

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1341 OF 2022
CRIMINAL WRIT PETITION NO. 1342 OF 2022
CRIMINAL WRIT PETITION NO. 1343 OF 2022
CRIMINAL WRIT PETITION NO. 1344 OF 2022
CRIMINAL WRIT PETITION NO. 1345 OF 2022
CRIMINAL WRIT PETITION NO. 1346 OF 2022
CRIMINAL WRIT PETITION NO. 1347 OF 2022

* * * * *

CRIMINAL WRIT PETITION NO. 1341 OF 2022

Shri Guru Ganesh Shri Guru Mishri Gaurakshan .. Petitioner
Charitable Trust Prajrapol,
Bhokardan Dist. Jalna
Reg. No. E-332/Jalna/3.4.2007
Through its Secretary
Shri Nitin Shantilal Ostawal
Age. 57 years, Occ. Business,
R/o. Bhokardan Dist. Jalna.

Versus

1. The State of Maharashtra .. Respondents
Through P.S.O. Paradh, Tq. Bhokardan,
Dist. Jalna.
2. Shaikh Sarfaraj Shaikh Ayaji,
Age. Major, Occ. Business,
R/o. Pardeshipura, Khandva,
Madhya Pradesh.

WITH
CRIMINAL WRIT PETITION NO. 1342 OF 2022

Shri Guru Ganesh Shri Guru Mishri Gaurakshan .. Petitioner
Charitable Trust Prajrapol,
Bhokardan Dist. Jalna
Reg. No. E-332/Jalna/3.4.2007
Through its Secretary
Shri Nitin Shantilal Ostawal
Age. 57 years, Occ. Business,
R/o. Bhokardan Dist. Jalna.

Versus

1. The State of Maharashtra .. Respondents
Through P.S.O. Paradh, Tq. Bhokardan,
Dist. Jalna.
2. Shaikh Amjad Shaikh Riyaj,
Age. Major, Occ. Business,
R/o. Pardeshipura, Khandva,
Madhya Pradesh.

**WITH
CRIMINAL WRIT PETITION NO. 1343 OF 2022**

Shri Guru Ganesh Shri Guru Mishri Gaurakshan .. Petitioner
Charitable Trust Prajrapol,
Bhokardan Dist. Jalna
Reg. No. E-332/Jalna/3.4.2007
Through its Secretary
Shri Nitin Shantilal Ostawal
Age. 57 years, Occ. Business,
R/o. Bhokardan Dist. Jalna.

Versus

1. The State of Maharashtra .. Respondents
Through P.S.O. Paradh, Tq. Bhokardan,
Dist. Jalna.

2. Shaikh Ajam Wahid Kureshi,
Age. Major, Occ. Business,
R/o. Pardeshipura, Khandva,
Madhya Pradesh.

**WITH
CRIMINAL WRIT PETITION NO. 1344 OF 2022**

Shri Guru Ganesh Shri Guru Mishri Gaurakshan .. Petitioner
Charitable Trust Prajrapol,
Bhokardan Dist. Jalna
Reg. No. E-332/Jalna/3.4.2007
Through its Secretary
Shri Nitin Shantilal Ostawal
Age. 57 years, Occ. Business,
R/o. Bhokardan Dist. Jalna.

Versus

1. The State of Maharashtra .. Respondents
Through P.S.O. Paradh, Tq. Bhokardan,
Dist. Jalna.
2. Shaikh Nawab Sheikh Hamid,
Age. Major, Occ. Business,
R/o. Pardeshipura, Khandva,
Madhya Pradesh.

**WITH
CRIMINAL WRIT PETITION NO. 1345 OF 2022**

Shri Guru Ganesh Shri Guru Mishri Gaurakshan .. Petitioner
Charitable Trust Prajrapol,
Bhokardan Dist. Jalna
Reg. No. E-332/Jalna/3.4.2007
Through its Secretary
Shri Nitin Shantilal Ostawal

Age. 57 years, Occ. Business,
R/o. Bhokardan Dist. Jalna.

Versus

1. The State of Maharashtra .. Respondents
Through P.S.O. Paradh, Tq. Bhokardan,
Dist. Jalna.
2. Shaikh Nawab Sheikh Hamid,
Age. Major, Occ. Business,
R/o. Pardeshipura, Khandva,
Madhya Pradesh.

**WITH
CRIMINAL WRIT PETITION NO. 1346 OF 2022**

Shri Guru Ganesh Shri Guru Mishri Gaurakshan .. Petitioner
Charitable Trust Prajrapol,
Bhokardan Dist. Jalna
Reg. No. E-332/Jalna/3.4.2007
Through its Secretary
Shri Nitin Shantilal Ostawal
Age. 57 years, Occ. Business,
R/o. Bhokardan Dist. Jalna.

Versus

1. The State of Maharashtra .. Respondents
Through P.S.O. Paradh, Tq. Bhokardan,
Dist. Jalna.
2. Parvej Firoz Kureshi,
Age. Major, Occ. Business,
R/o. Pardeshipura, Khandva,
Madhya Pradesh.

WITH

CRIMINAL WRIT PETITION NO. 1347 OF 2022

Shri Guru Ganesh Shri Guru Mishri Gaurakshan .. Petitioner
Charitable Trust Prajrapol,
Bhokardan Dist. Jalna
Reg. No. E-332/Jalna/3.4.2007
Through its Secretary
Shri Nitin Shantilal Ostawal
Age. 57 years, Occ. Business,
R/o. Bhokardan Dist. Jalna.

Versus

1. The State of Maharashtra .. Respondents
Through P.S.O. Paradh, Tq. Bhokardan,
Dist. Jalna.
2. Shaikh Shabir Sheikh Shabbir,
Age. Major, Occ. Business,
R/o. Pardeshipura, Khandva,
Madhya Pradesh.

Mr.Ajay T. Kanawade, Advocate for the petitioner.
Mr.Y.G. Gujarati, APP for the respondent/State.
Mr. Shaikh Altmash A. Latif, Advocate for respondent No.2.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	18.04.2023
PRONOUNCED ON	:	12.05.2023

J U D G M E N T :-

01. These all petitions are arising out of same offences and common judgment passed by the learned Sessions Judge, therefore, are taken up together.

02. Rule. Rule made returnable forthwith by consent of the parties.

03. The facts in short involved in the petition are that one Samadhan Bapurao Wagh filed an FIR with Police Station, Paradh, Dist. Jalna bearing FIR No.106 of 2022 dated 07.05.2022 under sections 11, 5(a), 5(b), 9(a) of the Prevention of Cruelty to the Animals Act, 1960, Section 130(3), 66, 192 of the Motor Vehicles Act and Section 119 of the Maharashtra Police Act read with section 34 of the Indian Penal Code. It is alleged in the FIR that the informant, a Police Constable along with one other Police Constable Jadhav, were on patrolling duty. At around 5.00 a.m. in the morning of 07.05.2022. they found one white colour Eicher vehicle passing from Buldhana to Ajintha. Said Eicher vehicle bearing No. MP-12-H-0493 was stopped by them. On asking the driver, namely, Shaikh Momin, he avoided to inform as to what he is carrying in the said vehicle. Said Eicher vehicle was followed by other vehicles, bearing No. MP-12-GA-2043, MH-04-HD-0496 and MP-12-GA-2190. Even drivers of other vehicles avoided to answer as to what they were carrying in the vehicle. The police, therefore, searched the vehicles. They found buffaloes in the said vehicles. The driver could not produce transport

permission. The buffaloes were found being carried in a cruel manner. There was no sufficient space available for their movement. Each vehicle was containing buffaloes as below :-

Sr. No.	Vehicle Number	Name of Vehicle	Name of Accused	Total buffaloes
1	MH-04-HD-0496	Eicher	Naziroddin Shaikh Narmoddin	15
2	MP-12-GA-2190	Bolero	Shaikh Talif Shaikh Latif	5
3.	MP-12-H-0493	Eicher	Shaikh Mobin Shaikh Abdul Hafiz	16
4.	MP-12-GA-2043	Bolero	Shaikh Javed Shaikh Hamid	5

. On seizure of the vehicles and buffaloes, the buffaloes were sent to Goshala. The offence, therefore, thus came to be lodged in respect of all these buffaloes 41 in number for being transported without permission and in cruel manner.

04. Thereafter, the Police started investigation. The drivers were also made accused. All the respondents in the writ petitions filed their applications in the Court of learned JMFC, Bhokardan seeking custody of the respective animals. In the meantime one of the buffaloes died. The learned JMFC granted all these applications and directed to handover custody of the animals to the applicants therein, as per chart below :-

Sr. No.	Cri.M.A. No.	Animals Seized	Name of the Applicant
1	211/2022	6 buffaloes	Sk. Sarfaraj Shaikh Ayad
2	212/2022	6 buffaloes	Sk. Amjad Sk. Riyaj
3	213/2022	11 buffaloes	Sk. Ajam Wahid Kureshi
4	214/2022	4 buffaloes	Sk. Nawab Sk. Hamid
5	215/2022	5 buffaloes	Wasim Salim Kureshi
6	216/2022	4 buffaloes	Parvej Firoz Kureshi
7	217/2022	4 buffaloes and one bull	Sk.Shabir Sk. Shabbir

05. Since the applications were allowed in favour of the accused/respondents, the petitioner filed revision application bearing Nos.39, 40, 41, 42, 43, 44, 45 of 2022. The learned Sessions Judge dismissed all the revision applications by common judgment and order dated 03.09.2022 by holding that in the FIR there is no allegation that any of the animal was being transported for the purpose of slaughtering. It is mainly held that the provisions of the Maharashtra Animals Preservation Act are not applicable. It is further held that the required certificates from the Veterinary Doctor were not obtained. The Court found that there was complete violation of Rule 22 of the Rules, as some of the animals suffered wounds like abrasion and contusion. After discussing all the authorities cited, it recorded its conclusion under limited jurisdiction available to the Sessions Court under section 397 of the Cr.PC. It is held that the learned JMFC has not committed any

jurisdictional error or perversity in the judgment. The petitioner is, thus, before this Court.

06. The submissions made on behalf of the petitioner is that in two Eicher vehicles and two Bolero vehicles the animals were found being transported. In one Eicher vehicles there were 16 buffaloes; whereas in another vehicles there were 15 buffaloes. Five buffaloes were found in each Bolero vehicle. He submits that immediately on seizing the vehicles, the buffaloes those were found were sent to petitioner-Goshala. From the certificate of Doctor, he submits that 10 buffaloes were found pregnant. Seven buffaloes were found with injuries like abrasion, wound and swelling. It is his submission that the animals were treated with cruelty. He submits that in view of section 19 of the Maharashtra Animals Preservation Act, there was contravention of section 5C, 5D of the Maharashtra Act. Section 5C is in respect of possession of flesh of any cow, bull or bullock slaughtered in contravention of the provisions of this Act. Section 5D is in respect of possession of flesh of any cow, bull or bullock slaughtered outside the State of Maharashtra. Section 6 is in respect of punishment on slaughtering of scheduled animals in the State of Maharashtra without obtaining certificate in

writing from the competent authority that a animal is fit for slaughter. He submits that charge-sheet is filed under section 6(1) of the Act and therefore possession could not have been directed to be handed over to the owners. About transportation, he submits that there was no valid certificate by the qualified Veterinary Doctor to the effect that cattles were in fit condition to travel by rail or road or not suffering from any infectious or contagious or parasitic diseases. He further submits that there is also contravention of the rules, which provides that no goods vehicle shall carry more than six cattles. In this case, more than six cattles were found in one vehicle. No certificate was obtained before transportation, which is in violation of Rule 96.

07. The animals which are transported should be in good condition and should be carried only after examination by Veterinary Doctor. He further submits that there is violation of notification issued by the Ministry of Road Transport and Highways dated 8th July, 2015, wherein special requirement is provided for motor vehicles transporting livestock. It provides that no motor vehicle meant for carrying animals shall be permitted to carry any other goods. He further submits that Bolero vehicle cannot get permission to transport the cattles. It is only truck in which such animals can be

transported.

08. The learned Advocate for the petitioner relied upon judgment in the case of Laxmi Narain Modi Vs. Union of India (UOI) and Ors. reported in (2013) 10 SCC 227, wherein the Court has considered the guidelines to be followed by the authorities for transportation of different animals. He further relied upon judgment of this Court at Principal Seat in the case of Viniyog Pariwar Trust Vs. The State of Maharashtra & Ors. (Cri.PIL No.33 of 2017) and the judgment of Orissa High Court in the case of Jiba Bikash Parisad Vs. State of Odisha & Anr., CRLMC No.199 of 2021. The learned Advocate further submits that in view of this legal position and observations by the learned Sessions Court in para 14 of the judgment, it is seen that the order passed by the Sessions Court is against legal position, wherein the Court has observed that some of the animals were found in weak condition. Even from the photographs, the learned Sessions Judge has formed opinion that there were some injuries to the buffaloes. He also submits that the observations that in the FIR there are no allegations is also not correct. There is observation that if there was cruelty to the animals, it was necessary to decline to handover custody to the owners. The certificate of local market produced before the

Court are alleged to be bogus. He further submits that the receipts issued on record were not cross-checked and therefore should not have been relied upon.

09. In reply to the submissions of the petitioner, the learned Advocate for the respondents submits that from the FIR it is clear that the allegation is not that the animals were being carried for slaughtering. In the FIR itself, the allegation is that the animals were for selling and not for slaughtering. He thus submits that considerations are different when animals are being carried for slaughtering. In this case, the animals are the buffaloes and they are not prohibited animals. Section 9(a), 5 and 6 are in respect of animals which are transported for the purpose of slaughtering and not for the purpose of selling. He submits that it has already come in the observation of learned JMFC that when a person went to Goshala, said Goshala was found to be locked for two days and he was not allowed to enter the Goshala. The police had even issued a letter to Goshala. He submits that though order was passed by the learned JMFC and the revision was dismissed, same was only for 25 days so as to facilitate the petitioner to approach this Court. However, even thereafter the learned JMFC refused to handover custody and any stay order without any

provision on say of the petitioner. He further submits that the learned Sessions Judge has clearly observed that two buffaloes died before the order by the JMFC could be passed. From the postmortem report, it was found that one buffalo died due to hypoxia due to pneumonia on 08.06.2022 and another died on 30.05.2022 due to hypoxia and acidosis. Two more buffaloes died within last eight days of the order due to viral infection. The submission is, therefore, made that four animals died after 26 days of their seizure, when they were in custody of Goshala. He submits that this clearly shows that the animals are not kept in good condition even by the petitioner. He reiterates that there is no complaint of the animals were being carried for slaughtering. Further submission is that the Court has clearly observed that animals were not being carried in air tight condition. The vehicles were open to sky and injuries were minor in nature i.e. abrasion and contusion.

10. He submits that so far as expenses are concerned, since it is the petitioner who has got the order stayed, the expenses be waived. He submits that in view of section 8 of the Act, it is only the competent person, who can lodge complaint. In this case, certainly the Constable was not a competent person to lodge the complaint. It is only the competent authority or any

person authorized on that behalf by the competent authority shall have power to enter and inspect any place having reason to believe that an offence under the Act has been or is likely to be committed. He submits that in this case the police constable was not authorized to lodge a complaint. He submits that at the most there is violation of transport rules. Looking to the condition at the time of seizure, he submits that four buffaloes have died after those were seized. Nine buffaloes were found pregnant and by now they might have delivered calves. The respondents are ready to pay charges till the order passed by the learned JMFC and not for further period as it is the petitioner who has prayed for stay to the order passed by the learned JMFC.

11. In rebuttal, the learned Advocate for the petitioner submits that if the State is taking care of bullocks, the petitioner will not claim custody and maintenance charges. He submits that though there was order passed directing to handover custody, however, since that was to be challenged, the possession was not given to the respondents.

12. The learned APP submits that the judgment in the case of Krushik Goseva Sangh and Anr. Vs. State of Maharashtra & Ors., 1988 Mh.L.J.293, is

under the old Act and after the amendment now there is Act of 2015 and amendment made to it in 2017, wherein now a committee is established to suggest measures to see the Acts and the Rules are implemented according to the suggestion of the committee. He submits that in view of guidelines, police machinery takes care till the animals are handed over to the institution like Goshala. Even police machinery to take care only for the period till those are transported to Goshala and thereafter it is for those institutions to take proper care. He submits that even after handing over custody to the institution, if it is found that there is violation of Rules, police can still take action. He submits that when police visited Goshala, it was locked. Therefore, no action could be taken by the police. The Government has rightly decided cost of care of the animals pending the litigation and it is as per said rate a person has to pay the amount.

13. In this case from the information lodged to the police itself, it is seen that the information was lodged by the Police Constable – Samadhan Wagh. He was with Police Amaldar when the vehicle was stopped and was searched. Thus, the institution of the prosecution itself is by a person who was not competent to take any action. Though the respondent has submitted that

the Constable had no authority to lodge a complaint, this question needs to be dealt by the Trial Court. For the present question before this Court is only about custody.

14. The next submission that needs to be dealt with is that from the contents of the FIR it is seen that there is no allegation that the buffaloes were being carried for the purpose of slaughtering. The allegation is that those were only carried in the condition where the animals were more in number than permitted as per rules under the MV Act and that itself cannot be said to be violation of the provisions under the Maharashtra Act. The object of the Maharashtra Act is as under :-

“An Act to provide for the prohibition of slaughter 2[and preservation of cows, bulls and bullocks useful for milch, breeding, draught or agricultural purposes and for restriction on slaughter for the preservation of certain other animals suitable for the said purposes.”

. Thus, it is seen that the Act provides for the prohibition of slaughtering of the animals. So far as the object of the Prevention of Cruelty to the Animals Act, 1960 is concerned, under the Maharashtra Act, there is no prohibition of slaughter of buffaloes and thus assuming that the cattles were carried for the purpose of transport, even then it cannot be said to be against the Act. In view of above, it is clear that the allegations under section 9A, 5

and 6 of the Maharashtra Act are not applicable to the present case. It is clear that the JMFC had passed order on 18.06.2022 and inspite of that the animals were not given in possession of the owners. From the facts of the case, it is seen that when the concerned person went to Goshala to see the condition of the animals, the Goshala was found locked for two days and therefore the police had to issue a letter to Goshala. Further fact needs to be considered is that four buffaloes died while in custody of Goshala and that too after more than 25 days of the seizure of the animals. This again shows that the animals were not kept in good condition even by the Goshala. The Sessions Court has considered that the injuries were abrasion, contusion & swelling and were not serious in nature.

15. In the judgment in the case of **Laxmi Narain Modi (Supra)**, the Hon'ble Apex Court has considered the guidelines for transportation of animals and slaughtering houses. Considering the guidelines the Governments/Union Territories and the Committees constituted were directed to follow the same. These guidelines were directed to be followed in the facts that the Court had apprehension as to whether the Committees constituted were effectively functioning and whether proper steps were being taken for

proper implementation of the legislature with regard to transportation of the animals, maintaining slaughter houses etc.

16. Further in the order passed by this Court in the case of **Viniyog Pariwar (Supra)**, Division Bench of this Court had in-fact expressed its concern in view of existence of two sets of rules; one under the Prevention of Cruelty to Animals Act, the Transport of Animals (Amendment) Rules, 2001 and the Transport of Animal Rules, 1978. This was not in respect of custody of the animals as such.

17. The next judgment relied upon is in the case of **Jiba Bikas Parishad (Supra)**, wherein the vehicle was released. In this case the revisional Court had directed interim release of vehicle without taking into consideration the provisions under the Prevention of Cruelty to Animals Act, wherein the Revisional Court in that case had directed to release seven vehicles seized in connection with offence under sections 379, 411, 294, 353, 332, 506 r/w 34 of the IPC and Section 11 of the Prevention to Cruelty to Animals Act, 1960. In this case, there is no case of violation of section 11 of the Prevention of Cruelty to Animals Act. At the most the allegations show that there was

failure of the owner to exercise reasonable care of the provision, with a view to prevention of such offences.

18. As observed by the learned Sessions Court, the vehicles were not air-tight vehicle and were free to sky. This Court notes that the learned Sessions Court had noted condition of the animals. The Court also rightly considered that there was no allegation in the FIR that the animals were being transported for the purpose of slaughtering. Further the observations in para 44 that the requisite certificates from the Veterinary Doctor were not obtained. The allegation that more than six cattles were transported by the vehicle, was not as serious to conclude that there was cruelty to the animals and has rightly passed the order.

19. Hence, in view of above discussion, this Court finds that the learned Sessions Judge has rightly passed the order and no interference is called for. Since it is pointed that inspite of order passed by the learned JMFC, the custody of the animals was not handed over to the respondents, it prima facie finds that the respondents shall not be liable to pay maintenance amount, till the date of order passed by the Magistrate, the respondents to pay

the amount of maintenance. It is rightly pointed out that for 41 animals, they will be required to pay Rs.8200/- per day. Therefore, the question of payment of maintenance amount after order passed by the learned Magistrate shall be decided at the conclusion of the Trial. Hence, this Court finds that there is no merit in the petitions. The petitions are thus dismissed. Rule discharged. The learned JMFC shall release the cattles on deposit of maintenance amount as mentioned above.

[KISHORE C. SANT, J.]

. After pronouncement of judgment, the learned Advocate for the petitioner prays for stay to the effect of this order for a period of two weeks. The learned Advocate for the respondents vehemently opposes the prayer stating that already there is much delay and the respondents are deprived of their animals inspite of orders passed by the two Courts below before filing of the petitions and prays that no such stay be granted.

. However, considering that the stay is in operation since filing of the petitions, same is continued for a period of two weeks at the costs and consequences of the petitioner.

[KISHORE C. SANT, J.]