

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1183 OF 2016

Abhaychandrashekhar s/o. Pashupatinath
Singh, Age 45 years, Occu. Manager and
Animal Welfare Officer, Ratanlal C. Bafna
Gau Seva Anusandhan kendra,
Kusumba, Dist. Jalgaon.

....Petitioner.

Versus

1. State of Maharashtra,
Through Pahur Police Station
Tal Jamner Dist. Jalgaon.
2. Shaikh Gaffar Shaikh Habib,
Age 32 years, Occu. Business,
R/o. Paladhai Tal Jamner,
Dist. Jalgaon.
3. Shenphadu Amrut Baviskar,
Age 38 years, Occu. Business,
R/o. Paladhi, Tal. Jamner,
Dist. Jalgaon.

....Respondents.

Mr. Anil S. Bajaj, Advocate for petitioner.

Mr. S.J. Salgare, APP for State.

Mrs. A.N. Ansari, Advocate for respondent Nos. 2 and 3.

CORAM : T.V. NALAWADE, J.

DATED : 16th January, 2017.

JUDGMENT :

- 1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.

2) The petition is filed to challenge the order made by the learned Judicial Magistrate, First Class, Jamner in Criminal Misc. Application No. 308/2016 and also the decision of Criminal Revision Application No. 147/2016, which was pending in the Court of Additional Sessions Judge, Jalgaon. Present petitioner is the institution which is taking care of animals, particularly cows and bullocks. In Cr. No. 25/2016 registered in Pahur Police Station, District Jalgaon for offence punishable under section 3, 5A (1), 5B of the Maharashtra Animal Preservation Act, 1976 (hereinafter referred to as 'the Act'), custody of bovine bullocks is already handed over to the present petitioner by police. The application filed by petitioner under section 457 of Criminal Procedure Code is rejected by the learned J.M.F.C. and this decision is confirmed by the Sessions Court.

3) The incident in question took place on 31.7.2016 at about 8.00 a.m. Complainant Vijay and his friend Shivaji had gone to village Paldhi to see his friend Kailas Joshi. As Kailas had gone towards dam side, they went towards that side and there, they noticed that near a scrap shop, one transport vehicle of Tata Company 407 bearing No. MH-04/9477 was parked and 3-4 persons were offloading bovine bullocks from the transport vehicle. The complainant felt that the persons who were

offloading the bullocks were not taking proper care and most of the bullocks were in injured condition. He requested those persons to show mercy and take care of the bullocks. Upon that, those persons said that they were taking the bullocks to slaughter house and there was no necessity of taking any such care.

4) After observing the condition of the bullocks, Vijay contacted police. So many persons gathered and police came there with veterinary doctor. Police seized the bullocks and also the vehicle. There were in all 39 bullocks and most of the bullocks were in injured condition. Some bullocks were so infirm that there was no possibility of surviving of those bullocks. Vijay then gave report that these persons were taking the bullocks to slaughter house and the crime came to be registered for aforesaid offences. The veterinary doctor of the Government Hospital examined the bullocks and he noted the injuries when bullocks were handed over to the present institution.

5) Present petitioner filed application for interim custody of 39 bullocks before the J.M.F.C. The J.M.F.C. has rejected the application by holding that the allegations made are not sufficient to make out prima facie case that the bullocks

were being taken for slaughtering. The other reason is given that six bullocks died when they were kept in the custody of the petitioner and there is no record to show that the petitioner has good reputation of taking care of such animals.

6) This Court has carefully gone through the papers of investigation. The chargesheet is filed for aforesaid offences against Sayyed Faruk Sayyed Habid. The papers of investigation include panchanama of seizure and it shows that almost all the bullocks were in injured condition. There is direct evidence showing that bullocks were being offloaded from Tata Company 407 transport vehicle. Photographs were taken to show the place where the bullocks were kept and it shows that the bullocks were being kept in open compound of the accused. Through veterinary doctor, the bullocks were examined and there is record to show that they were seriously injured. The P.M. reports are there in respect of six bullocks and they show that they died due to weakness and toxemia. It can be said that the condition of many bullocks was serious when they were seized by police.

7) The learned counsel for petitioner took this Court through the various provisions of the Act. A copy of notification of the State Government of the year 2015 is produced. The

provisions of the Act are amended and the animal 'bullock' is also included in the Act. The amendment is made to section 8 of the Principal Act and the proviso which is added to section 8 is as under :-

"Provided that pending trial, seized cow, bull or bullock shall be handed over to the nearest *Gosadan, Goshala, Panjrapole, Hinsa Nivaran Sangh* or such other Animal Welfare Organizations willing to accept such custody and the accused shall be liable to pay for their maintenance for the period they remain in custody with any of the said institutions or organizations as per the orders of the court."

The learned counsel for petitioner took this Court through the Transport of Animals Rules 1978 and particularly, Rules framed for transfer of cattle to show that there was breach of these Rules also as 39 animals were being carried in one vehicle.

8) As against the aforesaid record, the petitioner has record like some receipts prepared by the Agricultural Produce Marketing Committee and they show that on 31.7.2016 the bullocks were purchased. The learned counsel submitted that the respondent, owner wanted to use the cattle for agricultural purpose and so, the bullocks were purchased. The learned

counsel submitted that when the respondent is owner and he is ready to get the custody, the custody cannot be given to present petitioner. He placed reliance on the observations made by this Court, other Hon'ble Judge in **Criminal Writ Petition No. 29/2010 [Gulam Husain Khan Mustafa Khan Vs. The State of Maharashtra and Anr.] decided on 5.7.2010** and the case reported as **2010 (4) B.Cr.C. 37 [Shaikh Zakir Shaikh Nasir Vs. The State of Maharashtra and Anr.]**.

9) The learned counsel for petitioner took this Court through the observations made by this Court in following three reported cases :-

(i) **1998 (2) LJ 674 [Ashok L. Puranik Vs. State of Maharashtra and Ors.]**,

(ii) **2010 ALL MR (Cri) 45 (NAGPUR BENCH) [Deorao s/o. Sadashivji Navghare Vs. State of Maharashtra and Anr.]**, and

(iii) **1997 ALL MR (Cri) 1740 [Akhil Bharat Krishi Go Seva Sangh Vs. State of Maharashtra and Anr.]**.

10) The provision of section 5 of the Act shows that no person can slaughter or cause to be slaughtered such animal and he cannot offer for slaughter any such animal in any place in the State of Maharashtra. There is specific allegation against the respondents that they had collected the animals for sending

them to slaughter house. When there are such allegations and there are circumstances like in the present matter which are quoted, this Court holds that for safety of the animals, the animals need to be kept in the care of institution like the present petitioner. Only because six bullocks died after handing over the custody to the petitioner, it cannot be said that the reputation of petitioner is bad. The record is produced to show that one Committee is constituted under the directions of this Court and petitioner institution is approved by the Committee. Though it appears that the person, who is controlling the institution is also appointed as Animal Welfare Officer by the Committee, it can be said that due to this circumstance, the custody cannot be refused to the petitioner institution. However, it needs to be observed against the Committee that it is never desirable to allow a person controlling such institution to work as Animal Welfare Officer for Committee. The provisions of the Act can be used against such person as there are more chances of breach of provisions of the Act by such institution.

11) It appears that no bond was taken from the petitioner by police when the custody was given to the petitioner. Though some provisions are made for handing over the custody to institution like present one, the institution needs

to execute bond so that proper care of the animals is taken by the institution. When a query was made, the learned counsel for petitioner made a statement that petitioner is ready to deposit the value of the six bullocks in the Court which died after handing over the custody. That price, amount needs to be kept in the criminal case and further, the bond on the basis of value shown in the seizure panchanama needs to be obtained in respect of the remaining animals from the present petitioner. Thus, the learned J.M.F.C. has committed error in refusing the custody of the animals in favour of the present petitioner.

12) In the result, the petition is allowed. The order made by the learned J.M.F.C. in Criminal Misc. Application No. 308/2016 and also the order made by the Additional Sessions Judge, Jalgaon in Criminal Revision Application No. 147/2016 are hereby set aside and the application filed for interim custody of the animals by the present petitioner is allowed. This relief is granted subject to condition that present petitioner deposits the value of six bullocks which died in the custody of the petitioner and also gives the bond in respect of the amount which is shown as value of the bullocks in the seizure panchanama in the Court. The petitioner will be liable to pay, deposit the amount in the Court. At the end petitioner to produce, make bullocks available

at the disposal of the Court. If such bond is not given and the amount is not deposited within 30 days from today, it will be open to the Magistrate to hand over the custody of the cattle to others.

In those terms, the rule is made absolute.

[T.V. NALAWADE, J.]

ssc/