

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.12930 of 2023

Arising Out of PS. Case No.-51 Year-2022 Thana- KHAGARIA District- Khagaria

=====

1. RAJESH MAHTO @ RAJESH KUMAR SON OF SRI RAMASHISH MAHTO @ RAM SINGH R/O WARD NO.20, VISHNUPUR CHATURBHUIJ, P.S.- MUFASSIL (BEGUSARAI), DISTRICT- BEGUSARAI (BIHAR)
2. KUMAR ALOK SON OF SRI ASHOK KUMAR CHOUDHARY R/O WARD NO.20, NAND GRAM HEMRA, P.S.- BEGUSARAI SADAR, DISTRICT- BEGUSARAI (BIHAR)

... ... Petitioner/s

Versus

THE STATE OF BIHAR

... ... Opposite Party/s

=====

*Acts/Sections/Rules:*

- *Sections 170, 171 and 420 read with Section 34 of the Indian Penal Code*
- *Societies Registration Act, 1860*
- *Sections 13(3), 14, 32(1), 32(2) and 34 of the Prevention of Cruelty to Animals Act, 1960*
- *Police Manual Appendix 1 Section 34 of the Police Act*

*Cases referred:*

- *State of Haryana and Others Vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335*

*Petition - filed to quash the order whereby CJM took cognizance for the offences punishable under Sections 170, 171 and 420 read with Section 34 of the Indian Penal Code against the petitioners.*

*Held - It nowhere appears that the State disputed the appointment of petitioners with SPCA. It appears that petitioners were entitled for “khaki uniform”, which appears reason for present prosecution. Hence, it can be gathered safely that prima-facie no cognizable offence is made out against petitioners from the bare perusal of the FIR and as such present case is covered by the guidelines as mentioned in Bhajan Lal case. (Para 11)*

*Petition is allowed. (Para 12)*

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.12930 of 2023**

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1.

RAJESH MAHTO @ RAJESH KUMAR SON OF SRI RAMASHISH MAHTO @ RAM SINGH R/O WARD NO.20, VISHNUPUR CHATURBHUI, P.S.- MUFASSIL (BEGUSARAI), DISTRICT- BEGUSARAI (BIHAR)
2.

KUMAR ALOK SON OF SRI ASHOK KUMAR CHOUDHARY R/O WARD NO.20, NAND GRAM HEMRA, P.S.- BEGUSARAI SADAR, DISTRICT- BEGUSARAI (BIHAR)

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s

:

Mr. Mayank Shekhar, Adv

:

Mr. Amritya Raj, Adv

For the Opposite Party/s

:

Mr. Arun Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA  
ORAL JUDGMENT**

**Date : 13-02-2025**

Heard learned counsel for the petitioners and  
  
learned counsel for the respondent.

2. The present quashing petition has been preferred to quash the order dated 08.06.2022 passed in Chitragupta Nagar Khagaria P.S. Case No. 51 of 2022, where learned CJM, Khagaria took cognizance for the offences punishable under Sections 170, 171 and 420 read with



Section 34 of the Indian Penal Code against the petitioners.

3. The brief case of prosecution as it appears out of self-statement of Sub-Inspector of Police, Sanjeev Kumar (first informant) that on 17.01.2022 at around 15:30 hours he received information that two persons in police uniform impersonating themselves as sub-inspector, roaming around in the Collectorate premises and were looking suspicious. Upon information, the informant alongwith other police officials reached Collectorate and found petitioners near the stairs, wherein petitioner no. 1 was wearing uniform impersonating as sub-inspector and a badge where "SPCA" was written with steel and the petitioner no. 2 was in civil dress. It is further alleged that upon seeing police personnel both petitioners tried to escape but informant and his team caught them after chasing. It is further stated that both petitioners were brought to the police station, where after verification and inquiry it was found that petitioners belong to a society called as "Society for the Prevention of Cruelty to Animals" (SPCA) and were dressed similar to police officials without any authority, with an intention to deceive general



public.

5. Learned counsel appearing on behalf of petitioners submitted that SPCA ("Society for the Prevention of Cruelty to Animals") was incorporated under Societies Registration Act, 1860 on 22.08.1929, having Registration No. 178. It is pointed out that the society is running since long even before independence of this country and working for preventing cruelty to animals and therefore the work of society was recognized by the Animal Welfare Board (Ministry of Environment and Forest, Government of India). The society is further affiliated with World International SPCA having office at London. It is pointed out that society appointed petitioner no. 1 namely Rajesh Mahto @ Rajesh Kumar through its letter dated 01.07.2019 bearing letter no. 47 of 2019 and also petitioner no. 2 namely Kumar Alok through its letter dated 20.01.2021 bearing letter no. 5 of 2021, for the post of sub-inspector and inspector in SPCA. It is pointed out that Government of Bihar had issued notification in terms of Section 14 of the Prevention of Cruelty to Animals Act, 1890, where the persons nominated by SPCA



were given statutory power of inspectors. The aforesaid notification referred as annexure no. 4. The Prevention of Cruelty to Animals Act, 1890 was repealed by Prevention of Cruelty to Animals Act, 1960. It is submitted that Inspector General of Police, Bihar through its letter dated 29<sup>th</sup> November, 1961 approved the uniform for the inspectors of SPCA. It is pointed out that State of Bihar again issued a notification being S.O. No. 4273 dated 7<sup>th</sup> June 1990 & S.O. No. 4275 dated 7<sup>th</sup> June 1990 in terms of Sections 13(3), 32(1), 32(2) and 34 of the Prevention of Cruelty to Animals Act, 1960, whereby persons appointed by SPCA were again conferred power of inspectors with a reference to the aforesaid provisions.

6. It is further submitted by learned counsel that police order no(s). 69 and 78 were published in terms of Police Manual Appendix 1 Section 34 of the Police Act. In view of aforesaid police orders, Ministry of Home Affairs, Government of Bihar, issued a letter bearing Letter No. 7366 dated 14.08.2014 to the office Director General of Police, Bihar directing him to circulate the letter in order to assist



SPCA to prevent cruelty to animals. It is pointed out that in terms of aforesaid, members of SPCA are duly authorised to refer themselves as inspector and sub-inspector for specified purpose and they are entitled to wear uniform with SPCA badge. It is pointed out that even from the face of FIR, it is not appearing that petitioner was intended to cheat any person and allegation to deceive public appears based upon presumption.

7. While concluding the argument, learned counsel for the petitioners submitted that from the bare perusal of FIR and in view of aforesaid referred documents no *prima-facie* case is made out against petitioners and therefore, impugned order taking cognizance is fit to be quashed and set aside. In support of his submissions learned counsel relied upon the report of Hon'ble Apex Court decision in the case of **State of Haryana and Others Vs. Bhajan Lal and Others** reported in **1992 Supp (1) Supreme Court Cases 335**.

8. The counter affidavit dated 22.12.2023 as filed by the State of Bihar not appears to contradict any of the



annexures and letters referred above by learned counsel for the petitioners, which suggests on its face that State is not in position to dispute the submission as advanced by learned counsel for the petitioners.

9. It would be apposite to reproduce annexure no(s). 4, 5, 6, 7, 8 and 9 here in below :-

**Annexure-4**

The 11th July, 1944

No. 2898. J - In exercise of the powers conferred by Sub. section (2) of section 7-A of the Prevention of Cruelty to Animals Act, 1890 (XI of 1890), and in supersession of notification no. 1132.J., dated the 5th April, 19, the Governor of Bihar is pleased to authorise persons appointed as Inspectors by the Bihar Provincial Society for the Prevention of Cruelty to Animals, to exercise the powers conferred by the said sub section. In respect of phooka or doom dev performed on any animals within the limits of their respective jurisdictions in the province of Bihar.

By order of the Governor of Bihar  
W.W. DALZIEL, Secy.

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True copy of letter no. 1607/J dated Patna, the 9th February, 1950 from Sri S.P. Singh, A-11/1949 Esqr., B. L., Under Secretary to Government of Bihar, Judicial Department addressed to All Commissioners of Division (except Patna) regarding procedure for trial of cases relating to cruelty to animals.

I am directed to forward copies of the correspondence



noted in the margine and to say that Government agree with the views expressed by the Commissioner of the Patna Division. Necessary instructions may be given to the Magistrate in your Division.

Yours faithfully,  
Sd/-S. P SINGH,  
Under Secretary to Govt.

**Annexure-5**

Memo No. 10946 XLIII-38-78-61.  
Office of the Inspector General of Police, Bihar.  
Patna, the 29 November, 1961.  
Aswin, 1883(C)

To

All Ss. P.

Sub.: Uniform of the G.P.C.A Inspectors.

The Inspector-General of Police, Bihar has approved the suggested change in the uniform and insignia of the S.P.C.A. Inspectors issued by the Hony. Secretary, State, S.P.C.A., Bihar from now.

The changes in uniform and insignia of the S.P.C.A. Inspectors are as under-

1. Senior Inspectors - Khaki Uniform consisting letter and district with the cap and three stars with blus cross.

(2) Junior Inspectors - Uniform as above with two stars with blus cross. Kindly acknowledge receipt of this letter.

Sd/-  
21/11  
A.I.G. of Police, Bihar, Patna.





Copy forwarded to the Honorary Secretary, States S.P., Bihar with preference to his memo no. 4676 dated 6.10.61 for information.

3. All running D.Is.G. for information.

### **Annexure-6**

बिहार सरकार  
पशुपालन एवं मत्स्य विभाग  
(पशुपालन)  
अधिसूचना

एस. ओ. संख्या-4273

पटना-15, दिनांक 7.6.90

..... / पशुओं के प्रति क्रूरता निवारण अधिनियम, 1960

(अधिनियम 59, 1960) को पारा-13 को उप-धारा (3) परा 32 को उप पारा (1) एवं (2) तथा धारा 34 को शक्तियों बिहार राज्यपाल द्वारा राज्य पशु क्लेश निवारण समिति, बिहार, के द्वारा नियुक्त निरीक्षकों में निहित की जाती है और वे बिहार राज्य के अपने-अपने क्षेत्राधिकार को सीमा में निरीक्षक का कार्य करेंगे।

2- मंत्री, स्टेट एस.मो.सो.ए. निरीक्षकों पर केवल तकनीकी नियंत्रण रखेंगे। निरीक्षक पूर्व की भांती आरक्षी अधीक्षक एवं उप-आरक्षी अधीक्षक को सौंपी देख रेख में निरीक्षण एवं अभियोजन को कार्य करेंगे।

3- प्रशासनिक नियंत्रण अनुमंडल पदाधिकारी/जिला पदाधिकारी के जिम्मे रहेगा। जिला पदाधिकारी स्वयं या किसी अपर समाहर्ता के द्वारा और अनुमंडल पदाधिकारी स्वयं या किसी उप-समाहर्ता के द्वारा इनपर कड़ी-से-कड़ी निगरानी रखेंगे।

4- निरीक्षकों के खिलाफ जो भी लिखित/अलिखित शिकायतें प्राप्त होंगी उनको जांच कराई जायेगी।

5- निरीक्षकों द्वारा सड़कों पर चेक पोस्ट को व्यवस्था लागू नहीं की जायेगा। किसी विशेष परिस्थिति में जिला पदाधिकारी को पूर्वानुमति से



ही चेक पोस्ट लगाये जायेंगे।

6— इनके कार्यों को समीक्षा प्रति माह जिला एवं अनुमंडल स्तर पर की जायेगी।

7— पशुपालन विभाग को अधिसूचना संख्या— 8286 दिनांक 18—9—87 को वापस लेते हुए रद्द किया जाता है।

8— पशुपालन निदेशालय में पशुओं के प्रति क्रूरता निवारण अधिनियम 1960 के द्वारा बिहार राज्य में लागू प्रावधानों के क्रियान्वयन एवं प्रशासन को देखने के लिए एक कोषांग खोला जायगा।

9— यह आदेश निर्गत होने की तिथि से प्रभावी समझा जायेगा।

संचिका संख्या — 5 एम (3) 6021 / 90

बिहार राज्यपाल के आदेश से,

ह. / —

(अवधेश कुमार सिंह)

सरकार के अपर सचिव

**Annexure-6/2**

Government of Bihar  
Department of Animal Husbandry and Fisheries  
(Animal Husbandry)

.....

**NOTIFICATION**

S.O. No. 4275                      Patna-15, the 7th June, 1990

The Governor of Bihar is pleased to vest the powers under Sub-section (3) of Section-13, sub-sections (1) and (2) of Section "32 and Section 34" of the Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960) to the Inspectors appointed by



the State Society for Prevention of Cruelty to Animals, Bihar and they shall exercise the powers of inspection within the limits of their respective jurisdiction in the State of Bihar.

2. The Secretary, State S.P.C.A. Bihar shall exercise only technical control over the Inspectors of S.P.C.A. This Inspectors will do inspection and Prosecution - work under the direct supervision of the Superintendent of Police/Deputy Superintendent of Police, as before.

3. The administrative control shall remain with the District Magistrate/Sub-Divisional Magistrate. The District Magistrate himself or through any Additional District Magistrate or Sub-divisional Magistrate himself or through any Deputy Collector shall exercise strict control over them.

4. Any written/un-written complaint received against the Inspector shall be investigated.

5. No check-post on the roads shall be established by the Inspectors. In special circumstances check-post shall be established only with the prior permission of the District Magistrate.

6. Monthly review of the work of Inspectors shall be done at the District and Sub-divisional level.

7. The Notification No. 8286 dated 18.9.87 issued by the Animal Husbandry Department is withdrawn and cancelled.

8. A Cell in the directorate of the Animal Husbandry will be opened for looking into the implementation and administration of the provision of the Prevention of Cruelty to Animals Act 1960 enforced in the State of Bihar.

9. It shall come into force from the date of issue of the order.



File No. 5M(3)-6021/90

BY THE ORDER OF GOVERNOR OF BIHAR

Sd/-

(A.K. SINGH)

ADDITIONAL SECRETARY TO GOVERNMENT

**Annexure-7**

POLICE ORDER NO 69

Co-operation between Police officers and Inspectors of the society for Prevention of Cruelty to Animals.

The attention of all officers is drawn to the necessity for full co-operation with the Inspectors of the society for the prevention of cruelty to Animals.

Police officers on their own initiative must take all possible action against persons found ill treating animals, as well as affording whatever assistance they can to the Inspectors of the Society. It is suggested that in order to facilitate prosecutions superintendents should see their District Magistrates and request that a particular Magistrate should be deputed to try cases under the Prevention of Cruelty in Animals Act at fixed hours on particular days each week.

While it is not intended that court officers should undertake the prosecution of these cases, they must nevertheless give all the assistance they are. It is clear that if the Inspectors of the Society are to spend most of the time prosecuting cases, they cannot spend adequate time in detecting offences. The Inspectors are unable to conduct the prosecution themselves for unavoidable reasons or when the prosecution is difficult and the Inspectors need legal advice or other assistance.



In order further to facilitate these prosecutions, the S.P.C.A.

Inspectors have been directed to send carbon copies of their reports to the A.P.P. direct in order that he may enter them in the Non-first Information Report Register immediately and take necessary action to expedite the receipt of the original reports from police stations.

The entry of the carbon copies in the N-on. First Information Report Register should ensure that no report is overlooked and that delays can be promptly checked.

Manual reference-see in P.M. Appx. I section 34 of the Police Act.

#### POLICE ORDER NO. 78

Co-operation between Police Officers and Investigations of the directing for Presentation of Cruelty in Animal.

The prevention of all officers is drawn to the for fill intimation with the Inspection of the Society for the Prevention of the Animals.

Police officers on their own initiative must take all possible action for found ill treating animals whatsoever they own to the Inspection of the Society.

The suggested that in order to facilitate preventions Superintendent of the should are their District Magistrate and that a particular should be deputed to try owns under the Prevention of Cruelty to Animals Act at fixed hours on a particular day or days



each week.

While it is not intended that court officers should undertake the prevention of these common they must, nevertheless, give all the assistance they not. It is clear that if the Investigation of the Society are of their time prosecuting uses any cannot spound adequate time detecting offences. A.D.P. showing the directed to assist the prosecutions themselves for reasons, or when the promotion is difficult and the Inspectors used legal advice or other assistance.

In order further to facilitate these prosecutors the S.P.C.M. Instructors have been directed to send carbon copies of their reports so the A.D.P. direct in order that he may enter them in the Non-First Information Report Register immediately and take necessary action to expedite the receipt of the original reports from police-stations. The entry of the carbon people in the Non-First Information Report Register should ensure that no report is overlooked and that delays on the promptly checked.

Manual reference-See section 84 (Appendix I) of Police Act.

### **Annexure-8**

पत्र संख्या-स्टे0/विविध-17/2017-...../

बिहार सरकार

गृह (विशेष) विभाग

प्रेषक,

राजीव रंजन सिन्हा

सरकार के विशेष सचिव।

सेवा में,

पुलिस महानिदेशक,

बिहार, पटना।

पटना, दिनांक-

अगस्त, 2014



Patna High Court CR. MISC. No.12930 of 2023 dt.13-02-2025  
14/19

विषय:— बिहार के विभिन्न जिलों में पदस्थापित स्टेट एस.पी.सी.ए. बिहार के निरीक्षकों को पशु कूरता से संबंधित अपराधों को रोकने हेतु आवश्यक सहयोग तथा सुरक्षा प्रदान करने से संबंधित निर्देश/आदेश निर्गत करने के संबंध में।

महाशय,

निदेशानुसार उपर्युक्त विषयक श्री रत्नेश्वर प्रसाद सिंह, सचिव, स्टेट एस.पी.सी.ए. बिहार, पटना के पत्रांक 39/14 दिनांक 23.07.2014 की छाया प्रति अनुलग्नक सहित संलग्न करते हुए कहना है कि पुलिस आदेश सं.-69 के आलोक में राज्य के सभी जिला पदाधिकारी तथा पुलिस अधीक्षक को स्टेट एस.पी.सी.ए. निरीक्षक को पशु कूरता के विरुद्ध कार्रवाई करने में सहयोग प्रदान करने से संबंधित निर्देश दिया गया है।

अतः अनुरोध है कि पुलिस आदेश सं.-69 का अनुपालन सुनिश्चित कराया जाय तथा अपने अधीनस्थ सभी पुलिस पदाधिकारियों को निदेशित करने की कृपा की जाय कि स्टेट एस.पी.सी.ए. निरीक्षकों को पशु कूरता से संबंधित अपराधों को रोकने हेतु अन० यथोक्त।

विश्वासभाजन

ह. /—

सरकार के विशेष सचिव

### **Annexure-9**

#### **PATNA HIGH COURT** **NOTIFICATION**

The 11th September, 1997  
20th, Bhadra, 1919.

No. 416A: In exercise of power conferred upon the High Court under Sub-section (1) of Section 13 of the Code of Criminal Procedure, 1973 (Act-2 of 1974), the Executive Officers named in column No. 2 of the table given below are appointed as Special Judicial Magistrate of second Class for a period of one year with effect from the date of Communication of notification to them within the territorial jurisdiction mentioned against their names in column No. 3 of the table, to try case under the prevention of cruelty to Animals Act, 1960, which they are competent to try under the Code of Criminal Procedure, 1973.

They are also vested with the powers conferrable on a



Judicial Magistrate of the Second Class to try summarily the cases under the aforesaid act as are covered under section 261 of the Code of Cominal Procedure, 1973.

They are also vested with the powers to take cognizance of such cases which they are authorised to try in their territorial jurisdictions.

Sl. No.	Name of officers with their designation & places of posting.	Jurisdiction powers are being vested for which
1	2	3
1.	Sri Raghvendra Jha, Executive Magistrate, Khagaria	For the area of entire Khagaria District.

By order of the High Court,  
Manohar Lal Visa,  
Registrar Central

\*\*\*\*\*

10. It would also be apposite to reproduce the paragraph no. 102 of **Bhajan Lal Case (supra)** which reads as under:

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the





Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

**(1)** Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

**(2)** Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

**(3)** Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do



not disclose the commission of any offence and make out a case against the accused.

**(4)** Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

**(5)** Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

**(6)** Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

**(7)** Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with



a view to spite him due to private and personal grudge.”

11. In view of aforesaid factual and legal discussions and by taking note of the counter affidavit of the State, it nowhere appears that the State disputed the appointment of petitioners with SPCA. From different annexures as referred and reproduced here-in-above, particularly, Annexure-5, it appears that petitioners were entitled for “khaki uniform”, which appears reason for present prosecution. Hence, it can be gathered safely that *prima-facie* no cognizable offence is made out against petitioners from the bare perusal of the FIR and as such present case is covered by the guidelines as mentioned in para nos. 1 & 3 of **Bhajan Lal Case (supra)**, hence impugned order of cognizance dated 08.06.2022 with all its consequential proceedings, *qua*, both above named petitioners arising thereof as passed in Chitragupta Nagar Khagaria P.S. Case No. 51 of 2022, pending before learned CJM, Khagaria is hereby quashed and set aside.

12. Hence, this application stands allowed.



13. TCR (Trial Court Records), if any, be returned to  
the learned Trial Court alongwith the copy of this judgment.

**(Chandra Shekhar Jha, J.)**

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	13.02.2025
Transmission Date	13.02.2025

