



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

953 CRIMINAL WRIT PETITION NO. 1213 OF 2023

Madan Prakashrao Shinde
VERSUS
The State of Maharashtra and another

...

WITH
CRIMINAL WRIT PETITION NO. 1305 OF 2023

Salim Rasul Khureshi
VERSUS
The State of Maharashtra and another

...

WITH
CRIMINAL WRIT PETITION NO. 1302 OF 2023

Biban Khureshi Khaja Khureshi
VERSUS
The State of Maharashtra and another

...

Advocate for the Petitioners : Mr. Shaikh Wajeed Ahmed
APP for Respondent No.1: Mrs. Pratibha J. Bharad
Advocate for Respondent No.1 : Mr. Shrimant Mundhe

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 10th MAY, 2024.

PER COURT :-

1. These matters are regarding handing over of custody of bullocks seized at the time when they were found illegally carried by vehicles. The petitioners have filed three different criminal M.A. No. 314 of 2023, 315 of 2023 and 317 of 2023 under Section 457 of Cr.P.C. before the learned JMFC, Parbhani for the custody of the animals. The said applications were rejected, the petitioners have

filed Criminal Revision Nos. 39 of 2023, 37 of 2023 and 38 of 2023 before the learned Additional Sessions Judge, Parbhani. The said revisions were also rejected.

2. A Writ petition No. 1213 of 2023 is filed for quashing of the judgments passed by the learned Additional Sessions Judge, Parbhani in Criminal Revision No.39 of 2023 dated 17.6.2023 and the order passed below Exh.1 by the Judicial Magistrate, First Class, Parbhani in Cri. M.A. No.314 of 2023 dated 9.5.2023. The Writ Petition No.1305 of 2023 is filed for quashing of the judgment and order passed by the learned Additional Sessions Judge, Parbhani in Criminal Revision No.37 of 2023 on 17.6.2023 and the order passed below Exh.1 by the Judicial Magistrate, First Class, Parbhani in Cri. M.A. No. 315 of 2023 dated 9.5.2023. The Writ Petition No. 1302 of 2023 is filed for quashing of the judgment and order passed by the learned Additional Sessions Judge, Parbhani in Criminal Revision No.38 of 2023 dated 17.6.2023 and the order passed below Exh.1 by the Judicial Magistrate, First Class, Parbhani in Cri. M.A. No.317 of 2023 dated 09.05.2023.

3. Brief facts of the case are as under:-

A police Naik Ashutosh Sanjay Jadhav lodged three reports that animals i.e. total 11 bullocks were found in the three vehicles, which were being illegally carried away for slaughtering without RTO permissions and without fitness certificates of veterinary doctors

required as per rules. Therefore, three offences punishable under Section 11(1) (d) of the Prevention of Cruelty to Animals Act, 1960 alongwith Sections 47 and 96 of the Motor Vehicles Act were registered against the petitioners.

4. Learned advocate for the petitioners argued and pointed out the averments in the petition that permission of judicial magistrate was not taken for investigation of non cognizable offences registered under Section 11(d) of the Prevention of Cruelty to Animals Act in these three cases. Petitioners are owners of the animals and therefore, the petitioners are entitled for its custody as they are owners of the animals. Respondent No.2 Goshala is not a registered institution. The order of keeping custody of two animals given to respondent No. 2 in criminal M.A. No. 315 of 2023, 317 of 2023 and 314 of 2023 be set aside and the custody of the two bullocks in Criminal M.A. No. 315 of 2023, 5 bullocks in criminal M.A. No. 317 of 2023 and 4 bullocks in criminal M.A. No.314 of 2023 be given to the petitioners. He prayed to allow all the Writ Petitions.

5. The learned APP for respondent No. 1 and learned Advocate for respondent No. 2 strongly opposed these applications and submitted that there were no such legal permissions of RTO as well as certificates of fitness of those bullocks with the petitioners to transport the animals. The impugned orders and judgments are thus legal and correct. No interference is warranted in.

6. The learned trial court held that as per Section 8(3) of the Maharashtra Prevention of Cruelty to Animals Act, the custody of animals shall be given to the Goshala which is working for animals welfare and petitioners are liable to pay its maintenance charges. As per the Section 38 of the Prevention of Cruelty to Animals Act, the Government has framed Transport of Animal Rules of 1978 and Rules 47 to 56 are mandatory that the permission is necessary to 11 bullocks in one vehicle were being carried away by violating the Rule 56(c) of the Transport of Animals Rules, 1978. Thus, prayers of the applicants for the custody of the animals were rejected. The revisions filed against it were rejected.

7. Perused the impugned judgments and orders of the trial court and revisional Court. The petitioners were not having the RTO permission for carrying the animals in the vehicles alongwith the fitness certificates of Veterinary doctor in respect of the health condition of those animals. This is a clear cut violation of the Rules 47 to 56 and Rule 56 (c) of the Transport of Animals Rules, 1978 by the petitioners. No doubt, there are receipts for purchase of animals issued by the Gram Panchayat to show that the petitioners have purchased those animals. The petitioners have not produced the fitness certificates of animals issued by the Veterinary doctor alongwith the certificates of RTO permitting petitioners to carry away the animals in the vehicle. The documents of registration of Goshala

are filed on record which show that it is a registered one. In the case of **Dhyan Foundation Vs. The State of Maharashtra and Anr., (Criminal Writ Petition No. 575 of 2023 decided on 31.01.2024)**, in which this Court in paragraph No.6 held as under :

“6. It is a common ground that till the trial is concluded, the temporary custody of the animals remains with the Pinjrapole Gaushala, Infirmary or SPCA, as the case may be. In case of conviction those animals are to be forfeited to the said Organizations and in case of acquittal, it will be handed over to the owners of the animals. The provision is also made for making payment by the owner of the animals or owner of the vehicle, in which they were being transported, for treatment, care and maintenance of those animals by the said organizations. Therefore, it is clear that the impugned order directing to hand over custody of 43 goats to respondent No. 2 pending the trial is against the provisions of the Act.”

8. From the allegations in the FIR, it appears that the animals were illegally carried for slaughtering therefore, its custody cannot be given to the petitioners. Considering the fact that the animals are safe in the custody of Goshala of respondent No. 2 and they are maintained there properly. Thus, there is no substance in the grounds of objections raised in all these writ petitions. The learned Magistrate rightly directed to hand over custody of animals to the respondent No. 2. The revision applications were rightly dismissed by

the learned Additional Sessions Judge, Parbhani. There is no scope for interference in the impugned orders and judgments, as these animals were found being transported for slaughtering.

9. At this stage, there is a limited issue to decide as to whether custody of the seized animals can be given to the petitioners or not. Therefore, arguments advanced on behalf of the petitioners that the offences are not cognisable and the police should not have taken cognizance of it and that crimes are wrongly registered against these petitioners is not acceptable. For that separate remedy and course of action is available to the petitioners. This issue cannot be decided in these Writ Petitions. On this point bunch of precedential laws submitted on behalf of the petitioners are not relevant and therefore, not considered and relied upon.

10. The Writ Petitions deserve to be dismissed. Hence the following order :

ORDER

The writ petitions are therefore, dismissed. No costs.

(SANJAY A. DESHMUKH, J.)

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