

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 229 OF 2023

PETITIONER : Sohil Kureshi S/o. Rashid Kureshi,
Aged about 23 years, Occupation
Business, R/o. House No.27, Ward
No.14/2, Shrivastav Colony, Dist.
Chindwara, M.P.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, Through P.S.O.
Morshi, Amravati (Rural).

2. Siddha Bal Hanuman Sansthan
Ubhalkhed (Nabipur) Kekatpur
Morshi, Amravati, Through its
Authorized Representative Madhavrao
Sukhdeorao @ Madhavdas Maharaj,
Morshi, Amravati.

Mr. Laique Hussain, Advocate for the Petitioner.
Ms. Mayuri Deshmukh, APP for Respondent No.1/State.
Mr. Raju R. Gupta, Advocate for Respondent No.2.

CORAM : G. A. SANAP, J.
DATED : 12th JULY, 2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is
heard finally by consent of learned advocates for the parties.

02] In this writ petition, challenge is to the order dated 9th January, 2023, passed by learned Additional Sessions Judge, Amravati, whereby learned Additional Sessions Judge set aside the order passed by learned Judicial Magistrate First Class, Morshi dated 28th November, 2022, whereby custody of the seized animals was directed to be handed over to the petitioner.

03] The facts are as follows:

The petitioner is claiming to be the owner of 17 she buffaloes and one he buffalo. It is the case of the prosecution that on 20th November, 2022, Police Head Constable Uike, attached to Morshi Police Station, received a secret information that animals are being illegally transported. He, therefore, kept watch at Simbhora Chowk, Morshi. After some time, he noticed that a tempo bearing registration No.MH20-EL-9154 was driven in a suspicious manner. The said tempo was intercepted. The police found 18 animals in the said tempo. The space in the tempo was not sufficient to carry the animals. The animals were crammed in the short space of the tempo. Accused No.1 was driving the tempo. Accused Nos.2 and 3 accompanied accused No.1. Police Head Constable Uike lodged a report. On the basis of the said report, a crime bearing No.548/2022 was registered against accused Nos.1

to 3 for the offence punishable under Sections 11(1), 11(1)(c) and 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 (for short “the Act of 1960”), Section 119 of the Maharashtra Police Act, 1951 and Sections 83 and 177 of the Motor Vehicles Act, 1988 (for short “the Act of 1988”). The animals were seized. The accused were arrested. The Investigating Officer handed over temporary custody of the animals to Siddha Baal Hanuman Sansthan for maintenance, care and safety.

04] The petitioner (accused No.1) applied for custody of the animals. Similarly, respondent No.2-Siddha Baal Hanuman Sansthan also applied for custody of the animals. Learned Magistrate rejected the application made by respondent No.2 for custody but, allowed the application made by the petitioner (accused No.1) for handing over custody of the animals. Respondent No.2, being aggrieved by this order, filed a revision application in the Sessions Court, Amravati. Learned Additional Sessions Judge allowed the revision application and set aside the order passed by learned Magistrate directing handing over custody of the animals to the petitioner (accused No.1) and allowed the application made by respondent No.2 for retaining custody of the animals. The petitioner (accused No.1) has challenged the said

order passed by learned Additional Sessions Judge in this revision application.

05] I have heard Mr. Laique Hussain, learned advocate for the petitioner, Ms. Mayuri Deshmukh, learned Additional Public Prosecutor for the State and Mr. Raju R. Gupta, learned advocate for respondent No.2. Perused the record and proceedings.

06] Learned advocate for the petitioner submitted that the petitioner had purchased the animals from the market. He is possessing a valid trade licence for sale and purchase of the animals. The crime registered against the petitioner is without any basis and foundation. The animals were not subjected to any cruelty as alleged. Learned advocate submitted that the offences mentioned in the First Information Report (FIR) have not been made out. Learned advocate submitted that custody of the animals was rightly given by learned Magistrate to the petitioner. Learned advocate submitted that learned Additional Sessions Judge has committed illegality by reversing the well reasoned judgment and order passed by learned Magistrate.

07] Learned Additional Public Prosecutor opposed the petition. Learned Additional Public Prosecutor, in her submissions,

reiterated the facts set out in the FIR. Learned Additional Public Prosecutor submitted that the material collected during the course of investigation is sufficient to *prima facie* establish the commission of offence by the petitioner.

08] Learned advocate for respondent No.2 submitted that 18 buffaloes were crammed in a tempo. Learned advocate submitted that the material placed on record is sufficient to establish that the animals were subjected to aggravated form of cruelty. Learned advocate further submitted that transport of the animals was contrary to the provisions of the Transport of Animals Rules, 1978 (for short “the Rules of 1978”) and the Transport of Animals (Amendment) Rules, 2001 (for short “the Rules of 2001”). Learned advocate further submitted that transport of the animals in this case was contrary to Rule 125E of the Central Motor Vehicles Rules, 1989. Learned advocate further submitted that during pendency of the trial, the petitioner as per the law cannot be allowed to dispose of the animals and therefore, custody of the animals be handed over to respondent No.2. Learned advocate pointed out that respondent No.2 is well equipped to take care of the animals in all respect. Learned advocate pointed out that the Courts below have not passed any order directing the accused to

pay charges towards maintenance and care of the animals. Learned advocate submitted that, therefore, respondent No.2 is required to bear charges for maintenance and care of the animals.

09] In order to appreciate the rival submissions and particularly the claim of the petitioner that the animals were not subjected to cruelty in any form, it would be necessary to consider the relevant rules of the Rules of 1978. The relevant rules are Rules 47 to 50 and 56. For the purpose of convenience, these rules are extracted below :

“47. (a) A valid certificate by a qualified veterinary surgeon to the effect that the cattle are in a fit condition to travel by rail or road and are not suffering from any infectious or contagious or parasitic diseases and that they have been vaccinated against rinderpest and any other infectious or contagious or parasitic diseases, shall accompany each consignment.

(b) In the absence of such a certificate, the carrier shall refuse to accept the consignment for transport.

(c) The certificate shall be in the form specified in Schedule E.

48. Veterinary first-aid equipment shall accompany all batches of cattle.

49. (a) Each consignment shall bear a label showing in bold red letters the name, address and telephone number (if any) of the consignor and consignee, the number and types of cattle being transported and quantity of rations and food provided.

(b) The consignee shall be informed about the train or

vehicle in which the consignment of cattle is being sent and its arrival time in advance.

(c) The consignment of cattle shall be booked by the next train or vehicle and shall not be detained after the consignment is accepted for booking.

50. The average space provided per cattle in Railway wagon or vehicle shall not be less than two square meters.

51 to 55

56. When cattle are to be transported by goods vehicle, the following precautions are to be taken :-

(a) Specially fitted goods vehicles with a special type of tail board and padding around the sides should be used ;

(b) Ordinary goods vehicles shall be provided with anti-slipping material, such as coir matting or wooden board on the floor and the superstructure, if low, should be raised ;

(c) No goods vehicle shall carry more than six cattle ;

(d) Each goods vehicle shall be provided with one attendant ;

(e) While transporting, the cattle, the goods, vehicles shall not be loaded with any other merchandise ; and

(f) to prevent cattle being frightened or injured, they should preferably, face the engine.

10] In this case, undisputedly valid certificate by a qualified Veterinary Surgeon with regard to the fitness of the animals to transport by road with other particulars, was not obtained by the owner. The animals were loaded 3-4 times beyond the capacity of the vehicle prescribed under the Rules. Similarly, there was no provision of first-aid equipments in the vehicle. There was no

arrangement of water and fodder in the vehicle. The animals were being transported by goods vehicle. Rule 56 lays down the conditions for transport of the animals by goods vehicle. Rule 56, clause (c) provides that no goods vehicle shall carry more than six cattle. It is further seen that in the vehicle, there was no special arrangement with regard to the special type of tail board and padding around the sides. Similarly, there was no anti-slipping material on the floor of the vehicle. The number of animals transported in a tempo would, therefore, clearly indicate that it was in violation of the above rules.

11] The Rules of 1978 were amended in 2001. Rule 96 of the Rules of 2001 has been relied upon to contend that the certificate provided in this Rule was not procured. Rule 96 of the Rules of 2001 is extracted below :-

“96. Issue of certificate before transportation :-

(1) A valid certificate issued by an officer or any person or Animal Welfare Organisation duly recognized and authorized for this purpose by the Animal Welfare Board of India or the Central Government shall be procured by any person making transport of any animal before transportation of such animal verifying that all the relevant Central and State Acts, rules and orders pertaining to the said animals including the rules relating to transport of such animals have

been duly complied with and that the animal is not being transported for any purpose contrary to the provision of any law.

(2) In the absence of such certificate, the carrier shall refuse to accept the consignment for transport.

12] Reliance has also been placed on amended Rule 125E of the Central Motor Vehicle Rules, 1989. For convenience, Rule 125E is extracted below :-

“125E-Special requirements of motor vehicles transporting livestock -

(1) On and after, the 1st January, 2016, motor vehicles used for transportation of livestock by road shall be in accordance with the specifications of the Bureau of Indian Standards as provided in IS-14904:2007 ; or IS-5238:2001 ; or IS-5236:1982, as the case may be, as amended from time to time and the transporter or consigner of the livestock shall follow the code of practice laid down in the respective specification regarding the transport of the livestock.

(2) Subject to sub-rule (1), the motor vehicles for carrying animals shall have permanent partitions in the body of the vehicles so that the animals are carried individually in each partition where the size of the partition shall not be less than the following namely:-

- (i) Cowes and buffaloes = 2 sq.mts.*
- (ii) Horses and mares = 2.25 sq. Mts.*
- (iii) Sheep and goat =0.3 sq. Mts.*
- (iv) Pig = 0.6 sq. Mts. And*
- (v) Poultry = 40 cm.sq.*

(3) No motor vehicles meant for carrying animals shall be

permitted to carry any other goods.

(4) The regional Transport officer shall issue special licences for the motor vehicles meant for carrying animals on the basis of vehicles modified in accordance with the provisions of sub-rule (2)."

13] Rule 125E stipulates special requirements of motor vehicles transporting livestock, namely the space to be provided for each kind of livestock, the ban on use of said vehicle to carry any other goods and issuance of licence by the R.T.O. for motor vehicles meant for carrying animals on the basis of the vehicles modified in accordance with the provisions of sub-rule (2). Perusal of the above rules would show that the rules are mandatory. It is to be noted at this stage that the offences for which the accused have been prosecuted are under Sections 11(1), 11(1)(c) and 11(1)(d) of the Act of 1960, Section 119 of the Maharashtra Police Act, 1951 and Sections 83 and 177 of the Act of 1988.

14] It is to be noted that the identical issue was decided by this Court in the case of *Ansar Ahmad & Ors. Vs. State of Maharashtra, thru. P.S.O. & Anr. [2023 SCC OnLine Bom 1123]*. In my view, the facts of this case and the facts in the case of *Ansar Ahmad & Ors.* (supra) are identical. On facts and law, the issue

involved in this case is fully covered by the decision in the case of *Ansar Ahmad & Ors.* (supra). The decisions of the Hon'ble Supreme Court considered by this Court while deciding the case of *Ansar Ahmad & Ors.* (supra) would be applicable with equal force to the case on hand.

15] It is not out of place to mention that fully grown 17 she buffaloes and 1 he buffalo were transported in a tempo. It was contrary to the rules set out hereinabove. The material on record clearly indicates that 18 fully grown animals were crammed in a small space available in the tempo. The animals were transported contrary to the rules as above. The animals were subjected to cruelty of an aggravated form. In my view, therefore, learned Sessions Judge was right in setting aside the order passed by learned Judicial Magistrate First Class, Morshi. I do not see any reason to interfere with the well reasoned judgment and order passed by learned Additional Sessions Judge, Amravati. Therefore, the writ petition is **dismissed**. Rule stands discharged.

(G. A. SANAP, J.)