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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2051/2015

PEOPLE FOR ANIMALS Petitioner
Through Mr.S.D. Windlesh, Adv.

versus

MD MOHAZZIM & ANR Respondents
Through Ms.Jasbir Kaur, APP for the State.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER
% **15.05.2015**

Crl.M.A. No. 7292/2015 & Crl.M.A. No. 7293/2015

Exemption allowed, subject to all just exceptions.

The applications are disposed of.

Crl.M.C. 2051/2015 & Crl.M.A. No. 7294/2015

Brief facts of the case are that an intimation was given to SHO PS Lajpat Nagar, New Delhi for violation of various provisions of Prevention of Cruelty (Capture of Animals) Rules, 1979. Police on 13th October, 2004 seized birds and animals and registered FIR against the owner. The same was shifted to recognized body of the Ministry of Environment and Forest, Govt. of India. The owner moved the application for release of the birds on superdari. The same was allowed by releasing the birds on superdari. The complainant i.e. People for Animal filed the revision petition. The revision petition was dismissed despite of arriving a finding that the respondent is not the owner of the birds they are not exotic and the respondent/alleged owner

has not committed any cruelty and therefore, the respondent cannot be deprived of his property if he is otherwise entitled for the same.

The present order at present is only confined to birds. Coloured photographs have been filed on behalf of NGO people for animals which would show that the birds were kept in small cages though it is not sure whether their wings and tails were cut or not. No order was passed to be released them in the open sky. I have been informed by the learned counsel for the petitioner i.e. NGO people for animals that more than thousands of birds are subjected to pain as the so called owner put them in small cages and sell them in the commercial market for his vested rights, despite of statutory and constitutional right to live with dignity.

Supreme Court has recently recognized the five fundamental rights of the animals including the right to live with dignity and announced twelve stringent measures/directives for the Govt. and other implementing authorities to stop cruelty on animals in A. Nagaraja & Ors. vs. Animal Welfare Board of India on 7th May, 2014.

It is argued that the so called owners were given superdari of birds without hearing the petitioner.

After hearing both sides, this Court is of the view that running the trade of birds is in violation of the rights of the birds. They deserve sympathy. Nobody is caring as to whether they have been inflicting cruelty or not despite of settled law that birds have a fundamental right to fly and cannot be caged and will have to be set free in the sky. Actually they are meant for the same. But on the otherhand they are exported illegally in foreign countries without availability of proper food, water, medical aid and other basic amenities required as per law. Birds have fundamental rights

including the right to live with dignity and they cannot be subjected to cruelty by anyone including claim made by the respondent. Therefore, I am clear in mind that all the birds have fundamental rights to fly in the sky and all human beings have no right to keep them in small cages for the purposes of their business or otherwise. The petition requires consideration.

Issue notice. Learned APP for the State accepts notice. Hence, issuance of notice to the State is dispensed with. However, notice shall be issued to respondent No.1, returnable on 28th May, 2015.

Till the next date of hearing, the operation of the impugned orders dated 20th October, 2014 and 10th March, 2015 shall remain stayed. Dasti.

MANMOHAN SINGH, J.

MAY 15, 2015/jk