

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Writ Petition No.1521 Of 2014.

Khandu s/o Bhivasan Borse.

Age : 60 Years., Occ.: Agriculturist.

R/o.: Chinchawar, Tal.& Dist Dhule :: **Petitioner.**

Versus

(1) The State Of Maharashtra.

(2) The Manager,
Panjara Poli Prani Rakshak Sanstha,
Dhule :: **Respondents.**

Appearance ==>

Mr. Prakashsingh B. Patil, Advocate for the Petitioner.

Mr. V.H. Dighe, Additional Public Prosecutor for the State of Maha.

Mr. Vishnu Madan, Advocate h/for Mr. N.L. Chaudhari, Advocate for
Respondent No.2.

CORAM : V.M. DESHPANDE, J.

DATE : 14th JANUARY, 2015.

JUDGMENT :-

Rule. Rule made returnable forthwith. With the consent of both the parties, taken up for final hearing.

[2] I have heard Mr. Prakashsingh B. Patil, learned counsel for the Petitioner, Mr. V.H. Dighe, learned Additional Public Prosecutor for the State of Maha. and Mr. Vishnu Madan, learned counsel h/for Mr. N.L. Chaudhari, learned counsel for Respondent No.2 in extenso.

[3] On 21st September, 2014, F.I.R. was lodged with Police Station, Azhadnagar, Tal.Dhule vide C.R.No.131/2014 in respect of offences punishable under Sections 11(A),(B),(D),(F) of Maharashtra Preservation of

Animals Act, 1960 and under Section 83 read with 177 and Section 130(1) of the Motor Vehicle Act, 1988.

[4] The said offence was registered against the present applicant alongwith other persons. It is alleged in the said F.I.R. that the when First Informant – Police Constable Pankaj Vinayak Khairmode was on patrolling duty alongwith other police staff, he noticed matador bearing registration No. MH/18/A/7722 was carrying live stock (bullocks 4 in number). Said vehicle was intercepted and upon enquiry with the driver it was revealed that, live stock belongs to present applicant. The driver was unable to give satisfactory reply to the queries put to him by the First Informant.

[5] When the enquiry was going on, First Informant noticed another TATA X matador bearing registration No.MH/18/M/9088 that vehicle was also intercepted. In that vehicle also it was found to be carrying live stock (bullocks – 3 in number) and when the enquiry was made to the driver, it was disclosed to the First Informant that live stock belongs to Shabbirshah Ukkhanshah Fakir. According to the F.I.R., the said live stock in those two vehicles were transported in cruel manner, therefore, offence was registered and the custody of that live stock was taken by the Police authority.

[6] Two different applications were filed before the learned Magistrate by the owners of those live stock namely present applicant Khandu s/o Bhivasan Borse and Shabbirshah Ukkhanshah Fakir.

[7] The application filed under Section 457 of the the Code of Criminal Procedure by the present applicant was registered as Criminal M.A.No. 1005/14 where-as application filed on behalf of the Shabbirshah was registered as Misc.Appln. No.1002/14. The learned Magistrate rejected both the Criminal Applications.

[8] Both the owners preferred two different Criminal Revision Applications in the Sessions Court, Dhule. Both the Criminal Revision Applications were made over to the file of the Additional Sessions Judge, Dhule.

[9] Criminal Revision Application filed on behalf of the present petitioner was registered as Criminal Revision Application No.96/14 whereas Criminal Revision Application filed on behalf of the Shabbirshah Ukkhan-shah Fakir was registered as Criminal Revision Application No. 100/14.

[10] On 28th October, 2014 the learned Additional Sessions Judge, Dhule allowed Criminal Revision Application No.100/14 filed by Shabbir-shah and, thereby, the order passed by the learned Magistrate rejecting application for the interim custody of live stock was set aside and it was directed by the learned revisional court to hand over the custody of the live stock to Shabbirshah on he executing indemnity bond of Rs.40,000/- and upon condition that live stock will not be subjected to cruelty and will not be slaughtered.

[11] Criminal Revision Application No.96/14 filed on behalf of the present petitioner was taken up for hearing and decided on 2nd December, 2014. The very learned Additional Sessions Judge, who allowed Criminal Revision Application No. 100/14 was pleased to reject the Criminal Revision Application filed on behalf of the present petitioner.

[12] Present Writ Petition is against the rejection of Criminal Revision Application No.96/14 by the learned Additional Sessions Judge. The learned counsel for the petitioner pointed out that on very same day, two different vehicles were intercepted and on the same date, live stock belongs to the petitioner and applicant in Criminal Revision Application No.

100/14 was taken into custody. He pointed out that circumstances are identical. He further pointed out that, applicant also filed on record before the Revisional Court documents in respect of his ownership over the live stock however, according to the learned counsel, Criminal Revision Application No.96/14 was erroneously dismissed by the learned revisional court.

[13] One of the reason for rejecting the Criminal Revision Application, as observed by the learned revisional court is that “ as per the investigation, it was transpired that animals were sold for slaughter purpose.” When specific query was put to the learned Additional Public Prosecutor by this court to support such observation, the learned Additional Public Prosecutor fairly submitted that there is nothing in the investigating papers to reach such conclusion. Further it appears that the learned Additional Sessions Judge has dismissed the Criminal Revision Application on the precious ground that price shown in the receipt shown by the present petitioner is very meager. It is hard to digest such reasoning. There was no material, no data, available before the learned Additional Sessions Judge to arrive at such conclusion. Therefore, such conclusion and findings recorded by the learned Additional Sessions Judge are without any basis and has to be set aside. The learned Additional Sessions Judge has further adopted very curious view while deciding Criminal Revision Application. that the applicant has not denied that the animal were transported for the purpose of slaughter. In absence of any positive material on record, it was not open for the revisional court to record such findings, especially when in the investigating paper, there is nothing to indicate such things that the live stock was transported for the purpose of slaughter.

[14] Further the petitioner even before the revisional court and also before this court has filed 7/12 extract which clearly shows that he owns agricultural field admeasuring 2 Hectors from and out of land Gat No.111 of village Chinchwar, Tal.Dhule. That fact clearly demonstrates that present applicant is an Agriculturist.

[15] Mere transportation of live stock by an Agriculturist cannot be termed that he was transporting the same for slaughter purpose. In that view of the matter, the perversity is crept in the Judgment delivered by the learned Additional Sessions Judge, Dhule and it cannot be stands in the scrutiny of law. Criminal Revision Application needs to be allowed. Hence, following order is passed :-

ORDER

(i) Criminal Writ Petition is allowed.

(ii) Order passed by the learned Judicial Magistrate, First Class, Dhule [Court No.VI] in Criminal Misc.Application No.1005/2014 dated 7th October, 2014 together with Judgment and Order dated 2nd December, 2014 passed by the learned Additional Sessions Judge, Dhule passed in Criminal Revision Application No.96 Of 2014 are hereby quashed and set aside.

(iii) The application filed on behalf of the present applicant under Section 457 of the Code of Criminal Procedure for grant of interim custody of live stock is hereby allowed.

(iv) The Petitioner shall execute the Indemnity Bond of Rs.40,000/- [Rs. Forty Thousand only] before the learned Magistrate.

(vi) He shall also gave an undertaking before the learned Magistrate that he shall not subject those bullocks to cruelty and shall not slaughter those bullocks. Further during the pendnecy of the proceedings, he shall not transfer the ownership of those four bullocks.

(vii) Upon such execution of the Indemnity Bond and undertaking, the learned Magistrate is directed to pass appropriate order for handing over the interim custody of live stock – four bullocks in favour of present Petitioner from Respondent No.2, and Respondent No.2 shall handover custody to the Petitioner.

(viii) With this, Rule is made absolute. Writ Petition is allowed.

(V.M. DESHPANDE, J.)