

PETITIONER:
MANAGER, PINJRAPORE DEUDAR & ANR.]

Vs.

RESPONDENT:
CHAKRAM MORAJI NAT & ORS.

DATE OF JUDGMENT: 31/08/1998

BENCH:
M.K. MUKHERJEE, SYED SHAH MOHAMMED QUADRI

ACT:

HEADNOTE:

JUDGMENT:
THE 31ST DAY OF AUGUST, 1998

Present:

Hon'ble Mr. Justice M.K.Mukherjee
Hon'ble Mr. Justice S.S.Mohammed Quadri

Dr.A.M.Singhvi, Sr. Adv., S.C.Patel, G.R.Popat, Advs. with him for the appellants.
A.K.Ganguli, Sr. Adv., J.L.Chauhan, Shakil Ahmed Syed, Ms.H.Wahi, Ms.Neithono Rhetso, Ms.Anu Sawheny, Advs. with him for the respondents.

J U D G M E N T

The following Judgment of the Court was delivered:
QUADRI, J.

Leave is granted.

These three appeals are filed by the Manager, Pinjrapole against the common judgment of the High Court of Gujarat dated April 8, 1997. The short question that arises for consideration in these appeals is: whether the order of the High Court declining to grant interim custody of the animals to the appellants is contrary to Section 35 of the Prevention of Cruelty to Animals Act, 1960.

The facts giving rise to this question may be noticed here. While the sheep and goats [hereinafter referred to as "animals"] were being transported, the Gujarat police seized them for the alleged violation of provisions of the Prevention of Cruelty to Animals Act, 1960 for short. The Act), Bombay Police Act and Rules 65 to 75 of the Gujarat Diseases of Animals control Rules, 1963. It is a common ground that the offences alleged are non-cognizable. The learned Judicial Magistrate, 1st Class, Dhanera, on their production before him, directed that the custody of the animals be handed over to Pinjrapole. Dissatisfied with the order to the learned Magistrate, the owners of animals filed Criminal Revision Application before the learned Additional Sessions Judge, Banaskantha at Palnapur, who allowed the Revision and directed that the custody of animals be given to the owners pending trial of the cases. The Pinjrapole carried the matter in Revision before the High Court of Gujarat. That Revision and two other cases were disposed of by the High Court by common order dated April 8, 1997, declining to interfere in the order passed by the learned

Additional Sessions Judge.

The correctness of that common order is assailed in these appeals.

Dr.A.M.Singhvi, the learned senior counsel appearing for the appellants, has argued that Section 35 of the Act, enjoins that in the event the Magistrate not sending animals to an infirmary, he has to send them to Pinjrapole pending the trial of offences against the owner under the Act; that the order of the High Court confirming restoration of custody of the animals to the owners in preference to the appellant-Pinjrapole, which is a charitable institution and is only interested in the welfare of the animals, is violative of Section 35, illegal and unsustainable.

Mr. A.K.Ganguli, the learned senior counsel appearing for the respondents, has submitted that the High Court has properly constructed section 35 of the Act and after taking note of various instances of destruction of the animals and the standard of care taken in the Pinjrapoles, and that having regard to the welfare of animals as well as the interest of the owners, the High Court has rightly declined to interfere with the order of the learned Sessions Judge, so these appeals are liable to be dismissed.

For judging the merits of these contentions, it will be apt to notice the scheme of the Act in the light of the relevant provisions thereof. section 4 of the act postulates establishment of Animal welfare Board by the Central Government for the promotion of animal welfare generally and for the purpose of protecting animals from being subjected to unnecessary pain or suffering, in particular. The Board is a body corporate having perpetual succession and a common seal with power to acquire and dispose of property, subject to the provisions of the Act. Section 9 of the Act enumerates functions of the Board; clause (g) thereof contains the objective which reads: to encourage, by the grant of financial assistance or otherwise, the formation or establishment of pinjrapoles, rescue homes, animal shelters, sanctuaries and the like where animals and birds may find a shelter when they have become old and useless or when they need protection. section 11 enlists offences against the animals and prescribes penalty therefor specific offence to practising 'phooka and doom day. Under Section 29 magistrate has power to deprive a person of the ownership or custody of an animal on his conviction of offences under the Act subject to certain conditions. sections 32 to 34 deal with the power of search and seizure, issuing of search warrant and general power of seizure for examination. The owner is required to accompany the seized animals to the place of inspection.

Now, it may be useful to quote Section 35 of the Act under which the appellant-pinjrapole claims interim custody of the animals:

"35. Treatment and care of animals

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(1) The State Government may, by general or special order, appoint infirmaries for the treatment and care of animals in respect of which offences against this act have been committed, and may authorise the detention therein of any animal pending its production before a magistrate.

(2). The magistrate before whom a prosecution for an offence against this act has been instituted may

direct that the animals concerned shall be treated and cared for in an infirmary, until it is fit to perform its usual work or is otherwise fit for discharge, or that it shall be sent to a pinjrapole, or if the veterinary officer in charge of the area in which the animal is found or such other veterinary officer as may be authorised in this behalf by rules made under this Act certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed.

(3) An animal sent for care and treatment to an infirmary shall not, unless the magistrate directs that it shall be sent to a pinjrapole or that it shall be destroyed, be released from such place except upon a certificate of its fitness, for discharge issued by the veterinary officer in charge of the area in which the infirmary is situated or such other veterinary officer as may be authorised in this behalf by rules made under this Act.

(4) The cost of transporting the animal to an infirmary or pinjrapole, and of its maintenance and treatment in an infirmary, shall be payable by the owner of the animal in accordance with a scale of rates to be prescribed by the district magistrate, or, in presidency-towns, by the commissioner of police.

Provided that when the magistrate so orders on account of the poverty of the owner of the animal, no charge shall be payable for the treatment of the animal.

(5). Any amount payable by an owner of an animal under sub-section (4) may be recovered in the same manner as an arrear of land revenue.

(6). If the owner refuses or neglects to remove the animal within such time as a magistrate may specify, the magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.

(7). The surplus, if any, of the proceeds of such sale shall, on application made by the owner within two months from the date of the sale, be paid to him."

From a plain reading of the provisions, above noted, it is evident that sub-section (1) of Section 35 enables the State Government to appoint infirmaries for the treatment and care of animals in respect of which any of the offences

under the Act has been committed and to authorise the detention of such animals pending their production before a magistrate. Under sub-section (2), the Magistrate may order that: (a) the animal shall be treated and cared for in an infirmary till such time it is fit to perform its usual work or is otherwise fit for discharge; (b) the animal shall be sent to a Pinjrapole; or (c) the animals shall be destroyed if it is certified by a veterinary officer, authorised under the Rules, to be incurable or if it is found that it cannot be removed without cruelty. Mandate of sub-section (3) is that no animal shall be released from an infirmary unless it is directed to be sent to Pinjrapole or be destroyed or certified by concerned veterinary officer to be fit for discharge. Sub-section (4) imposes liability for payment of the cost of transporting the animal to an infirmary or Pinjrapole and its maintenance and treatment in an infirmary, in accordance with the prescribed rates, which, however, can be dispensed with if the Magistrate is satisfied that on account of the poverty of the owner, he is unable to bear the same, otherwise it may be recovered as arrears of land revenue, as envisaged in sub-section (5). Sub-section (6) says that if the owner refuses or neglects to remove the animal within the time specified by the Magistrate then he can order the sale of the animal and appropriation of the sale proceeds for the cost thereof and in the event of there being surplus proceeds of such sale, payment of the same to the owner on his application within two months of the sale. This is postulated by sub-section (7).

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.

Now advertent 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 count 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.

Dr. Singhvi represents that Pinjrapole prepared to keep animals in custody without charging any money for their maintenance. In our view, that cannot be a correct criteria for giving custody of the animals to Pinjrapole particularly when the Court has to decide the competing claims of the owner and the Pinjrapole for their custody.

For the aforementioned reasons, we find no merit in these appeals, they are accordingly dismissed but having regard to the facts and circumstances of the case without costs.