

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 762 OF 2019

Shri. Chatrapati Shivaji Gaushala
Ranisavargaon, Tq. Gangakhed,
District – Parbhani
Through its authority holder
Shri. Shriniwas S/o Nandlalji Dhuppad
Age- 60 years, Occu- Member,
Prevention of Business,
R/o 186/188, Jyoti Nagar, R.B. Land Mark,
4th Floor, Flat No.15, Main Road,
Aurangabad, Tq. & Dist. Aurangabad.

... **PETITIONER**
(Orig. Applicant)

Versus

1. The State of Maharashtra
Through Parbhani Rural Police Station,
Parbhani, Maharashtra.
2. Shaikh Shafi S/o Shaikh Khaja
Age: 30 years, Occu. Labour,
R/o. Osamanpura Colony, Parbhani,
Tq. & Dist. Parbhani.
3. Shaikh Aziz S/o Shaikh Ahmed
Age: 35 years, Occu. Labour,
R/o. Apna Corner, Parbhani,
Tq. & Dist. Parbhani.
4. Abdul Karim S/o Abdul Jalal
Age: 45 years, Occu. Labour,
R/o. Dhar Road, Parbhani,
Tq. & Dist. Parbhani.
5. Shaikh Babu S/o Shaikh Moin
Age: 36 years, Occu. Labour,
R/o. Wanto Road, Parbhani,

Tq. & Dist. Parbhani.

6. Shaikh Gaus S/o Shaikh Khaled
Age: 32 years, Occu. Labour,
R/o. Tadkalas, Tq. Purna,
Dist. Parbhani.
7. Sopan S/o Pandharinath Kale
Age: 35 years, Occu. Labour,
R/o. Pratap Nagar, Parbhani,
Tq. & Dist. Parbhani.
8. Nisar Khan S/o Ali Khan
Age: 35 years, Occu. Driver,
R/o. Khandoba Bazaar, Parbhani,
Tq. & Dist. Parbhani.

... **RESPONDENTS**
(Original Respondents)

...
Advocate for Petitioner : Mr. R.S. Wani h/f Mr. Anil S. Bajaj
A.P.P. for Respondent -State: Mr. P.K. Lakohtiya
Advocate for Respondent nos.2 to 8: Mr. G.R. Syed

...

CORAM : MANGESH S. PATIL, J.
RESERVED ON: 06.09.2019
PRONOUNCED ON: 17.10.2019

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. Learned A.P.P. waives service for the Respondent no.1. Learned advocate Mr. G.R. Syed waives service for the Respondent nos. 2 to 8. At the request of both the sides the matter is heard finally at the stage of admission.

2. The facts leading to the filing of this Writ Petition are to the effect

that a volunteer of an organization intercepted a Truck on 17.03.2019 and found that cattle were being transported in it. There were fifteen bullocks and three buffaloes. The Respondent no.8 was driving the Truck and was unable to give satisfactory explanation about necessary permits. The Truck was taken to the police station and the crime was registered as Crime No.59 of 2019 for different offences under the Cruelty to Animals Act, Animal Protection Act, Maharashtra Preservation of Animal Act, Cattle Transportation Act and the Motor Vehicles Act.

3. The Respondent nos. 1 to 8 claiming to be the owners of the cattle submitted an application before the Magistrate for release of the cattle by filing application under Section 457 of the Code of Criminal Procedure. Simultaneously the Petitioner which is a Goshala also submitted a similar application and requested to handover ad interim custody of the cattle to it for preservation till conclusion of the trial. The learned Magistrate rejected the application of the Respondent nos. 2 to 8 and allowed the application of the Petitioner and further directed the Respondents to pay to it Rs. 100 per day per cattle for their maintenance.

4. Being aggrieved by the order the Respondent nos. 2 to 8 preferred a revision before the Sessions Court. By the impugned judgment and order

the learned Additional Sessions Judge allowed the revision, quashed and set aside the order passed by the learned Magistrate and directed the cattle to be returned to the respondent nos. 2 to 8 subject to usual terms and conditions. Hence this Writ Petition.

5. The learned advocate for the Petitioner vehemently submitted that the cattle was being transported in blatant violation of different statutes mentioned herein-above. The cattle were being transported in a cruel manner in violation of the Transport of Animals Rules and the very purposes and object of these enactments were being defeated. In spite of existence of sufficient material demonstrating that the Respondent nos. 2 to 8 were causing cruelty to the cattle, the Magistrate had rightly refused to return the cattle to them and instead had rightly directed it to be returned to the Petitioner during trial as per the provisions of Section 8(b) of the Maharashtra Animal Preservation Act, 1995. The very purpose of bringing such a provision by way of Amendment is to meet a contingency wherein the cattle is likely to be put to further cruelty even during pendency of the trial if it is handed over back to the accused or to the owner. By the impugned order the learned Additional Sessions Judge has clearly overlooked the mandate of law and has replaced his own discretion in place of the discretion exercised by the Magistrate in a fair manner. The discretion exercised by the Magistrate by no

stretch of imagination was either perverse, arbitrary or capricious which could have enabled the Court exercising powers under Section 397 of the Code of Criminal Procedure to interfere. Therefore the impugned order is nothing but a gross misuse of the power in the Sessions Court.

6. The learned advocate for the petitioner in support of his submission placed reliance on different provisions of the aforementioned statutes and also placed reliance on the decision of a Division Bench of this Court rendered in **Krushni Goseva Sangh and Another Vs. State of Maharashtra and Others; 1988 Mh.L.J. 293** and few decisions of the coordinate benches of this Court in **Ashok L. Puranik Vs. State of Maharashtra and Others; 1998 (2) LJ 674**, **Deoram Sadashivji Navghare Vs. State of Maharashtra and Another 2010; All MR (Cri) 45**, **Akhil Bharat Krishi Go Seva Sangh Vs. State of Maharashtra and Another; 1997 All MR (Cri) 1740** and **Jivdaya Pashupakashi Saurakshan and Sanwardha Sanstha Vs. State of Maharashtra and Another; 2009 All MR (Cri) 3230**.

7. The learned advocate for the Respondent nos. 2 to 8 submitted that admittedly the cattle belongs to them. They trade in the cattle and being their vocation were legitimately transporting it as a part of their business. The learned Magistrate had overlooked these important aspects and had directed the custody of cattle to be given to the Petitioner. The Respondents had duly

presented the purchase receipts of all the cattle before the Magistrate and still those were overlooked. There was no material to show that the cattle were being transported to some slaughter house. The cattle was found in a Truck and not at any slaughter house. There was no other material to *prima facie* draw any inferences as to if really the cattle were being taken to some slaughter house. The order passed by the Magistrate was clearly perverse and arbitrary and has rightly been interfered with in revision. The learned Additional Sessions Judge has rightly stepped in and has rightly directed the cattle to be returned to them. The observations and the conclusions in the impugned judgment and order are neither perverse nor arbitrary and this Court should not intervene under the writ jurisdiction.

8. The learned advocate also sought to place reliance on the decisions of the Supreme Court in the case of **Manager, Pinjrapole Deudar and Another Vs. V. Chakram Moraji Nat and Others; AIR 1998 SC 2769, Bharat Amratlal Kothari Vs. Dosukhan Samadkhan Sindhi and Others; AIR 2010 S.C. 475**, and the decision of a coordinate bench of this Court in the case of **Shaikh Bilal Shaikh Ayybu Vs. The State of Maharashtra and Another; in Criminal Writ Petition No.1183 of 2018 dated 08.04.2019** (Aurangabad Bench).

9. The learned A.P.P. submits that the order passed by the Magistrate

clearly seeks to implement the provisions of various enactments mentioned herein-above and should be restored.

10. It is alleged by the prosecution that fifteen bullocks and three buffaloes were being transported in one Truck and were being taken to a slaughter house. There was no valid permit for transportation of such cattle. The cattle was treated cruelly and offences under different statutes mentioned herein-above have been committed. There is no apparent dispute that the Respondent nos. 2 to 8 are the owners of the cattle and have been claiming interim custody. It is pertinent to note that the Maharashtra Animal Preservation Act, 1995 has been amended by the Maharashtra Act No.V of 2015 which has come into force on 04.03.2015. By way of such amendment, Section 8 of the principal Act has been amended and following proviso is added to Sub-section 3 which reads as under:

“(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 or 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.”

11. It is necessary to note that it is by virtue of this proviso to Sub-section 3 of Section 8 that the Petitioner which is a Goshala is claiming interim custody of cattle. Independently, in the absence of any such statutory provision *prima facie* the petitioner has no right to claim custody of cattle seized in connection with various crimes committed under the aforementioned statutes.

12. Conspicuously, this provision is contained in the State law namely Maharashtra Animal Preservation Act, 1995. I am pointing out this only because this proviso of Sub-section 3 of Section 8 of that Act which has come into force in the year 2015 was not in existence when the Supreme Court decided the matter in case of **Bharat Amratlal Kothari** (supra). With respect,

the scenario has undergone material change post insertion of such a proviso which entitles a third party like a Goshala to seek custody of cattle.

13. The purpose and object of such an enactments is not far to seek. Any enactment like Prevention of Cruelty to Animals Act, 1960 aims at protecting animals and preventing any ill-treatment to them. The Maharashtra Animal Preservation Act further aims at protecting the animals. Section 35 of the Prevention of Cruelty to Animals Act made certain provisions for protection of animals. It reads thus:

“35. Treatment and care of animals-

(1) The State Government may, by general or special order, appoint infirmaries for the treatment and care of animals in respect of which offences against this Act have been committed, and may authorise the detention therein of any animal pending its production before a Magistrate.

(2) The Magistrate before whom a prosecution for an offence against this Act has been instituted may direct that the animals concerned shall be treated and cared for in an infirmary, until it is fit to perform its usual work or is otherwise fit for discharge, or that it shall be sent to a Pinjrapole, or if the Veterinary Officer in-charge of the area in which the animal is found or such other Veterinary Officer as may be authorised in this behalf by rules made under this Act certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed.

(3) An animal sent for care and treatment to an infirmary shall not, unless the Magistrate directs that it shall be sent to a Pinjrapole or that it shall be destroyed, be released from such place except upon a certificate of its fitness, for discharge issued by the Veterinary Officer in-charge of the area in which the infirmary is situated or such other Veterinary Officer as may be authorised in this behalf by rules made under

this Act.

(4) The cost of transporting the animal to an infirmary or Pinjrapole, and of its maintenance and treatment in an infirmary, shall be payable by the owner of the animal in accordance with a scale of rates to be prescribed by the District Magistrate, or, in presidency-towns, by the Commissioner of Police:

Provided that when the Magistrate so orders on account of the poverty of the owner of the animal, no charge shall be payable for the treatment of the animal.

(5) Any amount payable by an owner of an animal under sub-section (4) may be recovered in the same manner as an arrear of land revenue.

(6) If the owner refuses or neglects to remove the animal within such time as a Magistrate may specify, the Magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.

(7) The surplus, if any, of the proceeds of such sale shall, on application made by the owner within two months from the date of the sale, be paid to him.”

14. Although a proviso similar to Sub-section 3 of Section 8 of the Maharashtra Animal Preservation Act was not there, Sub-section 2 of Section 35 of the Prevention to Cruelty to Animals Act provides as to under what circumstances a Magistrate can pass an order directing the animals concerned to be treated during pendency of the trial. There is no evidence to show that the State of Maharashtra has made any provision for appointment of infirmaries. In the case of **Manager, Pinjrapole Deudar and Another** (supra) the Supreme Court has laid down following guidelines in paragraph no.10 for

implementing the provisions of Section 35:

“10. Now adverting to the contention that under Section 35 (2), in the event of the animal not being sent to infirmary, the Magistrate is bound to give the interim custody to Pinjrapole, we find it difficult to accede to it. We have noted above the options available to the Magistrate under Section 35 (2). That sub-section vests in the Magistrate the discretion to give interim custody of the animal to Pinjrapole. The material part of sub-section (shorn of other details) will read, the Magistrate may direct that the animal concerned shall be sent to a Pinjrapole. Sub-section (2) does not say that the Magistrate shall send the animals to Pinjrapole. It is thus evident that the expression “shall be sent” is part of the direction to be given by the Magistrate if in his discretion he decides to give interim custody to Pinjrapole. It follows that under Section 35 (2) of the Act, the Magistrate has discretion to handover interim custody of the animal to Pinjrapole but he is not bound to handover custody of the animal to Pinjrapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, Pinjrapole has no preferential right. In deciding whether the interim custody of the animal be given to the owner who is facing prosecution, or to the Pinjrapole, the following factors will be relevant : (1) the nature and gravity of the offence alleged against the owner; (2) whether it is the first offence alleged or he has been found guilty of offences under the Act earlier; (3) if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution; (4) the condition in which the animal was found at the time of inspection and seizure; (5) the possibility of the animal being again subjected to cruelty. There cannot be any doubt that establishment of Pinjrapole is with the laudable object of preventing unnecessary pain or suffering to animals and providing protection to them and birds. But it should also be seen, (a) whether the Pinjrapole is functioning as an independent organization or under the scheme of the Board and is answerable to the Board; and (b) whether the Pinjrapole has good record of taking care of the animals given under its custody. A perusal of the order of the High Court shows that

the High Court has taken relevant factors into consideration in coming to the conclusion that it is not a fit case to interfere in the order of the learned Additional Sessions Judge directing the State to handover the custody of animals to the owner.”

15. These guidelines in my considered view would still govern the situation post insertion of Sub-section 3 and its proviso to Section 8 of the Maharashtra Animal Prevention Act and a Goshala like the Petitioner would be entitle to seek interim custody of animals only in the circumstances and situations covered by these guidelines. The nature and gravity of the offences, criminal antecedents under that statute, condition in which the animals were found at the time of inspection or seizure, possibility of the animal being again subjected to cruelty, the track record of a Panjrapole/Goshala in maintaining and preserving animals are the important factors which should weigh with a Magistrate while deciding the rival claims of the owner and Panjrapole/Goshala for custody of the animals.

16. Bearing in mind these principles, if one examines the matter in hand, the only material before the Magistrate which would *prima facie* show that the cattle was being treated cruelly is the fact that as many as eighteen cattle i.e. fifteen bullocks and three buffaloes were being transported in one vehicle. As has been pointed out by the learned advocate for the petitioner, the Transport of Animals Rules, 1978 framed pursuant to enabling provision

contained in Section 38 of Prevention of Cruelty to Animals Act, 1960 clearly lay down various elaborate provisions laying down specification for transportation of animals. Chapter IV lays down provisions in Rules 47 to 56 for transportation of cattle. Rule 56 lays down that when cattle are to be transported by a goods vehicle the vehicle should have a special type of tail board and padding around the sides, it should provide anti sleeping material and no goods vehicle shall carry more than six cattle. In the matter in hand, as many as eighteen cattle were being transported in one vehicle and such transportation was clearly violative of this rule and constitutes cruelty.

17. However barring this violation there are no allegations about the cattle being treated with cruelty. There is apparently no material demonstrating that the cattle was physically harmed or was put to any danger or was kept starving or was not being looked after properly.

18. Simultaneously, even there is no material to show that the cattle if returned to the Respondent nos. 2 to 8 would face a similar cruelty. Again there is also no material as to the track record of the petitioner in maintaining and preserving cattle. Again there is no material to show that the respondent nos. 2 to 8 have earlier faced any such similar offence. All these aspects are so very important and need to be taken into account while deciding the rival claims of the Petitioner on the one hand and the Respondent nos. 2 to 8 on

the other.

19. As laid down in the case of **Manager, Pinjrapole Deudar and Another** (supra), these being very crucial and decisive factors, the learned Magistrate ought to have examined the material in hand objectively. The order passed by the Magistrate does not demonstrate about he having taken into consideration these important aspects. The order passed by the Magistrate clearly shows that the decision in the case of **Manager, Pinjrapole Deudar and Another** (supra) was not brought to his notice. The learned Magistrate simply on the basis of the amended proviso to Sub-section 3 of Section 8 of the Maharashtra Animal Prevention Act and the decisions cited on behalf of the Petitioner referred to herein-above directed the cattle to be returned to the Petitioner. True it is that even the attention of the learned Additional Sessions Judge was not adverted to this decision of the Supreme Court. Still, when it is demonstrable that the learned Magistrate had overlooked the aforementioned aspects, his decision was clearly perverse and arbitrary and was liable to be interfered with in the revision. Even in the absence of any reasoning assigned by the learned Additional Sessions Judge on these lines as discussed herein-above, this Court needs to bear in mind the principle of law laid down in the case of **Manager, Pinjrapole Deudar and Another** (supra) and apply these principles. The order passed by the

Magistrate does not demonstrate about all the relevant factors (supra) having been taken into consideration. The order was liable to be interfered with in revision. Therefore even if the learned Additional Sessions Judge has not come out with sound reasoning, the order needs to be upheld.

20. As can be noticed, the decisions cited on behalf of the Petitioners have been rendered in the peculiar facts and circumstances obtaining in those individual cases. Even the decisions of the coordinate benches cited by the learned advocate for the Respondent nos. 2 to 8 have been decided in the peculiar facts and circumstances obtaining therein. Needless to state that there could be no strait jacket formula in such matters where a Goshala or Panjrapole and the owners of the cattle are pitted against each other laying rival claims. The factors which a Magistrate needs to take into consideration in such cases should be as laid down in paragraph no.10 of the judgment in the case of **Manager, Pinjrapole Deudar and Another** (supra). Applying these principles, the impugned order in the revision cannot be interfered with under the writ jurisdiction of this Court.

21. The Writ Petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL, J.]

22. At this juncture, the learned advocate for the Petitioner submits that the cattle is in its custody pursuant to the order of the Magistrate. The status may be continued so as to enable it to approach the Supreme Court and the operation of the judgment be stayed for a reasonable time.

23. The learned advocate for the respondents No. 2 to 8 opposes the request but concedes that the cattle is in the custody of the Petitioner.

24. Considering the aforementioned state of affairs it would be appropriate to allow the status quo to be maintained by extending some opportunity to the Petitioner to approach the Supreme Court. Therefore the operation of the judgment and order shall stand stayed for a period of four weeks from today.

[MANGESH S. PATIL, J.]