

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2466 OF 2022

Altaf Babru Shaikh ...Petitioner
Versus
The State of Maharashtra And Anr. ...Respondents

**WITH
CRIMINAL INTERIM APPLICATION NO. 2847 OF 2022**

Dhyan Foundation through Punit Arvind Jain ...Applicant
Versus
Altaf Babru Shaikh And Others ...Respondents

....

Mr. Atharva Dandekar i/by Mr. Ajay S. Pagedar, Advocate for the
Petitioner.

Mr. Harish Pandya i/by Mr. Raju Gupta a/w Mr. Dhruv Gupta, Advocate
for Respondent No.2.

Mr. A.R. Patil, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 8th SEPTEMBER, 2022.

PER COURT:

1. The petitioner has challenged the order dated 22nd June, 2022 passed by learned District Judge - 8th and Additional Sessions Judge, Nashik rejecting the Criminal Revision Application No.111 of 2022 as well as order dated 13th May, 2022 passed by learned J.M.F.C. in Criminal Misc. Applications No. 142, 143 and 145 of 2022 to the extent of directions contend in paragraph no.6 of the operative part thereof requiring the petitioner to pay jointly and severally with the accused and the owner of the case property and

SUNNY
ANKUSHRAO
THOTE

Digitally signed
by SUNNY
ANKUSHRAO
THOTE
Date:
2022.12.09
19:11:15 +0530

amount of Rs.96,625/- towards maintenance and health inspection of the animals until 13th May, 2022 and amount of Rs.200/- per day per animal till the final conclusion of trial.

2. First Information Report (for short 'FIR') was registered on 19th April, 2022 vide C.R. No.79 of 2022 with Ghoti Police Station, Dist. Nashik under Section 11 of Maharashtra Protection of Animals Act, 1976 and Section 192-A of Motor Vehicle Act, 1988. In the FIR it was alleged that on 19th April, 2022 information was received that the animals would be transported illegally from village Vadiv towards Mumbai. The raiding party proceeded to Ghoti Toll Naka. They intercepted vehicle with animals and noted that the animals therein were treated with cruelty. There were about 23 Buffaloes in the vehicle and they were being transported. The occupants of the vehicle they gave their names as Maqsood Abdul Sattar Shaikh and Iqbal Abdul Sattar Shaikh. They informed that the animals are being taken to Bhiwandi for sale. The vehicle and the animals were taken in custody.

3. Shaikh Khalid Shaikh Sadiq Qureshi preferred an application before the Court of J.M.F.C. Igatpuri under Sections 451 and 457 of Cr.P.C. seeking interim custody of the animals intercepted in the truck. The said application was preferred on

25th April, 2022. The application was opposed by the State by filing say. The petitioner preferred an application under Sections 451 and 457 of Cr.PC. before the aforesaid Court on 27th April, 2022 for return of vehicle to him. The application was opposed by the State by filling say. Intervention application was preferred by Dhyan Foundation before the Court of learned J.M.F.C. contending that the intervenor is a registered Trust or Social Organization, which is engaged in looking after the welfare of the cows and its progenies, their preservation and protection. The police rescued 23 Buffaloes and handed over their custody to Gaushala for preservation and care. As per rule 3(a) of Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017, the health inspection, identification and ear tagging of cattle are mandatory and the same to be complied by the seizing authority. As per Rules 4 and 5 the accused / owners / owner of vehicle are liable to pay amount of maintenance towards transport, medical, fodder, care etc. of all the Buffaloes.

4. The learned J.M.F.C. passed a common order below Exhibit-1 in Criminal Misc. Applications No. 142, 143 and 145 of 2022, all the applications were filed for interim custody of cattle and vehicle seized in C.R. No.12 of 2022 registered with Ghoti Police Station. The learned Magistrate vide order dated 13th May,

2022 directed that the interim custody of the vehicle be handed over to the petitioner on execution of Supurtnama Bond of Rs.10,00,000/-(Ten Lakhs) on certain conditions. The interim custody of seized 25 cattle was given to Dhyan Foundation for proper care and maintenance till final disposal of case culminating from C.R. No. 12 of 2022 registered with Ghoti Police Station. It was further directed that accused / owner / vehicle owner are jointly and severally liable for the cost of transport, treatment and care of animal. The accused Maqsud Abdul Sattar Sahikh and Iqbal Abdul Sattar Sahikh, owner Shaikh Khalid Shaikh Sadiq and vehicle owner Altaf Babru Shaikh are jointly and severally directed to pay Rs.90,625/- towards maintenance and health inspection of 25 cattle within three days. The amount of maintenance is for a period from the date of 19th April, 2022 till 13th May, 2022. It was further directed that they shall continue to pay future amount of Rs.200/- per day per animal till final conclusion of the trial. It was also directed that in case the accused / owner / vehicle owner failed to execute the bond under Rule 5(1) of the Rules, the vehicle shall be held as security in view of Rule 5(4) of the Rules, 2017.

5. The petitioner had preferred Criminal Application No. 111 of 2022 before the District and Sessions Judge, Nashik challenging the aforesaid order to the extent of making him liable to make the

maintenance payment towards. The learned Sessions Judge by order dated 22nd June, 2022 rejected the revision application.

6. The learned Advocate for the petitioner submitted that the order passed by learned Magistrate making him liable to pay the amount of maintenance with the other persons is illegal. The petitioner is only the owner of the vehicle. The vehicle has been directed to be returned to him on bond. He had no connection with other accused. He was not involved in purchase and sale of animals. The truck belonging to the petitioner was hired for transporting the animals. He cannot be compelled to pay maintenance cost towards the animals. He is not the owner of animals. The learned Sessions Judge has rejected the revision application without appreciating the facts. The petitioner cannot be jointly and severally made to pay the amount towards maintenance and health inspection of animals and also to pay amount of Rs.200 per day per animal alongwith other persons. The trial will not be over shortly. The petitioner has not caused any cruelty to animals.

7. The learned counsel for the Respondent No.3 and learned APP submitted that there is no illegality in the impugned orders passed by the learned Magistrate and learned Sessions Judge. The

truck was intercepted. Several animals were loaded in the truck. They were tied to a rope causing harm to them. The provisions of Rules 3, 4 and 5 of Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017, makes provision of custody of animals pending litigation, cost of care and keeping of animals pending litigation and execution of bond. Rule 5 provides that 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. The reliance is placed on circular dated 2nd July, 2019 issued by Maharashtra Animal Welfare Board with regards to the maintenance cost of animals and reliance is also placed on the decision of the Division Bench of this Court in Criminal Public Interest Litigation No.33 of 2017 dated 6th August, 2019.

8. The learned Magistrate has passed a detail order dated 13th May, 2022 on the applications preferred by respective parties. The petitioner is aggrieved by the directions to share the cost of maintenance of animals directed in impugned order dated 13th May, 2022. Although the petitioner is the owner of the vehicle, he cannot be absolved of his responsibility to pay the amount towards maintenance and health inspection of animals in accordance with

rules as stated above the petitioner can be directed to pay the amount towards maintenance, health inspection and future amount of Rs.200/- per day per animal being the owner of the vehicle. The learned Magistrate has taken into consideration viz. aspect while directing the petitioner to pay the maintenance cost of animals. The learned Sessions Judge has made reference to rule 5 relating to execution of bond which provides for joint and several liability for the cost of transport, treatment and care of animals in case of offence relating to transport of animals, by the vehicle owner, consignor, consignee, transporter, agents and any other parties involved. The learned Sessions Judge has rightly observed that the petitioner being owner of the truck is jointly and severally liable for the cost of transport, treatment and care of animals.

9. Considering the aforesaid circumstances, I do not find any merits in the contention of the petitioner and the petition deserves to be dismissed.

ORDER

- i. Criminal Writ Petition No.2466 of 2022 is rejected and disposed off.
- ii. Criminal Interim Application No.2847 of 2022 stands disposed off.

(PRAKASH D. NAIK, J.)