



CGHC010063392021

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 274 of 2021

Md. Vasim Qurashi S/o Md. Kalim Quarshi Aged About 30 Years R/o Govindpur, Police Station Jari, District Gumla (Jharkhand).

--- **Petitioner(s)**

versus

The State Of Chhattisgarh Through District Magistrate, Jashpur, District Jashpur Chhattisgarh.

--- **Respondent(s)**

{Cause Title Taken from Case Information System}

For Petitioner(s)	: Mr. Rishikant Mahobia, Advocate.
For Respondent(s)	: Mr. Vivek Sharma, Advocate General assisted by Mr. Amit Buxy, learned Deputy Government Advocate.
Amicus Curiae	: Ms. Naushina Afrin Ali, Senior Advocate assisted by Ms. Ankita Gouraha, Advocate.
Date of Hearing	: 15/07/2026
Date of Order	: 22/07/2026

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Ravindra Kumar Agrawal, Judge

C.A.V. Order

Per Ramesh Sinha, Chief Justice

1. Heard Mr. Rishikant Mahobia, learned counsel for the petitioner. Also heard Mr. Vivek Sharma, learned Advocate General for the State/respondent as well as Ms. Naushina Afrin Ali, learned Senior Advocate assisted by Ms. Ankita Gouraha, *Amicus Curiae*.
2. By this petitions filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks to challenge the order dated 02.01.2021 passed by the learned Sessions Judge, Jashpur, District

Jashpur, in Criminal Revision No. 7/2020 by which the order dated 08.12.2020 passed by the learned Chief Judicial Magistrate, Jashpur, in in Criminal Case No. 287/2020 rejecting the application filed by the petitioner for grant of the cattle on *Supurdnama*, has been affirmed.

3. The facts, in brief, as projected by the petitioner is that the petitioner is owner of 28 buffaloes, which were seized pursuant to FIR No.241/2020, registered at Police Outpost-Manora, District-Jashpur against him and co-accused persons for offences under Sections 4,6 and 10 of the Chhattisgarh Agricultural Cattle Preservation Act, 2004 (*for short, the Act of 2004*) and Section 11 of the Prevention of Cruelty to Animals Act, 1960 (*for short, the Act of 1960*).
4. As per the FIR, a truck bearing registration No. HR-55 Q-5980, which was plying from the State of Chhattisgarh to Jharkhand Slaughter house carrying 23 male buffaloes and 5 female buffaloes were seized and above-stated offences were registered. The petitioner made an application under Section 457 of the Cr.P.C for grant of interim custody of said cattle, which was rejected by the Chief Judicial Magistrate, Jashpur on 8.12.2020 in the light of Section 7 of the Act of 2004, which has been affirmed by the revisional Court and custody has been directed to be given to the registered Goshala in the light of Section 7 of the Act of 2004 and decision of this Court in the matter of ***Jalil Ansari and Ors. v. State of C.G. and Ors.*** { 2012(1)CGLJ 176}, against which, this petition under Section 482 of the Cr.P.C has been filed.
5. Before the learned Single Judge, the learned counsel for the petitioner had submitted that the petitioner being owner of the cattle was entitled to have interim custody of seized cattle as there was no express statutory bar contained in the Act of 2004 and Section 7 of the Act of 2004 was only enabling provision for keeping the seized cattle till the conclusion of

prosecution, if application for interim custody is not made or it is rejected, but it will certainly not bar the application for interim custody under Section 451 and 457 of the Cr.P.C (now Sections 497 and 503 of the *Bharatiya Nagrik Suraksha Sanhita, 2023*). It was contended that the decision rendered by this Court in **Jalil Ansari** (supra) requires reconsideration.

6. In **Jalil Ansari** (supra), a Single Bench of this Court held as under:-

“12. The Act of 2004 is therefore, special enactment prohibiting slaughter, prohibition of possession and transport or sale of Agriculture cattle. The Act is applicable in respect of the Agriculture cattle being animal specified under the schedule appended to the Act. The Act contains special provision with regard to interim custody/possession of seized Agriculture cattle. It clearly mandates that till the conclusion of prosecution, seized Agricultural cattle will be under the custody of nearest registered Goshala, Gosadan, Gorakshan sansthan or other registered Sansthan. Therefore, till the conclusion of prosecution, interim custody of seized Agriculture cattle could only be given to specified institutions. The provision contained in Section 7 of the Act of 2004 therefore, impliedly prohibits interim custody of Agriculture cattle to any person or institution other than those specified in Section 7 of the Act. In view of the provisions contained in Section 18 of the Act, provisions of Section 7 will have overriding effect notwithstanding anything contained in any other law for the time being in force.

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19. Learned counsel for the respective petitioners however submitted that even though, the interim custody of the Agriculture cattle could not be given to the petitioners, it could not be given to the private individuals/villagers. In this regard, it is suffice to say that the provisions contained in Section 7 are unambiguous and interim custody of Agriculture cattle could be granted only to those institutions, which have been specified in Section 7 and to none other. The petitioners in the aforesaid case shall be at liberty to move application before the Court below, if in any case, interim custody of the cattle has been granted to any person other than those specified in Section 7 of the Act of 2004. On such applications being filed, the trial Court shall pass necessary order ensuring that interim custody of Agriculture cattle is granted only to the persons/institutions specified in Section 7 of the Act of 2004.

20. Subject to the aforesaid observations, all the aforesaid petitions (Cr.M.P. No.270, 391, 433, 471, 472 & 473 of 2011) are without any basis and are hereby dismissed.”

7. In the present matter, the learned Single Judge was of the opinion that the decision rendered by another co-ordinate Single Bench of this Court in ***Jalil Ansari*** (supra) requires reconsideration and as such, the following question was referred to be answered by this Bench:

“Whether Section 7 of the Act of 2004 impliedly bars the jurisdiction of criminal Court under Sections 451 and 457 of the Cr.P.C for grant of interim custody of the cattle seized in the FIR registered for commission of offence(s) under the provisions of the Chhattisgarh Agricultural Cattle Preservation Act, 2004?”

8. Mr. Rishikant Mahobia, learned counsel for the petitioner would submit that the petitioner in the present case, alongwith other co-accused persons, stood acquitted in the trial and as such, nothing survives in this petition for adjudication. However, only the question referred by the learned Single Judge remained to be answered by this Hon’ble Bench.
9. The aforesaid fact was taken note of by this Bench on 02.07.2026. On the said date, the learned Advocate General as well as Ms. Naushina Afrin Ali, learned Senior Advocate were requested to assist the Court and as such, the matter was further directed to be listed on 15.07.2026.
10. Mr. Vivek Sharma, learned Advocate General would submit that on 17.11.2020, FIR No. 241/2020 was registered at Police Outpost Manora, Police Station Aasta, District Jashpur against the petitioner and co-accused persons under Sections 4, 6, and 10 of the Act of 2004 and Section 11 of the Act of 1960. A truck bearing registration No. HR-55 Q-5980 carrying 28 agricultural cattle (23 male buffaloes and 5 female buffaloes) allegedly being transported to a slaughterhouse in Jharkhand was seized. The petitioner filed an application under Section 457 of the Cr.P.C. seeking interim custody of the seized cattle. The learned Chief Judicial Magistrate, Jashpur rejected the application on 08.12.2020 in light of Section 7 of the Act of 2004. This rejection was affirmed by the

Revisional Court, directing that interim custody be given only to a registered *Goshala* in accordance with Section 7 of the Act of 2004 and the coordinate Bench decision of this Hon'ble Court in ***Jalil Ansari*** (*supra*). While hearing this petition, the learned Single Judge took a divergent view from ***Jalil Ansari*** (*supra*). The learned Single Bench observed that Section 7 is merely an enabling procedural provision that does not expressly bar the jurisdiction of criminal courts under Sections 451 and 457 Cr.P.C. Applying the maxim "*expressum facit cessare tacitum*" and strict construction of jurisdictional bars, the Single Bench referred the matter for the constitution of a Larger Bench. During the pendency of the reference, the trial concluded. The learned Magistrate, Jashpur, in Criminal Case No. 821/2021, acquitted the petitioner and co-accused on 27.04.2024 giving them the benefit of doubt as independent prosecution witnesses turned hostile.

11. Section 7 of the Act of 2004 provides:

"7. Possession of seized agriculture cattle and Monthly reports.—Till the conclusion of prosecution, seized Agricultural cattle will be under custody of nearest registered Goshala, Gosadan, Gorakshan sansthan or other registered Sansthan and they are required to provide monthly report to concerned court in prescribed proforma."

12. According to learned Advocate General, the legislature has employed the unambiguous phrase "*will be under custody of...*". Unlike general enabling statutes, Section 7 leaves no room for judicial discretion regarding *where* the cattle must be housed during active prosecution. By specifying that custody during prosecution *will be* with registered *Goshalas/Sansthans*, the statute by necessary implication excludes all other categories of custodians, including the ostensible owner or accused.

13. Section 18 of the Act of 2004 states that *"The provisions of this Act shall have an overriding effect notwithstanding anything contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act."* When Section 7 is read alongside the non-obstante clause of Section 18, any general procedural law (including Sections 451/457 Cr.P.C) inconsistent with the mandatory placement prescribed under Section 7 stands overridden.
14. The statutory framework of the Cr.P.C itself recognizes the supremacy of special local laws: Section 4(2) Cr.P.C mandates that all offences under any other law shall be dealt with under Cr.P.C, *"subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."* Section 5 Cr.P.C (Saving Clause) expressly preserves special jurisdiction or powers conferred by any special law, declaring that nothing in the Code shall affect any special law or local law in force. Consequently, general powers under Section 451/457 Cr.P.C yield completely to the special statutory mechanism of Section 7 of the Act of 2004. The learned Single Judge in the referral order dated 18.03.2021 relied upon the maxim *"Expressum facit cessare tacitum"* (express mention of one thing implies exclusion of the other) to hold that because Section 7 does not *expressly* state that Cr.P.C is barred or that release is prohibited (unlike Section 6E of the Essential Commodities Act or Section 47D of the Excise Act), general Cr.P.C powers remain intact.
15. Mr. Sharma would submit that when a statute positively commands that property *"will be under custody of specified institutions till conclusion of prosecution"*, ordering interim custody to an accused directly violates the affirmative statutory command. An express positive mandate excludes contradictory general discretion. The Act of 2004 was enacted to prohibit

slaughter and illegal transport of agricultural cattle. If courts exercise general discretion under Section 451/457 Cr.P.C to hand seized cattle back to the very transporters/accused facing charges of smuggling them to slaughterhouses, the mischief sought to be suppressed by the legislature will be actively perpetuated. Section 7 of the Act of 2004 read with Section 18 of the said Act is a special, mandatory legislative enactment that circumscribes and impliedly bars the general discretion of criminal courts under Sections 451 and 457 of the Cr.P.C to grant interim custody of seized cattle to any accused, transporter, or private individual during the pendency of prosecution. Till the conclusion of trial, custody can only be vested in the specified statutory institutions (*Goshala, Gosadan, Gorakshan Sansthan*, or other registered *Sansthans*). The judgment rendered by the coordinate bench in **Jalil Ansari** (supra) lays down the correct proposition of law and warrants reaffirmation. In support of his contentions, Mr. Sharma would place reliance on the decision of the Apex Court in **Shri Chatrapati Shivaji Gaushala v. State of Maharashtra** {2022 SCC OnLine SC 1402}, **State of M.P. v. Uday Singh** {(2020) 12 SCC 733}, **State of M.P. v. Kallo Bai** {(2017) 14 SCC 502}, **State of Karnataka v. K.A. Kunchindammed** {(2002) 9 SCC 90}.

16. Ms. Naushina Afrin Ali, learned *Amicus Curiae*, would submit that the issue assumes considerable practical significance because seizures of cattle under the Act of 2004 are frequent and applications for interim custody are routinely filed before criminal courts. Ms. Ali would submit that divergent judicial opinions have arisen on whether the confiscatory mechanism contained in Section 7 of the Act impliedly excludes the jurisdiction of the Magistrate under Sections 451 and 457 of the Cr.P.C. to grant interim custody pending investigation, trial or confiscation

proceedings. The resulting uncertainty has necessitated the present reference. The controversy must be examined in the light of settled principles of statutory interpretation. Exclusion of the jurisdiction of ordinary criminal courts cannot be readily inferred unless the legislative intent is expressed in clear and unambiguous language or follows by necessary implication from the statutory scheme. Courts ordinarily lean in favour of preserving, rather than excluding, judicial remedies, particularly where such jurisdiction operates as a safeguard against arbitrary deprivation of property. The present issue, therefore, extends beyond a question of statutory construction and directly implicates the constitutional guarantees of fairness, judicial oversight and protection against arbitrary executive action embodied in Articles 14, 21 and 300A of the Constitution. The reference is not concerned with the existence of the competent authority's power to confiscate under Section 7 of the Act of 2004. That power is undisputed. The limited question is whether such power, by necessary implication, excludes the Magistrate's jurisdiction to grant interim custody under Sections 451 and 457 Cr.P.C. Confiscation and interim custody operate in distinct fields. Confiscation determines the final disposition of the seized property upon fulfilment of the statutory conditions, whereas an order under Sections 451 or 457 Cr.P.C. merely regulates temporary custody during the pendency of criminal or confiscatory proceedings. The former is a final statutory consequence; the latter is an interlocutory measure intended to preserve the property and regulate its custody until adjudication. Unless the statute expressly or by necessary implication provides otherwise, both jurisdictions are capable of harmonious coexistence. The Act of 2004, though a self-contained enactment governing prohibition, seizure and confiscation, contains no provision expressly excluding the jurisdiction of criminal

courts under the Code of Criminal Procedure. Section 7 of the Act of 2004 merely empowers the competent authority to confiscate cattle and other property used in the commission of the offence. It neither regulates nor prohibits the grant of interim custody by a Magistrate. The absence of any express exclusion is significant. The question, therefore, is whether such exclusion can nevertheless be inferred by necessary implication. In construing a penal statute, particularly one affecting civil rights and criminal procedure, courts cannot read into the enactment words which the legislature has consciously omitted. As held in ***Padma Sundara Rao v. State of Tamil Nadu*** (2002) 3 SCC 533, a casus omissus cannot be supplied except in cases of clear necessity, and in ***Union of India v. Deoki Nandan Aggarwal*** {1992 Supp (1) SCC 323}, the Supreme Court reiterated that courts cannot rewrite legislation under the guise of interpretation. The consequences of accepting an implied bar are equally significant. Such an interpretation would deprive persons entitled to possession of seized cattle of the statutory remedy available under Sections 451 and 457 Cr.P.C., notwithstanding the absence of any express prohibition. It would permit continued executive retention of property without effective judicial supervision and thereby raise serious concerns under Articles 14, 21 and 300A of the Constitution. As explained in ***E.P. Royappa v. State of Tamil Nadu***, {(1974) 4 SCC 3}, arbitrariness is antithetical to the rule of law and every procedure affecting civil rights must satisfy the test of fairness, justice and reasonableness. Article 300A further mandates that no person shall be deprived of property save by authority of law. While seizure may be authorised by statute, prolonged deprivation of possession without judicial oversight cannot readily be presumed in the absence of an express legislative mandate. The constitutional dimension assumes

greater significance because the subject matter of the present proceedings consists of living animals.

17. Ms. Ali would next submit that the Act of 2004 is undoubtedly a welfare legislation enacted in furtherance of the constitutional directives contained in Articles 48 and 51A(g) to preserve agricultural cattle. At the same time, being a penal statute, its provisions affecting civil rights must receive strict construction. Recognition of the Magistrate's jurisdiction does not frustrate the legislative objective. On the contrary, as observed by the Supreme Court in ***Animal Welfare Board of India v. A. Nagaraja*** {(2014) 7 SCC 547}, humane treatment of animals is itself a constitutional obligation. In appropriate cases, interim custody to a *bona fide* owner, subject to stringent conditions such as execution of bonds, furnishing of security and production of the cattle whenever required, may better secure both the welfare of the animals and the efficacy of confiscation proceedings than prolonged detention in overcrowded shelters. Accordingly, the power of confiscation under Section 7 of the Act of 2004 neither expressly nor by necessary implication excludes the jurisdiction of the Magistrate under Sections 451 and 457 Cr.P.C. The two jurisdictions operate at different stages, serve different purposes and are capable of harmonious coexistence. To infer an implied bar in the absence of clear legislative language would be contrary to settled principles of statutory interpretation and inconsistent with the constitutional guarantees of fairness, judicial oversight and protection against arbitrary deprivation of property under Articles 14, 21 and 300A of the Constitution.
18. We have heard learned counsel appearing for the parties as well as the learned *Amicus Curaie* on the question referred by the learned Single Judge.

19. The controversy referred to this Bench lies within a narrow compass. The issue is not whether the criminal Court possesses general powers under Sections 451 and 457 of the Cr.P.C. (now Sections 497 and 503 of the BNSS, 2023) to pass appropriate orders regarding interim custody of seized property. The only question is whether the exercise of such general power survives where a special enactment, namely the Act of 2004, itself provides a specific statutory mechanism governing the custody of agricultural cattle seized for offences under the Act. It is equally well settled that where a special enactment creates rights, liabilities and a complete mechanism for dealing with a particular subject, the provisions of the special statute prevail over the general provisions contained in the Code. Sections 4(2) and 5 of the Cr.P.C. expressly preserve the operation of special statutes and recognise that offences under special enactments are to be dealt with in accordance with the procedure prescribed therein, unless the special statute provides otherwise. The Code, therefore, does not operate in isolation. It itself acknowledges that its provisions yield where the Legislature has enacted a special law governing the same field.
20. The principal submission advanced on behalf of the learned Amicus Curiae is that Section 7 merely provides a place where the seized cattle may be kept during the pendency of prosecution and does not expressly prohibit the Magistrate from exercising powers under Sections 451 and 457 Cr.P.C. This submission, attractive at first blush, cannot withstand a closer scrutiny of the statutory language as Section 7 provides that "*Till the conclusion of prosecution, seized agricultural cattle will be under custody of the nearest registered Goshala, Gosadan, Gorakshan Sansthan or other registered Sansthan...*" The Legislature has consciously employed the expression "will be under custody". The

provision does not employ permissive expressions such as "may", "can", or "ordinarily". Nor does it leave the matter to the discretion of the Court. The legislative command is mandatory, certain and exhaustive. Once seizure takes place for offences under the Act, the statute itself determines the custodian of the seized cattle till the conclusion of prosecution. An express prohibition is not the only method by which legislative intent may be manifested. A positive statutory command may equally exclude any contrary exercise of power. If Parliament or the State Legislature commands that a particular property "shall remain" or "will be under custody" of a specified authority till completion of proceedings, any judicial order directing custody to a different person would directly negate the legislative mandate. Courts cannot exercise discretionary powers in a manner inconsistent with an express statutory command. Therefore, although Section 7 does not employ the words "no Court shall release the cattle", the consequence necessarily follows from the mandatory language adopted by the Legislature. The above conclusion is fortified by Section 18 of the Act which gives overriding effect to the provisions of the Act of 2004 notwithstanding anything contained in any other law for the time being in force. A *non-obstante* clause is enacted precisely to resolve any inconsistency between the special enactment and general law. Sections 451 and 457 Cr.P.C. undoubtedly confer a general power upon criminal Courts regarding interim custody of seized property. However, once Section 7 of the Act of 2004 specifically directs that seized agricultural cattle shall remain in the custody of specified institutions till conclusion of prosecution, the exercise of general power under the Code in favour of any private individual would directly conflict with the mandate of Section 7. Such conflict stands resolved by Section 18 of the Act of 2004.

- 21.** The object of the Act of 2004 also supports the above interpretation. The legislation was enacted to prohibit illegal slaughter, illegal transport and illegal dealing in agricultural cattle. Protection of cattle constitutes the very foundation of the enactment. If persons accused of transporting cattle for illegal slaughter are permitted to obtain interim custody immediately after seizure by invoking Sections 451 and 457 Cr.P.C., the statutory safeguard enacted by Section 7 would become wholly ineffective. Such an interpretation would enable the very mischief which the Legislature intended to suppress. The Court must adopt an interpretation which advances the legislative purpose rather than defeats it.
- 22.** Learned Amicus Curiae has argued that Section 7 and Sections 451 and 457 Cr.P.C. occupy different fields and can operate harmoniously. We respectfully disagree on this point. Harmony is possible only where both provisions are capable of simultaneous operation. Section 451 empowers the Magistrate to deliver interim custody to any person considered entitled thereto. Section 7 of the Act of 2004 simultaneously commands that till conclusion of prosecution custody shall remain only with the nearest registered Goshala or other specified institution. Both commands cannot simultaneously operate if interim custody is directed in favour of the owner or accused. To that extent, the provisions are irreconcilable. The conflict is therefore real and not merely apparent. Such conflict stands resolved by the rule that a special statute prevails over the general statute.
- 23.** Much emphasis has been laid on the circumstance that certain statutes, such as the Forest Act and Excise Act, expressly bar the jurisdiction of criminal Courts, whereas the present Act does not. The submission overlooks the distinction between express exclusion and implied

exclusion. The absence of an express bar does not necessarily preserve jurisdiction where the statutory scheme itself renders exercise of that jurisdiction impossible. Implied exclusion arises whenever the exercise of general jurisdiction would defeat the statutory command contained in the special enactment. The Legislature is not obliged to employ identical language in every enactment. The intention is to be gathered from the scheme of the statute.

24. We have carefully examined the reasoning adopted by the learned Single Bench in ***Jalil Ansari*** (*supra*). The learned Single Bench correctly appreciated—(i) the mandatory language of Section 7; (ii) the overriding effect of Section 18; (iii) the object of the legislation; and (iv) the principle that special statutes override the general provisions of the Code.
25. We respectfully concur with the reasoning and conclusion recorded therein. The principles laid down by the Supreme Court in ***K.A. Kunchindammed*** (*supra*), ***Kallo Bai***, (*supra*), ***Uday Singh*** (*supra*), and ***Shri Chatrapati Shivaji Gaushala*** (*supra*) consistently recognise that where a special enactment provides a distinct statutory mechanism regarding custody or confiscation of seized property and contains an overriding clause, the general jurisdiction under the Code cannot be exercised inconsistently with such statutory scheme. Though those decisions arose under different enactments, the governing principle remains identical.
26. The apprehension that such interpretation would deprive owners of a remedy is misplaced. The Legislature itself has balanced competing interests. The statute protects the welfare of agricultural cattle by directing that during pendency of prosecution custody shall remain with registered institutions subject to the supervision of the concerned Court through monthly reports. Once prosecution concludes, appropriate

orders regarding disposal may always be passed in accordance with law. Temporary deprivation of interim custody is thus a legislative policy and not a judicial innovation. Courts are bound to give effect to such legislative choice.

27. Section 7 of the Act of 2004 is neither merely procedural nor merely directory. It constitutes a mandatory statutory command governing interim custody of seized agricultural cattle. Read with Section 18 of the Act of 2004 and Sections 4 and 5 of the Cr.P.C., it impliedly excludes the exercise of jurisdiction under Sections 451 and 457 Cr.P.C. insofar as grant of interim custody to persons other than the institutions specified under Section 7 of the Act of 2004 is concerned. The contrary view taken in the referring order does not state the correct legal position.
28. The reference made by the learned Single Judge to this Bench is answered accordingly.
29. Though the submissions advanced and the views expressed by Ms. Naushina Afrin Ali, learned Senior Advocate, appearing as *Amicus Curiae*, have not found favour with this Court, this Court places on record its deep appreciation for the assistance rendered by her.
30. Registry is directed to list this case before the Bench having the Roster.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Head Note

Conjoint reading of the overriding clause contained in Section 18 of the Chhattisgarh Agricultural Cattle Preservation Act, 2004 and Sections 4(2) & 5 of the Cr.P.C., impliedly excludes the general jurisdiction of criminal Courts under Sections 451 and 457 of the Cr.P.C. to grant interim custody of seized agricultural cattle to any private person, including the owner or accused.