

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2020 OF 2009
(Arising out of S.L.P. (Criminal) No. 198 of 2009)

Bharat Amratlal Kothari and another ...
Appellants

Versus

Dosukhan Samadkhan Sindhi & others ...Respondents

J U D G M E N T

J.M. PANCHAL, J.

Leave granted.

2. This appeal, by special leave, is directed against judgment dated December 30, 2008, rendered by the learned Single Judge of High Court of Gujarat at Ahmedabad in Special Criminal Application No. 1387 of 2008 by which, while dealing with two prayers made by the respondent Nos. 1 to 6

herein, namely, (a) to declare that the order dated July 5, 2008, passed by the learned Additional Chief Judicial Magistrate, Deesa, refusing to hand over custody of the live stock to them is illegal and (b) to declare that they are entitled to get custody of the entire live stock, which is in illegal custody of Bharat Kothari, i.e., appellant No. 1 herein and confined in the Panjarapole at Kanth, near Deesa, the learned Single Judge has :-

- i) held that each of the respondent Nos. 1 to 6 are guilty under Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 and punished each of them with fine of Rs.50/-;
- ii) quashed the FIR No. II-C.R.No. 3131 of 2008, registered with Deesa City Police Station for the alleged commission of offences punishable under Section 279 of Indian Penal Code, Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 and Sections 5, 6 and 8 of Bombay Animal

Preservation Act, 1954, at the instance of the appellant No. 1 as well as the proceedings pursuant thereto, including the orders for interim custody of the animals and the revision applications preferred therefrom;

- iii) directed the appellant No. 1 to pay, by way of compensation and cost, to each of the respondent Nos. 1 to 6 a sum of Rs.75,000/-, without prejudice to their rights and contentions in the criminal proceedings initiated by way of Criminal Inquiry Case No. 237 of 2008 and pending before the learned Chief Judicial Magistrate, Palanpur, as well as to pay, on behalf of respondent Nos. 1 to 6 the cost of maintenance and treatment of the animals in question to the respondent No. 8 herein, i.e., Panjarapole Patan in accordance with the provisions of sub-Section (4) of Section 35 of Prevention of Cruelty to Animals Act, 1960, within a period of one month, i.e., latest by January 30, 2009;

- iv) directed respondent No. 8, which is entrusted care and custody of the animals under interim order, to hand over the surviving animals to the respondent Nos. 1 to 6 in such proportion as the original number of seized animals bears to the number of surviving animals;
- v) directed the State of Gujarat, i.e., respondent No. 7 herein, to take appropriate departmental action for illegal or unauthorized actions, if any, on the part of any police officer and if, upon inquiry it prima facie appears that any police officer has participated in a cognizable offence, to initiate appropriate criminal proceedings against such officer;
- vi) directed the Registrar of the High Court to serve copy of the judgment upon the appellant No. 2, i.e., Animal Welfare Board of India, Ministry of Environment and Forests, Government of India, 13/1, Third Seaward Road, Valmiki Nagar, Thiruvamiyr, Chennai; and

vii) directed (a) the respondent Nos. 1 to 6 to take over the custody and care of surviving animals within two weeks and (b) that the Police Officer in-charge of the Police Station at Patan to supervise the delivery of the animals to the respondents by the appellant or respondent No. 8 in such manner that the animals are not subjected to further cruelty in their transportation within the area of his jurisdiction. The respondent Nos. 1 to 6 are further directed not to commit any offence under the Prevention of Cruelty to Animals Act, 1960 in respect of the surviving animals and submit an undertaking to that effect to the police officer in-charge of the Police Station at Patan.

3. The facts emerging from the record of the case are as under: -

The appellant No. 1 is an Animal Right Activist. He is also Secretary of Rajpur-Deesa Panjarapole, which is a public trust and involved in preservation of old, infirm and stray cattle. One of the

objects of the trust is to prevent illegal and unauthorized transportation and slaughtering of animals. On June 16, 2008 he with others was present at Deesa. He received a message that certain trucks with goats and animals had left from Badmer to go to Ahmedabad via Deesa and Palanpur. In view of this information he and others, i.e., Jivdaya Dharmendra Kokani, Vijaybhai Chauhan, Bherabhai Mali and Shivrambhai Mali kept a watch at Jalaram Cross Road since 11.00 P.M. in the night. At about 2.00 A.M. on 17.6.2008 they noticed that a line of trucks was coming from Gayatri Temple. They waived their hands and search light to stop the trucks but the drivers of the trucks did not stop the vehicles and were found driving trucks speedily towards Palanpur. Therefore, the appellant No. 1 and others sat in an interceptor vehicle bearing registration number GJ-8-A-1294 and followed the trucks. The appellant No. 1 had his mobile phone with him and, therefore, informed the Police Control, Palanpur that trucks loaded with goats and sheep were coming speedily towards Palanpur, whereas he and

others were following those trucks and, therefore, necessary action should be taken to halt the trucks at Aroma Circle Check Post. When the trucks reached near Aroma Circle, the drivers spotted the police. Therefore, they stopped their vehicles and, after leaving the trucks, ran away. On search being made, it was found that in all there were eight trucks and in each truck, goats and sheep were being conveyed in a congested manner. It was also noticed that there was no facility of fodder, water, etc. in any of the trucks and that the drivers had meted out cruelty to the animals. On making the inquiry as to who were driving the trucks, it was found that (1) Ramjanbhai Ibrahimbhai Sindhi, resident of Nilana, Taluka Shiv, District Badmer, (2) Rojakhan Dosukhan Sindhi, resident of Lilasa, Taluka Shiv, District Badmer and (3) Jamalkhan Dinakhan Sindhi, resident of Nimlatada, Taluka Shiv, District Badmer, Rajasthan, were drivers of some of the trucks. They were arrested and on being questioned, it was informed by Ramjanbhai Ibrahimbhai Sindhi that the others were cleaners of the trucks. It was also

learnt from Ramjanbhai Ibrahimbhai Sindhi that the goats and sheep loaded in the trucks were brought from Badmer to be taken to Ranip Slaughter House, Ahmedabad. He was called upon to produce permit for loading the goats and sheep, but he could not produce the same. It was further learnt that the goats and sheep were filled in the trucks in an unauthorized and cruel manner. Therefore, the goats and sheep were taken to Deesa from Palanpur in the trucks and other vehicles. One of such vehicle, i.e., mini truck No. GJ-9-Y-5143, conveying the goats and sheep from Palanpur to Deesa, had overturned on the side of the road as a result of which some animals had died. The truck, which had overturned, was left at the place where it had overturned and other trucks were taken with goats and sheep to Kanth Panjarapole, Deesa. The trucks, which were being driven from Badmer, were also taken to the said Panjarapole. It was further found that in all there were 1974 animals out of which 99 animals had died and that 1875 goats and sheep worth Rs.400/- each were kept in the Panjarapole, Deesa. of which the

appellant No. 1 is the Secretary. Under the circumstances the appellant No. 1 filed complaint against Ramjanbhai Ibrahimbhai Sindhi and others for alleged commission of offences punishable under Section 279 of Indian Penal Code, Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 (for short the "Act") and Sections 5, 6 and 8 of Bombay Animal Preservation Act, 1954.

4. The record further shows that another FIR was lodged on June 17, 2008 at 1430 hours with Palanpur Police Station by Govind R. Rabari, mentioning himself as an accused for the commission of the offence punishable under Section 279 of Indian Penal Code and stating that while he was driving mini truck carrying the cattle from Palanpur to Deesa at the instance of the appellant No. 1, he had lost control of the vehicle due to overweight of cattle as a result of which the truck had turned on its side killing six cattle and causing damage to the said vehicle.

5. The case of the respondent Nos. 1 to 6 is that the appellant No. 1 and his associates are headstrong persons who had grabbed the consignment of sheep and goats illegally by stopping the trucks near Palanpur and forcing the trucks to be taken to Deesa. According to the respondent Nos. 1 to 6, not a single sheep or goat had died in any of the trucks, but large number of them were shown to have died in the FIR with a view of appropriating them. The respondent Nos. 1 to 6 have asserted that the appellant No. 1 had planned the entire operation of looting the trucks with the active help and connivance of local police at Deesa. Therefore, one of the respondent Nos. 1 to 6 filed complaint against the appellant No. 1 with Superintendent of Police at Palanpur on June 17, 2008 itself about the forcible and violent taking over of the trucks with cattle and Rs.500/- in cash. In the complaint filed with Superintendent of Police, Palanpur, nothing was done. Therefore, a criminal complaint was filed

in the Court of learned Chief Judicial Magistrate, Palanpur, which is registered as Criminal Inquiry No. 237 of 2008 on June 18, 2008 for the alleged commission of offences punishable under Sections 395, 427, 506(2) read with Section 34 of Indian Penal Code alleging that the persons accused therein, including the appellant No. 1, had, with the help of police, taken over the trucks, beaten the drivers, looted cash of Rs.1,11,000/- and taken away sheep and goats worth Rs.45,48,000/-. The learned Chief Judicial Magistrate made an order below the complaint directing the Deputy Superintendent of Police, Palanpur, to make a report within seven days after conducting investigation into the earlier complaint filed before him on June 17, 2008.

6. The respondent Nos. 1 to 6, claiming to be the owners of goats and sheep, filed an application under Sections 451 and 457 of the Code of Criminal Procedure, 1973 for custody of the cattle. The learned Additional Chief Judicial

Magistrate, Deesa, by order dated July 5, 2008, rejected the said application and further directed the Investigating Officer Mr. Lakhubhai Amubhai to take possession of all goats and sheep from Rajpur-Deesa Panjarapole and to hand over the same within two days to the Panjarapole of the nearest district, except the District of Banaskantha at Government cost and thereafter to submit a report to the Court.

7. Feeling aggrieved by the above mentioned order, the respondent Nos. 1 to 6 invoked extraordinary jurisdiction of the High Court under Article 226 of the Constitution, by filing Special Criminal Application No. 1387 of 2008. It may be mentioned at this stage that the State Government, through Police Inspector Dauljibhai Savjibhai Asari, challenged order of the trial court refusing to hand over custody of goats and sheep to the respondent Nos. 1 to 6 before the learned Additional Sessions Judge, Banaskantha at

Deesa by filing of Criminal Revision Application No. 41 of 2008.

8. The Special Criminal Application filed by the respondent Nos. 1 to 6 was placed for preliminary hearing before the learned Single Judge, who after hearing the parties, by an interim order dated October 24, 2008, directed the appellant No. 1 to shift 1325 sheep and goats in proper manner to Panjarapole at Patan under the supervision and in presence of the Investigating Officer of Deesa City Police Station before October 31, 2008.
9. The learned Single Judge, by the impugned judgment, has convicted the respondent Nos. 1 to 6 under Section 11(1)(d) of the Act and imposed fine as well as given other directions referred to above giving rise to the instant appeal.
10. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part

of the instant appeal as well as documents forming part of the Special Criminal Application No. 1387 of 2008, which was filed by the respondent Nos. 1 to 6 before the High Court.

11. This Court notices that the respondent Nos. 1 to 6 in the instant appeal had filed Special Criminal Application No. 1387 of 2008 under Article 226 of the Constitution before the High Court stating that they were owners of the goats and sheep seized by the police pursuant to FIR No. II-C.R. No. 3131 of 2008, registered with Deesa City Police Station for alleged commission of offence under Section 279 IPC, Section 11(1)(d) of the Act and Sections 5, 6 and 8 of Bombay Animal Preservation Act, 1954 and claimed custody of the cattle. The names of the respondent Nos. 1 to 6 are as under: -

1. Dosukhan Samdakhani Sindhi, at Village Gudamalani, District Barmer, Rajasthan
2. Amirkhan Sadikkhan Sindhi, at Village Ramsar, District Barmer, Rajasthan

3. Razakkhan Noorkhan Sindhi, at Village Badau, District Barmer, Rajasthan
4. Bherakhan Hamidkhan Sindhi, at Village Bamgol, District Barmer, Rajasthan
5. Sadikkhan Wagahkhan Sindhi, at Village Jalikheda, District Barmer, Rajasthan
6. Chanesar Alakhan Sindhi, at Village Sarupekatla, District Barmer, Rajasthan.

It is an admitted position that II-C.R. No. 3131 of 2008 is not registered with Deesa City Police Station against any of the respondent Nos. 1 to 6. Admittedly, II-C.R. No. 3131 of 2008, for the alleged commission of offences punishable under Section 279 IPC, Section 11(1)(d) of the Act and Sections 5, 6 and 8 of the Bombay Animal Preservation Act, 1954, is filed against following persons: -

1. Rajakbhai Ibrahimhai Sindhi
2. Sherubhai Doshubhai Sindhi
3. Ramkha Nurkha Sindhi
4. Jamalkhan Dinakha Sindhi

All residents of Nikla Tada, Taluka Shiv, District Barmer (Rajasthan).

This Court notices with surprise that though the respondent Nos. 1 to 6 herein, who were original petitioners before the High Court, are not accused of commission of any offence even remotely, even then the learned Single Judge of the High Court has convicted them under Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 and imposed a fine of Rs.50/- on each of them. It hardly needs to be emphasized that those, who are not even remotely alleged to have committed offence/offences, cannot be convicted at all either at the trial or while exercising so called wide jurisdiction under Article 226 of the Constitution. The four accused named above were not parties to the petition filed by the respondent Nos. 1 to 6 nor they had approached the High Court for custody of goats and sheep seized. Therefore, conviction of the respondent Nos. 1 to 6 under Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 and imposition of fine of Rs.50/- on each of them will have to be regarded as without jurisdiction, unauthorized, unwarranted and illegal and will have to be set aside.

12. From the final directions, given by the High Court in the impugned judgment, it is evident that the learned Single Judge has quashed the FIR registered as II-C.R. No. 3131 of 2008 with Deesa City Police Station and the proceedings pursuant thereto including the orders for interim custody of the animals and the Revision Application preferred therefrom. The respondent Nos. 1 to 6, who had filed writ petition before the High Court, are not accused. Therefore, they could not have prayed for and, in fact, have not prayed to quash the FIR registered as II-C.R. No. 3131 of 2008 with Deesa City Police Station and the proceedings pursuant thereto. Prayer for quashing the FIR could have been made only by the accused, who have been named above. But none of them had chosen to invoke jurisdiction of the High Court either under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution to get quashed the FIR registered as II-C.R. No. 3131 of 2008 with Deesa

City Police Station against them and the proceedings pursuant thereto. The quashing of FIR at the instance of third parties is unknown to law. Further, it is well settled that neither power under Section 482 of the Code of Criminal Procedure, 1973 nor jurisdiction under Article 226 of the Constitution can be exercised by the High Court to quash the complaint if prima facie commission of offences is made out. The complaint lodged by the appellant No. 1 is on the record of this appeal. A perusal of the same indicates that the appellant No. 1 has averred in his complaint that close to 2000 goats and sheep were being transported in eight trucks, in a cramped manner, denying them even food and water in the process. It is asserted by the appellant No. 1 in his complaint that carrying of more than 200 animals in a truck is cruelty by itself. The other averments made in the complaint could not have been ignored while deciding the question whether the complaint

deserves to be quashed. The complaint has been quashed without taking into account the contents thereof or discussing them. The examination of the complaint lodged by the appellant No. 1 prima facie indicates commission of offences mentioned therein by the accused. Even before the investigation could be completed and report submitted to the competent court by the Investigating Agency, the High Court arrived at a pre-mature conclusion that no offences under Section 279 IPC and under Sections 5, 6 and 8 of the Bombay Animal Preservation Act, 1954 were made out against the accused and quashed the criminal proceedings. Such a relief to the accused, who had not approached the High Court for quashing the FIR, could not have been granted in a petition filed by the owners of goats and sheep seeking custody of the live stock notwithstanding wide amplitude of power available under Article 226 of the Constitution. What is astonishing is that the learned Single

Judge has convicted the respondent Nos. 1 to 6 under Section 11(1)(d) of the Act, though none of them is alleged to have committed any offence either under the Act or under I.P.C. or under the Bombay Act of 1954 and on the other hand quashed the complaint. The scrutiny of the judgment impugned shows that the State had not filed any counter to the petition filed by the respondent Nos. 1 to 6 but the Additional Public Prosecutor for the State had submitted before the Court to quash the complaint filed by the appellant No. 1 if the complaint was found by the Court to be untenable and commission of cognizable offence was not made out. The Additional Public Prosecutor had requested the Court to quash the complaint in exercise of inherent jurisdiction of a High Court under Section 482 of the Criminal Procedure Code. Probably, these submissions of Additional Public Prosecutor had prompted the learned Single Judge to examine the question whether the

complaint filed by the appellant No. 1 should be quashed. The learned Single Judge has concluded in para 11 of the judgment that the offences as alleged in the FIR registered as II-C.R. No. 3131 of 2008 under Section 279 of IPC and Section 11(1)(d) of the Act or Sections 5, 6 and 8 of the Bombay Animal Preservation Act were not made out and also recorded another finding that excessive number of animals were carried in the vehicles due to which they were subjected to unnecessary pain and suffering. These findings are contradictory to each other in terms. Having held that no offence under Section 11(1)(d) of Act was made out, why the respondent Nos. 1 to 6, who are not shown as accused at all, are convicted under Section 11(1)(d) of the Act, could not be explained by any of the learned counsel appearing for the parties. Also the grievance made by the appellant No. 1 in ground I of the memorandum of Special Leave to Appeal that by overstepping its jurisdiction and giving a go-bye

to the regular trial, the High Court has quashed criminal proceedings without hearing the complainant/appellant No. 1 cannot be ignored by this Court in view of peculiar facts of the case. The learned Single Judge has quashed the complaint of the appellant No. 1 contrary to the well settled principles governing quashing of a complaint. Quashing of the complaint in part should not have been ordered after convicting the respondent Nos. 1 to 6 for the offence punishable under Section 11(1)(d) of the Act and, therefore, for all these reasons, the impugned judgment is liable to be set aside.

13. What is noticed by this Court is that by filing Special Criminal Application No. 1387 of 2008, the respondent Nos. 1 to 6, who claim to be owners of the goats and sheep seized, had prayed for the following reliefs, which are enumerated in paragraph 8 of the petition: -

“8. In the aforesaid facts and circumstances and the grounds, the

petitioners pray that Your Lordships will be pleased to issue a writ of certiorari or mandamus or any other appropriate writ, order or direction;

- (A) declaring that the impugned order dated 5.7.2008 passed by learned Additional Chief Judicial Magistrate, Deesa is illegal to the extent that learned trial court has refused to hand over custody of the live stock to the petitioners and further be pleased to quash and set aside the same to that extent;
- (B) be pleased to declare that the petitioners are entitled to get the custody of the entire live stock which is in illegal custody of Shri Bharat Kothari – respondent No. 1 herein and confined in the Panjarapole at Kanth, near Deesa;
- (C) pending admission and final disposal of this petition, be pleased to direct the respondents to forthwith handover entire live stock of 1515 sheep and goats as mentioned in the application of the petitioners before learned Additional Chief Judicial Magistrate, Deesa in health and saleable condition;
- (D) such other and further relief that is just, fit and expedient in the facts and circumstances of the case may be granted.”

A bare glance at the prayers made makes it clear beyond pale of doubt that the respondent Nos. 1 to 6 had not prayed that the appellant No. 1 be directed to

pay compensation and cost to each of them. The grievance made by the appellant No. 1 in the instant appeal is that without putting the parties to notice that the Court was inclined to determine and direct the appellant No. 1 to pay by way of compensation and cost, the learned Single Judge has determined the amount of compensation and cost at Rs.75,000/- and directed him to pay such amount to each of the respondent Nos. 1 to 6.

It may be mentioned that Criminal Inquiry Case No. 237 of 2008 referred to in the direction (iii), is the sequatter of the complaint filed by one of the aides of the respondent Nos. 1 to 6 alleging therein that the police personnel as well as the appellant No. 1 and other persons had robbed the accused of goats and sheep on the trucks along with an amount of Rs.1,11,000/- in cash. After hearing the complainant in that case, the learned Chief Judicial Magistrate, Palanpur, passed an order on June 19, 2008 directing the complaint to be registered in the Criminal Inquiry Register and that is how Criminal Inquiry No. 237 of 2008 is registered in

the Court of the learned Chief Judicial Magistrate, Palanpur. Further by the said order the D.S.P., Palanpur was also directed to report within seven days before the court and submit a progress report every seventh day till the completion of the investigation, after which the court was to pass further orders.

14. The approach of the High Court in granting relief not prayed for cannot be approved by this Court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the

Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. Normally, the court will grant only those reliefs specifically prayed by the petitioner. Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner. In Krishna Priya vs. University of Lucknow [(1984) 1 SCC 307], overlooking the rule relating to grant of admission to Postgraduate course in medical college, the High Court in the exercise of powers under Article 226 of the Constitution directed the Medical Council to grant provisional admission to the petitioner. This Court set aside the order passed by the High Court observing that “in his own petition in the High Court, the respondent has merely prayed for a writ directing the State or the College to consider his case for admission yet

the High Court went a step further and straightway issued a writ of mandamus directing the College to admit him to M.S. course and thus granted relief to the respondent which he himself never prayed for and could not have been prayed for". Again, in Om Prakash vs. Ram Kumar [(1991) 1 SCC 441], this Court observed, "A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute". Though a High Court has power to mould reliefs to meet the requirements of each case, that does not mean that the draftsman of a writ petition should not apply his mind to the proper relief which should be asked for and throw the entire burden of it upon the court. It is relevant to notice that the High Court was not exercising powers under Article 226 of the Constitution *suo motu* but was examining the validity of order passed by the

Additional Chief Judicial Magistrate refusing to grant custody of goats and sheep to the respondent Nos. 1 to 6, in the Special Criminal Application, which was filed by them under Article 226 of the Constitution through a seasoned lawyer. The respondent Nos. 1 to 6 were represented by a senior counsel practicing in the Gujarat High Court and having regard to the facts of the case, the learned lawyer was justified only in claiming those reliefs to which reference is made earlier. The respondent Nos. 1 to 6 were seeking a writ of certiorari or mandamus to declare that order dated July 5, 2009, passed by the learned Chief Judicial Magistrate, Deesa, refusing to hand over custody of the goats and sheep seized to them, was illegal and were also seeking quashing of the said order. At no point of time, the learned advocate for the respondent Nos. 1 to 6 had moved any application seeking permission of the Court to amend the prayer clause contained in the petition

so as to enable the respondent Nos. 1 to 6 to claim compensation from the appellant No. 1. A fair reading of the petition makes it more than clear that no factual data whatsoever was laid by the respondent Nos. 1 to 6 for claiming compensation from the appellant No. 1. No facts were mentioned as to in which manner they or any of them had suffered damage or loss because of the handing over of custody of goats and sheep to the appellant No. 1 and ultimately to the respondent No. 8 Panjarapole situated at Patan nor the appellant No. 1 was permitted to controvert that in fact no damage or loss was suffered by the respondent Nos. 1 to 6 or any of them. There is no manner of doubt that the High Court was too indulgent in this matter. After all, it was not a petition from a person languishing in jail or from a bonded labourer or a party in person or public spirited citizen seeking to bring a gross injustice to the notice of the court. Here, the High Court had before it the respondent Nos.

1 to 6 as petitioners. The question whether the respondent Nos. 1 to 6 suffered damage or loss because of handing over of goats and sheep to the appellant No. 1 and/or to the respondent No. 8, depends upon facts to be proved. Normally, such an exercise cannot be undertaken in a writ filed under Article 226 of the Constitution. This Court further finds that the appellant No. 1 is not only directed to pay, by way of compensation and cost, to each of the respondent Nos. 1 to 6 a sum of Rs.75,000/- but is further directed to pay on behalf of respondent Nos. 1 to 6 the cost of maintenance and treatment of the animals in question to respondent No. 8 in accordance with the provisions of sub-Section (4) of Section 35 of the Act. To mention the least, it is evident that the respondent Nos. 1 to 6 are not parties to Criminal Inquiry Case No. 237 of 2008, which is pending before the learned Chief Judicial Magistrate, Palanpur. As observed earlier, the said inquiry has been initiated at the instance of

one of the aides of the accused. In the said inquiry the question posed for determination of the learned Chief Judicial Magistrate, Palanpur, would be whether the appellant No. 1 and others with police personnel had committed loot of trucks with goats and sheep and also cash amount of Rs.1,11,000. The said inquiry is not concluded as on today nor any finding is rendered that the appellant No. 1 and others with the aid of police personnel had committed loot of the articles mentioned in the complaint of that case. Therefore, the appellant No. 1 could not have been directed to pay compensation and cost of Rs.75,000/- to each of the respondent Nos. 1 to 6 without prejudice to their rights and contentions in the criminal proceedings initiated by way of Criminal Inquiry Case No. 237 of 2008. Moreover, no claim was advanced by the respondent No. 8 herein that the appellant No. 1 should be directed to pay, on behalf of the owners, i.e., the respondent Nos. 1 to 6, the cost

of maintenance and treatment of the animals in question in accordance with the provisions of sub-Section (4) of Section 35 of the Act. Normally, cost of maintenance and treatment of the animals in such cases would be payable by one who claims custody or who are the owners of the live stock but not by the complainant. In the instant case the assertion made by the appellant No. 1 is that he was handed over custody of goats and sheep by the police after registration of FIR whereas the case of the respondent Nos. 1 to 6 seems to be that the appellant No. 1 had taken possession of the live stock and trucks illegally before the FIR was lodged and had acted in a high handed manner. The dispute whether appellant No. 1 was handed over custody of goats and sheep after filing of the complaint or whether he had obtained custody of goats and sheep illegally before the complaint was lodged, will have to be adjudicated upon evidence to be lead by the parties. Such a highly contentious dispute

cannot and could not be resolved in a petition under Article 226 of the Constitution. Having regard to the totality of the facts and circumstances emerging from the record of the case, this Court is of the firm opinion that there was no justification at all in directing the appellant No. 1 to pay a sum of Rs.75,000/- towards compensation and cost to each of the respondent Nos. 1 to 6 and to pay to the respondent No. 8 herein the cost of maintenance and treatment of the animals in question on behalf of the respondent Nos. 1 to 6. Therefore, this direction is also liable to be set aside.

15. This Court further finds that the learned Single Judge has directed the State of Gujarat to take appropriate departmental action for illegal or unauthorized actions, if any on the part of any police officer and if upon inquiry it prima facie appears that any police officer has participated in a cognizable offence, appropriate criminal proceedings be initiated against such officer. It is

true that while dealing with entitlement of custody of goats and sheep the learned Additional Chief Judicial Magistrate, Palanpur has come to the conclusion that the seizure of goats and sheep was not in accordance with law. During the course of hearing of the appeal, the learned counsel for the appellant No. 1 has referred to several admissions made by the respondent Nos. 1 to 6 which would indicate that the custody of the goats and sheep seized was handed over to the appellant No. 1 by the police. However, it is not necessary to make a detailed reference to them. What is important to be noticed is that in the order passed by the learned Additional Chief Judicial Magistrate no officer has been named at all. Whether search and seizure of the goats and sheep is illegal or not can be effectively gone into only at the stage of final disposal of the trial and not at interim stage when the court hears an application under Section 451 read with Section 457 of the Code of Criminal Procedure, 1973 for

interim custody of the muddammal. Direction to the State Government to initiate appropriate departmental action for illegal or unauthorized actions at the interim stage is harsh as well as not called for on the facts of the case. Therefore, the said direction, which is contained in clause (5) of paragraph 14 of the impugned judgment, also deserves to be set aside.

16. This Court further notices that the learned Single Judge has directed the Registrar of the High Court to serve a copy of the judgment impugned in the appeal upon the appellant No. 2, i.e., Animal Welfare Board of India, Ministry of Environment and Forests, Government of India, 13/1 Third Seaward Road, Valmiki Nagar, Thruvamiyr, Chennai. As this Court is inclined to set aside most of the directions given by the learned Single Judge in the impugned judgment, the direction to serve a copy of the judgment on the appellant No. 2, i.e., Animal Welfare Board of

India becomes redundant and, therefore, the same is also liable to be set aside.

17. This takes the Court to answer the question whether respondent Nos. 1 to 6 are entitled to relief of interim custody of goats and sheep seized pursuant to filing of complaint No. II-C.R. 3131 of 2008 registered with Deesa City Police Station. The fact that respondent Nos. 1 to 6 are owners of the goats and sheep seized is not disputed either by the appellant No. 1 or by the contesting respondents. Though the respondent No. 8 has, by filing counter reply, pointed out that the officials of Panjarapole at Patan are taking best care of the goats and sheep seized in the instant case, this Court finds that keeping the goats and sheep in the custody of respondent No. 8 would serve purpose of none. Admittedly, the respondent Nos. 1 to 6 by vocation trade in goats and sheep. Probably a period of more than one and half years has elapsed by this time and by production of goats and sheep seized before the

court, the prosecution cannot prove that they were subjected to cruelty by the accused because no marks of cruelty would be found by this time. The trade in which respondent Nos. 1 to 6 are engaged, is not prohibited by any law. On the facts and in the circumstances of the case this Court is of the opinion that respondent Nos. 1 to 6 would be entitled to interim custody of goats and sheep seized in the case during the pendency of the trial, of course, subject to certain conditions.

18. For the foregoing reasons the appeal partly succeeds. The directions Nos. 1 to 6, contained in paragraph 14 of the impugned judgment, are hereby set aside. The Special Criminal Application No. 1387 of 2008 is accepted in part by directing the respondent No. 8 to hand over custody of goats and sheep seized in the instant case to the respondent Nos. 1 to 6, who are owners thereof, in such proportion as the original number of seized animals bears to the number of

surviving animals, on each of them depositing a sum of rupees fifty thousand with the trial court and each furnishing two sureties of Rs.50,000/- to the satisfaction of the trial court. The respondent Nos. 1 to 6 be handed over custody of goats and sheep in the presence of Police Officer in-charge of the Police Station at Patan, who shall supervise delivery of the animals to the respondent Nos. 1 to 6 in such manner that the animals are not subjected to further cruelty in their transportation within the area of his jurisdiction. The respondent Nos. 1 to 6 are directed to see that no cruelty is meted out to the surviving animals and submit an undertaking to that effect to the trial court within a period of two weeks from today.

19. Subject to abovementioned directions regarding handing over interim custody of goats and sheep, the appeal is allowed.

.....J.

[Harjit Singh Bedi]

.....J.
[J.M. Panchal]

New Delhi;
November 04, 2009.