

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO.02 OF 2022

Roshan Omkar Tarare
Aged about 30 years,
Occupation : Business,
R/o. Azad Nagar, Kamptee,
through his power of Attorney Holder
Loknath @ Bablu S/o Munna Swami Pille
R/o. Kolsatal, Near Durga Mandir,
Kamptee

...PETITIONER

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Sakoli, District Bhandara
2. Sukrut Gaushala Kayankari Sanstha
Khairi, Post Pimpalgaon (S),
Tah. Lakhani, District Bhandara

...RESPONDENTS

Shri Laique Hussain, Advocate for the petitioner.
Shri M.K. Pathan, Additional Public Prosecutor for the
respondent No.1/State.
Shri A.P. Kalmegh, Advocate for respondent No.2.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
RESERVED ON : OCTOBER 20, 2022.
PRONOUNCED ON : FEBRUARY 10, 2023

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard finally with the consent of learned Counsel for the
parties.

2. By invoking the jurisdiction under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order passed by the Additional Sessions Judge, Bhandara by which the application of the petitioner for releasing vehicle one Bolero Pickup of Mahindra Company bearing Registration No.MH-40-N-6400, is released on condition that the petitioner shall deposit Rs.30,000/- (Rs. Thirty thousand) before the Judicial Magistrate First Class, Sakoli and executing Indemnity Bond of Rs.3,00,000/- (Rs. Three lakhs). In compliance the learned Judicial Magistrate First Class calculated Rs.8,03,000/- at the rate of Rs.200/- per day per cattle from 10/10/2019 to 09/10/2020. It is further directed that the Judicial Magistrate First Class shall determine the cost of transportation, care, maintenance and medicine of the animals seized in the crime from the date of its seizure till passing of the order and further directed that the cost so determined shall be paid to appropriate person from the amount of Rs.30,000/- which will be deposited by the petitioner. The learned Magistrate is further directed to determine the monthly amount which is sufficient to cover all responsible cost incurred for maintenance and treatment of animals seized in the crime as provided under the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017.

3. It is the contention of the petitioner that the police station Sakoli registered an offence punishable under Section 11(1) of the

Prevention of Cruelty to Animals Act, 1960 read with Section 5 of the Maharashtra Animal Preservation Act, 1995 and seized the vehicle of the petitioner i.e. Mahindra Bolero Pickup bearing Registration No.MH-40-N-6400. The offence was registered on an allegation that the prohibited animals are transported in the said vehicle without obtaining due certificate and thereby committed an offence.

4. It is further the contention of the petitioner that he applied for releasing of the vehicle under Section 457 of the Code of Criminal Procedure before the Judicial Magistrate First Class, Sakoli by filing Miscellaneous Criminal Case No.140/2019. The Judicial Magistrate First Class had rejected the said application on 26/06/2020. Being aggrieved by the order dated 26/06/2020, the petitioner preferred Criminal Revision Application bearing No.22/2020. The said Criminal Revision Petition No.22/2020 was allowed on 12/08/2020 subject to the condition on depositing Rs.30,000/- before the Judicial Magistrate First Class, Sakoli and executing bond of Rs.3,00,000/- (Rs. Three lacs). The Sessions Court also directed to the Judicial Magistrate First Class, Sakoli to determine the cost of transportation, care, maintenance and medicine of the animals seized in the crime from the date of its seizure till passing of the order. It was further directed that the cost so determined shall be paid to appropriate person from the amount of Rs.30,000/- which will

be deposited by the petitioner. The Sessions Court also directed to the Judicial Magistrate First Class, Sakoli to determine the monthly amount which is sufficient to cover all responsible costs incurred for maintenance and treatment of animals seized in the crime. The learned Judicial Magistrate First Class calculated Rs.8,03,000/- at the rate of Rs.200/- per day per cattle from 10/10/2019 to 09/10/2020.

5. It is the contention of the petitioner that the custody of the vehicle has been granted to the present petitioner subject to condition that he shall pay Rs.200/- per day per cattle. The Government of India issued Notification in respect of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017.

6. Rule 5 Clause 4 and 5 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 have not been interpreted correctly.

7. It is submitted that the rules were being misused and as such the same were challenged in Writ Petition (c) No.000422/2017 before the Hon'ble Apex Court and under which Union of India made a statement that the aforesaid rules would be considered afresh and there will be re-notification. Considering and relying upon the statement of

the Hon'ble Apex Court disposed of the writ petition on 11/07/2017. In view of the said fact, the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 are not in existence and cannot be enforced. The Sessions Court came to the erroneous conclusion and learned Judicial Magistrate First Class had calculated the amount erroneously, therefore, the said order deserves to be quashed and set aside.

8. In response to the notice, the State has opposed the application on the ground that in view of the provisions i.e. Rules the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017, the order is passed by the trial Court as well as by the Revisional Court. Though the validity of the said rules is challenged before the Hon'ble Apex Court till no notification is issued by the Government in view of statement made before the Hon'ble Apex Court, therefore, the said rules are in existence and applicable in the present case. Hence, the writ petition deserves to be dismissed.

9. Heard Shri Hussain, learned Counsel for the petitioner. He submitted that the order passed by the Magistrate calculating the amount of Rs.200/- per day per cattle is exorbitant one. He submitted that in fact the validity of the said rules was challenged before the

Hon'ble Apex Court wherein the statement was made that the aforesaid rules would be reconsidered and there will be re-notification. In view of the said statement, the writ petition was disposed of. In view of the said statement, the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 are not in existence and cannot be enforced. He further submitted that the Sessions Court as well as the trial Court have come to the erroneous conclusion, and therefore, the order passed by the learned Magistrate calculating the amount at the rate of Rs.200/- per day per cattle deserves to be set aside.

10. Whereas Shri M.K. Pathan, learned Additional Public Prosecutor for respondent No.1/State and Shri A.P. Kalmegh, learned Counsel for respondent No.2 supported the order passed by the trial Court and submitted that the writ petition is devoid of merits and liable to be dismissed.

11. After hearing both the sides and after going through the record it is apparent that the offence was registered vide Crime No.287/2019 at Sakoli police station on an allegation that the accused Bablu @ Loknath Munna Swami, Roshan Tarare, Dilshad Hasan Gafar Hasan Haideri and Hitesh Gabhane found transporting the animals by causing cruelty to them by keeping 11 cattle in one vehicle illegally

without obtaining due medical certificate and thereby committed an offence punishable under Section 11(1) of the Prevention of Cruelty to Animals Act, 1960 read with Section 5 of the Maharashtra Animal Preservation Act, 1995. After registration of the said crime, the vehicle of the present petitioner bearing No.MH-40-N-6400 was seized.

12. Before entering into the legality or illegality of the order it is necessary to see the relevant provision in respect of release of vehicle when offence is registered under the provisions of Prevention of Cruelty to Animals Act, 1960. The necessary rules i.e. Rule 5 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 is reproduced as follows :

“5. Execution of bond.—

(1) The magistrate when handing over the custody of animal to an infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala shall determine an amount which is sufficient to cover all reasonable cost incurred and anticipated to be incurred for transport, maintenance and treatment of the animal based on the input provided by the jurisdictional veterinary officer and shall direct the accused and the owner to execute a bond of the determined value with sureties within three days and if the accused and owner do not execute the bond, the animal shall be forfeited to infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala.

(2) The infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala having the custody of the animal may draw on from the bond on a fortnightly

basis the actual reasonable cost incurred in caring for the animal from the date it received custody till the date of final disposal of the animal.

(3) The magistrate shall call for the accused and the owner to execute additional bond with sureties once eighty per cent. of the initial bond amount has been exhausted as cost for caring for the animal.

(4) Where a vehicle has been involved in an offence, the magistrate shall direct that the vehicle be held as a security.

(5) 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.

(6) In cases where a body corporate owns the animal, the Chief Executive Officer, President or highest-ranking employee of the body corporate, the body corporate and the accused shall be jointly and severally liable for the cost of transport, treatment and care of the animal.

(7) In cases where the Government owns the animal, the Head of the Department and the accused shall be jointly and severally liable for the cost of transport, treatment and care of the animal.

(8) If the owner and the accused do not have the means to furnish the bond, the magistrate shall direct the local authority to undertake the costs involved and recover the same as arrears of land revenue.”

13. Thus, the sub-Rule 5 of Rule 5 states that in case of offence relating to transport of animals, the vehicle owner, consigner, 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 aforesaid provisions clearly indicate that the arrangement for maintenance of animals is to be made by the person from whose possession the animals are seized in a crime. It is also seen that if crime is relating to transport of animals and vehicle is involved in the crime then the vehicle owner, consigner, consignee, transporter, agents in any other parties involved shall be jointly and severally liable for the cost of transport, treatment and care of animals. Thus, there is a specific provision and the vehicle owner, consigner, consignee, transporter and agents are duty bound to pay for the maintenance of said cattle which are seized from their possession.

14. Initially, the Bombay Animal Preservation Act, 1954 was enacted for the preservation of animals suitable for milch, breeding or for agricultural purposes. In view of Section 5 of the said Act there was prohibition against slaughter without certificate from the competent Authority. Sub-Section 1A of Section 5 specifically stated that no certificate under Sub-Section 1 shall be granted in respect of a cow, the calf of a cow whether male or female, bulls or bullocks. There was a prohibition to transport the animals for slaughtering and the prohibited animals are a cow or the calf of a cow, bulls and bullocks. In the present case, the 11 cows were found to be transported in the said vehicle.

15. Shri Hussain, learned Counsel for the petitioner submitted that in view of statement made before the Hon'ble Apex Court by the Union of India that the aforesaid rules would be reconsidered and the fresh notification would be issued. The Rules which are in existence i.e. the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 are not in existence and cannot be enforced.

16. Admittedly, the Central Government though made a statement before the Hon'ble Apex Court but neither the rules are reconsidered nor the re-notification was issued. The rules are still in existence, and therefore, said rules are applicable. In view of the Sub-Rule 5 of Rule 5, present petitioner is under obligation to pay the amount for the maintenance, transport, treatment and care of animals. So far as the directions are concerned issued by the Revisional Court, said directions are in view of the rules in existence.

17. This Court in Criminal Writ Petition No.304/2022 with Criminal Writ Petition No.356/2022 had already dealt with this issue and by referring the judgment of the Hon'ble Apex Court in case of *Sunderbhai Ambalal Desai Vs. State of Gujarat (2002) 10 SCC 283*, wherein the Hon'ble Apex Court held that :

“In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time”.

Thus, Single Bench of this Court held that the vehicle is seized for the offence under the special statute, no specific provision is brought to the notice about confiscation of vehicle. In absence of such provision under the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017, the general provisions contained under Chapter XXXIV of the Code of Criminal Procedure would apply. The Trial Court will take considerable time for disposal of case. Certainly, if the vehicle is kept lying at the Police Station, during passage of time it would become worthless. Therefore, though the vehicle can be held as security, the interim custody can be given to the petitioners on certain terms and conditions.

18. In the present case also the vehicle was seized. In view of provisions of Prevention of Cruelty to Animals Act, 1960 the necessary rule i.e. Rule 5 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 states that the custody of vehicle can be handed over to the owner on depositing the transportation charges, maintenance, treatment and care of animals. As

already observed that the directions issued by the Revisional Court are in view of the rules in existence.

19. Now coming to the next aspect regarding the cost ascertained by the Judicial Magistrate First Class at the rate of Rs.200/- per day per cattle is concerned appears to be exorbitant one. The Magistrate has not assigned the reason on what basis he had ascertained the said cost. As far as the health and maintenance of the cattle is concerned it appears to be illogical. The amount towards the transportation is also exorbitant one. The learned Magistrate has prepared the chart and ascertained the amount at the rate of Rs.200/- per cattle.

20. As per the FIR there were 11 cattle carried in Mahindra Bolero Pickup bearing registration No.MH-40-N-6400 which is owned by the present petitioner. Present petitioner is the owner of vehicle and it appears that while calculating the amount the learned Magistrate has calculated Rs.8,03,000/- towards the 26 seized cattle. But as far as the allegation in the FIR are concerned only 11 cattle are found in his vehicle bearing No.MH-40-N-6400, therefore, he is liable to pay the amount towards the transportation and maintenance of these 11 cattle. The amount is also calculated at a higher rate. At the most considering the daily maintenance, care, health examination, the amount of Rs.125/-

would be just and proper. Said amount comes to Rs.1,38,250/- for the period from 10/10/2019 to 20/10/2022.

21. In view of that the petitioner is liable to pay Rs.1,38,250/- towards the protection, care and maintenance of the cattle. The petitioner shall also execute bond of Rs.3,00,000/- and shall undertake that he will not sale, transfer the said vehicle and will not create any third party charge on the said vehicle.

22. If the petitioner has deposited any amount towards the maintenance it should be deducted from the final amount.

23. Hence we proceed to pass following order :

(i) The petition is partly allowed.

(ii) Petitioner shall deposit the respective amount at the rate of Rs.125/- per cattle per day for the period from 10/10/2019 to 20/10/2022 in terms of Rule 5(1) of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017.

(iii) The temporary release of vehicle is subject to the petitioner tendering the photocopy of document of ownership of vehicle to the satisfaction of the Magistrate.

(iv) The temporary custody is handed over on condition that the vehicle shall not be used in any crime.

(v) The petitioner shall provide photograph of vehicle from all sides to the Investigating Officer. The detail pahchanama of the vehicle shall be made by the Investigating Officer and place it along with photographs.

(vi) The petitioner shall not hand over possession of vehicle to third party, nor alienate or change the outer appearance of vehicle till conclusion of trial.

(vii) The petitioner shall produce the vehicle in the Court as and when required.

24. The petition is disposed of in above terms.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*