

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF FEBRUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION No.5344/2020

R

BETWEEN:

COMPASSION UNLIMITED PLUS ACTION,
AN N.G.O TRUST,
HAVING REGISTERED OFFICE AT
1ST FLOOR, KENSINGTON APARTMENTS
18/1, ULSOOR CROSS ROAD, ULSOOR,
BENGALURU - 560 008.

REPRESENTED BY ITS PRESIDENT
SUPARNA GANGULY.

... PETITIONER

(BY SRI ALWYN SEBASTIAN, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
BY PUTTENAHALLI POLICE STATION,
BENGALURU CITY.
REP. BY THE STATE PUBLIC PROSECUTOR,
HIGH COURTS BUILDING,
BENGALURU - 560 001.

2. SRI SHREYAS,
HINDU, MAJOR,
RESIDING AT 30TH CROSS,
BEHIND INCHARA HOTEL,
J.P. NAGAR, 6TH PHASE,
BENGALURU 560 076.

... RESPONDENTS

(BY SMT. NAMITHA MAHESH B.G., HCGP FOR R-1;
SRI RAKSHITH R., ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO SET ASIDE THE ORDER DATED 09.10.2020 PASSED IN CR.NO.181/2020 BY THE XXX A.C.M.M., AT BENGALURU AT ANNEXURE-H.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.01.2021, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed under Section 482 of Cr.P.C. praying this Court to set aside the order dated 09.10.2020 passed in Crime No.181/2020 by the XXX ACMM, Bengaluru.

2. The factual matrix of the case is that one Sri Harish K.B., an Animal Welfare Activist, filed a compliant on 19.09.2020 to the Inspector, Puttenahalli Police Station, against the accused for the offences relating to animal cruelty and the said complaint came to be registered in Crime No.181/2020 for the offences punishable under Section 11 of the Prevention of Cruelty to Animals Act, 1960 ('PCA Act' for short) and also invoked Section 428 of IPC and the matter is pending before the learned Magistrate.

3. The sum and substance of the complaint against the accused who has been arraigned as respondent No.2 in this

petition is that he is an unlicensed dog breeder, who is conducting commercial activity of dogs breeding. The respondent No.2 in his custody has many female dogs and puppies that are being subjected to abject cruelty by confining them in an unsanitary kennel. The complaint states that the dogs confined are in docks without being provided with adequate food, water and veterinary care, thereby subjecting them to pain and sufferings. The complaint also narrates that a few dogs are in pathetic condition and are in need of immediate medical care and attention.

4. Pursuant to the complaint, the police have seized five dogs from the custody of the accused and handed them over to the applicant and the said dogs were transferred to the Rehabilitation Center for immediate treatment situated at CUPA Second Chance Adoption Center, Sarjapura Road, Bengaluru. The accused in his custody had many dogs that were subjected to cruelty for the purpose of commercial breeding. The Karnataka Animal Welfare Board issued a notice dated 21.09.2020 to the first respondent police directing them to seize

the remaining dogs and hand them over to a trusted NGO for care and maintenance.

5. The respondent No.1 police is presently investigating the aforesaid complaint and is still to file a charge-sheet. Such being the case, the petitioner filed an application under Rules 3 and 4 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017, ('PCA Rules, 2017' for short) seeking for a direction from the court below permitting custody of the aforesaid ten dogs to the petitioner, pending disposal of the above criminal proceedings and also seeking maintenance at Rs.50,000/- per month towards cost of medical treatment, food and shelter for the seized dogs. The petitioner had preferred two applications for the custody and maintenance of the dogs which were seized on two different occasions on 19.09.2020 and on 25.09.2020. The respondent No.1 has filed a requisition on 30.09.2020. The accused also filed objections to the said applications. The learned Magistrate dismissed the application filed by the petitioner and passed the order directing the concerned police to hand over the interim custody of the dogs to the accused and also directed the accused

to pay Rs.5,000/- to the applicant in respect of expenses spent towards treatment and nourishment of the dogs and other directions were given. Being aggrieved by the said order, the present petition is filed.

6. The main grounds urged in the petition is that the case is registered under Section 11 of the PCA Act on the allegation that the animals that are subjected to cruelty cannot remain in the custody of the owner of such animal, pending investigation. It is the further contention that as per Rules 3 and 4 of the PCA Rules, 2017, the accused cannot retain custody of animals that are subjected to cruelty, pending litigation. The Apex Court in the unreported judgment in the case of **STATE OF UTTAR PRADESH v. MUSTAKEEM** passed in **Crl.A.Nos.283-87/2002** dated 22.02.2002 has held that the allegation in the FIR was that the animals were transported for being slaughtered and were tied very tightly to each other. The criminal case is pending. It is observed that it is shocked as to how such an order could be passed by the learned Judge of the High Court in view of the very allegations and in view of the charges, which

the accused may face in the criminal trial and set aside the order and directed that these animals be kept in the Goshala.

7. The learned counsel for the petitioner also relied on the judgment of the Apex Court in the case of **PINJRAPOLE DEUDAR AND ANOTHER v. CHAKRAM MORAJU NAT AND OTHERS** reported in **(1998) 6 SCC 520**, has held that an important consideration while granting custody to Pinjrapole is to examine the health condition of the animals at the time when they were seized. Referring this judgment, the learned counsel would submit that in the present case also the animals were in very poor condition and are presently being treated under intensive care.

8. The learned counsel would submit that Article 51A(g) of the Constitution of India confers a constitutional duty on all citizens and the State to have compassion for living creatures. The Trial Court has simply failed to consider the cost of maintenance directed to be awarded and erroneously directed to pay the amount of Rs.5,000/-. The learned Magistrate did not apply his mind to the invoking of the offences against

respondent No.2 and passed an erroneous order. Hence, it requires interference of this Court.

9. The learned counsel during the course of his arguments, he reiterated the grounds urged in the petition and also relied upon the judgment of the Apex Court in the case of **SANJAI TIWARI v. THE STATE OF UTTAR PRADESH AND ANOTHER** passed in **CrI.A.No.869/2020**, wherein the Apex Court in paragraph No.13 of the judgment, extracted paragraph Nos.26 and 27 of the judgment in the case of H.S.Choudhary, who sought the relief before the High Court to quash the order of the Special Judge, which revision was also dismissed by the High Court. While dismissing the appeals filed by H.S. Choudhary, the Apex Court observed in paragraph Nos.26 and 27 as follows:

"26. Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.

"27. We, in the above background of the case, after bestowing our anxious and painstaking consideration

and careful thought to all aspects of the case and deeply examining the rival contentions of the parties both collectively and individually give our conclusions as follows:

1. Mr. H.S. Chowdhary has no locus standi (a) to file the petition under Article 51A as a public interest litigant praying that no letter rogatory/request be issued at the request of the CBI and he be permitted to join the inquiry before the Special Court which on 5.2.90 directed issuance of letter rogatory/request to the Competent Judicial Authorities of the Confederation of Switzerland; (b) to invoke the revisional jurisdiction of the High Court under Sections 397 read with 401 of the Cr.P.C. challenging the correctness, legality or propriety of the order dated 18.8.90 of the Special Judge and (c) to invoke the extraordinary jurisdiction of the High Court under Section 482 of the Cr.P.C. for quashing the First Information Report dated 22.1.90 and all other proceedings arising therefrom on the plea of preventing the abuse of the process of the Court."

10. The learned counsel for the petitioner also relied upon the judgment of the Apex Court in the case of **ANIMAL WELFARE BOARD OF INDIA v. A. NAGARAJA AND OTHERS** reported in **(2014) 7 SCC 547** and brought to the notice of this Court paragraph No.64 of the judgment with regard to recognized freedoms for animals, which reads as follows:

- (i) freedom from hunger, thirst and malnutrition;*
- (ii) freedom from fear and distress;*
- (iii) freedom from physical and thermal discomfort;*

- (iv) *freedom from pain, injury and disease; and*
- (v) *freedom to express normal patterns of behaviour.*

11. The Apex Court discussing with regard to recognized freedoms for animals held that, these five freedoms, as already indicated, are considered to be fundamental principles of animal welfare and we can say that these freedoms find a place in Sections 3 and 11 of PCA Act and they are for animals like the rights guaranteed to the citizens of this country under Part III of the Constitution of India. The Apex Court in paragraph No.66 of the judgments held as follows:

"66. Rights guaranteed to the animals under Sections 3, 11, etc. are only statutory rights. The same have to be elevated to the status of fundamental rights, as has been done by few countries around the world, so as to secure their honour and dignity. Rights and freedoms guaranteed to the animals under Sections 3 and 11 have to be read along with Articles 51A(g) and (h) of the Constitution, which is the magna carta of animal rights."

12. The Apex Court in paragraph No.67 of the judgment held that Article 51A(g) of the Constitution of India states that it shall be the duty of citizens to have compassion for living creatures referring to the case of **STATE OF GUJARAT v.**

MIRZAPUR MOTI KURESHI KASSAB JAMAT reported in **(2005) 8 SCC 534**. In paragraph No.72 discussed with regard to Right to life as envisaged under Article 21 of the Constitution of India, 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.

13. The learned counsel referring these judgments would contend that giving the animals to the custody of a person who has not treated them properly and not taken care, amounts to handing over the animals to the custody of the wrong person and hence the impugned order is liable to be set aside.

14. The learned counsel for respondent No.2 would vehemently contend that the police have given illegal custody of the dogs which are owned by respondent No.2. The offences under Section 428 of IPC and Section 11 of PCA Act does not attract. It is also his contention that one of the dogs died when the custody was given to the petitioner and the same is not

reported to the Court. The post mortem report also discloses the reasons for cause of death. The dogs are stationed in different places. Section 11 of the PCA Act and Rules 3 and 4 of the PCA Rules, 2017 does not attract to cruelty. The investigation is not yet completed. Future custody in favour of the petitioner would cause loss to respondent No.2 and there are no grounds to set aside the order.

15. Having heard the learned counsel for the petitioner and the learned counsel for respondent No.2, this Court has to examine whether the learned Magistrate has not applied his mind while passing the order and committed an error in passing the impugned order.

16. Having perused the grounds urged in the petition and also the contention of the learned counsel for the petitioner and also respondent No.2, the paramount consideration of the case before this Court is in view of Rule 3 of the PCA Rules, 2017 and Section 11 of the PCA Act, this Court has to examine whether the order passed by the learned Magistrate is legally sustainable.

17. Before considering the grounds urged in the petition and also the contentions raised by the parties, it is appropriate to refer to Section 11 of the PCA Act, which reads as follows:

"11. Treating animals cruelly.- (1) *If any person-*

- (a) *beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes, or being the owner permits, any animals to be so treated; or*
- (b) *employs in any work or labour or for any purpose any animal which, by reason of its age or any disease, infirmity, wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be employed; or*
- (c) *wilfully and unreasonably administers any injurious drug or injurious substance to any animal or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by any animal; or*
- (d) *conveys or carries, 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; or*
- (e) *keeps or confines 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; or*
- (f) *keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or*

- (g) *being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or*
- (h) *being the owner of any animal, fails to provide such animal with sufficient food, drink or shelter; or*
- (i) *without reasonable cause, abandons any animal in circumstances which tender it likely that it will suffer pain by reason of starvation thirst; or*
- (j) *wilfully permits any animal, of which he is the owner, to go at large in any street, while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animal, of which he is the owner, to die in any street; or*
- (k) *offers for sale or, without reasonable cause, has in his possession any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment; or*
- (l) *mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections, in the heart or in any other unnecessarily cruel manner or;*
- (m) *solely with a view to providing entertainment-*
 - (i) *confines or causes to be confined any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object or prey for any other animal; or*
 - (ii) *incites any animal to fight or bait any other animal; or*

- (n) *organises, keeps, uses or acts in the management or, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or*
- (o) *promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting;*

he shall be punishable, in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees 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 twenty-five rupees but which may extend, to one hundred rupees or with imprisonment for a term which may extend, to three months, or with both.

(2) For the purposes of sub-section (1), an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence:

Provided that where an owner is convicted permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) Nothing in this section shall apply to –

- (a) the dehorning of cattle, or the castration or branding or nose-roping of any animal in the prescribed manner, or*
- (b) the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed; or*

- (c) *the extermination or destruction of any animal under the authority of any law for the time being in force; or*
- (d) *any matter dealt with in Chapter IV; or*
- (e) *the commission or omission of any act in the course of the 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."*

18. Rule 3 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 reads as follows:

"3. Custody of animals pending litigation.-

When an animal has been seized under the provision of the Act or the rules made thereunder-

- (a) *the authority seizing the animal shall ensure health inspection, identification and making such animal, through the jurisdictional veterinary officer deployed at Government Veterinary Hospital of the area and marking may be done by ear tagging or by chipping or by any less irksome advance technology but marking by hot branding, cold branding and other injurious marking shall be prohibited;*
- (b) *the magistrate may direct the animal to be housed at an infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala during the pendency of the litigation.*

19. Having perused Rule 3 as well as Section 11, it is clear that Section 11 punishes treating the animals cruelly that he shall be punished for the first offence with a fine upto Rs.50/- and a second or subsequent offence committed within three years of the previous offence, with fine upto Rs.100/- or with imprisonment upto three months, or with both.

20. Rule 3 contemplates custody of animals pending litigation and Rule 3(b) empowers the Magistrate may direct the animal to be housed at an infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala during the pendency of the litigation.

21. Having perused the rule as well as the penal provision, the Court has to look into the allegations made in the complaint. In the case on hand, it has to be noted that, the Investigating Officer exercised his right under Section 32 of the Act when the complaint is received about treating animals cruelly and reported with regard to pathetic conditions of the animals. No doubt, Section 35 confers the powers to the State Government may, by general or special order, appoint

infirmaries for the treatment and care of animals in respect of which offences against this Act have been committed, and may authorise the detention therein of any animal pending its production before a Magistrate. The Magistrate is having the power to handover the same to pinjrapole or that it shall be destroyed, be released from such place except upon a certificate of his fitness for discharge issued by the veterinary officer in charge of the area in which the infirmary is situated or such other veterinary officer as may be authorized in this behalf by rules made under this Act. The other proviso also enumerated in Section 35 of PCA Act.

22. In the background of Rule 3 and also Section 11, this Court has to examine the order passed by the learned Magistrate. The learned Magistrate while dealing with an application for interim custody having taken note of Section 32 as well as Section 35 comes to a conclusion that the Investigating Officer has not complied Section 35 of the Act. The said Section described the procedure after seizure of the dogs and its custody. It is observed that the Investigating Officer has not obtained permission from the Court for custody of dogs

seized. The Investigating Officer has not complied with the statutory directions. It is also observed that the accused himself discloses his willingness for the interim custody of dogs in objection. It is further observed that the accused is eligible for the interim custody of dogs, is important fact. The Investigating Officer without obtaining permission straight-away handed over the dogs to the application CUPA, NGO, which is not proper. The very observation of the impugned order leads to directing the concerned police to handover the interim custody of the dogs to the accused immediately and other directions are given with regard to the health conditions. It has to be noted that the paramount consideration of the Act as well as the Rules is to protect the interest of the dogs, which was subjected to cruelty. The Court also has to look into the pathetic conditions of the animals. The report is clear that the dogs have sustained injuries. It is also an allegation against the accused that he is treating the dogs with cruelty and he has using the dogs for making money for breeding purpose.

23. It is also an allegation that the accused is an unlicensed dog breeder, who is conducting commercial activities

of dogs breeding. The accused is having custody of many female dogs and puppies that are being subjected to abject cruelty by confining them in an unsanitary kennel.

24. The Magistrate ought to have taken note of the said fact into consideration while passing an order directing the Investigating Officer to release the dogs to the custody of the accused and the same has not been considered by the Magistrate. The Court also ought to have taken into paramount consideration of the welfare of the dogs, which are under the pathetic condition. The Court also ought to have looked into the wisdom of the legislature in passing the enactment and framing the rules that has not been taken note of. The Rule 3(b) is specific that the learned Magistrate has to take note of the conditions of the dog and exercised the power in consonance with the object of the enactment and also the welfare of the animal and the same has not been considered.

25. The learned counsel appearing for the petitioner during the course of arguments, he also submits that they have not in respect of the money which the learned Magistrate has ordered for maintenance cost and the paramount consideration

is to take care of the animals which have been treated with cruelty and also to take care of the same and they are willing to continue the custody on the paramount interest of the welfare of the animals. It is also important to note that when the order has been challenged before this Court vide order dated 15.10.2020 ordered to handover the dogs to the custody of the petitioner herein considering the relevant provisions. He further submits that the petitioner does not want the cost of maintenance and the welfare of the animal is paramount.

26. This Court having considered the rules and the penal provisions passed an order having taken note of the factual consideration of the case on hand. It is also important to note that the Apex Court while considering Section 3 and Section 11 of the enactment further gone to the extent of invoking Section 51-A(g) and also Article 21 of the Constitution of India in the case of **Animal Welfare Board of India v. A. Nagaraja and Others** reported in **(2014) 7 Supreme Court Cases 547**.

27. Having perused the principles laid down in **Animal Welfare Board of India's** case (supra), particularly, in paragraph No.66, the Apex Court says that rights guaranteed to

the animals under Section 3, Section 11, etc. are only statutory rights. The same have to be elevated to the status of fundamental rights, as has been done by few countries around the world, so as to secure their honour and dignity. Rights and freedoms guaranteed to the animals under Section 3, Section 11, have to be read along with Articles 51-A(g) and (h) of the Constitution, which is the magna carta of animal rights. The Court also made elaborate discussion in paragraph No.67 with regard to Compassion and so also in paragraph No.68 with regard to Humanism. Further, in paragraph No.72 while considering the right to life, it is observed by the Apex Court as under:

"Right to life

72. 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 51-A(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. The right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. The right, not to be beaten, kicked, overridden, overloaded is also a right recognised by Section 11 read with Section 3 of the PCA Act. Animals also have a right against human beings not to be tortured and against infliction of unnecessary pain or suffering." x x x x x

28. Having taken note of the principles laid down in the Judgment, it is clear that the very object and wisdom of legislature have to be taken note of and also the expanding of

the definition and scope of Article 51-A(g) and (h) and also Article 21 of the Constitution of India, which says 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 of India. It is observed that animals' well-being and welfare have been statutorily recognized under Section 3 and Section 11 of the PCA 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 Section 3 and Section 11 of the PCA Act read with Article 51-A(g) and (h) of the Constitution of India.

29. When such being the case, the Magistrate ought to have taken note of the said fact into consideration. I have already pointed out that the allegation against the accused is that he is treating the animals with cruelty and also he is using the same for making the money particularly keeping the female animals for breeding purpose and the said aspect of greediness of the accused has not been taken care of by the learned Magistrate. The learned Magistrate comes to the conclusion that

the permission was not obtained by the Investigating Officer handing over the dogs from the Court, but ought to have taken note of the paramount consideration of the dogs which have been treated with cruelty and the report of the veterinary doctor says that the dogs are sustained injuries, instead of going on technicality ought to have taken note of the paramount consideration of the welfare of the animals that has not been done. Hence, I am of the opinion that the learned Magistrate has committed an error and it requires an interference of this Court.

30. In view of the discussions made above, I pass the following:

ORDER

- (i) The petition is allowed.
- (ii) The order dated 09.10.2020 passed in Crime No.181/2020 by the XXX ACMM, Bengaluru, is hereby set aside.
- (iii) The order passed by this Court vide order dated 15.10.2020 handing over the dogs to the custody of the petitioner, is made as absolute.

- (iv) It is also made clear in view of the submissions of the learned counsel for the petitioner that they are not for money for the maintenance of the dogs. Hence, there cannot be any order for payment of money to take care of the animals till the disposal of the case registered against the accused.

**Sd/-
JUDGE**

MD/cp*