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Gujarat High Court
(BEFORE N.N. MATHUR, J.)

Manager, Panjarapole, Deodar ... Petitioner;
Versus
Chakaram Moraji Nat & Anr. ... Respondents.

Criminal Revision Application No. 24 of 1996*

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(with Criminal Revision Application Nos. 225/96, 226/96, 2/93, 3/93 and 408/92) and Sepcial Criminal Application No. 1431 of 1996)

Decided on April 8, 1997

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The Judgment of the Court was delivered by

N.N. MATHUR, J.:— In this group of applications, which arises out of different orders with respect to interim custody of animals under the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as "the Act of 1960"), the following questions arise for consideration:

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Q. 1. Whether Panjarapole has locus to apply and also approach to the High Courts in the matter of interim custody?

Q. 2. Whether as a rule pending investigation, enquiry or trial, the custody of the animal should be given to Panjarapole?

Q. 3. Whether the owner of the animal alone is liable to pay the costs of maintenance of the animals while in custody of Panjarapole?

Q. 4. Whether the seizure of animal by the police in noncognizable case under the. Act of 1960 and other ancillary Acts, is legal? What is its effect on order for interim custody?

Q. 5. What criteria should be adopted by the Courts while directing the interim custody of animal seized for the offence under the Act of 1960 and other ancillary Acts?

Question - 1:

2. Mr. M.M. Tirmizi, learned Counsel appearing for the owners of the animal submits

that Panjarapole has no locus to either apply for the interim custody of the animal or to approach to the Higher Courts in that regard. In the Criminal Proceedings for the offences under the said Act of 1960, the concerned parties are only the owner or accused and the State. It is only under Section 35 of the Act of 1960, the concerned Magistrate may direct to send the animal to Panjarapole. This in itself would not give power to Panjarapole to ask for the custody.

3. Learned Counsel relies on an unreported decision of this Court rendered in Special Criminal. Application No. 804 of 1985 on 30-10-1985, wherein this Court (Coram: M.B. Shah, J., as His Lordships then was) said, "In my view, as such respondent No. 2 has no *locus standi* in the matter because possession of the animals was handed over to Panjarapole only as a custodian." It may be stated that in the said case, the Panjarapole was the respondent No. 2. He has also referred to the order dated 2-9-1996 of the Supreme court in Special Leave to Appeal No. 7349/96 wherein the Apex Court rejected the appeal of Panjarapole saying that:

> "The petitioner is unconnected with the merits of the case. He is thus not aggrieved by change of custody of the case property. Special leave petition is dismissed."

4. It is thus submitted by Mr. Tirmizi that Panjarapole is only a custodian and as observed by the Supreme Court, it has nothing to do with the merits of the case and thus, cannot be said to be an aggrieved party. In view of this, the Panjarapole cannot have any locus in the matter of interim custody of the animal with respect to the offence under the Act of 1960. On the other hand, Mr. N.S. Sheth, learned Counsel appearing, for the Panjarapole contended that the Panjarapole being interested in the welfare and protection of the animal, has a right to approach, to the Court and ask for the custody. Learned Counsel has placed reliance on the order of the Supreme Court dated 9-9-96 passed in Special Leave to Appeal (Cr.) (*Bharatbhai Kothari* v. *Jabbar Mohd. Ramzan*). In the said Special Leave Application preferred by the Panjarapole, the Supreme Court, added further condition and directed the learned Magistrate to ensure proper maintenance of the animal by appointing a Special Officer from amongst the learned Counsel appearing and practising in the Court to ascertain the proper keeping of the animal every month and furnish the statement in that regard. On the strength of the said order, it is contended by Mr. Sheth that the said condition was added on a petition filed by the Panjarapole and as such, the Apex Court accepted the locus of the Panjarapole.

5. The aforesaid cases cited before me, of this Court and the Apex Court, in my view, cannot be taken as precedent. Taking

the first unreported case of this Court, viz. Special Criminal Application No. 804 of 1985. It appears that, after the petition was rejected, a prayer was made by the counsel for the Panjarapole for Leave to Appeal to the Supreme Court. While considering the said prayer, the Court observed that the respondent No. 2 has no locus. The Court had no occasion to examine the question in depth and detail. Similarly, the Apex Court in both the cases referred to above, has not examined the question of locus of Panjarapole. In the first order dated 2-9-1996, the Court has said that the petitioner, i.e., Panjarapole is unconnected with the merits of the case and thus, cannot be said to be aggrieved by the change of custody. In another order dated 9-9-1996, the Apex Court on a petition filed by the Panjarapole, while refusing to interfere with the order of High Court, added certain conditions for the welfare of the animal. It will not be out of place to say that a decision to be law under Article 141 must not be a mere conclusion by which the case is disposed of. Because, a

conclusion, mere conclusion, may be on facts, it may not be and does not necessarily involve consideration of law. It is well settled that Article 141 will not be attracted if law is not declared or stated vocally to support the conclusion reached for deciding the lis. A mute dclaration of the mere conclusion is not contemplated under Article 141. Thus, in my view, none of the cases referred to above can be of any assistance to the controversy before me.

6. To get the key of the question raised, it would be convenient to briefly acquaint with the relevant provisions of the Act of 1960. It has been enacted to prevent the infliction of unnecessary pain or sufferings of animals. Panjarapole has bot been defined under the Act of 1960. However, Section 9 of the Act, cast a duty on the Animal Welfare Board to encourage by granting of financial assistance or otherwise, the formation or establishment of Panjarapole, rescue homes, animal shelters, sanctuaries where animals and birds find shelter when they become old and useless or when they need protection. Section 35 empowers the Magistrate to direct that the animal seized in connection with the offence under the Act may be sent to Panjarapole.

7. Thus, from the scheme of the Act, it appears that the Panjarapole is an important institution to achieve the object of the Act, i.e., to prevent infliction, unnecessary pain or sufferings on animals and further to prevent the cruelty to animals. Panjarapole is a charitable institution and it functions for the noble purpose and do their best for preserving the cattle in the State. In view of this, it cannot be said that Panjarapole has no interest in the case pertaining to cruelty to animals. Thus, keeping in view the scheme of the Act and the fact that it is not only recognized by the State, but it is vested with statutory obligation, in my view, the panjarapole has locus to maintain a petition with respect to the interim custody of the animal seized for the offence under the Act of 1960 of the ancillary Acts.

Question - 2:

8. It is contended by Mr. N.S. Sheth, learned Counsel appearing for the Panjarapole that, giving custody of animal to a Panjarapole is mandatory. He relies on Section 35 of the Act of 1960. Sub-section (1) of Section 35 cast a duty on the State Government to appoint infirmaries for the treatment and care of the animals in respect of which offence against the Act have been committed and may also authorise the detention therein of any animal pending its production before the Magistrate. Sub-Section (2) talks of infirmary and Panjarapole. It empowers a Magistrate to direct that the animal concerned be sent for treatment and care to infirmary. The animal can be kept in infirmary until they become fit to perform its usual work or otherwise fit for discharge. Thus, as per the Scheme, if the

animal is sick or infirm, it may be sent to infirmary and be kept there until it becomes fit to perform its usual work. The infirmary is a place for treatment of sick or injured animal. It is thus different from Panjarapole. If the condition of the animal is not as such which requires to be sent to the infirmiry, then they can be sent to the Panjarapole.

9. Learned Counsel has much emphasized on the word ‘shall’ used in Section 35 when it speaks that “it shall be sent to Panjarapole”. *Prima facie*, the use of word “shall” may indicate that the provision is mandatory, but such an inference is rebuttable by other considerations. There are several cases where the word “shall”, has been construed as merely directory. Though the Act of 1960 has referred to institution

of Panjarapole, the Act does not provide its functions and consequences of ill functioning of Panjarapole. Thus, the provision on face cannot be said to be imperative, just because, the statute has used the word "shall".

10. Mr. Tirmizi, learned Counsel has brought to my notice some of the unreported decisions of this Court which speaks about the functioning of the Panjarapole.

11. In Special Criminal Application No. 804/85 decided on 30-10-1985, 200 sheep and goats were handed over to Panjarapole by the order of the learned Magistrate. The said order was challenged by the owner of the animal. During the pendency of the petition before the High Court, a Criminal Misc. Application was filed stating that 125 animals have died in the custody of the Panjarapole. This fact was not disputed by the learned Counsel for the Panjarapole. The Court, considering the various factors said that there is no reason to deprive the petitioner of possession of animals belonging to him, more particularly when the petitioner is prepared to furnish necessary bonds for the production of the said animals at the time of trial.

12. In Criminal Revision Application No. 385/94 decided on 18-10-94, it was brought to the notice of the Court that, out of 150 animals, more than 100 animals died while they were with the Panjarapole. The Court, considering the fact, directed that the remaining livestock be handed over to the owner of the animal.

13. In Criminal Revision Application No. 111/96 decided on 17-4-1996, this Court (Coram: S.D. Dave, J.) noticed alarming averments made at para-13 of the said application, saying that, in C.R. No. 92/95 and No. 93/95 registered at Deesa rural police station, the livestock numbering 1366 were taken in their custody by the police and later on, they were sent to the very same Panjarapole, but ultimately, it was reported by the said Panjarapole that, all the abovesaid livestock have died. S.D. Dave, J. narrated his experience in this regard as follows:

> "During this month, I have come across certain petitions being filed by the accused persons saying that, a large number of livestock which were either handed over to the concerned police have ultimately come before the Court with the case that, thousands of animals do not exist and they have died. Such petitions are pending before me and during the preliminary debate, I was not able to Satisfy myself that this could have been legitmately happened. In the instant case also, they have expressed such a rear."

14. S.D. Dave, J. reading the provision of Sections 29 and 35(2) of the Act of 1960, expressed that livestock is generally to be restored to the custody of Panjarapole. However, looking to the facts that, large number of cattle have died, indicates that there is no proper care in respect of their up-keeping in the Panjarapole and as such, cattle should not be restored to the custody

of Panjarapole till the entire picture is clear.

15. An apprehension was also expressed by the owners of the animal in Special Criminal Application No. 477/96 that the authorities of Panjarapole would sell all the animals and allow them to be killed for their monetary benefits. It was submitted that the cruelty to the animal would be through the medium of Panjarapole authorities. Considering the facts of the case, M.S. Parikh, J. setting aside the order of custody to the Panjarapole, directed interim custody of the remaining live goats and sheep to be handed over to the owner of the animal on the conditions set out in the said order. The Court also gave liberty to the owner of the animal to take appropriate legal remedy against the concerned responsible persons for such loss of goats and sheep at an

appropriate point of time.

16. M.P. Thakkar, J. (as His Lordships then was), in Criminal Revision Application No. 552/73 decided on 10-4-74, observed that, in normal circumstances, Panjarapole should have been a proper institution for handing over the sheep and goats for interim custody, but in the peculiar facts of the case, His Lordships declined to give the custody to the Panjarapole. His Lordships observed that the Courts in secular democratic state cannot be guided by emotions or sentiments.

17. It is next contended by Mr. Sheth that the interim custody cannot be given to the accused and/or owner of the animal, as on conviction, in view of Section 29, the animal with respect to which offence is committed is liable to be forfeitted to the Government. To appreciate the contention, Section 29 may be read, as follows:

Section - 29: Power of Court to deprive person convicted of ownership of animal:

(1) If the owner of any animal is found guilty of any offence under this Act, the Court, upon his conviction thereof, may, if it thinks fit, in addition to any other punishment, make an order that the animal with respect to which the offence was committed shall be forfeited to Government and may, further make such order as to the disposal of the animal as it thinks fit under the circumstances.

(2) No order under sub-section (1) shall be made unless it is shown by evidence as to a previous conviction under this Act or as to the character of the owner or otherwise as to the treatment of the animal that the animal, if left with the owner, is likely to be exposed to further cruelty.

(3)... ... ...

(4) ... ...

(5) ... ...

(6) ... ...

18. The analysis of Section 29 indicates that, while sub-section (1) of Section 29 empowers the Magistrate to forfeit to the Government, the animal with respect to which the offence has been committed, sub-section (2) contemplates two situations. Firstly, there shall be no order of forfeiture unless it is shown by evidence that the accused is a previous convict under the Act or there is an evidence to show that if the animal is left with the owner, it is likely to be exposed to further cruelty. It may also be noticed that, looking to the nature of offence under the Act of 1960, there may be hardly any necessity of the production of the animal in the Court during trial for identification or for any other purpose. Thus, a Court while considering the question of proper custody pending enquiry or trial under Section 451 Cr. P.C., is to keep in view, that because of the pendency of enquiry or trial, the owner of the muddamal is not deprived of the possession which

may cause loss in his business, unless there are compelling reasons to deprive him, on the ground that during the trial, presence of the said muddamal is “must” and further, presence cannot be secured even by imposing a suitable condition or there are strong ground to form an opinion that the muddamal is likely to be forfeited at the conclusion of the trial or in case of animal, the custody to owner shall not be in the welfare of the animal, even by imposing suitable condition. Thus, my answer to second question is that, Section 35(2) does not cast any duty on the Court to give custody of the animal to Panjarapole, as a rule.

Question - 3:

19. It is contended bv Mr. Tirmizi. learned Counsel for the owner of the animal that

the necessary expenses for up-keeping the animal should be either borne by the Panjarapole or the State as the custody is given to the Panjarapole at their instance. It is required to be noted that, under the Act of 1960, Animal Welfare Board is to be established for the protection of the animal, welfare and for the purpose of protecting animal from being subjected to unnecessary pain of suffering in particular. Section 9 of the Act enumerates the function of the Board. Sub-clause (e) provides that the Board shall encourage by grant of financial assistance or otherwise the formation or establishment of Panjarapole, rescue homes, animal shelters, etc. Sub-clause (i) provides that the Board shall give financial and other assistance to Animal Welfare Organisation functioning in a local area or to encourage the formation of the animal welfare organisations in any local areas which shall work under the general supervision and guidance of the Board. Section 8 of the Act provides that the funds of the Board shall consist of grants made to it from time to time by the Government and of the contributions, donations, subscriptions, bequest, gifts and the like made to it by any local authority or by any other person. The scheme therefore indicates that there are resources to fund the Panjarapole, for maintenance of the animal, and thereby to achieve the object of the Act.

20. A Division Bench of the Bombay High Court in an unreported case Criminal Writ Petition No. 917/93 (*Goshala Panjarapole Sanstha* v. *Mohd. Kalimkhan*) decided on 16-9-1993, held that it is the prosecution who lodges the complaint against the acused and desires the owner of the animal during the enquiry should make the payment for the maintenance of the animal. At this juncture, it may be noticed that sub-section (3) of Section 35 provides that, an animal sent for care and treatment to an infirmary shall not, unless the Magistrate directs that it shall be sent to a Panjarapole 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 infirmiry is situated or such other veterinary officer as may be authorised in this behalf by rules made under this Act. Sub-sections (4) and (5) provides that the costs of transporting and its maintenance and treatment in the infirmiry shall be payable by the owner of the animal. Thus, the Act directs for payment of maintenance of the animal only in a case where the animal is kept in infirmary for the treatment. Except this, there is no provision under the Act of 1960 or Code of Criminal Procedure which provides that the accused should be called upon to make payment for the maintenance of the animal during investigation, enquiry or trial. The financial sources are provided under the Act, if Panjarapole wish to maintain the animals. Thus, if the State or Panjarapole, whosoever ask for custody, it is their duty to maintain and they cannot ask for costs of maintenance to be paid by the accused or the owner of the animal. The question is decided accordingly.

Question - 4:

21. It is contended by Mr. Tirmizi, learned Counsel that the entire proceedings under the Act of 1960 right from the seizure of the animal and the order of the concerned Court, directing the interim custody, is illegal and without jurisdiction inasmuch as the offence under the Act, of 1960 or under the Bombay Police Act or under the Motor Vehicles Act are noncognizable and hence, seizure of animal by police is illegal and without authority of law. Learned Counsel has invited my attention to Section 31 of the Act of 1960, which reads as follows:

Section - 31: Cognizability of offences:

"Notwithstanding anything contained in the Code of Criminal Procedure, 1986, an offence punishable under clause (i), clause (n) or clause (o) or sub-section (1) of Section 11 or under Section 12 shall be cognizable offence within the meaning of the Code."

22. Thus, according to Section 31, all the offences except punishable under clause (i), (n) or (o) of sub-section (1) of Section 11 or under Section 12 are noncognizable offences within the meaning of the Code of Criminal Procedure. In all the cases in hand, the offences are under Section 11(1)(d) and (e) of the Act of 1960 and thus, admittedly they are noncognizable offences.

23. It is contended by Mr. Tirmizi, learned Counsel that, the offences being noncognizable, the police has no power to investigate the case except with the order of the Magistrate having power to try such case or conduct the cases for trial as provided under Section 155(2) of the Cr. P.C.

24. On the other hand, Mr. N.S. Sheth, learned Counsel submits that irrespective of the fact that the offence is noncognizable, Section 32 of the Act empowers the police officer not below the rank of sub-inspector or any person authorised by the State Government in this behalf who has reason to believe that an offence under clause (1) of sub-section (1) of Section 11, has been committed.

25. Though at the first instance, the contention raised by Mr. Tirmizi appears to be attractive, in my view, it has no substance. Section 102 of the Cr. P.C. empowers the police officer to seize any property which may be alleged or suspected to have been stolen or which may be found under the circumstances which create suspicion of the commission of an offence. Section 102 reads as follows:

Section - 102: Power of police officer to seize certain property:

(1) Any police officer may seize any property which may be alleged or circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the court as and when required and to give effect to the further orders of the court as to the disposal of the same.

26. The word 'any offence' employed under Section 102 shows unmistakably that even though there may be commission of noncognizable offence, the police may seize any property found under the suspicious circumstances. Sub-section (2) of Section

102 provides that, such officer, subordinate to the officer in charge of the police station, shall forthwith report the seizure to that officer. Sub-clause (3) provides that, every police officer acting under sub-clause (1) shall forthwith report the seizure to the Magistrate having the jurisdiction. Thus, the police officer has a power to seize animal on suspicion of commission of an offence committed under the Act of 1960 or under the other ancillary provisions, irrespective of the fact that they are non-cognizable offences. On such seizure, the police officer is required to forthwith report to the Magistrate having the jurisdiction. The Court is required to pass an appropriate order with respect to the custody of the animal under the provisions of Section 451 of the

Cr. P.C. Thus, in my view, irrespective of the fact that, except offences under clause (i) (n) or (o) of sub-section (1) of Sections 11 or 12 of the Act of 1960, rest of the offences are noncognizable, the police has a power to seize the animal under Section 102 of the Cr. P.C. and the Magistrate will be competent to pass an order under Section 451 of the Cr. P.C.

Question - 5:

27. Having held that, as a rule, the custody of the animal is not to be given to the Panjarapole, it will be for the Court concerned to exercise judicial discretion for the custody of the animal. Though it may not be possible to lay down any precise, clearly defined and sufficiently channellised and inflexible guidelines or rigid formula, the Court, while considering the question of custody should take into consideration and bear in mind the following criteria:—

(A) The prime consideration of the Court should be for the preservation of livestock, and elimination of chances of further cruelty to livestock.

(B) The Court should not be unnecessarily guided by emotions and sentiments.

(C) If it is first offence, unless there are strong reasons to believe that if the custody of animal is given to accused or owner, the animal will be further exposed to cruelty, the custody should be given to owner or the person from whose possession the animal is taken, on just conditions.

(D) Looking to the nature of trial, unless presence of the animal for identification of other purpose is required, the custody should be given to the owner or person from whose custody the animal is taken, on just conditions.

(E) In case the animal or animals are likely to be forfeited to Government at the conclusion of the trial or their presence is necessary during trial, whether the object can be achieved by imposing appropriate conditions?

(F) In case, it is considered necessary to give custody to Panjarapole, following steps shall be taken:

(i) Reputation of Panjarapole concerned be ascertained with respect to maintenance of animal;

(ii) Undertaking be obtained from Authorities of Panjarapole that they will maintain and take proper care of the health of animal and further, they will not claim costs for maintenance of animal from accused or owner of the animal;

(iii) They will not sell or transfer the animal and they will produce the animal as and when they are directed to do so;

(iv) If they fail to produce animal at the conclusion of trial and if the Court so directs, they will pay the compensation for the loss of each animal.

(6) Keeping in view animal as a muddamal, all efforts should be made to complete the trial expeditiously.

28. Bearing in mind the aforesaid principles, I shall deal with such Applications.

Criminal Revision Application No. 24 of 1996:

29. This Criminal Revision Application by Panjarapole-Deodar is directed against the order of the learned Additional Sessions Judge, Banaskantha, at Palanpur dated 17-1-1996 below Exh. 10 in Criminal Revision Application No. 131/95, whereby the learned

Judge set aside the order of the learned J.M.F.C. Sihori dated 21-11-1995 and directed the interim custody with the owner of the animal on the conditions set out therein.

30. It is contended by Mr. N.S. Sheth, learned Counsel for the Panjarapole that the learned Additional Sessions Judge has committed error in overlooking the fact that 300 cattle were being transported in one truck which itself speaks cruelty to animal on part of the owner. It is submitted by the learned Counsel that the learned Additional Sessions Judge did not properly appreciate the ratio laid down by this Court in Special Criminal Application No. 804/85 decided on 30-10-1985.

31. I have gone through the impugned order. The learned Judge found that the learned Magistrate was swayed by the fact that the animals were taken for slaughtering purpose, without there being any foundation. In the opinion of learned Judge, animal could be protected by imposing appropriate condition. Considering the fact that it is the first offence and there is no allegation that if the animal is left with the owner, there is likelihood of further cruelty, in my view, the order of the learned Additional Sessions Judge, does not call for any interference. The conditions set out in the impugned order sufficiently safeguards the welfare of the animal.

32. In view of the aforesaid, I find no merits in this Criminal Revision Application and the same is accordingly rejected.

Criminal Revision Application Nos. 225/1996 & 226/1996:

33. The petitioner Chunilal Nagaji, Manager, Dhanera Panjarapole has preferred these two Applications.

34. The facts giving rise to these Applications are that, 230 cattle (sheep and goats) were found being transported on 21-3-1996 in truck No. GJ-1-X-3986 from Dhori Muna to Bombay. The truck was being driven by driver Rahimkhan Muradkhan. The said truck was detained near village Samarvada and criminal complaint being Cr. R. No. 1132/1996 was filed by one Bhikhabhai under the provisions of Prevention of Cruelty to Animal Act, 1960 as well as under the provisions of Bombay Police Act, as well as under Rules 65 to 75 of the Gujarat Diseases of Animals Control Act, 1963. On 22-2-1996, Dhanera police seized the vehicle alongwith the cattle. The cattle were given in the custody of Panjarapole on the same day. On 4-4-1996, on an application filed under Sections 451 and 457 of the Cr. P.C. the learned J.M.F.C., Dhanera, after issuing notices to the Dhanera Panjarapole, directed to release the muddamal to the owner of the animal by order dated 15-4-1996. The said order dated 15-4-1996 has been challenged by the Dhanera Panjarapole by way of Criminal Revision which has been registered as Criminal Revision Application No. 226/1996. Against the same order dated 15-4-1996, the accused persons also preferred a Revision, aggrieved of certain conditions imposed, which was registered as Criminal Revision Application No. 48/1996. The learned Additional Sessions Judge, by his order dated 25-6-1996, has modified the order and set aside those conditions. The Criminal Revision Application No. 225/96 has been preferred against the said order.

35. Taking up Criminal Revision Application No. 226/1996, the contention of the

petitioner is that, as a rule, the learned Magistrate ought to have given the custody of the animal to the Panjarapole keeping in view the provisions of Section 35(2) of the Act of 1960. As I have held that sub-section (2) of Section 35 does not give a command that, as a rule, the custody should be given to the Panjarapole, I find no justified ground to interfere with the impugned order of the learned Magistrate, Dhanera.

36. In view of the aforesaid, I find no merits in this Criminal Revision Application No. 226/1996 and the same is accordingly rejected.

37. So far as the Criminal Application No. 225/96 is concerned, the condition imposed by the learned Magistrate were found to be harsh and as such, learned Additional Sessions Judge has rightly interfered with the order. In view of this, I am not inclined to interfere with the just order passed by the learned Additional Sessions Judge. The contention with respect to the maintainability of revision at the instance of Panjarapole has been answered by me, as such it is decided accordingly.

38. In view of this, there is no merit in this Criminal Revision Application and the same is accordingly rejected.

Criminal Revision Application Nos. 408/1992, 2/1993 and 3/1993:

39. One Geetaben B. Shah, Inspector, (on her death, now substituted by Bachubhai Rambhai), Akhil Bharatiya Hinsa Nivaran Sangh filed a complaint under Section 11(d) of the Act of 1960 read with Sections 5, 8 and 10 of the Bombay Animal Preservation Act and Sections 4(c)(b) and 62 of the Bombay Essential Commodities and Cattle (Control) Act, 1958 (Gujarat Amendment), 1983. She filed the said complaint in her capacity as Inspector of Animal Liberation Front. She stated that 13 animals were being taken ??? the slaughter house for being slaughtered. They were being transported in truck No. GPS 7144. The application of the owner of animal for interim custody was rejected by the order of the learned J.M.F.C. Valbhipur dated 13-11-1882. The owner of the cattle preferred a revision to the Court of the learned Additional Sessions Judge, Bhavnagar and the same was allowed by the order dated 30-11-1992. The learned Judge, on the conditions set out in the impugned order, directed to release the custody of animal to its owner. Geetaben approached to this Court by way of revision which has been registered as Criminal Revision Application No. 408/92. The main contention raised in this Criminal Revision Application is that Panjarapole was not heard by the learned Additional Sessions Judge.

40. While said petition was pending before this Court, the owner of the animal filed another Criminal Revision Application before the learned Additional Sessions Judge, after impleading the complainant as a party. The said Revision Application was registered as Cr. R.A. No. 101/92 which was allowed by the order of the learned Additional Sessions Judge and a direction was given that the accused shall pay Rs. 10/- per animal per day towards the costs of maintenance of the animal. The present two Revisions have been filed against the said order, which have been registered as Criminal Revision Application Nos. 2/93 and 3/93.

41. The contention raised in Criminal Revision Application Nos. 2/93 and No. 3/93 is that, in view of the fact that, one Revision Application filed by the petitioner was disposed of by the learned Sessions Judge, the second revision before the same Court was not maintainable. In my view, there is substance in the contention raised by the petitioner. The learned Additional Sessions Judge ought not to have entertained the Criminal Revision Application

No. 101/92 having entertained and decided the Criminal Revision Application No. 90/92 filed by the same party against the same order. In view of this, both the Criminal Revision Applications Nos. 7/93 and 3/93 deserves to be allowed and the impugned order of the learned Additional Sessions Judge, Bhavnagar dated 31-12-1977 deserves to be quashed and set aside.

42. In view of the aforesaid, Criminal Revision Application Nos. 2/93 and 3/93 are

allowed. The impugned order of the learned Additional Sessions Judge, Bhavnagar dated 31-12-1992 is quashed and set aside.

43. So far as the Criminal Revision Application No. 408/92 is concerned, the grievance of the petitioner-Panjarapole is that the Revision Application has been decided by the order of the learned Additional Sessions Judge without hearing them. There is substance in the contention raised by the petitioner.

44. In view of this, Criminal Revision Application No. 408/92 is allowed and the order of the learned Additional Sessions Judge, Bhavnagar dated 30-11-1992 is quashed and set aside. It is directed that the learned Judge/shall pass afresh order, after hearing all the concerned parties, and decide the same in the light of the law laid down by this Court.

Special Criminal Application No. 1431/96:

45. At Deodar police station, on 27-3-1996, a criminal complaint being Cr. No. II-79-96 was registered against the owner of the thick No. GJ-8-T-4414. It was found that, on 20th June 1996, in the night hours, 218 sheep and goats were being carried in the said truck, on which a case was registered. Out of 218 animals, three had died during transit and accordingly 215 goats/sheep were seized by the police. The petitioner made an application before the learned Magistrate for interim custody, which was rejected. The learned Magistrate directed that the cattle be handed over to the custody of Panjarapole. Against the said order of the learned Magistrate dated 27-6-1996, the petitioner preferred a Revision Application, which was rejected by the order of the learned Additional Sessions Judge, Banaskantha, at Palanpur dated 20-8-1996.

46. A preliminary objection has been raised by Mr. N.S. Sheth, learned Counsel for the Panjarapole, with respect to the maintainability of the present Criminal Revision Application on the ground that the petitioner has sought to invoke the inherent powers of this Court under Articles 226 and 227 of the Constitution of India with a view to circumvent the provisions of Section 397(3) Cr. P.C. which prohibits, second revision.

47. Mr. M.M. Tirmizi, learned Counsel submits that the orders of both the Courts below are wholly without jurisdiction, for the reason that the entire complaint deserves to be quashed and set aside, as it does not disclose a cognizable offence justifying the investigation by the police officer under Section 156(1) of the Cr. P.C. He further submits that the police has not obtained any permission from the Magistrate in accordance with the provision of Section 155(2) of the Cr. P.C.

48. I have considered this contention and it is found that the police has a power under Section 102 of the Cr. P.C. to seize the property if he suspects that some offence has been committed in respect of the said property. It makes no difference whether the offence is cognizable or non-cognizaable. In view of this, the contention is not sustainable and the same deserves to be rejected. It is next contended by Mr. Tirmizi

that the petitioner is not a previous convict and there is no material on record to indicate that if the custody of the animal is allowed to be with the petitioner, it is likely to be exposed to further cruelty. In my view, this aspect goes to the route of the case. Therefore, in order to meet the ends of justice, it is expedient that the matter is reheard by the learned Magistrate.

49. In view of this, this Special Criminal Application is allowed and the order of the learned J.M.F.C. - Deodar dated 27-6-1996 and the order of the learned Additional

Sessions Judge, Banaskantha, at Palanpur dated 20-8-1996 are quashed and set aside. The learned Additional Sessions Judge is directed afresh in the light of the law laid down by this Court.

ORDER

50. In view of the aforesaid, following order is made:

(A) Criminal Revision Application Nos. 227/96 and No. 226/96 are rejected. Rule discharged.

(B) Criminal Revision Application No. 403/92 is allowed and the impugned order of the learned Additional Sessions Judge, Bhavnagar dated 30-11-1992 is quashed and set aside. It is directed that the learned Magistrate shall pass afresh order after hearing all concerned and decide the same in light of the law laid down by this Court. Rule made absolute to the aforesaid extent.

(C) Criminal Revision Application Nos. 2/93 and No. 3/93 are allowed and the impugned order of the learned Additional Sessions Judge, Bhavnagar dated 31-12-1992 is quashed and set aside. Rule made absolute to the aforesaid extent.

(D) Special Criminal Application No. 1431/96 is allowed and the impugned order of the learned J.M.F.C. - Deodar dated 27-6-1996 and the order of the learned Additional Sessions Judge, Banaskantha, at Palanpur dated 29-8-1996 are quashed and set aside. The learned Additional Sessions Judge is directed to rehear the Revision Application and decide the same afresh in light of the law laid down by this Court. Rule made absolute to the aforesaid extent.

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* Revision challenging the order dated 12-1-1996 in Cri. Revision No. 131/1995 by Addi. Sessions Judge, Banaskantha at Palanpur.