

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

CRIMINAL APPLICATION NO. 3339 OF 2019

1. Jabir Khan Jahangir Khan Qureshi (Correct Name)
Jabirbhai Qureshi (Name as per FIR)
Age. 33 years, Occ. Business,
R/o. Qureshi Mohalla, Sakri Road,
Nandurbar Tq. & Dist. Nandurbar
 2. Mohammad Habib Mahammad Ismail Qureshi
(Name is not mentioned in FIR)
Age. 37 years, Occ. Business,
R/o. Plot No. 16, Priyadarshani Colony,
Ravaraspura, Padegaon,
Tq. & Dist. Aurangabad.
-Applicants
(Ori. Accused Nos. 3 & 4)

Versus

1. The State of Maharashtra,
Through Investigation Officer,
Nandurbar City Police Station,
Tq. & Dist. Nandurbar.
 2. Anil S/o. Jalindar Bade,
Age. 30 years, Occ. Service,
R/o. Nandurbar City Police Station,
Nandurbar, Tq. & Dist. Nandurbar.
-Respondents
(Resp. No. 2 is org. complainant)

Mr. Ravindra Gore, Advocate for the applicants,
Mr. M.M. Nerlikar, APP for respondent Nos. 1 and 2.

**CORAM : SMT. VIBHA KANKANWADI
AND RAJESH S. PATIL, JJ.**

DATE : NOVEMBER 24, 2022.

JUDGMENT [PER RAJESH S. PATIL, J.] :-

1. By order dated 16.10.2019, notice for final disposal was issued. Accordingly, the matter is heard finally.
2. By invoking the inherent powers of this court under Section 482 of the Cr.P.C, the applicants/accused are seeking quashment of the FIR bearing Crime No. 206 of 2019 as well as the charge sheet filed by Nandurbar City Police station, for the offences punishable under Sections 353, 332, 269, 278 r/w.34 and Sections 6 and 9 of the Maharashtra Animal Preservation Act, 1976, and further proceeding therein.
3. Facts in nutshell are as under :-

The respondent No.2 has lodged FIR bearing Crime No. 206 of 2019 filed before the Nandurbar City Police Station. It is reported in the said FIR that on 27.6.2019, the respondent No.2 received complaint that a Tempo bearing registration No. MH-20/AA 8682 was stopped by some persons. When the police arrived on the site, the police told driver and cleaner of the said vehicle i.e. accused Nos. 1 and 2 to come to the police station with the vehicle, however, they refused to come to police station and started quarrel with PSI – Chaudhari. They also had scuffle with the police. Hence, they prevented public servant from discharging his duties. During investigation,

accused No.1 told that the articles in the vehicle were animal bones which were purchased by applicant No.2 from applicant No.1. It was further stated that animal bones were procured for the purpose of preparing powder and fertilizers for medical use.

4. Accordingly, Crime No. 206 of 2009 was registered on 27.6.2019, against the present applicants and two other persons, for the offences punishable under Sections 353,332, 269, 278 r/w. 34 of IPC and Sections 6 and 9 of the Maharashtra Animal Preservation Act.

5. The applicants applied for Anticipatory Bail before the Sessions Court and they were released on bail. The applicants have hence filed the present criminal application for quashing the FIR and charge sheet and further criminal proceeding registered under the said crime.

SUBMISSIONS :-

6. On behalf of the applicants, Advocate Ravindra Gore argued that no offence is made out against them as they were carrying out legitimate business of sale and purchase of bones. Their firm is registered under the Shops and Establishments Act and Certificate of Registration has been issued to the applicants. It is also further argued that there is no prohibition for sale and purchase of bones of dead animals. The applicants have not exported any animal flesh and, therefore, Sections 6

and 9 of the Maharashtra Animal Preservation Act, is not attracted.

7. After hearing the parties for some time, the learned advocate for the applicant does not press the present application for applicant No.1. Therefore, the application is heard only as far as applicant No.2 is concerned.

8. It is further argued on behalf of the applicants that even though it assumed that complaint is bonafide, still, no offence is made out as contemplated in the Maharashtra Animal Preservation Act, as there was no animal in the vehicle, neither there was any flesh in the vehicle. There were only bones of animals found in the vehicle.

9. It is the case of the applicant that what has been found by the police is the transport vehicle in which there are numerous animal bones. It is the case of the applicants that these bones were meant for use in medicines. The said bones were procured by applicant No.2 from applicant No.1. Hence, according to Applicants in strict sense, the applicant No.2 has not slaughtered any kind of animal for procuring bones. It is his further case that even applicant No.1 had not slaughtered the animals but those were dead animals, whose bones were procured by the applicant No.1. It is his further case that what has been prohibited under the Act is export of any animal flesh. It is his further case that the applicants have a license from Shops and Establishments whereby they can sell and purchase

animal bones. The said licence has been further renewed and is in existence as of now. Hence, no offence as alleged has been committed by them.

10. The learned counsel for the applicants also relied upon the judgment of this Court in ***Criminal Application No. 2465 of 2021 (Mushta Ibrahim Shaikh Haji Mushtak Vs. The State of Maharashtra and another)*** wherein it has been held that possession of skin of dead animals is not prohibited. He also relied upon judgment in the matter of ***Isarul Haq Nisar Ahmed and another Vs. State of Maharashtra and another (Criminal Application No. 664 of 2016)*** wherein it has been held that there is no prohibition of import, export and carriage of the raw skin (processed animal skin). In the abovesaid sections, transportation of cow, bull or bullock for slaughtering is prohibited.

11. Hence, it is prayed that criminal application be allowed and FIR and criminal proceeding be quashed and set aside.

12. Per contra, learned APP supported the case of the prosecution and submitted that there are specific allegations in the FIR. That the applicant were carrying bones of animals in the vehicle. It is further argued that it is a matter of common sense that only after animal is killed, bones are procured. Hence, the offence as contemplated under Sections 6 and 9 of the Animal Preservation Act is made out and at this stage, no

lienency should be shown to the applicants and they be directed to face the trial. Accordingly, criminal application should be dismissed with costs.

ANALYSIS :-

13. After going through the contents of the FIR, it can be seen that what has been found in the vehicle are the animal bones. The report nowhere states that any kind of flesh of animal was found in the vehicle, neither any animal species for slaughter was found in the vehicle. What is prohibited under the Maharashtra Animal Preservation Act is slaughter of cows, bulls and bullocks, who are useful for milch breeding, drought or agricultural purpose. Section 5A of the Maharashtra Animal Preservation Act prohibits even the transport and export of cow, bull or bullock for slaughter. So also, Section 5C prohibits **possession** of flesh of cow, bull or bullock. Hence, it can be seen that there is prohibition for slaughter of cow, bull or bullock, so also, there is prohibition of possession of flesh of cow, bull or bullock. However, there is no prohibition of carrying of/transportation of bones of such animals.

14. In the present case, according to us, no offence is committed which will attract the penal provisions of Maharashtra Animal Preservation Act, which is punishable. The applicant No.2 cannot be asked to face the trial in such circumstances. His role is different. It would be a futile exercise to ask him to face trial and, therefore, this is a fit case

within the parameters laid down in the matter of ***State of Haryana Vs. Bhajanlal and others reported in AIR 1992 SC 604*** to exercise powers under Section 482 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

1. The application is disposed of as withdrawn so far as applicant No.1 is concerned.
2. The application stands allowed so far as applicant No.2 is concerned.
3. The FIR bearing Crime No. 206 of 2019 registered with Nandurbar City Police Station, for the offence punishable under Sections 6 and 9 of the Maharashtra Preservation of Animal Act and under sections 353, 332, 269, 278 r/w. 34 of the IPC, so also proceedings in Sessions Case No. 4 of 2020 pending before the learned Additional Sessions Judge-1, Nandurbar, are quashed and set aside to the extent of applicant No.2.
4. Application stands disposed of in above terms.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

grt/-