

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

**CRIMINAL WRIT PETITION NO. 1489 OF 2021**

Shahid Ahmed Mehmood Ahmed ... Petitioner  
Versus  
The State of Maharashtra and another ... Respondents

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Mr. S. N. Suryawanshi, Advocate for petitioner  
Mr. R. B. Bagul, APP for respondent No.1  
Mr. R. S. Banik, Advocate h/f Mr. V. P. Latange, Advocate for  
respondent No.2

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**CORAM : R. G. AVACHAT, J.**

**DATED : 22<sup>nd</sup> FEBRUARY, 2022**

**ORDER :-**

The challenge in this writ petition is to the Clause 1-B and Clause 5 of the order dated 15.09.2021, passed by the Judicial Magistrate, First Class, Dhule on Exh.1 in Criminal Miscellaneous Application No.718 of 2021 and affirmed by the Court of Additional Sessions Judge, Dhule vide its order dated 25.11.2021 passed in Criminal Revision Application No. 59 of 2021.

2. The petitioner owns a truck bearing No.MH-41-AU-3815. He was found transporting 30 cattle (calves) in the said truck on 19.07.2021. First Information Report (F.I.R.) has been lodged by a police Head Constable attached to Dhule taluka Police Station. It has

been alleged in the F.I.R. that the cattle were being taken to slaughterhouse at Malegaon. The number of cattle in the truck were beyond its transport capacity and required space to be maintained for each cattle. The cattle were tied brutally, due to which, most of the cattle had been injured. A crime therefore came to be registered for the offence punishable under Section 11 of the Prevention of Cruelty of Animals Act, 1960 (for short 'the Act of 1960'). The petitioner is accused therein.

3. The petitioner moved an application for custody of the truck. The learned Magistrate granted application with the condition stated herein above, impugned herein.

4. The learned Advocate would submit that the petitioner is not the owner of the seized cattle. He was simply transporting them from one place to another. The owner of the cattle is also an accused in the case. According to the learned Advocate, the petitioner not being owner of the seized cattle, cannot be saddled with the liability to pay for their maintenance. He, therefore, urged for grant of petition.

5. The learned APP and the learned Advocate for respondent No.2 (Khandesh Goseva, Goshala) would, on the other

hand submit that in terms of Rule 5 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017, the petitioner is liable to pay for the maintenance of the cattle. The learned APP and the learned Advocate for respondent No.2, therefore, urged for dismissal of the petition.

6. Considered the submissions advanced. Perused the F.I.R. and the rules relied on. The petitioner was found transporting 30 cattle (calves) in violation of the provisions of the Act of 1960 and the crime has therefore been registered against him. Clause (f) of Section 2 of the Act of 1960 defines the term “owner” as under:

*“(f) “Owner”, used with reference to an animal, includes not only the owner but also any other person for the time being in possession or custody of the animal, whether with or without the consent of the owner.”*

7. The petitioner having been found in possession of the seized cattle, is to be considered as owner thereof in view of the aforesaid definition. Section 35(4) speaks of the cost of transporting the animal to an infirmary or pinjrapole, and of its maintenance and treatment in an infirmary. It shall be payable by the owner of the animal in accordance with a scale of rates to be prescribed by the District Magistrate, or by the Commissioner of Police.

8. The Section has a proviso, whereunder, if the owner of the seized cattle on account of his poverty is unable to pay for their maintenance, the Magistrate has power to order that no charge shall be payable for the treatment of the animal(s).

9. The amount payable by an owner of animal under Sub-Section (4) of Section 35, may be recovered in the same manner as arrear of land revenue.

The Central Government, in exercise of power under Section 38(1) of the Act of 1960, have framed the rules. In terms of Rule 5(5) of the said Rules, in case of offence relating to transport of animals, the vehicle owner, consignor, consignee, transporter, agents and any other parties involved shall be jointly and severally liable for the cost of transport, treatment and care of animals.

Rule 7 speaks of voluntary relinquishment. The same reads;

***“7. Voluntary relinquishment – Nothing in these rules shall be construed to prevent the voluntary and permanent relinquishment of any animal by the owner who is the accused, to infirmary, pinjarapole. SPCA. Animal Welfare Organisation or Gaushala in lieu of executing a bond but the voluntary and permanent relinquishment shall have no effect on any criminal charges against the accused or owner.”***

10. The petitioner being transporter of the seized cattle is thus liable to pay for maintenance thereof. He is also the owner of the seized cattle in view of the definition of the term “owner” stated herein above. The learned Advocate for the petitioner would, however, submit that the petitioner would never claim ownership and possession of the said cattle. As such, the petitioner submits to have relinquished his claim, if any, to the seized cattle. The same shall have no bearing of a criminal charge, to be framed, if any, against the petitioner. In view of the same, the petition is allowed in terms of following order.

### **ORDER**

- (i) Clause 1-B of the order dated 15.09.2021, passed by the Judicial Magistrate, First Class, Dhule on Exh.1 in Criminal Miscellaneous Application No.718 of 2021, directing the petitioner to execute a bond with an undertaking to pay Rs.200/- per day per cattle for its maintenance and Clause 5 of the said order, are set aside as against the petitioner.
- (ii) The petitioner shall not have any claim of title or possession over the seized cattle.

**[ R. G. AVACHAT, J. ]**