

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY  
SUBORDINATE COURT) NO. 223 of 2014****With****SPECIAL CRIMINAL APPLICATION NO. 1225 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE S.G.SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?
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MUHAMMADBHAI JALALBHAI SERASIYA....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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**Appearance:**

MR MA KHARADI, ADVOCATE for the Applicant(s) No. 1

MR NM KAPADIA, ADVOCATE for the Respondent(s) No. 2

MR. MOHIT S BANKER, ADVOCATE for the Respondent(s) No. 2

MS JIRGA JHAVERI, ADDL. PUBLIC PROSECUTOR for the Respondent(s)  
No. 1

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**CORAM: HONOURABLE MR.JUSTICE S.G.SHAH**

**Date : 30/09/2014**

**COMMON CAV JUDGMENT**

1. Both these matters are filed for challenging the same impugned judgment and order dated 18.03.2014 by the learned 2<sup>nd</sup> Additional Sessions Judge, Rajkot in Criminal Revision Application No. 18 of 2014.

2. Such revision application was preferred by the petitioners of Special Criminal Application No. 1223 of 2014 challenging the judgment and order dated 18.02.2014 passed by the learned 4<sup>th</sup> JMFC, Rajkot in Muddmal Application No. 130 of 2014. The JMFC had vide order dated 18.02.2014 allowed the application for muddamal, whereby livestock in the form of 1951 chickens were ordered to be handed over to the petitioners of Criminal Revision Application No. 223 of 2014.

2.1 Therefore, in Special Criminal Application, petitioner Shree Rajkot Mahajan's Panjrapole, who was given custody of the livestock in question immediately after complaint, has prayed to order to release such livestock birds and make them free by releasing them in the open sky/air.

3. Petitioner in Criminal Revision Application has claimed the custody of possession of such livestock claiming that he is owner of such livestock.

4. Since impugned order in both the matters are same and since there are rival claims of the same livestock, by order of

Honourable the Chief Justice, both the matters are listed before this Court and heard together and disposed of by this common judgment; since, petitioners in both the petitions are also respondents in both the petitions, so also the livestock and rival claims of both the parties.

5. Heard learned advocate Mr. M. A. Kharadi for the petitioner in Criminal Revision Application and learned advocate Mr. N. M. Kapadia with Mr. Mohit Banker for the petitioner in Special Criminal Application as well as learned APP Ms. Jirga Jhaveri for the respondent – State.

6. The FIR was lodged with Gandhigram Police Station being II – C. R. No. 20 of 2014 on 06.02.2014 by Mr. Pratik B. Sanghani, Joint Secretary, SPCA, Rajkot Panjarapole against Kishor Chandulal Sakaria and Rakmuddin Vallimamadbhai Kadivar alleging that on 06.02.2014 at about 10 p.m. they found motor vehicle no. GJ-3-G-9330 carrying several cages full of chickens by violating the provision of Prevention of Cruelty to Animals Act, 1960 as well as Motor Vehicles Act, 1988 since all such chickens were packed in small cages where they were unable to even move and probably they were taken to slaughter house. It is further contended in such FIR that driver does not have proper permit and documents either to drive the vehicle or to transfer livestock. Certificate by Veterinary doctor was also not available, so also no proof of ownership of such livestock. Based upon such FIR, when police has detained the vehicle in question and inquired from the driver and occupant of the vehicle, they found in all 125 cages with 17 to 18 chickens in all such cages and that since they are running Panjrapole for animal welfare in the area,

they have lodged a complaint as aforesaid considering the violation of Section 11(1) (a), (d), (e), (g), (i) of the Prevention of Cruelty to Animals Act read with Section 119 of the Gujarat Police Act and Rule 77 to 80, 83, 84 and 96 to 98 of the Transport of Animals Rules. Allegations are also to the effect that they have committed offences under Section 428 of the Indian Penal Code also.

7. Surprisingly, though persons who were with the vehicle while transporting such livestock, were neither owners and they have not claimed the custody of such livestock, but one Muhammadbhai Jalalbai Serasiya, petitioner of Criminal Revision Application herein has immediately on same day i.e. on 06.12.2014 filed an application under Section 451 of the Code of Criminal Procedure claiming custody of such livestock as its owner.

7.1 Averments in such application are interesting. If we peruse such application dated 06.02.2014, copy of which is produced at Annexure B at page 9 and 10 in revision application, it becomes clear that it is a proforma application kept ready either by the applicant or by some such person, who is dealing with such matters for claiming possession of the muddamal in question. Therefore, what is stated in such application is only to the effect that the applicant is owner of muddamal article which is termed as "broiler hen". With contentions that petitioner is a poor person and such muddamal is only instrument for his livelihood and, therefore, it should be returned back to him. So far as charges against him are concerned, it is stated that police has wrongfully seized the muddamal and it is not required during the

pendency of the trial and, therefore, it is to be returned back to the applicant, for which he is ready to furnish security of suitable amount. Whereas with reference to livestock, it is stated that since trial would take long time and if muddamal article remains un-utilized, it may get spoiled and it will result into loss to the applicant and therefore it should be returned back to him with a statement that he is ready and willing to abide by all the conditions which may be imposed upon him while releasing such muddamal. In such averments, which are pre-printed, the only fact disclosed in the hand writing is name of the applicant, name of the police station, FIR number, section and Act under which FIR is lodged, name of muddamal in two words i.e. "broiler hen". Whereas in the prayer clause also in pre-printed proforma, similar details are endorsed in hand writing with prayer to release the livestock. Such observation is necessary for the reason that immediately on lodging the FIR, a person has come forward claiming himself as an owner of the livestock and seeking custody but inspite of disclosing properly that how he is owner and entitle to the custody of the livestock and more particularly, considering the fact that police has seized livestock and no any intangible material, the applicant has simply stated in his application that if it is lying unutilized, it may be perished. At the same time it is very much clear statement in the application itself by the applicant himself that he is a poor man and these seized articles are instruments for his livelihood. In that case, if we peruse the arguments thereafter when it is stated that such chickens are being purchased for selling only, it becomes clear that they are going to be supplied to slaughter house.

7.2 On such an application, learned APP has categorically



endorsed that when applicant has not produced any pass, permit or evidence and when notice upon original owner is not issued and when application does not properly disclose the nature of muddamal and how it would be taken care of by the applicant and when accused have not kept cages of proper size and space to transfer such cages and when there is no clarity at which place such livestock is to be transferred with cruelty and what arrangement and facility are available with the applicant for taking care of such livestock, the livestock cannot be handed over to the applicant.

7.3 It seems that while deciding such an application under Section 451 of the Code of Criminal Procedure, learned 4<sup>th</sup> JMFC has travelled beyond material on record, when he relied upon the statements by the applicant that applicant is a businessman and doing a business of poultry farm where he cultivate the chickens for distributing i.e. sale in different districts and that he owned a broiler for hens and such broiler hens are produced only for eating and even government has given a permission of such poultry farm and applicant has taken training to run such poultry farm, though no such averments are made in the application and though it is stated that applicant is a poor man. Similarly the trial Court has erred in relying upon the statements by the applicant when it is stated that if livestock is not returned back to him, he would have to suffer financial loss and that life of such livestock is only 60 days and thereafter they will automatically die and that they have sufficient equipment to take care of such livestock which is not with panjarapole and, therefore, Panjarapole being support less the livestock would remain unattended, which would result into loss to the applicant and

deterioration of the livestock and, therefore, custody should be given to such petitioner.

7.4 It seems that the trial Court has also relied upon the decision of the Honourable Supreme Court referred by the petitioner between ***Manager, Panjrapole Deodar & Anr. Vs. Chakram Moraji Nat & Ors. reported in AIR 1998 SC 2769***. However, the trial Court has also failed to appreciate the contentions of the Panjrapole when it is stated that custody of livestock cannot be given to someone when he has failed to produce proof regarding his ownership and when police has started investigation and inquiry of the person, who was transporting livestock, without permit and from whom and to whome such livestock is being transferred, when it is loaded in small cages and bundled with cruelty. During pendency of such application before the trial Court, the Investigating Officer has also disclosed that out of 2030 chickens from truck, some of them were died and ultimately 1951 chickens were seized. They also confirmed that even during inquiry, they could not find out any proof of ownership of such livestock or permit for transferring such livestock. Therefore, they prayed to reject the prayer of the applicant seeking custody of the livestock. It seems that applicant has produced certain documents which include permission by RTO to transfer birds in vehicle in question and training of the applicant for development of such chickens and affidavits by the accused confirming that they have no objections if livestock is handed over to the applicant. Thereupon relying upon the observations in para 11 in the case of ***Panjrapole Deudar (supra)*** the trial Court has allowed the application, though all the factors are to be relevant for deciding such an

application, the trial Court is guided only by the observations that Panjrapole does not have preferential right over such livestock and directed the custody of such livestock to applicant considering that he has sufficient means to maintain chickens and that 66 chickens were died in between and, therefore, relying upon such decision, custody was given with certain conditions and directions viz., applicant has to take care of feeding of the chickens and their development with facility of veterinary doctor as and when it is required. Applicant is also restrained from disposing of the chickens till further orders and transferring it either by sell or gift or assignment to anyone and also physical transfer and thereby continued status quo of the ownership of the livestock. It is further directed that in case of death of any chicken, applicant shall get post mortem report and to produce all the livestock before the Court as and when directed. It is also directed that livestock which is considered as muddamal in Muddamal Application shall not be utilized either directly or indirectly either while keeping at some place or transferring at any other place. While handing over the custody of such livestock, it is added that each such chicken/hen is to be marked with marking before handing over to the applicant. It is further observed that rest of the prayer for muddamal is rejected and in case of non-compliance of any such condition, application shall stand rejected and muddamal shall subject to seizure.

7.5 Therefore, prima facie it becomes clear that trial Court has relied upon the material which was otherwise not produced on record at the relevant point of time while filing of an application and in which other-side has not got any opportunity to verify the genuineness/correctness or



otherwise of such material after it was produced on record and there is contradictory directions in the order in as much as once it is stated that livestock should not be transferred to anyone, in the second breath the trial Court has imposed a condition that the livestock shall remain as it is and to produce before this Court as and when asked for, since livestock may certainly grow and not remain in same position and that applicant has admitted that such chickens are for sale for consumption. It is stated that life of the chickens is only 60 days and thereafter they would die on their own. In view of that direction to produce livestock before the Court as and when asked for, can never be complied with by any one. Therefore, more or less the prima facie reading of the judgment by the learned JMFC makes it clear that when applicant has filed an application for muddamal article mechanically, same way trial Court has allowed such application mechanically by imposing certain conditions. Therefore, even on such ground also such order is required to be quashed and set aside and even if issue regarding custody of livestock is not finally determined at such stage then to ask the trial Court to decide the relevant issue afresh. Legal issue on such subject will be discussed herein after.

8. When order upon such application was challenged before the Sessions Court by filing Criminal Revision Application No. 18 of 2014 by Shree Rajkot Mahajan Panjarapole with all material details that how such chickens are to be kept and how space area and cage size is required to transfer such birds under the chapter pertaining to transfer of poultry by railway, road and air in the Transfer of Animals Act. Unfortunately, the Sessions Judge also while setting aside

the judgment of the JMFC by judgment and order dated 18.03.2014 as disclosed herein above simply modified such order to certain extent.

8.1 If we peruse such judgment dated 18.03.2014 by learned 2<sup>nd</sup> Additional Sessions Judge, Rajkot, it becomes clear that after recording all relevant facts and legal points, the Sessions Court has modified the order dated 18.02.2014, but did not change the decision regarding handing over the custody of the livestock to the applicant. Thereby so far as custody of the livestock is concerned, even Sessions Court has confirmed the order dated 18.02.2014. Now the Sessions Court has imposed certain new conditions, viz. recording average measurement of weight, height, length before granting custody with observation that it would assist the trial Court to decide the case on merits at the time of trial. The direction regarding post moterm is cancelled so as the direction regarding resubmitting the chickens before the Court as and when asked for. Therefore, no modification regarding not to result cruelty while transporting or maintaining the chickens or not to utilize, either directly or indirectly, the chickens in question for slaughtering was missing in the order. However, one more condition is imposed whereby petitioner is asked to pay Rs. 1,38,447/- towards cost and maintenance of chickens to the Panjrapole.

8.2 Therefore, when original order of custody of hens has not been set aside or modified by the Sessions Court, the original applicant has in his revision application mainly challenged the order in para 2(F) by the Sessions Court regarding payment of maintenance of hens and by interim

order dated 19.02.2014, by which, order of trial Court has been stayed and it is in force till date.

9. Whereas Special Criminal Application is preferred by the Rajkot Mahajan's Panjrapole challenging the entire order and in fact now prayed to release the hens/birds in the open sky by quashing both the orders dated 18.02.2014 by the learned 4<sup>th</sup> JMFC in Muddamal Application No. 130 of 2014 and judgment dated 18.03.2014 by the learned 2<sup>nd</sup> Additional Sessions Judge, Rajkot in Criminal Revision Application No. 18 of 2014.

10. The factual details discussed herein above make it clear that both the Courts have failed to properly considered the factual material and law applicable to such matters and when there is contradictory order by the trial Court and order by the Sessions Court, without disclosing anything about quantum of such amount, there is no option but to quash and set aside both the orders. It is evident, on perusal of the judgment by the Sessions Court that though several factual details with reference to the provisions and law as pleaded before it, have been taken care of while deciding the issue regarding custody of livestock, the Court has observed that the entire poultry industry is for the mankind for consumption of meat and interpretation of provisions of Section 11 of the Prevention of Cruelty to Animals Act to the effect that nothing in Section 11 shall apply to the commission or omission of any act in the course of destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering. Surprisingly the Sessions Court has observed that it wonders either there was no

cruelty in transporting or maintaining the chickens by the owner when some chickens were died pending such litigation. However, there is no clarity that how and why chickens were died and that it was only during pendency of the proceedings or because of cruelty upon them while transporting in badly manner. Ultimately, consideration of all such issues are matter of trial, the Sessions Court has observed that merely there is a slaughtering it does not ipso facto mean that cruelty is committed at the hands of the owner. Unfortunately, the Sessions Court has considered that providing measurement at the time of giving custody may be the only remedy for deciding the issue permitting it as to whether cages were sufficient at all to carry out such livestock. It is further observed that owner cannot be put to a financial loss when chickens would be died after 60 days without proof of offences. It is also observed that in case of first offence, Act provides that animals should be provided to the owner and that when there is nothing to show on record that applicant has committed subsequent offence, relying upon the decision of ***Panjr pole Deodar (supra)***, the Sessions Court has also confirmed the custody of the livestock to the applicant/owner but with some modified conditions. Unfortunately, the reasonings and determination as well as directions by the Sessions Court are also improper and without proper appreciation of material facts and applicable law and therefore there is no option but to quash and set aside the judgment dated 18.03.2014 in Criminal Revision Application No. 18 of 2014 also.

11. Then comes the material issue regarding who is entitled to possession of the livestock.



11.1 If we consider the factual details on record, then it becomes clear that there is sufficient evidence regarding cruelty upon birds in question, in as much as, they were being transferred in very small cages without any permit and without taking care in accordance with law and that applicant has on same day of lodging FIR preferred an application for its custody. In that case unless it is proved on record that applicant is a real owner and that he has got evidence to prove his ownership, in fact initially he should have been added as an accused by the investigating agency because he permitted such transfer through accused whose names are disclosed in the FIR. At the same time, Investigating Officer has to inquire about the ownership and validity and genuineness of documents, if any, produced by the petitioner to prove his ownership, unless there is clarity on such issue, such an issue cannot be decided as being dealt with by both the lower Courts. It is also clear that though such applications are required to be decided at the earliest, there should not be any unnecessary haste and that such application can be taken care of at any stage of trial and therefore when applicant has not disclosed material facts in application, unless he disclosed, produced or proved an ownership and thereby his claim with evidence that he has not committed any cruelty, then and then there may be an order in his favour regarding custody of birds in question. Therefore, also the impugned order is required to be quashed and set aside with directions that either such application is to be decided afresh or applicant may file appropriate application with relevant material.



12. Therefore, when the factual details themselves are sufficient for deciding such matters, there is no need to enter into minute details of several citations referred by the parties. However, it would be appropriate at least to recollect the sum and substance of such decisions, which are as under:

12.1 Learned advocate Mr. M. A. Kharadi relies upon the following decisions:

- 1) ***Manager, Pajarapole, Deodar vs. Chakaram Moraji Nat & Anr. reported in 1998 (2) GLH 614***, wherein it is observed that Panjarapole has no preferential right and owner cannot be deprived of the custody unless he is convicted under the Act for the second time. Therefore, only because of such observations, custody cannot be immediately handed over to the petitioner against Panjrapole. More particularly the same judgment also confirms that Magistrate has discretion to handover the interim custody to Panjrapole. The Honourable Supreme Court has carved out certain guidelines for interim custody pending prosecution with Section 451 of the Code of Criminal Procedure and provisions of Prevention of Cruelty to Animals Act 1960 which are as under:

- a) nature and gravity of offence alleged against owner;
- b) has the owner been found guilty of offences under the Act;
- c) if owner is facing first prosecution under the Act, the animal is not liable to be seized and hence owner will have better claim for custody of animal pending prosecution;
- d) condition the animal was found in at the time of inspection and seizure;

- e) possibility of animal being again subject to cruelty;
- f) whether Panjarapole is functioning as an independent organisation or under a scheme of the Board and is answerable to the Board;
- g) whether Panjarapole has good record of taking care of animals given under its custody.

Therefore, even if we relied upon such judgment, then also there must be an answer to all issues on record and hence impugned orders are required to be interfered.

- 2) ***Vadhwan Mahajan Panjarapole vs. State of Gujarat & Anr. reported in 2001 (1) GLH 662***, wherein this High Court has simply reconfirmed that the Magistrate has to follow guidelines by the Apex Court in ***Panjarapole Deodar (supra)***.
- 3) ***Rahimbhai Adambhai Tarakvadiya vs. State of Gujarat & Anr. reported in 2007 (2) GLH 611***, wherein this High Court has again reconfirmed the decision in Panjarapole Diodar (supra) and Vadhwan Mahajan Panjarapole (supra) but now with reference to quashing of amount of cost or maintenance awarded in favour of Panjarapole.
- 4) ***Bharat Amratlal Kothari vs. Dosukhan Samadkhan Sindhi & Ors. reported in 2010 (1) GLH 221***, is not pertaining to custody of animals or birds but it relates to quashing of FIR at the instance of 3<sup>rd</sup> party who is otherwise unknown to the complainant and pertaining to payment of compensation and cost for keeping seized animals.

However, such judgment is not touching issue regarding cruelty upon animals, but it is mainly regarding jurisdiction of Magistrate Court in dealing with such an application and, therefore, though custody of animal is ordered to be handed over to the original owner in such reported case, it cannot be said that in all the cases without considering the factual details and issue involved in such litigations, the custody of animals or bird is given to its owner, more particularly without verification of real owner and that whether he is going to commit or likely to commit the similar offence of cruelty upon such animals/birds immediately after their release. In case on hand if ownership is proved, first of all owner is to be added as an accused due to cruelty on livestock under reference.

- 5) ***Anwarhusein Gulambhai Bulekha & 5 vs. State of Gujarat thro Deputy Secretary & 6 in Special Civil Application No. 12397 of 2012 with 12407 of 2012***, wherein by judgment and order dated 18.09.2012, the co-ordinate bench of this Court has considered that the chickens are saleable items. However, in the same judgment, it is held that petitioner should not slaughter or cut the chickens but they are permitted to sale only.

Therefore, if birds in question in present case are transported either to slaughter house or for poultry farm and in turn for slaughtering house, in that case, continues offence of cruelty on such birds at least till confirmation regarding any such activity during trial, interim custody of such birds cannot be handed over to such a person who is certainly continued to commit cruelty on such birds.

- (6) ***Royal Hatcheries Pvt. vs. State of Andhra Pradesh reported in AIR 1994 SC 666***, wherein practically issue was regarding sale tax upon sale of day old chicks. Petitioner is trying to emphasize that chicks are referred as birds and not an animals and therefore Prevention of Cruelty to Animals Act would not apply. Needless to say that Taxation laws on sale of certain things whereas at present considering the offence committed by the accused under the Prevention of Cruelty To Animals Act would certainly apply. However, in any case, if petitioner believes so, he should have challenged the FIR for its quashing so that birds may be released without any condition in their favour. Needless to say that few days old chickens are also birds and thereby livestock, upon which there cannot be a cruelty in any manner whatsoever.

12.2 Learned advocate Mr. Kapadia for the Panjrapole relied upon following decision:

Order passed in ***Animal Welfare Board of India vs. A. Nagaraja & Ors. dated 07.05.2014 passed in Civil Appeal No. 5387 of 2014*** by Honourable the Supreme Court. In case of Animal Welfare Board of India, the decision of the Honourable Apex Court makes it clear that there cannot be cruelty in any manner on any kind of animal including birds. Following two paragraphs are material:

**“COMPASSION:**



57. Article 51A(g) states that it shall be the duty of citizens to have compassion for living creatures. In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others* (2005) 8 SCC 534, this Court held that by enacting Article 51A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Articles 48 and 48-A are honoured as a fundamental duty of every citizen. Article 51A(g), therefore, enjoins that it was a fundamental duty of every citizen “to have compassion for living creatures”, which means concern for suffering, sympathy, kindness etc., which has to be read along with Sections 3, 11(1) (a) & (m), 22 etc. of PCA Act.

### **RIGHT TO LIFE:**

62. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, “life” means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity. Animals’ well-being and welfare have been statutorily recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. Right to dignity and fair



treatment is, therefore, not confined to human beings alone, but to animals as well. Right, not to be beaten, kicked, over-ridder, over-loading is also a right recognized by Section 11 read with Section 3 of the PCA Act. Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act."

Thereafter, the Honourable Apex Court has declared and directed as many as 12 directions against all amongst which only relevant declarations and directions, which are referred herein below:

1) We declare that the rights guaranteed to the Bulls under Sections 3 and 11 of PCA Act read with Articles 51A (g) & (h) are cannot be taken away or curtailed, except under Sections 11(3) and 28 of PCA Act.

2) xxxx                      xxxx                      xxxx

3) AWBI and Governments are directed to take appropriate steps to see that the persons-in-charge or care of animals, take reasonable measures to ensure the well-being of animals.

4) AWBI and Governments are directed to take steps to prevent the infliction of unnecessary pain or suffering on the animals, since their rights have been statutorily protected under Sections 3 and 11 of PCA Act.

5) xxxx                      xxxx                      xxxx

6) AWBI and the Governments would also see that even in cases where Section 11(3) is involved, the animals be not put to unnecessary pain and suffering and adequate and scientific methods be adopted to achieve the same.

7) AWBI and the Governments should take steps to impart education in relation to human treatment of animals in accordance with Section 9(k) inculcating the spirit of Articles 51A(g) & (h) of the Constitution.

8) Parliament is expected to make proper amendment of the PCA Act to provide an effective deterrent to achieve the object and purpose of the Act and for violation of Section 11, adequate penalties and punishments should be imposed.

9) Parliament, it is expected, would elevate rights of animals to that of constitutional rights, as done by many of the countries around the world, so as to protect their dignity and honour.

10) The Governments would see that if the provisions of

the PCA Act and the declarations and the directions issued by this Court are not properly and effectively complied with, disciplinary action be taken against the erring officials so that the purpose and object of PCA Act could be achieved.

11) XXXX XXXX XXXX

12) XXXX XXXX XXXX

Reading of such judgment makes it clear that there cannot be any cruelty upon any animals whatsoever.

13. Since such judgment is related to bullock fight, it would be appropriate to refer the judgment between ***S. Kannan vs. Commissioner of Police dated 21.05.2014 in Writ Petition No. 8040 of 2014 by the Madras High Court***, wherein now protection is granted to all kind of birds like eagle, cock, peacock, crow against their killing and cruelty upon them in any manner.

14. With this reference it would be appropriate to refer the provisions of Prevention of Cruelty to Animals Act, 1960 wherein Section 11 prescribed as many as 15 instances regarding treating animals whereby cruelty is certainly includes conveying or carrying, 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; (Clause d of Sub-Section 1 of Section 11) or keeping or confining any animal in any cage or other receptacle which does not measure

sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement (Clause e of Sub-Section 1 of Section 11), then such person shall be punishable in case of first offence with fine which shall not be less than Rs.10/- and extended upto Rs. 50/-, and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than Rs.25/- but which may extend to Rs.100/- or with imprisonment for a term which may extend to three months, or with both.

14.1 Therefore, as observed herein above since petitioner claims to be an owner, there would be a presumption regarding offences of cruelty if there is prima facie evidence regarding cruelty upon animals and, therefore, it would be necessary for the Investigating Officer to join him as an accused.

15. Whereas learned advocate Mr. Kharadi trying to emphasize that since they are permitted to run poultry farm, they will be exempted from certain provisions. However, he fails to prove any such thing on record.

15.1 As against that, if we peruse Sub – Section (3) of Section 11, there is specific list of instances of animals, when provisions of Section 11 shall not apply. However, such list does not include the birds which are otherwise seized, more particularly in manner in which it is transferred. With reference to all above facts and circumstances, if we reconsider the provision of Transport of Animals Rules 1978,

the Motor Vehicles Act, and consider the pleadings on record, it becomes clear that 2030 chickens were transferred in small cages.

15.2 The Panjrapole has produced one photograph of chickens in cages and the way in which they are transferred and photographs of such birds being kept by them in their custody. Such photographs and provisions of Motor Vehicles Act regarding transfer of animals by rail, road and air makes it clear that if the containers are not of measurement as prescribed under Rule 83, then there is certainly a commission of offence while transporting the poultry birds. On perusing the provisions of Sub-Section (2) of Section 11 of the Act, it becomes clear that there would be presumption that owner of such animals has committed such offence of cruelty and, therefore, there is no reason for the trial Court to hand over the possession of the birds to the petitioner in Criminal Revision Application.

15.3 Though hens are meant for poultry industry but it is for breeding and for eggs and not for transporting it with cruelty to slaughter house for preparing eatable items from such small chickens.

15.4 It cannot be ignored that some States have issued necessary notification in this behalf including State of Hariyana where provision regarding distance or storage of such birds from residential zone, area of storage, disposal of composites and dead birds as well as waste water etc. is



taken under consideration while issuing directions and notifications to be followed by the poultry house industry.

16. In view of above, facts and circumstances when there is prima facie evidence on record regarding breach of certain statutory provisions and cruelty upon birds, which are seized, I have no option but to quash and set aside both the impugned judgments dated 08.02.2014 and 08.03.2014. Thereby birds will remain with the Panjrapole as an interim custody and it would be appropriate for the Panjrapole to apply for making them free in open sky before the trial Court since so far as custody of birds is concerned, it is for the trial Court to reexamine the issue, whether custody of birds is required or not because there may not be need of such custody, it would be appropriate for the trial Court to examine the necessity for passing an order with reference to releasing the birds into the open sky based upon the judgment of this Court in the case of ***Abdulkadar Shaikh vs. State of Gujarat passed in Special Civil Application No. 1635 of 2010 dated 12.05.2011***. In aforesaid judgment, this High Court has taken care of the issue that Whether the birds have a right to live freely and/or Whether can birds be kept in illegal custody / cages and/or whether by keeping the birds in cages do their right to live freely is violated?

16.1 In the said judgment, after considering all relevant submissions by both the sides, the decision in case of ***Panjarapole Deodar (supra)*** that may be referred by the concerned parties, this High Court has by relying upon the

judgment between ***Sansar chand vs. State of Rajasthan reported in 2010 (10) SCC 640*** held that to keep birds in cages would tantamount to illegal confinement of the birds which is in violation of right of the birds to live in free air / sky. Thereby the co-ordinate bench of this High Court has directed to release and enlarge the birds in the open sky/air.

16.2 However, if we look into the factual details in such case under reference the birds and animals like parrots, pigeon, love birds, sparrows , rabbit, mouse, dog etc. were found for salling and NGO has initiated some proceedings to make them free whereas in the present case the birds which are seized are meant for poultry industry for production of eggs or for making eatable items then to that extent releasing them in open air may not be warranted, considering the overall evidence before the Court regarding nature of cruelty that may result upon them during transport and nature of their stock with original owner in approved poultry farm if at all there is evidence on record.

16.3 Therefore, instead of releasing the birds in air at this juncture, it would be appropriate to direct the trial Court to reexamine the factual details as discussed herein above before passing any such order.

17. However, so far as order regarding payment of cost or maintenance of birds is concerned, the same could not sustained because there is no proof of ownership of the birds by private respondent i.e. petitioner in Revision Application.

18. In view of above facts and circumstances, both these petitions are partly allowed. Impugned orders dated 18.02.2014 and 18.03.2014 passed by both the lower Courts are hereby quashed and set aside with observations that both the parties are at liberty to apply afresh for appropriate orders regarding custody or release of birds in open air. The trial Court shall consider such application after considering the record either in the form of charge – sheet or relevant evidence during the trial. Both the petitions are disposed of in above terms.

drashti

(S.G.SHAH, J.)

