

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

CRIMINAL APPLICATION NO.1044 OF 2015

Haji @ Ikhlaq Gaffar Dabawala	.. Applicant
Vs.	
The State of Maharashtra & Anr.	.. Respondents

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Mr.Chaitanya Pendse, Advocate with Mr.Kamlesh Y. Mali,
Advocate for the Applicant.

Mr.Y.M. Nakhwa, APP for Respondent No.1 - State.

Mr.Raju Gupta, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 31, 2017.

P.C. :

The applicant has invoked the inherent powers of this Court under Section 482 of the Code of Criminal Procedure challenging the order dated 28th August, 2015, passed by the Sessions Court in Criminal Revision Application No.995 of 2015 preferred by respondent no.2. The Sessions Court by the aforesaid order had set aside the order dated 21st August, 2015 passed by the Additional Chief Metropolitan Magistrate 9th Court Bandra Mumbai in M.A. No.424/N/2015 (LAC 27/2015) below the application of return of property preferred by the applicant.

2 The brief facts giving rise to the present application can be summarized as follows:

On 9th June, 2015, the officers of Khar Police Station, Mumbai, officer of Forest Department and the officers of the respondent no.2 organization effected raid on Mansuri building near National College, Road No.37, Khar (West), Mumbai and found that several animals including cats, horses, goats, one bull, four peahens and seven macaw were illegally kept in the building by the accused without any valid licence or permit. The employee of the applicant Mr.Chandan Vishwakarma was present at the spot of the occurrence and after inquiry it was revealed that the bull was especially brought for the purpose of "Qurbani". The raiding party seized the said bull of white colour and handed over its custody to respondent no.2. Crime No.27 of 2015 was registered at the Khar Police Station, Mumbai for the offences punishable under Sections 9, 39, 40(2), 48(A), 51 of Wildlife Protection Act, 1972 read with Section 384(A)(B) of Bombay Municipal Corporation Act, read with Section 11(A)(E)(F) of the Prevention to Cruelty to Animals Act, 1960 read with Sections 5, 5(B), 9, 9(B) and 11 of the Maharashtra Animal Preservation Act, 1985 read with Sections 3, 7 and 13 of the Maharashtra Control

of Animals Act, 1976. On completing the investigation, charge-sheet came to be filed on 6th August, 2015 in the Court of Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai.

3 The applicant preferred an application for return of bull before the Court of Additional Chief Metropolitan Magistrate 9th Court Bandra, Mumbai vide 424/N/2015 in LAC 27 of 2015. The learned Additional Chief Metropolitan Magistrate vide order dated 21st August, 2015 allowed the said application and directed that the bull seized in the aforesaid case be returned to the applicant on his furnishing indemnity bond of Rs.50,000/-. It was further directed that the applicant shall not cause any cruelty to the bull and take proper care of it. It was also directed that the applicant shall keep and maintain the bull in such a way that there shall not be violation of any law and there shall not be any nuisance to the public in the nearby locality. It was also directed that the applicant shall produce the bull as and when directed by the Court. In pursuant to the said order the applicant had executed the indemnity bond before the trial Court. The respondent no.2 however, challenged the said order by preferring criminal revision Application No.995 of 2015, before the Court of

Sessions. The Sessions Court passed the interim order on 26th August, 2015 and the order passed by the trial Court was stayed. The Revision Application was finally heard and by order dated 28th August, 2015, the Sessions Court was pleased to set aside the order passed by the learned Magistrate and directed that the custody of the Bullock be restored to the respondent no.2 till final conclusion of the trial. The applicant is aggrieved by the aforesaid order passed by the additional Sessions Judge, and have therefore approached this Court by preferring the present application under Section 482 of the Code of Criminal Procedure.

4 Learned advocates representing the applicant Shri Chitanya Pendse and Shri Kamlesh Mali had assailed the order passed by the Sessions Court on several grounds. It is submitted that no interference was warranted in the order passed by the learned Magistrate. It is submitted that the learned Sessions Judge has proceeded on erroneous presumption that the said bullock which was seized from the custody of the applicant was to be slaughtered without there being any evidence to support the same. It is submitted that the bullock was brought to the place of the incident for giving medical treatment which is fortified by the medical certificates issued by the veterinary doctor who had

treated the said bull. The copy of the medical certificate has been annexed to this application. It is submitted that on perusal of the entire charge-sheet it can be seen that there is nothing on record to indicate that the bullock was either treated with cruelty or brought for the purpose of slaughtering so as to invoke the provisions of cruelty to the animals act as against the applicant. It is further submitted that the applicant is also being charged for having committed the offence under the Maharashtra Animal Preservation Act. It is submitted that the said Act provides the competent authority appointed by the State Government which is empowered to make inquiries after inspecting any such premises where such animals are kept and it is only after ascertaining the correctness of the claims and counter claim, appropriate decision in respect of the said animal can be taken by the competent authority. In the present case none of these requirements have been fulfilled and, therefore, the procedure followed by the prosecution is contrary to law. The learned advocate pointed out the provisions of Sections 3 and 4 of the Maharashtra Animal Preservation Act, 1976 in support of the aforesaid submission. It is submitted that the respondent no.2 was given the custody of the bullock for its safe keeping by the investigating authority. Otherwise, respondent no.2 is not concerned with the said

prosecution. The respondent no.2 had no authority to prefer the Revision Application to challenge the order passed by the learned Magistrate. It is submitted that the Sessions Court ought not to have entertained the Revision Application preferred by respondent no.2 who had no locus to challenge the order of the learned Magistrate. The learned Magistrate has passed the order giving directions to take proper care of the animal. The said Court had also directed that the animal should be produced before the Court as and when required. Therefore, the apprehension expressed by the respondent no.2 before the Sessions Court is devoid of any substance and the Sessions Court has, therefore, passed an erroneous order by setting aside the order of the trial Court. It is submitted that the prosecution is relying on the statement of the co-accused Shri Chandan Vishwakarma who was purportedly present at the place of the incident when the officers had raided the place of incident and seized the animal. There is no other independent evidence to substantiate the charge that the bull was being brought for the purpose of slaughtering or there is likelihood of the said bull being slaughtered on the festival of Bakri Eid, at the instance of the applicant. There is no other evidence to substantiate the said apprehension. The prosecution cannot rely upon the statement of

the accused in arriving at such a conclusion or drawing the inferences that the bull was likely to be slaughtered. There were several other animals at the place of the incident which were not seized by the raiding officers and only the bullock was seized by them. The fact that there were several animals such as goats, birds, peahen etc. at the place of incident clearly supports the submission of the applicant that he is an animal lover and the bull was being brought to Mumbai for the purpose of treatment and not for the purpose of slaughter. It is further submitted that the judgments relied upon by the respondent no.2 and which were considered by the Sessions Court while allowing the revision application preferred by respondent no.2 are not applicable in the present case. The applicant had executed the bond in pursuant to the order passed by the learned Magistrate. The applicant was ready to abide by the conditions imposed by the trial Court while granting the custody of the bull to the applicant and the apprehension expressed by the respondent no.2 and the Sessions Court while passing the impugned order is devoid of any merits.

5 The learned APP and learned advocate for respondent no.2 had strongly opposed the reliefs sought by the applicant in the present application. They supported the order passed by the Sessions Court and submitted that no interference is required in

the said order. The counsel for respondent no.2 submitted that in pursuant to the seizure of the bull, the custody was handed over to the respondent no.2 and since then the respondent no.2 has been taking proper care of the said bull. It is submitted that respondent no.2 is a registered Goshala looking after welfare of animals, their preservation and protection from being illegally slaughtered. The main object of their organization is to prevent cruel treatment and illegal slaughtering of scheduled animals under the Maharashtra Animal Preservation of Animal Act, 1995. It is further submitted that the respondent no.2 is interested party being working for the welfare of animal as stated herein above and being voluntarily organization formed for protection of scheduled animals. The respondent no.2 has every right to claim the custody of the animals which are the subject matter of any crime registered under the said Act and any other laws incidental thereto. It is submitted that the applicant had brought the bull for illegal slaughtering on religious festival of Bakri Eid which was scheduled on 25th of September, 2016. The police registered the offences as stated herein above against the applicant vide the aforesaid FIR. After the seizure of the bull from the custody of the applicant and lodging of the FIR, the police attached to Khar Police Station as per the newly amended Section 8 of the

Maharashtra Animal Preservation Act, 1995 handed over the custody of the bull to respondent no.2 and the said respondent as on date has kept the bull in their Goshala in safe custody. It is submitted that the bull in question is of unique breed namely "Vechur" which is ranging between 150 to 250 through out India. This bull is the first choice preference for slaughtering on "Bakri Eid" and which is sold at a very high price in illegal market. This bull has many unique features for its height, size etc. The counsel for respondent no.2 placed reliance on the following decisions :

- (1) ***Bal Gangadhar Tripathi Vs. State of U.P.*¹;**
- (2) ***Krushni Goseva Sangh & Anr. Vs. State of Maharashtra & Anr.*²;**
- (3) ***Akhil Bharat Krishi Goseva Sangh Vs. State of Maharashtra & Anr.*³ ;**
- (4) ***Ashok L. Puranik Vs. State of Maharashtra & Ors.*⁴ ;**
- (5) ***Akihil Bharatiya Krushi Goseva Sangh Vs. State of Maharashtra*⁵.**

1 1997 Cr.L.J. 3587

2 1987 Mah.L.J. Page 293

3 1997 All MR (Cri.) Page 1740

4 1998(2) BCR Pae 96

5 Delivered in Cri.W.P.No.2879 of 2009.

It is submitted that in the light of the observations made in the aforesaid decisions and in the facts of the case the application preferred by the applicant may be rejected.

6 I have considered the submissions advanced by both the parties. The Maharashtra Animal Preservation Act, 1976 was amended vide Maharashtra Animal Preservation (Amendment) Act, 1995. Section 2 of the said Amendment Act reads as follows:

“2 and preservation of cows, bulls and bullocks useful for milch, breeding, draught or agricultural purposes and for restriction on slaughter for the preservation of certain other animals suitable for the said purposes.”

Thus, by way of aforesaid amendment the long title of the said Act was amended. Similarly, the preamble of principal Act is also amended by Section 3 of the said Amendment Act. Section 3 of the Amendment Act reads as follows:

“3 and preservation of cows, bulls and bullocks useful for milch, breeding, draught or agricultural purposes and for restriction on slaughter for the preservation of certain other animals suitable for the said purposes.”

The other relevant provision which is amended and which is necessary to be considered dealing with the present application is Section 8 of the Principal Act which is amended vide Section 7 of the Amendment Act. Section 7 of the Amendment Act reads as follows:

“7 In Section 8 of the principal Act,-

(a) after sub-section (2), the following sub-sections shall be added, namely:-

“(3) Any Police Officer not below the rank of Sub-Inspector or any person authorised in this behalf by the State Government, may, with a view to securing compliance of the provisions of Sections 5A, 5B, 5C or 5D, for satisfying himself that the provisions of the said sections have been complied with may, -

(a) enter, stop and search, or authorise any person to enter, stop and search any vehicle used or intended to be used for the export of cow, bull or bullock;

(b) seize or authorise the seizure of cow, bull or bullock in respect of which he suspects that any provision of sections 5A, 5B, 5C or 5D has

been, is being or is about to be contravened, alongwith the vehicles in which such cow, bull or bullock are found and there after take an authorise the taking of all measures necessary for securing the production of such cow, bull or bullock and the vehicles so seized, in a court and for their safe custody pending such production:

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.

(4) *The provisions of Section 100 of the Code of Criminal Procedure, 1973 relating to search and seizure shall, so far as may be, apply to searches and seizures under this section."*

(b) for the marginal note, the following shall be substituted, namely:-

"Power of entry, search, seizure and custody."

Thus, Section 8 of the Principal Act has been amended by the aforesaid Amendment Act. The proviso to Section

8 has been inserted wherein it has been stated 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 Organization willing to accept such custody and the accused shall be liable to be pay for their maintenance for the period they remain in custody with any of the said institution or organization as per the orders of the Court. The learned Magistrate while passing the order granting custody of the bullock to the applicant had not considered the aforesaid provision. In view of the aforesaid provision, the custody cannot be given to the applicant. From the statement of the complainant Sudhir Pednekar, recorded on 9th June, 2015, and the statements of other witnesses viz Chetan Sharma recorded on 9th June, 2015, Shri Shalik Suryawanshi recorded on 11th June, 2015 and Smt.Shubhangi Mangalekar recorded on 12th June, 2015, it can be seen that they have referred to the fact that the bull was brought for slaughtering which information was received by them at the time when they raided the place from where the bull was seized. No doubt the information was received from Chandan Vishwakarma who was also impleaded as the accused. He was the person who was present at the place of the incident and was managing the affairs of the said premises. Even if, the said

person is impleaded as an accused, the admissibility of the statement made by him will be tested during the course of trial. At the time of seizure, there was sufficient material before the raiding authority to apprehend that the bull which was found at the scene of the offence was brought for slaughter and, therefore, the said bull was seized and the custody was handed over to the respondent no.2.

7 The premises were raided by various officers including the police officers, animal welfare officer, range forest officer etc. The submission advanced by the learned counsel for the applicant and the prosecuting agency were not competent authorities within the provisions of Maharashtra Animal Preservation Act can be considered at the time of trial. The question in the present proceeding is whether the trial Court ought to have handed over the custody of the bull to the applicant. In the light of the material before the Court and in accordance with the provisions of the Amended Maharashtra Animal Preservation Act, the trial Court had committed an error in granting the custody to the applicant. After the seizure, the bull was in safe custody with the Goshala conducted by the respondent no.2. From the statements of witnesses which are

part of the charge-sheet filed by the police such as the complainant, Animal Welfare Officer, Forest Department Officer it appears that most of the animals were brought for illegal slaughtering on Bakri Eid. Several animals including the seized bull were found kept by the applicant without any licence. They were kept in such a condition that it amounts to an offence under the provisions of Cruelty to Animals Act, 1960 as well as the Maharashtra Animal Preservation Act.

8 In the case of ***Krushī Goseva Sangh & Anr.*** decided by the Division Bench of this Court, it is observed that the competent court is expected to pass an order which will be in tune with the object of the legislation. Order cannot be passed which will defeat the very object of the act. The order should be for intervention and protection of the cow or scheduled animal and not for its slaughter or destruction. It is now well settled view that what is directly forbidden cannot be indirectly permitted. Similar observations were made in another decision of this Court delivered in the case of ***Akhil Bharat Krishi Goseva Sangh.*** The Court relied upon the earlier decision of this Court and it was observed that the order pertaining to the custody could not be passed in any manner in which the object of the act namely

protection and preservation of animals would be defeated. In another decision of this Court which is relied upon by the advocate for respondent no.2 in the case of **Ashok Puranik & Ors. Vs. State of Maharashtra**. In paragraph 7 of the said decision delivered by this Court it has been observed as follows:

“7 *It appears that prima facie the allegations are justified as there was no permit for carrying the cattle in the said truck at the relevant time and there is nothing on record to show that they were being carried to the slaughter house after complying with the necessary provisions of the Act and Rules. Now it must be borne in mind that once the animals are taken to the slaughter house then nobody knows as to what would happen to them. Once they are slaughtered nothing can be done and preventive action is necessary to save their life. The facts remains that they were being carried in contravention of permit issued, and therefore, there was a prima facie case. If so it was not at all justified on the part of the learned Magistrate to return the cattle to the owner pending the trial, and it was necessary to continue their custody with organization devoted to the well-being and welfare of such cattle pending trial.*”

In the said decision in the concluding paragraph the

Court had observed that in view of the legal position, the learned Magistrate was in error in returning the cattle to the owner, pending trial and he ought to have continue the custody of the Panjrapole.

9 Similar view was taken by this Court in the other decisions which are relied upon by the advocate for respondent no.2. The submissions advanced by the counsel for the applicant that there is no material to derive the apprehension that the bull was being brought for slaughtering cannot be accepted at this stage. The statements which are referred to herein above *prima facie* indicates the apprehension expressed by the prosecuting agency was well founded and in the light of the legal provisions more particularly the proviso to section 8 of the Maharashtra Animal Preservation Act as amended, clearly stipulates that the custody ought not to be given to the applicant by the trial Court. In the circumstances, there is no reason to interfere in the order passed by the Sessions Court in the Revision Application wherein the order of the learned Magistrate was rightly set aside.

10 In view of the above, no interference is required in the impugned order which is under challenge before this Court and therefore this application deserves to be rejected.

11 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Application No.1044 of 2017 is rejected;
- (ii) The order passed by the Sessions Court in Revision Application No.995 of 2015 on 28th August, 2015 is hereby confirmed;
- (iii) The observations made in this order are only for the purpose of deciding the present application; and the trial Court shall not be influenced by the same during the trial;
- (iv) Criminal Application stands disposed of.

(PRAKASH D. NAIK, J.)