

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

CRIMINAL APPLICATION NO. 1597 OF 2020

Navid Khan s/o Anis Khan,
Age: 28 years, Occu: Business,
Plot No.45, Sy.No.17, Mominpura,
Malegaon, Dist. Nashik.

... **Applicant**

Versus

1. The State of Maharashtra
Through the Investigation Officer,
Police Station, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar,

2. Hujju s/o Amin Shaikh,
Age: 32 years, Occu: Driver,
R/o Lamjana, Tq. Ausa,
Dist. Latur.

... **Respondents**

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Advocate for Applicant : Mr. Sambhaji S. Tope
APP for Respondents/State : Mr. K.D. Mundhe
Advocate for R/2 : Mr. N.R. Thorat (Appointed)

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**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**
DATE : 16.12.2020

JUDGMENT : (Per: *M.G. Sewlikar, J.*)

Rule. Rule is made returnable forthwith. Learned A.P.P and the learned advocate for the respondent no.2 waive service. With the consent of both the sides the matter is heard finally at the stage of admission.

2. Applicant has sought quashing of charge-sheet filed against him under Section 411, 412 and 201 of the I.P.C. filed by Kopargaon Police Station, District Ahmednagar.

3. Facts giving rise to this petition are that the applicant is accused no.11 in the aforesaid charge-sheet.

4. The informant (Hujju Amin Shaikh) has alleged in the FIR that he is a driver. On 15.09.2019, he along with cleaner Irfan Yamin Qureshi left Bhiwandi at 4.00 pm. He was driving Eicher truck no. MH-05-DK-0757 in which eight she buffaloes were loaded. On 16.09.2019, at 12.30 am both of them reached Puntamba Phata at Gursal Vasti. One Ertiga car over took his Eicher truck and intercepted his truck. The informant stopped his truck. Out of the said car, four persons alighted. One of them waited at the car and the other three came to the informant and the cleaner. They forced the informant and the cleaner at the point of knife to get down from the truck. They forced the informant and the cleaner to sit in Ertiga car. They robbed him of

Rs.6,000/-. They robbed Irfan of his mobile and driving license. They beat them and left them at Aadsuregaon, Tq. Gangapur, District Aurangabad. On 16.09.2019 in the afternoon, the informant and the cleaner Irfan came to the spot of the incident i.e. Gursal Vasti. He did not notice his truck no.MH-05-DK-0757 and that she buffaloes were also not found. That confirmed his suspicion that the person who was waiting at the Ertiga car had stolen the Eicher truck and the she buffaloes. He searched for the Eicher truck and she buffaloes but they were not found. On 17.09.2019 he lodged the FIR. The stolen articles were cash of Rs.18,000/-, cell phone handset of MI company having Vodoafone sim bearing no.9764012886 and Jio sim no.80805543733, cell phone hand set of Samsung company which had Airtel sim no.70287546614, eight she buffaloes worth Rs.25,000/-, Eicher truck worth Rupees Four Lakhs. Accordingly, offence was registered under Section 395, 394, 363, 341, 504, 506 of the I.P.C. The applicant is alleged to have received the stolen property and he has slaughtered the she buffaloes in the slaughter house.

5. During investigation, it was revealed that accused Nitin Padwal, Kiran Arne, Bhaiyyasaheb Padwal, Rahul alias Shankar Kharat, Amol Makasare, Suresh alias Raju Uttam Bhalerao, Maari alias Mayur Pawar got to know each other at gate no.2 at Shirdi. All of them are drivers of either auto

rickshaw or four wheeler. They had hatched a plan of robbing the Eicher truck. Accused Suresh alias Bapu Katare was driving the Ertiga car no. MH-14-EH-5159 which was owned by Nitin Murlidhar Shinde. According to their plan they intercepted the Eicher truck, they kidnapped the informant and the cleaner and the person waiting at the Ertiga car drove the truck to Malegaon and the truck was given in possession of accused no.10-Shaikh Nisar Shaikh Isak and absconding accused no.13 Shaikh Irfan Shaikh Budan. Accused nos.10 and 13 gave these buffaloes in possession of accused no.11 and accused no.11 sold these she buffaloes to witness no.10 Rishin Rasheed. Rishin Rasheed runs Fair Export India Pvt. Ltd. These she buffaloes were slaughtered in slaughter house and this is how accused no.11 came in picture by virtue of which offence punishable under Section 411, 412 and 201 of the I.P.C. came to be registered against him.

6. Heard Shri Tope learned counsel for the applicant, Shri K.D. Mundhe learned APP for the State and Shri N.R. Thorat learned counsel for the responden no.2-informant appointed by the Court.

8. Shri Tope submitted that the applicant is an authorised commission agent of the Fair Export India Pvt. Ltd. Fair Export India Pvt. Ltd. company's business is of export of buffalo meat. The said company has

several agents for purchasing and supplying the buffaloes. He argued that the business of the applicant is registered under the provisions of Maharashtra Shop and Establishments Act, 1948. He has also opened a bank account bearing no. 642805001471 with the ICICI bank for business transactions. He argued that the applicant has no concern with the said offence. The applicant has not purchased these buffaloes for slaughtering. The code of the applicant as a commission agent is 4571. If any animal gets slaughtered in the name of applicant, then it is done under this code. He argued that the number of she buffaloes mentioned in the complaint and the number of she buffaloes mentioned in the general diary do not match. On 16.09.2019 at 11.20 am four animals were alleged to have been supplied under the code of the applicant, whereas the informant has alleged theft of eight buffaloes and in the general diary details maintained by the Inspector Rakesh Annappa there is an entry that nine buffaloes were stolen from the vehicle of the informant. The applicant has not purchased any buffaloes from the accused. He argued that on perusal of the entire charge-sheet, it cannot be gathered that the applicant had the knowledge that the she buffaloes were the stolen properties. If really they had been the stolen properties, the applicant would not have sold these buffaloes under his code name and would not have accepted the cash in cheque. The applicant would have insisted on taking the amount of

the buffaloes in cash instead of getting the said amount transferred in his account. At the time when the alleged she buffaloes were sold by the said absconding accused no.12, the applicant was not present at the place of his business. He submitted that the absconding accused Shaikh Budan was not arrested by ASI Borse, though the said ASI Borse and Shaikh Budan had been to the house of the applicant's father. He further argued that the applicant's father had addressed a communication to the Superintendent of Police highlighting the evil intentions of ASI Borse. He argued that ASI Borse had demanded Rupees Two Lakhs for giving a clean chit to the applicant. Since the applicant did not succumb to the pressure of ASI Borse, this false case has been filed against the applicant. ASI Borse has deliberately not arrested Shaikh Irfan Shaikh Budan. He submitted that not a single document is produced on record to show that the applicant was aware that these buffaloes were the stolen properties and with this knowledge he had sold those she buffaloes to the slaughter house. He therefore prayed for the quashing of the FIR and the charge-sheet. He placed reliance on the case of **Mir Nagvi Askari V/s. C.B.I.; 2009 DGLS (SC) 1197** and on the case of **Man Singh Narayan Singh V/s. State of Madhya Pradesh; 1993 DGLS (SC) 308**.

9. Shri Munde submitted that the statement of witnesses show that the applicant was aware of selling of these eight she buffaloes to his shop. He

argued that Manager of Fair Export India Pvt. Ltd. has given a statement that these eight she buffaloes were sold vide entry slip no. 57708, 57704. He argued that this sale happened on 16.09.2019 and the incident had also taken place on 16.09.2019 at 12.30 am. He submitted that involvement of the applicant is writ large. He submitted that there is documentary evidence in the form of receipt indicating that the applicant had purchased these she buffaloes with the knowledge that they were stolen properties. He therefore prayed for dismissal of the application.

10. Shri Thorat adopted the arguments of the learned APP.

11. It is not in dispute that the applicant is a commission agent with Fair Export India Pvt. Ltd., Malegaon. Rishin Rasheed is working as a Deputy Manager with the Fair Export India Pvt. Ltd., Malegaon since last three years. This company was established in the year 2016. It slaughters the she buffaloes and the meat is sold abroad after processing it.

12. Statement of Rasheed Rashin was recorded during investigation. He has stated that on 16.09.2019 the applicant Navid Khan Anis Khan had sold eight she buffaloes to Fair Export India Pvt. Ltd. vide animal gate entry slip no. 57708 and 57704 vide receipt no. 89248 and 89244. An amount of Rs.1,30,020.70/- and Rs. 1,35,991.90/- respectively was paid to the applicant.

Witness Irfan Khan Ibrahim Khan has stated that he works with the applicant as a Labour. On 16.09.2019 at about 10.00 am he got a call from Shaikh Irfan Shaikh Budan. The said Shaikh Irfan Shaikh Budan informed this witness Irfan Khan Ibrahim Khan that the said Shaikh Budan wanted to sell eight she buffaloes in the name of the applicant. The said Irfan Khan has further stated in his statement that he called up the applicant and made known to the applicant about the offer of Shaikh Budan. The applicant permitted him to purchase these she buffaloes. Shaikh Budan had brought eight she buffaloes in two equal instalments of four buffaloes.

13. Statement of father of the applicant by name of Anis Khan Ismail Khan has been recorded. He has stated that on inquiry with the applicant the applicant told him that he had purchased eight she buffaloes on 16.09.2019 between 10.00 am and 12 noon. He had brought those buffaloes in pick-up van no. MH-14-G-2737 twice i.e. four for the first time and four second time. Thus, this evidence clearly shows that the applicant was aware that these she buffaloes were sold by Shaikh Budan. Entry to that effect has been taken vide code no. 4571 on 16.09.2019 at 11.15 am which shows that they were brought in vehicle no. MH-14-G-2737 by driver Akhil at 11.15 am. Similarly, vide receipt no. 57704 another four she buffaloes were sold by the applicant vide vehicle no. MH-14-G-2737, driver of which was one Akhil and the time

was 10.15 am. This shows that these she buffaloes were sold by the applicant to Fair Export India Pvt. Ltd., Malegaon.

14. Shri Tope argued that Fair Export India Pvt. Ltd. Company allow its registered agents only to supply the buffaloes. He argued that the applicant had no knowledge that these eight she buffaloes were the stolen property. In the case of **Mir Nagvi Askari** cited (supra) it has been held that a property is stolen when its possession has been transferred by theft, extortion, robbery, dacoity or criminal breach of trust or under misappropriation. It is further held in this authority that Section 410 requires two essentials:

- a) dishonest receipt or retention of stolen property
- b) Knowledge or reason to believe at the time of receipt that the property as obtained in the ways specified in the section.

15. It is further held that to bring home the guilt of a person under Section 411 the prosecution has to prove that the stolen property was in the possession of the accused, that some person other than the accused had possession of the property before the accused got possession of it, and that the accused had knowledge that the property was stolen. In the case at hand, it is evident that these eight she buffaloes were stolen by the other accused from the possession of the informant and the cleaner. Therefore, they were the

stolen properties. *Prima facie* there is proof to show that these eight buffaloes were sold to the applicant twice i.e. four for the first time at 10.15 am and four for the second time at 11.15 am on 16.09.2019. Before purchasing the witness Irfan Khan Ibrahim Khan had called up and informed the applicant that eight she buffaloes were to be sold by Shaikh Budhan to the applicant. Statement of Anis Khan Ismail Khan, the father of the applicant, indicates that the applicant had received a call from Shaikh Budhan stating therein that said Shaikh Budhan wanted to sell these eight buffaloes to the applicant. Chronology of these events show that the applicant had the knowlege that these were the stolen properties otherwise there was no reason for Irfan Khan Ibrahim Khan to call up the the applicant and seek his permission. In this view of the matter, at this *prima facie* stage it cannot be said that the applicant had no knowledge that these buffaloes were the stolen properties.

16. In the case of **Man Singh Narayan Singh** cited (supra) it has been held that merely because certain stolen articles were recovered from the accused they cannot be held to be dacoits by invoking a presumption unless there is a recent possession. It is further observed that in this case there is a lapse of nearly three or four months. In the case at hand the possession is recent because these she buffaloes were sold to the applicant on 16.09.2019 between 10 am and 12 noon. Whereas according to the prosecution these she

buffaloes were stolen at 12.30 am on 16.09.2019. It is true that the statements of these two witnesses were recorded late. Statement of Rishin Rasheed was recorded on 02.12.2019. Anis Khan's statement was recorded on 19.12.2019 and Irfan Khan's statement was recorded on 19.12.2019. What is the effect of recording the statement late will be decided during trial. At this stage what has to be seen is whether the she buffaloes were stolen properties or not, and whether the applicant had knowledge that these she buffaloes were the stolen properties and the possession of the applicant was recent. As discussed above all these ingredients are established *prima facie* by the prosecution. Therefore, we do not find any merit in the application, hence the application is dismissed. Rule discharged.

17. The fees of the appointed counsel is quantified @ Rs.4000/- and it is to be paid through the High Court Legal Services Sub-Committee.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]