

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MS.JUSTICE J.M.KHAZI

CRIMINAL REVISION PETITION NO.1344 OF 2019

BETWEEN:

HARISH K B
.....

...PETITIONER

(BY SRI. TOMY SEBASTIN, SENIOR COUNSEL FOR
SRI. GIRISH Y L, ADVOCATE)

AND:

1. SMT PONNAMMA

2. THE STATE OF KARNATAKA
BY STATION HOUSE OFFICER
PEENYA POLICE STATION
BENGALURU - 560 058
REP BY SPP, HIGH COURT
BUILDING, BENGALURU - 01

.....RESPONDENTS

(BY SRI. ADITHYA S KUMAR, ADVOCATE FOR R1;
SRI. CHANNAPPA ERAPPA, HCGP FOR R2)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 AND 401 OF CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 06.08.2019 PASSED BY THE LXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU IN CRL.A.NO.1111/2017 AND ENHANCE THE SENTENCE AWARDED BY THE XLV ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU CITY IN C.C.NO.17338/2016, TO MEET THE ENDS OF JUSTICE.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 04.12.2023, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This criminal petition filed under Section 397 r/w 401 of Cr.P.C, is by the complainant, challenging the order of the trial Court, by which on the basis of accused pleading guilty for the offence punishable under Section 429 IPC, Section 93 of Karnataka Police Act and Section 11 of Prevention of Cruelty to Animals Act, 1960, the trial Court sentenced the accused only to pay fine and in default to undergo simple imprisonment.

2. For the sake of convenience, the parties are referred to by the rank before the trial Court.

3. Complainant Harish, Honorary Animal Welfare Officer, filed a complaint against the accused alleging that on 15.03.2016, in the evening, accused removed eight puppies aged 20 days old from the drain near her house and flung them in a nearby site, as a result of which they died. When questioned, she did not show any remorse and think that she has not done anything wrong. She blocked the drain so that the pups and their mother could not go back to the drain.

4. Based on the complaint, the concerned police have registered case against the accused for the offences punishable under Section 429 IPC, Section 93 of Karnataka Police Act and Section 11 of Prevention of Cruelty to Animals Act. After completing the investigation, the concerned police filed charge sheet against the accused for the above offences.

5. After due service of summons, accused appeared before the trial Court and pleaded guilty to the charges leveled against her. The trial Court has convicted and sentenced her to pay fine as under:

"Accused is convicted and sentenced to pay fine of Rs.700/- for the offence p/u/s 429 IPC and in default of payment of fine accused shall undergo simple imprisonment for 7 days.

Accused is convicted and sentenced to pay fine of Rs.100/- for the offence p/u/s 93 of K.P. Act and in default of payment of fine accused shall undergo simple imprisonment for 15 days.

Accused is convicted and sentenced to pay fine of Rs.200/- for the offence p/u/s 11 of Prevention of Cruelty to Animals Act, 1960 and in default of payment of fine accused shall undergo simple imprisonment for 15 days."

6. Not being satisfied with the quantum of punishment imposed, the complainant filed appeal under Section 372 Cr.P.C before the Session Court. After securing the presence of accused and considering the arguments of both sides, the Sessions Court dismissed the appeal by holding that in exercise of its discretionary power, the trial Court has imposed the punishment and it is not a case to interfere.

7. Being aggrieved by the order passed by the trial Court as well as the Sessions Court, the complainant

is before this Court, contending that the order passed by both Courts below is contrary to the facts and gravity of the case. After investigation, the concerned police filed charge sheet against the accused. When the accused voluntarily appeared and pleaded guilty, both trial Court and Sessions Court have committed error in taking lenient view by awarding a flea bite sentence. It is unjust, improper and liable to be set aside. The Courts below ought to have exercised judicial discretion with proper application of mind. The trial Court without hearing the accused has imposed the sentence. The punishment imposed is not in commensurate with the gravity of the offence committed by the accused. Article 51 (A) (g) of the Constitution of India mandate that it is the duty of every citizen to have compassion for living creatures and sought for enhancing the punishment imposed on the accused.

8. In support of his arguments, the learned counsel representing the complainant has relied upon the following decisions:

- (i) Animal Welfare Board of India Vs. A.Nagaraja and Ors. (**A.Nagaraja**)¹
- (ii) Bhartiya Govansh Rakshna Sanverdhhan Parishad Vs. The Union of India & Ors. (**Bhartiya Govansh Rakshna**)²
- (iii) Lalit Miglani Vs. State of Uttarakhan & Ors. (**Lalit Miglani**)³
- (iv) Thomas Vs. State of Kerala (**Thomas**)⁴
- (v) State of Punjab Vs. Balwinder Singh & Ors. (**Balwinder Singh**)⁵
- (vi) Soman Vs. State of Kerala (**Soman**)⁶
- (vii) Sardar Khan & Anr. Vs. State of Bihar & Anr (**Sardar Khan**)⁷
- (viii) Narayan Dutt Bhatt Vs. Union of India & Ors. (**Narayan Dutt Bhatt**)⁸
- (ix) Collector Land Acquisition and Anr Vs. Mst.Katiji & Ors. (**Katiji**)⁹
- (x) Prakash Vs. State by Turuvanur Police rep. by State Public Prosecutor (**Prakash**)¹⁰
- (xi) Narasappa & Ors. Vs. State of Karnataka & Ors. (**Narasappa**)¹¹

¹ (2014) 7 SCC 547

² MANU/HP/0697/2016

³ MANU/UC/0067/2017

⁴ 2013 CrI.L.J 825

⁵ (2012) 2 SCC 182

⁶ (2013) 11 SCC 382

⁷ CrI.Misc.No.47517/2013

⁸ MANU/UC/0431/2018

⁹ AWC 1987 SC 675: AIR 1987 SC 1353

¹⁰ MANU/KA/0075/2010

¹¹ MANU/KA/0501/2017

9. On the other hand, learned counsel representing respondent No.1/accused submitted that this was the first offence committed by the accused and taking into consideration the age of the accused and the fact that she pleaded guilty, using its discretion the trial Court has rightly imposed the punishment of fine only and the Sessions Court has also declined to interfere and prays to dismiss the petition.

10. Heard arguments of both sides and perused the record.

11. Thus, the grievance of complainant is that despite the accused pleading guilty, the trial Court has imposed a flea bite sentence and let go the accused after paying fine. The Sessions Court has also failed to exercise its jurisdiction and dismissed the appeal filed by the complainant.

12. The allegations made against the accused are that a stray bitch has given birth to eight puppies in the drain situated in front of the house of accused. As they

were hauling day in and out, being annoyed by their constant noise, accused removed the puppies from the drain and kept them in an open site. As a result the puppies could not go back to their mother and for want of her care and protection and also not getting the milk from their mother the puppies died after two days. After the puppies died, it was brought to the notice of complainant and on the basis of information gathered from the neighbours, he filed the complaint.

13. After conducting detailed investigation, the concerned police have filed charge sheet against the accused for the offences punishable under Section 429 IPC, Section 93 of Karnataka Police Act and Section 11 of Prevention of Cruelty to Animals Act.

14. After due service of summons, the accused appeared before the trial Court and wanted to plead guilty for the charges. In fact, the trial Court has cautioned the accused about the consequences of pleading guilty. However, the accused was very firm and went ahead with pleading guilty to the charges. Taking

into consideration the punishment prescribed for the offences, the trial Court has sentenced the accused to pay fine with the default sentence of imprisonment. The accused has paid the fine and obeyed the order of the Court.

15. The State has not challenged the said order. However, complainant filed appeal under Section 372 Cr.P.C before the Sessions Court. There was also delay in filing the appeal. The Sessions Court has dismissed the appeal both on merits as well as on the ground of delay. At this juncture, it is relevant to note that under Section 372 Cr.P.C, the victim is having a right to prefer appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. The plain reading of the Section makes it clear that the victim has no right of appeal, challenging the quantum of punishment. He can only challenge the acquittal or convicting for a lesser offence or imposing inadequate compensation. However,

the Session Court has disposed of the appeal on merit as well as on limitation.

16. At the outset it is relevant to note that when the incident took place, the accused was aged 65 years. She is said to be the wife of Air Force employee. She was staying with her son who was employed in a private establishment. Finding a stray bitch having given birth to 8 puppies and they were howling day in and out, she has removed the puppies from the drain and kept them in a vacant site. It is alleged that because of this, the puppies could not go back to their mother and died in the sun. Though it is alleged that the puppies could not go to their mother, it is not clear whether the bitch was also not able to reach her puppies.

17. Anyhow, fact remains that accused pleaded guilty and the trial Court has convicted and sentenced her to pay fine with the default sentence of imprisonment. The maximum punishment prescribed for the offence under Section 429 IPC is imprisonment for a period of two years or fine or both. Similarly, for the

offence punishable under Section 93 of the Karnataka Police Act, the punishment prescribed is fine, imprisonment which may extend to one month or with fine which may extend to Rs.100/- or with both. So far as the offence punishable under Section 20 of Prevention of Cruelty to Animals Act is concerned, the punishment prescribed is fine which may extend to Rs.200/-. Such being the case, taking into consideration the fact that accused choose to plead guilty, the trial Court exercising its discretion had imposed punishment of fine.

18. Having regard to the fact that at the time of incident, the accused was aged 65 years and she has admitted her guilt, the trial Court was well within its power to exercise discretion. Now accused is aged about 72 years. Having regard to these aspects, this Court is of the considered opinion that this is not a fit case to interfere in exercise of the power under Section 397 r/w 401 Cr.P.C. In the light of the facts and circumstances of the case, the decisions relied upon by the complainant

are not applicable to the case on hand. In the result, the petition fails and accordingly the following order:

ORDER

- (i) The petition filed by the complainant under Section 397 r/w 401 Cr.P.C is dismissed.
- (ii) The order dated 23.01.2017 in C.C.No.17338/2016 on the file of XLV ACMM, Bengaluru and judgment and order dated 06.08.2019 in CrI.A.No.1111/2017 on the file of LXV Addl.City Civil and Sessions Judge, Bengaluru are hereby confirmed.
- (iii) The Registry is directed to send back the trial Court and Sessions Court records along with the copy of this order forthwith.

**Sd/-
JUDGE**

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