

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1026 OF 2020

Gorakshanarth Aadiwasi Sevabhavi Sanstha
Hatta (Naik) Gopal Gaushala
Hatta Naik, Tq. Sengaon Dist. Hingoli
P.T.R. No.3792 (Hingoli)

... Petitioner

Versus

1. The State of Maharashtra
Through Police Station, Hatta.
Tq. Basmath, Dist. Hingoli
2. Sk. Abdul Shafi Abdul Madar Kureshi
Age: 32 years, Occu.: Business,
R/o. Parbhani, Tq. & Dist. Parbhani

... Respondents

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Mr. J. S. Kini h/f Mr. J. V. Deshpande and Mr. B. N. Magar, Advocate for petitioner.

Mrs. R. P. Gaur, APP for respondent No.1 – State.

Mr. R. J. Nirmal, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02-12-2020

JUDGMENT :

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

2. Present writ petition has been filed by the Gaushala in whose possession the cattle seized by police in connection with Crime No.245 of 2020

registered with Hatta Police Station, Dist. Hingoli were handed over by police. Present respondent No.2 then filed an application under Section 457 of the Code of Criminal Procedure claiming to be the owner of the cattle, vide Criminal Miscellaneous Application No.114 of 2020 which came to be allowed by the learned Judicial Magistrate First Class, Aundha on 14-08-2020. Thereafter, the present petitioner had approached the learned Additional Sessions Judge, Basmathnagar in Criminal Revision Application under Section 397 of the Code of Criminal Procedure. However, it came to be dismissed on 25-08-2020 holding that the Gaushala has no *locus standi* to file revision application. Therefore, the petitioner wants to invoke the constitutional powers of this Court under Article 227 of the Constitution of India as well as inherent powers of this Court under Section 482 of the Code of Criminal Procedure to challenge the impugned orders.

3. Heard learned Advocate Mr. J. S. Kini holding for learned Advocate Mr. J. V. Deshpande and Mr. B. N. Magar for petitioner, learned APP Mrs. R. P. Gaur for respondent No.1 – State and learned Advocate Mr. R. J. Nirmal for respondent No.2.

4. It has been vehemently submitted on behalf of the writ petitioner that the petitioner is a Public Charitable Trust. The main object of the Trust is to protect, preserve and care cattle, including cows, bulls, bullocks and buffalos without making any private orientation activities and with purpose of providing

fodder, medical aid and hygienic environment to the cattle. Police has seized 16 calf and 2 oxe in the said Crime No.245 of 2020 on 23-07-2020. The offence that was registered was under Sections 11(1)(D)(E) of the Prevention of Cruelty to Animal Act (hereinafter referred to as the 'PCA Act'), Sections 5(a)(b), 9 and 11 of the Maharashtra Prevention of Animal Act (hereinafter referred to as 'MPA Act') and Section 83 punishable under Section 177 of the Motor Vehicles Act, 1988. It was alleged that those cattle were being illegally transported for the purpose of slaughtering in cruel manner. The Hatta police had requested the petitioner- Gaushala to provide medical treatment and protect as well as preserve the cattle. It was readily accepted by the petitioner. Present respondent No.2 claimed to be the owner of the cattle, who had filed application under Section 457 of the Code of Criminal Procedure. The petitioner was never called upon by the learned Magistrate to submit say. In fact, the custody of the cattle is with the petitioner and they are taking good care of the cattle by incurring all the expenses from the Trust. As per the circular of Animal Welfare Board of India dated 03-05-2008, the daily maintenance of per cattle has been fixed at Rs.200/-. The Home Department of State Government of Maharashtra has issued a circular on 03-05-2008 stating that the cattle which are found for being carried for illegal slaughter should be handed over to a Social Organization to avoid further cruelty to the animals and for their preservation. It is very much clear that the applicant i.e. respondent No.2, though claimed to be the owner of

the cattle, was responsible for the cruelty to the animals. Merely because he is the owner, he cannot get the custody of the cattle. The order that was passed by the learned Trial Court was not in consonance with the provisions of Rule 3(b) of Prevention of Cruelty to Animal (Care and Maintenance of Case Property Animals) Rules, 2017. This was tried to be challenged by the present petitioner before the learned Sessions Judge, but without even numbering the revision, the learned Additional Sessions Judge appropriately dismissed the revision contending that the petitioner has no *locus standi* to file revision. It is patently illegal order. When the custody of the cattle is with the petitioner, then an opportunity ought to have been given by the learned Sessions Judge to make submissions before him to the petitioner. The learned Sessions Judge committed error in misinterpreting the orders passed in ***Pranab Kumar Mitra Vs. The State of West Bengal and Another (1959 Supp. (1) SCR 63)*** and ***Thakur Ram Vs. State of Bihar (AIR 1966 SC 911)***. The facts of the said matter were different. When the Acts and Rules those have been now framed require that the animals which have been seized under the provisions of the said Act are required to be get in a infirmary, Pinjrapole, SPCA, Animal Welfare Organization or Gaushala, then such authority should be heard as would be in the interest of natural justice.

5. Learned Advocate for the petitioner has relied on the decision in ***Manager, Pinjrapole Deudar and Another Vs. Chakram Morarji Nat and others [(1999) 1 BLJR 57]***, wherein it has been held thus :-

“8. From a plain reading of the provisions, above noted, it is evident that sub-section (1) of Section 35 enables the State Government to appoint infirmaries for the treatment and care of animals in respect of which any of the offences under the Act has been committed and to authorised the detention of such animals pending their production before a Magistrate. Under sub-section (2), the Magistrate may order that; (a) the animal shall be treated and cared for in an infirmary till such time it is fit to perform its usual work or is otherwise fit for discharge; (b) the animal shall be sent to a Pinjrapole; or (c) the animals shall be destroyed if it is certified by a veterinary officer, authorised under the Rules, to be incurable or if it is found that it cannot be removed without cruelty. Mandate of sub-section (3) is that no animal shall be released from an infirmary unless it is directed to be sent to Pinjrapole or be destroyed or certified by concerned veterinary officer to be fit for discharge. Sub-section (4) imposes liability for payment of the cost of transporting the animal to an infirmary or Pinjrapole and its maintenance and treatment in an infirmary, in accordance with the prescribed rates, which, however, can be dispensed with if the Magistrate is satisfied that on account of the poverty of the owner, he is unable to bear the same otherwise it may be recovered as arrears of land revenue, as envisaged in sub-section (5). Sub-section (6) says that if the owner refused or neglects to remove the animal within the time specified by the Magistrate then he can order the sale of the animal and appropriation of the sale proceeds for the cost thereof and in the event of there being surplus proceeds of such sale, payment of the same to the owner on his application within two months of the sale. This is postulated by sub-section (7).

9. In view of the above discussion and provisions of Section 451 Cr.PC., it appears to us that unless the owner of the animal in respect

of which he is facing prosecution, is deprived of the custody (which can be done only on his conviction under the Act for the second time), no Bar can be inferred against him to claim interim custody of the animal.

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, 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 sent animals to Ponjrapole. 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 hand over interim custody of the animal to Pinjrapole but he is not bound to hand over 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 offences 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 can not 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 hand over the custody of animals to the owner.”

6. Further, reliance has been placed on the decision in ***Shri. Chatrapati Shivaji Gaushala Vs. State of Maharashtra and others, (Criminal Writ Petition No.762 of 2019)*** decided by this Court on 17-10-2019, wherein it has been held that the petitioner i.e. Pinjrapole has right to be heard. It has also brought to the notice of this Court that this order in ***Shri. Chatrapati Shivaji Gaushala (Supra)*** is presently pending before Hon'ble Supreme Court in Petition (s) for Special Leave to Appeal (Crl.) No(s).412 of 2020. However, the *status quo* has been granted and thereby the cattle are with Pinjrapole now. Similar view was taken in ***Bhartiya Govansh Rakshan Sanvardhan Parishad Vs. State of Maharashtra and others, (Criminal Application No.1054 of 2017)***. Further, it was admitted in that matter that subject goats were already slaughtered and, therefore, question of granting custody did not remain, but still this Court gave directions that the

mandate of the provisions under Section 102 of the Code of Criminal Procedure and also the provisions of PCA (Care and Maintenance of Case Property Maintenance) Rules, 2016 should be observed. Further, reliance has been placed on the decision in ***Manager, Panjarapole, Deodar Vs. Chakaram Moraji Nat and another (1997 SCC OnLine Guj 81)*** which is decided by the Single Bench of the Gujarat High Court, wherein it has been held that Panjarapole being interested with the custody should be heard. Reliance was placed on the decision in ***Shaikh Zahid Mukhtar and others Vs. The State of Maharashtra and others (MANU/MH/0670/2016)***, wherein the validity of Maharashtra Animal Preservation Act as amended by Maharashtra Animal Preservation (Amendment) Act, 1995, which had received the assent of Hon'ble President of India on 04-03-2015, was under challenge and the Division Bench of this Court has upheld the validity. In this case, the very purpose of enactment was discussed. Further, reliance has been placed on the decision in ***State of W.B. and others Vs. Ashutosh Lahiri and others, (1995) 1 SCC 189***, wherein the preliminary objection was raised before the High Court about the petitioners *locus standi* to move the writ petition. In that case, the High Court had held that it was a Public Interest Litigation and the writ petitioners have sufficient *locus standi* to move the petition. The said view was then upheld by the Hon'ble Supreme Court. Similar view regarding Pinjrapole or Gaushala has *locus standi* to challenge the orders which are passed under the PCA Act regarding custody has been upheld in

Jivdaya Pashupakashi Saurakshan and Sanwardha Sanstha Vs. State of Maharashtra and another (Criminal Application No.567 of 2009) decided by this Court Bench at Nagpur on 08-10-2009.

7. After relying on these decisions, it has been submitted on behalf of the writ petitioner that the learned Additional Sessions Judge totally erred in dismissing the revision *in limine*.

8. Per contra, learned Advocate appearing for respondent No.2 vehemently submitted that respondent No.2 is admittedly the owner of cattle those were seized by police. Necessary documents were produced before the learned Magistrate and the learned Magistrate held that mere suspicion that the cattle were taken in slaughtering is not a ground to reject the application. The original applicant i.e. present respondent No.2 is an agriculturist and, definitely, he has the cattle in his possession. The custody was rightly directed to be handed over to respondent No.2. The present petitioner has no *locus standi* to oppose the said order. He further submitted on the basis of the affidavit-in-reply filed by respondent No.2 that he had tried to execute the order passed by the learned Magistrate, but the petitioner is avoiding to return the property. Therefore, offence has been registered against the present petitioner on 25-08-2020. When he had made phone calls to the petitioner's official, it was then told that the petitioner's official would come on 19-08-2020. Accordingly, when respondent No.2 went, that person was not available. Again, he went on

20-08-2020, again that person was not available. On 22-08-2020, he has searched for the officer of the petitioner with the help of police authorities. Again, a search was undertaken on 24-08-2020. Therefore, possibility that the petitioner would have sold 18 calves and then misappropriated amount of Rs.3,60,000/- cannot be ruled out and, therefore, he lodged Crime No.282 of 2020 with Sengaoon Police Station on 24-08-2020. According to respondent No.2, the animals which are given in the custody of the petitioner are not available and, therefore, the petition is devoid of any merits. The Apex Court in ***Manager, Panjarapole Deudar (Supra)*** has held that there is discretion to the Magistrate to hand over the animals and under such circumstance, when the discretion has been used by the learned Magistrate appropriately, it cannot be subjected to any interference.

9. When the fact regarding existence of the cattle was raised by respondent No.2, petitioner was directed to give photographs of the cattle which they possess under the orders of police relating to the present case. Those photographs in the form of photocopy have been produced on record, yet, it is the say of respondent No.2 that the cattle seen in the photographs do not belong to him. It was also told that one of the calf has died and it was so informed to the police and acknowledgment of dead body has been produced.

10. At the outset, it is required to be seen that in respect of existence of the property is concerned, it appears to be a disputed fact which cannot be gone

into in writ petition. However, when the question comes to give an opportunity to the petitioner - Gaushala to put forth its say then definitely that being a point of law, so also whether the Gaushala could have challenged the order passed by the learned Magistrate under Section 457 of the Code of Criminal Procedure before the revisional Court is also a law point, that can be gone into in this writ petition. As aforesaid the legality of the Act which is required to be dealt with in this case has been upheld by the Division Bench of this Court in ***Shaikh Zahid Mukhtar's case (Supra)***. We need not go into any such challenge which would be contrary raised. The purpose behind enactment is required to be considered. The Act was enacted to prevent the infliction of unnecessary pains or suffering of animals in order to curb the cruelty to animals. Section 38 provides for power to make rules. Accordingly, various rules have been framed and one of the rule that was framed is the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017. Further, there is Maharashtra Animal Prevention Act, 1995 holding the field. It has been amended by 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, which reads thus :-

“(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, Panjarpole, 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.”

Thus, it can be seen that the proviso specifically makes a provision regarding the custody of cattle, pending trial and further arrangement is made that the accused should be liable to pay to such organization in which the cattle is handed over as an interim custody for the maintenance of the cattle for the period till the custody is handed over ultimately. This Court in ***Shri. Chatrapati Shivaji Gaushala (Supra)*** has taken into consideration all the relevant provisions, however, according to the learned Advocate for the petitioner, Division Bench’s decision in ***Shaikh Zahid Mukhtar’s Case (Supra)*** were not considered. Further,

we cannot ignore the fact that the said decision is now pending before Hon'ble Supreme Court. However, the fact remains that provision has been made to grant the cattle in custody of an organization immediately after the seizure of those animals under the Act and then when it comes to handing over of custody under Sections 451 or 457 of the Code of Criminal Procedure, then we are guided by other provisions including those are applicable to Sections 451 and 457 of the Code of Criminal Procedure.

11. Now, in this case it is a fact that after the cattle were seized in this case, they were immediately handed over to the present petitioner. The learned Magistrate got the knowledge about the same when it is so mentioned in the application itself. Under such circumstance, an opportunity ought to have been given by the learned Magistrate to the petitioner - Gaushala to put forth its say. The property i.e. cattle were in the custody of the petitioner and they were supposed to be taken out of the custody and, therefore, naturally the petitioner would be the affected party. Rules of natural justice required that the petitioner ought to have been heard in the matter. The three Judge Bench of Hon'ble Supreme Court in ***State Bank of India Vs. Rajendra Kumar Singh and others (AIR 1969 SC 401)*** has observed (it was under the old Cr.PC.) that :-

“It is true that the statute does not expressly require a notice to be issued or a hearing to be given to the parties adversely affected. But though the statute is silent and does not expressly require issue of

any notice, there is in the eye of law a necessary implication that the parties adversely affected should be heard before the Court makes an order of return of the seized property. Thus an order of the High Court reversing the order of the Sessions Court directing disposal of property under Section 517, without giving notice to the person to whom the property is directed to be delivered by the Sessions Court, is vitiated by law.”

The said case was then relied by Karnataka High Court in ***Basappa Durgappa Kurubar and others Vs. The State of Karnataka and another, (1977 CRI.L.J. 1541)***, wherein it has been held that, “Though Section 451 of the Code of Criminal Procedure does not expressly require a notice to be issued or a hearing to be given to the parties adversely affected, there is in the eye of law a necessary implication that the parties adversely affected should be heard before the Court makes an order for the return of seized property.”

12. Therefore, all these pronouncements definitely state that the party adversely affected needs to be heard. Further, in view of the change in the provisions by way of amendment in the Acts, definitely, a right is given to the Panjarpole or Gaushala. Therefore, learned Magistrate, in the present case, ought to have called upon the custodian of the cattle to put forth its say. That opportunity needs to be given here also.

13. The learned Additional Sessions Judge totally erred in dismissing the revision by holding that the Panjarpol had no *locus standi* to file such

application. Merely because the revision applicant i.e. present petitioner was not a party in Criminal Miscellaneous Application No.114 of 2020, it was held that petitioner being third party cannot file the revision. In fact, Section 397 of the Code of Criminal Procedure Code which has been almost quoted by the learned Additional Sessions Judge also puts duty on the shoulders of Sessions Judge to see the correctness, legality or propriety of the order. Then he ought to have noticed that the person in whose possession the custody have been given by police under the provisions of the Act has been heard nor not. The learned Additional Sessions Judge could have asked the learned Magistrate to hear the present petitioner and decide the matter afresh. In that way, he would have dealt with the “correctness” of the order passed by the learned Magistrate. Therefore, the dismissal of the revision *in limine* is unjustifiable and inappropriate. It deserves to be set aside for giving directions to the learned Magistrate to hear the present petitioner and then pass an appropriate order under the provisions of law. The learned Magistrate may also be then required to hold an inquiry which is contemplated under Section 457 of the Code of Criminal Procedure in view of the situation which has now arisen, that as per respondent No.2, the cattle shown in the photographs before this Court are not the same which belong to him and were given in custody of the petitioner.

14. Before parting, it can be seen, due to the aforesaid situation which had now arisen, that while handing over the cattle by police, it appears that

detailed panchanama was not prepared. In fact, Rule 3 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 makes provision for custody of animals pending litigation, which runs thus :-

“3. Custody of animals pending litigation.- When an animal has been seized under the provision of the Act or the rules made thereunder -

(a) the authority seizing the animal shall ensure health inspection, identification and marking such animal, through the jurisdictional veterinary officer deployed at Government Veterinary Hospital of the area and marking may be done by ear tagging or by chipping or by any less irksome advance technology but marking by hot branding, cold branding and other injurious marking shall be prohibited;

(b) the magistrate may direct the animal to be housed at an infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala during the pendency of the litigation.”

15. Further, Rule 5 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 deals with the execution of bond. From reading of the same it would appear that the participation of the Pinjrapole is definitely needed. But then the said execution of bond would arise after the Magistrate passes an order of handing over the custody of the animal to an infirmary, Pinjrapole etc. It appears that in the present case, all the rules have not been strictly followed even at the time of handing over the animals/cattle to the pinjrapole by police. The requirements under Rule 3(a) of the abovesaid

rules, which are mandatory in nature, have not been followed. When these rules are mandatory, then they should be followed by all the authorities acting under the Act.

16. With these observations, following order is passed :-

ORDER

- I) The writ petition stands partly allowed.
- II) The order passed below un-numbered revision application by learned Additional Sessions Judge, Basmathnagar, Dist. Hingoli on 25-08-2020, between Gorakshanarth Aadiwasi Sevabhavi Sanstha Hatta (Naik) Gopal Gaushala Vs. The State of Maharashtra and another, is hereby set aside.
- III) The order passed by learned Judicial Magistrate First Class, Court No.2, Aundha Nagnath, Dist. Hingoli on 14-08-2020 in Criminal Miscellaneous Application No.114 of 2020 is hereby set aside.
- IV) Criminal Miscellaneous Application No.114 of 2020 is restored on the file of learned Judicial Magistrate First Class, Court No.2, Aundha Nagnath, Dist. Hingoli.
- V) The learned Magistrate is directed to hear the present petitioner by giving appropriate opportunity and decide the said

application under Section 457 of the Code of Criminal Procedure as per the provisions of law.

VI) The petitioner to appear before the learned Magistrate on 07-12-2020. In that event, it may not be necessary for the Magistrate to issue notice to the present petitioner.

VII) Respondent No.2 – original applicant should also appear before the learned Magistrate on 07-12-2020.

VIII) In that event, learned Magistrate to decide the said application within a period of two months after the said appearance by the parties on 07-12-2020.

IX) Rule is made partly absolute in the above terms.

[SMT. VIBHA KANKANWADI, J.]

scm