.

6. Again on 01.01.2021, an FIR was lodged by ASI Manjit Nath, alleging that on that day at about 3:00 A.M., on the basis of secret information that a truck was carrying cows illegally from West Bengal towards Assam, the police conducted a naka checking at Simultapu. At about 4:30 A.M., four trucks bearing Regn. No.NL-01-K-9840, NL-01-K-8298, NL-01-L-3157 and NL-03-A-9531 were intercepted at NH-31C, at Simultapu and altogether 104 numbers of cows were found loaded on the truck. Two drivers of the truck managed to flee, taking advantage of darkness, whereas two drivers were apprehended. On being asked, the drivers who were



apprehended, could not produce any valid documents against the loaded cows. Hence, the cows were seized and the case was registered.

7. During investigation of the said case, again on 03.01.2021, as per secret information, another four trucks bearing Regn. No.UP-78-CN-8150, UP-22-AT-1768, HR-38-T-7615 and UP-12-BT-1335, carrying 110 of male cows and buffalos were apprehended along with ten accused persons. Again on 11.01.2021, the police seized 18 cattle, which were carrying on foot and the persons who were taking the cattle, fled way from the spot.

8. In connection with the aforesaid cases, police arrested several accused persons, who were carrying the cattle/buffalos in the trucks from one State to another for slaughtering purposes and the cases are pending for finding out the kingpin of the illegal cattle business.

9. According to the petitioner, she is the managing partner of M/s. Pioneer Livestock, having its principal place at Hatsingimari, Village Kharubandha, Post Office Hatsingimari, P.S. South Salmara, Mankachar in South Salmara, Mankachar at Hatsingimari. It is stated that the Registered Firm of the petitioner deals with sale and purchase of the cattle for the agricultural purpose, after fulfilling the legal formalities. Immediately after starting of the business, the petitioner faced different problems which compelled to stop the business and filed the WP(C) No.315/2010 before this Court and on the basis of the direction passed by this Court on 16.08.2010, the petitioner restarted the business of Inter State transportation of cattle business with strict adherence to Transport of Animals Rules, 1978 and Transport of Animals (Amendment) Rules, 2009.



10. The petitioner herein made several petitions before the trial court praying for zimma of various seized cattle on different dates in all the aforesaid cases mentioned above claiming to be the owner of the said animals contending *inter alia* that she had necessary challan for purchasing the cattle and fitness certificate given by the concerned veterinary officials. It is stated that the seized cattle were purchased from Panjipara Hat Cattle Market in North Dinajpur District, West Bengal to sell them in Guwahati for agricultural purpose but the same has been illegally seized by the police officials. The prayer for zimma of seized cattle in all the petitions was rejected by the learned trial court by an order dated 27.01.2021 and by an order dated 30.01.2021 the learned trial court has given the zimma of seized cattle to Dhyan Foundation/respondent no.2 with a direction to the petitioner/the owner of the seized cattle to bear the cost of the cattle and to execute a bond in this regard but as the petitioner did not execute the bond as directed, by an order dated 01.02.2021 the learned court has directed for forfeiture of the seized animals/cattle on the basis of the report of the I/O that the petitioner has not executed any bond.

11. Aforesaid order of rejection dated 27.01.2021 has now been challenged in the Crl. Revision Pet. No.41/2021, Crl. Revision Pet. No.42/2021, Crl. Revision Pet. No.46/2021 and Crl. Revision Pet. No.49/2021 and the order dated 30.01.2021 has been challenged by way of Crl. Revision Petition No.86/2021 and the order dated 01.02.2021 has been challenged in Crl. Revision Pet. No.85/2021.

12. Crl. Revision Pet. Nos.44/2021 and 45/2021 arising out of Gossaigaon P.S. Case No.5/2021, under Sections 279/353/379/411/289 of the IPC, read with Section 11(i)(a)(d)(e)(h) of the Prevention of Cruelty to Animal Act, read with Section 184/179 of the M.V. Act has been preferred against the common order of



rejection dated 27.01.2021.

The order of learned lower court dated 12.01.2021 has been impugned in Crl. Revision Pet. No.47/2021.

13. According to the learned counsel for the petitioner, the order of aforesaid rejection as well as giving zimma to a third party despite the petitioner being the owner as well as forfeiture of cattle, is bad in law and the learned trial Court failed to pursue the ratio laid down by the Hon'ble Apex Court in the case of "*Manager, Pinjarpole Deudar and another vs. Chakram Moraji Nat and Others*", reported in (1998) 6 SCC 520. Further, it is contended that the seized animals should be given to the owner in terms of Section 29 of the *Prevention of Cruelty to Animal Act, 1960*. It is also contended that as per the parent Act, the custody of seized article can be granted to the owner, hence Rule 2017 cannot over-ride the provision of the Act.

14. It is to be noted that the petitioner has not annexed the copy of the FIR with the present petitions and has only annexed the impugned order. However, in this regard, a status report from the I.O. was called for, wherein the I.O. has narrated entire facts, which I have gone through.

15. In his report, the I.O. has submitted that at the time of seizure and during investigation, no NOC was found to be issued from the Directorate of Animal Husbandry Department for carrying those cattle and the vehicles have no permit to transporting the cattle to another State and failed to show any document that the cattle were medically examined by the registered Veterinary Doctor before their transportation.

the seized cattle during its stay at the firm as per Section 5 of the *Prevention of Cruelty to Animals Rules, 2017*. Subsequently, by order dated 01.02.2021 the court has directed for auction of the seized cattle as the owner did execute the bond as directed.

19. The learned counsel for the petitioner has urged before this Court that the petitioner is the Managing Partner of M/S. Pioneer Livestock having trade licence registration no. RF/GDR/179/03 of 2007 dated 01.03.2007 and whereas she has been allowed to continue her cattle business by virtue of the order dated 16.08.2010 in WP(C) 315/2010 by the Hon'ble Gauhati High Court and on the strength of aforesaid order, Government of Assam, A.H & Veterinary Department vide order dated 22.01.2014 has allowed M/S. Pioneer Livestock to restart the inter-state transportation of cattle business, so there is no irregularity in carrying the cattle from West Bengal and to sale the same in Guwahati. Referring to the decisions of the Hon'ble Supreme Court in *Manager Pinjrapole Deudar (supra)*, it has been urged before this Court that there is no bar to give the interim custody of the animals to the owner who is facing the prosecution and owner can be deprived of the custody only on his conviction under the Act. It has been observed that in case where the owner is claiming the custody of animals, Pinjrapole has no preferential right. In deciding whether the interim custody of the animals is given to the owner who is facing prosecution or to the Pinjrapole following factors will be relevant –

- (1) The nature and gravity of the offence alleged against the owner;
- (2) Whether it is a first offence alleged or he has been found guilty of offence under the Act earlier;
- (3) If the owner is facing first prosecution under the Act, the animals is

not liable to be seized , so the owner will have better claim for custody of the animals during the prosecution;

- (4) The conditions in which animal was found at the inspection of seizure;
- (5) The possibility of the animals being again subjected to cruelty.

20. Relying on the decision above, the petitioner contends that the claim of petitioner being owner of the seized cattle cannot be denied as she has necessary permission/licence to continue to the cattle business and the necessary receipt as well as the medical certificate obtained from Veterinary Department. Further, it has been contended that rejection of the prayer for custody on the basis of the Rules 2017, is not maintainable as it cannot substitute the Act.

21. In his argument, Mr. D. Das, learned counsel appearing for the respondent Dhyan Foundation has submitted that after rejecting prayer for zimma vide it's order dated 27.01.2021, the learned SDJM(M) has granted the interim custody of all the seized cattle in connection Gossaigaon P.S. Case Nos.589/2020, 5/2021 and 23/2021 to the Dhyan Foundation by orders dated 30.01.2021 and 25.01.2021 and they are under proper care and custody of the said Dhyan Foundation and in that view of the matter, present revision petitions became infructuous.

22. The learned counsel for the respondent Dhyan Foundation Mr. D. Das has further argued that 2017 Rules that was framed only under the Act which is to be followed with letter and spirit and it has binding affect under the Act and the same cannot be flouted. Reliance has been placed upon the recent decision of the Supreme Court dated 05.02.2020 in Criminal Appeal No.230/2020 arising out of SLP (Criminal No.11726/2019) *Raguramsharma and Ors. v. C. Thulsi and Anr.*, to



25. Further, it is contended that the medical document issued by the Retired Veterinary Doctor is not permissible going by the provision of the Act and Rules. Only on the basis of the document issued to the petitioner to run the business, the same cannot be utilized as blatant permission to carry out illegal transportation of the cattle/animals by violating the rules and procedure. The Rule and the Act provide the procedure for transportation of animals in required manner, which is not at all followed in any of the cases under challenge by the petitioners' side. Thus, it has been submitted that there is no illegality in the order passed by the trial court who have already taken note of all relevant rules and procedure while passing the order.

26. It is to be noted that in a sequence of few days that is on 24.11.2020, 19.12.2020, 24.12.2020, 26.12.2020, 01.01.2021, 03.01.2021 and 11.01.2021, large number of cattle were carried in trucks and there is nothing to show that the animals were carried/transported as per Rule 1978 and Rule 2017 (supra). As per the report of the I/O, above vehicles found carrying 10/25/20/22/25/35/110/18/104 numbers of cattle in each vehicle (totaling 369) and at the time of seizure, no NOC was found to be issued from the Directorate of Animal Husbandry and Veterinary Department, no any livestock permit to transport the cattle inter-state was found and cattle were not examined by registered Veterinary Doctor before their transportation.

27. Here, the petitioner has claimed to be the owner of seized cattle on the strength of documents like, permission, some receipts issued by market situated at Dinajpur, West Bengal and medical certificate . Now, the question will be how a doctor from Assam that too Retired one can issue fitness certificate to travel the cattle from West Bengal. According to receipt, the cattle were purchased on



22.12.2020 from West Bengal, medical certificate was issued on 25.12.2020 after reaching Assam and it is apparent that the same was not issued at the time of transportation but at subsequent time.

Rule 56 of the Transport of Animal Rules, 1978 is quoted below:

“Rule 56- When cattle are to be transported by goods vehicle, the following precautions are to be taken –

- a) *Specially fitted goods vehicle with a special type of tail board and padding ground the sides should be used.*
- b) *Ordinarily goods vehicle shall be provided with anti-slipping material such as coir matting or wooden board on the floor and the super structure, if low, should be raised.*
- c) ***No goods vehicle shall carry more than 6 cattle.***
- d)
- e)
- f)”

Thus, the Rule has specifically provided that a vehicle cannot carry more than 6 cattle whereas in the present case large number of cattle were carried in the single vehicle as indicated above, by violating the Rules. More importantly, repeated violation has been conducted by the petitioner while transporting the cattle in gross violation of rules which had adverse impact on the health of cattle so carried and it amounts to cruelty within the provisions of the Act.

28. In a fact situation, decision of the Hon’ble Supreme Court in *Raguramsharma*

(supra) (vide order dated 05.02.2020), is relevant, that in such case of gross violation of rules, interim custody of animals ought not to be handed over to the accused.

29. In *Lakshmi Narain Modi* (supra), the Hon'ble Supreme Court has already expressed anxiety about the importance of proper implementation of the provisions of Prevention of Cruelty to Animals, Rules, 2000, Environment Protection Act, 1986, the Solid Waste Management and Handling Rules, 2007 and the Prevention of Cruelty to Animals (Slaughter House), Rules and while issuing certain guidelines for transportation of animals and maintenance of slaughter, house observed that it is, of extreme importance that all State Governments, State Animal Welfare Boards, Pollution Control Board etc. should scrupulously follow the guidelines. But in the given cases, it is noticed that by flouting all the guidelines and rules animals were transported.

30. So far as the prevention of Cruelty to Animals Act, 1960, which being a special Act has been enacted to prevent the infliction of unnecessary pain or suffering on animals to prevent the cruelty to animals. The cruelty has been defined in the Section 11 of the Act and provision to Section 11 (d) reads as follows:

“Section 11 – Treating animals cruelty –

(1) If any person –

(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;

Section 11(2) read as follows:

(2) For the purpose of sub-section (1), an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence:"

31. Only asserting the ownership by a person one cannot sought for zimma of animals that has been transported in blatant violation of Rules and the Act. In terms of the Section 11(2) of the Prevention of Cruelty to Animal Act, an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to prevention of the offence.

32. Even going by the principles in the *Pinjirapole* (supra), relied by the petitioner, it is seen that the petitioner cannot avail the benefit of the same as the authority has observed that the owner will have a claim over the custody of animals if the animals are not liable to be seized and the conditions of the animals at the time of inspection is well maintained. Whereas, in the present case, apart from claiming ownership of the animals, it is not disclosed by the petitioner that proper care was taken at the time of transportation of such animals, as mandated under the law and rules. Large number of cattle were carried without required documents.

33. From the materials available on record, it is evident that there is clear violation of the requirement of Rule 56(c) of the Transport of Animal Rules, nor the required medical certificate has been furnished from the qualified Veterinary Surgeon as per Rule 47(a) of the Transport of Animals Rules, 1978. As per Section 47(b), such certificate is required to be issued by the doctor at the loading point (in the present case West Bengal) whereas it was issued by a Retd. Veterinary Doctor of Assam (at the end point). Although the revision petitioner was allowed to restart



Government for inter-state transportation of cattle etc., in an illegal manner without complying the rules under the law. The Government is in a position to re-examine its order dated 22.01.2014 vide Memo No.VFV.33/ 2006/ Pt./128 issued by the Joint Secretary to the Government of Assam, Animal Husbandry & Veterinary Department, Dispur, Guwahati-6 as regard the compliance of the *Transport of Animals Rules, 1978* (as amended in 2009).

37. In view of the matters on record, as well as the legal proposition discussed above, this Court is of the opinion that the learned trial court has rightly appreciated the matter in proper perspective of law while rejecting the zimma prayer of the petitioner and giving same to third party/ respondent no.2 with direction to the owner/petitioner to bear the cost, failing which forfeiture of the seized cattle. There being no illegality and irregularity in the impugned orders, no interference is called for and resultantly all the revision petitions stand dismissed with a direction to the learned trial court to expedite the matter of trial as early as possible as the well-being of large number of animals is in question.

Return the Case diary.

JUDGE

Comparing Assistant