

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.100 OF 2017

1. Shri Vishwas Naik,
Indian National,
major in age,
Son of Tukaram Naik,
Resident of H. No.52/B,
Vagurme Ponda Goa.
2. Dhyan Foundation,
Quitla, Balli,
Quepem- Goa.
Through its Goa Co-ordinator,
Mrs. Swati Shilker. .. Petitioners

V/s

1. The State of Goa
Through Police Inspector
Ponda Police Station,
Ponda- Goa
2. Shri Husain Abdullah Malgudi,
Son of Abdullah Malgudi,
38 years of age,
Resident of Tal, Mudol,
H.No.48, Dist. Bagalkot,
Karnataka. .. Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. A. Kamat, Advocate for the petitioners.

Mr. S. R. Rivankar, Public Prosecutor for the respondent no.1.

Mr. A. F. Naik, Advocate for the respondent no.2.

CORAM :- C. V. BHADANG, J.

Date : 2nd August, 2017.

ORAL JUDGMENT :

Rule, made returnable forthwith. The learned Public Prosecutor waives service for the first respondent. Shri Naik, the learned Counsel waives service for the second respondent. Heard finally by consent of the parties.

2. The petitioners are challenging the concurrent finding of the Courts below, by which nine buffaloes, which are the subject matter of dispute, have been directed to be handed over to the second respondent under Section 457 of the Code of Criminal Procedure (the Code, for short), on the ground that the second respondent is the owner thereof.

3. I have heard the learned Counsel for the parties and perused the record.

4. It is submitted by Shri Kantak, the learned Senior Counsel for the petitioners that there is non-compliance with Rule 96 of Transport of Animals Rules, 1978 (Transport Rules, for short), framed under the Prevention of Cruelty to Animals Act, 1960 (the Act, for short). It is submitted that under the said rule, the transporter, before the transportation of the cattle is required

to have a valid certificate issued by an Officer or any person or Animal Welfare Organization, duly recognised and authorised for this purpose by the Animal Welfare Board of India or the Central Government. It is pointed out that there is no such certificate forthcoming in this case. The learned Senior Counsel has placed reliance on the decision of the Supreme Court in the case of ***Laxmi Narain Modi Vs. Union of India***; (2013)10 SCC 227, in order to contend that as per the guidelines for transportation of animals and slaughter houses, obtaining of such certificate is mandatory. The learned Senior Counsel has pointed out guideline no.4(I)(3), as reproduced in para 4 of the judgment in the case of ***Laxmi Narain Modi*** (supra). It is submitted that this aspect has not been considered by any of the Courts below.

5. It is next submitted that since after the impugned order was passed by the learned Magistrate, the Central Government has framed Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 (Rules of 2017), which are published in the Government Gazette on 23/05/2017. It is submitted that rule 3 of Rules of 2017 deals with the custody of the animals pending litigation, will be material in the present case.

6. It is further submitted that the she-buffaloes were admittedly purchased by the original owner under a “Kamdhenu Scheme Sudharit”, in which the beneficiary is not permitted to dispose of the animals for a period of 42 months from the date of purchase. The learned Senior Counsel has pointed out to a letter dated 08/02/2017 from the Director of Animal Husbandry, which states that the original owner (from whom the second respondent claims to have purchased the she-buffaloes) was directed to obtain permission for such sale, subject to the condition of refund of subsidy. It is pointed out that there has been no investigation on this aspect.

7. The learned Public Prosecutor for the first respondent as well as the learned Counsel for the second respondent, support the impugned order. It is pointed out that there is a certificate dated 13/06/2017 issued by the Assistant Director of Veterinary Hospital, Sonsodo under Rule 47 of the Transport Rules. It is submitted that the learned Magistrate has imposed stringent conditions while releasing the cattle in favour of the second respondent and thus, no interference is called for.

8. I have carefully considered the rival circumstances and

the submissions made.

9. Indisputably, Rules of 2017 have come into force after the order was passed by the learned Magistrate, on which the petitioners want to rely upon.

10. Prima facie, at this stage, the learned Counsel for the second respondent has been unable to point out any certificate obtained under Rule 96 of the Transport Rules. Prima facie, it appears that there are separate certificates envisaged under Rule 47 and under Rule 96 of the Transport Rules. The Supreme Court in the case of **Laxmi Narain Modi** (supra), has held that following of these rules and guidelines is mandatory. In view of the fact that these aspects have not been gone into by the Courts below, it would be appropriate that the learned Magistrate reconsiders the matter on merits, after hearing the parties, in accordance with law.

11. In the circumstances, the petition is partly allowed. The impugned orders are hereby set aside. The learned Magistrate shall consider the application under Section 457 of Cr.P.C. filed by the second respondent afresh, on its own merits, after hearing the parties concerned and in accordance with law.

The learned Magistrate shall decide the application as expeditiously as possible and preferably, within a period of six weeks from the receipt of this order.

12. Rival contentions of the parties are left open.

13. Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

SMA