

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1459 OF 2021
WITH
CRIMINAL WRIT PETITION NO. 1460 OF 2021

Kamdhenu Goshala Mandal, Dharangaon
Through It's President
Chatrabhuj Shamrao Patil
Age: 65 Years, Occ: Retired,
R/o. 34, Ganesh Nagar, Dharangaon ...Petitioner

Versus

1. Sk. Rafiq Sk. Musa
Age : 52 years, Occ: Agri,
R/o. Kureshi Mohalla,
Dharangaon, Dist. Jalgaon
2. The Police Inspector,
Police Station, Dharangaon
Dist. Jalgaon. ...Respondents

WITH
CRIMINAL WRIT PETITION NO. 1461 OF 2021

Kamdhenu Goshala Mandal, Dharangaon
Through It's President
Chatrabhuj Shamrao Patil
Age: 65 Years, Occ: Retired,
R/o. 34, Ganesh Nagar, Dharangaon ...Petitioner

Versus

1. Jamil Ahmadkhan A. Rahim,
Age : 52 years, Occ: Agri,
R/o. Kureshi Mohalla,
Dharangaon, Dist. Jalgaon
2. The Police Inspector,
Police Station, Dharangaon
Dist. Jalgaon. ...Respondents

Mr. D. D. Pande, Advocate for the Petitioner.

CORAM : R.M. JOSHI, J.

RESERVED ON : JUNE 21, 2023

PRONOUNCED ON : JUNE 23, 2023

JUDGMENT

1. These Petitions are filed challenging order passed by the Additional Sessions Judge allowing Criminal Revision Application Nos. 70 of 2021, 71 of 2021 & 72 of 2021 dated 03rd December, 2021 whereby the order passed by the learned JMFC refusing application under Section 457 of Code of Criminal Procedure filed by the Respondent No. 1 herein for the custody of animals.

2. Petitioner is an Animal Welfare Association working for the welfare of cows, calf and other animals used for the purpose of agriculture and allied work. Petitioner submitted that on 20th July, 2021 on the occasion of Bakri Id police found 20 bulls in possession of Respondent No. 1 herein in these Petitions during search operation. Police authority found that the said animals were brought for the purpose of slaughtering and hence, offence punishable under Sections 5, 6, 9 & 9-A of the Maharashtra Animal Preservation Act, 2015 (for short '**the Act**') came to be registered against them. Police took custody of the

animals and handed over the same to the Petitioner. The Respondent No. 1 filed applications before learned JMFC, Dharangaon for interim custody of bulls seized by the police on the ground that they are in the business of purchase and sale of sell for the purpose of agriculture. The said applications came to be dismissed by the learned JMFC by passing order dated 16th August, 2022. The said order was challenged before the Additional Sessions Judge by filing revision applications under Section 397 of Cr.P.C. By passing impugned order, learned Additional Sessions Judge allowed the revision applications of the accused/Respondent for interim custody of the animals.

3. Being aggrieved by the said orders, present Petitions are filed on the ground specifically set out in the Petitions.

4. Learned Counsel for the Petitioner submitted that the Revisional Court has committed error in passing order of return of the cattles to the accused without appreciating the facts on record more particularly, order passed by the learned JMFC which indicates that there is angle of theft of the cattles.

It is further submitted that the said order is also passed by ignoring provisions of the Act. To support his contention, he placed reliance on the judgment of the Hon'ble Apex Court in case of Shri Chatrapati Shivaji Gaushala Vs. State of Maharashtra and Others, Criminal Appeal No. 1719 of 2022.

5. None appeared for the Respondents.

6. At the outset, it needs to be recorded that this is not the case of illegal transportation of the cattles. As per the case of the prosecution, 20 cattles were found in two open places situated at Kureshi Mohalla. It is further revealed that except for the some injury to two animals, there were no injuries to other animals in order to indicate that they were treated cruelly. The first information report seems to have been lodged on the basis of apprehension that since the bulls were brought during the period of Bakri Id they were to be slaughtered. There is, however, nothing on record to indicate that any preparation of slaughtering was found at the spot and no material is found on record to support such apprehension. *Prima facie*, therefore, provision of Section 5 of the Act may

not get attracted. Resultantly, there would be no justification for seizure of these cattles and granting interim custody to Panjarpol.

7. The learned JMFC, in his order, has not made any observation about *prima facie* causing of cruelty to the animals in question. The order shows that only on the ground that there is angle of theft, as indicated by the investigating officer, the applications for return of the cattles filed by the Respondents were rejected.

8. It is pertinent to note that though objection was raised by investigating officer for allowing application, however, there was a report placed on record before learned JMFC to show that police gave no objection for return of the cattles to the Respondents. Herein this case, the Respondent claim themselves to be traders, and therefore, they were in possession of animals. The contention of the Petitioner that for the purpose of agriculture on an average two bulls are required by the agriculturist cannot be accepted for the reason that the Respondents claim to have been involved in the business of sell and purchase of the

cattles.

9. Perusal of the judgment in case of Shri Chatrapati Shivaji Gaushala (supra) shows that it was the case wherein a truck was intercepted carrying 15 bullocks and three buffaloes. The said truck was carrying more cattles than permissible capacity. Thus, there was apparent cruelty caused to the cattles and in such circumstances, it was held that the order of handing over interim custody of the animals to the accused is not justified. The facts of the present case are totally differ than involved in this case. In the instant case, there is no allegation of causing any cruelty to the animals and offence is registered only on the apprehension of slaughtering of the animals and even JMFC does not hold that any cruelty was caused to the animals and hence, the judgment cited supra has no application to the present case.

10. Section 35(2) of the Prevention of Cruelty to the Animals Act provides for the discretion to the Magistrate to handover the interim custody of the animals to the Panjrapole. The intention of the legislature in incorporating Section 8(3) of the Act

was to give effect to the objective of the Act to preserve and protect cows, calf and bullocks. When there is *prima facie* case to show that cruelty has been caused or there is violation of the animal transport rules, then in that case handing over of custody of seized cattles to Panjarpol would be justified. In absence of any *prima facie* case being made out of the cruelty or illegality in transportation of the animal, the custody of all animals cannot be kept with Panjrapole/Gaushala.

11. Though, it is sought to be contended that there is angle of theft in this case, however, pertinently prosecution has not challenged the impugned orders and in spite of lapse of more than 2 years, no material is placed before this Court to support this claim. No one else has claimed ownership of these cattles for quite long period.

12. In view of the above, this Court finds no perversity in the orders of learned Additional Sessions Judge in reversing order passed by learned JMFC. Hence, Petitions are dismissed.

(R.M. JOSHI, J.)