



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1493 OF 2023

YusufKhan S/o Mustafa Khan Qureshi and another .Vs. The State of Maharashtra,
through Police Inspector, Upa-Nagar, P.S., Nandurbar, Tq. & Dist. Nandurbar and
another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.S. Kulkarni, Advocate for petitioners.

Mrs. P.J. Bharad, A.P.P. for respondent No.1/State.

Shri S.G. Dodaya, Advocate for respondent No.2.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE ORDER : 10/05/2024

DATE OF PRONOUNCING THE ORDER : 14/06/2024

1. This writ petition is filed against the common order passed below Exh.1 by the learned Judicial Magistrate First Class, Nandurbar in Criminal Misc. Application No.416 of 2023 and Criminal Misc. Application No.436 of 2023 dated 17.08.2023. The petitioners application was for handing over the custody of the cows. It was conditionally allowed.

The brief facts of the present case as under:

2. The First Information Report was lodged against the petitioner No.2 under Section 11 of the Prevention of Cruelty to the Animals Act, 1960 and under Section 5 and 5-B of the Maharashtra Animal Preservation

Act, 1976. On the allegations that petitioner No.1 is trying to slaughter those cows.

3. The petitioner No.1 filed a Criminal Misc. Application No.416 of 2023 under Section 457 of the Code of Criminal Procedure, 1973 (Cr.PC) for release of his cows. Respondent No.2 also filed Criminal Misc. Application No.436 of 2023 and prayed for the interim custody of those cows. The Criminal Misc. Application No.416 of 2023 was allowed and the Criminal Misc. Application No.436 of 2023 was partly allowed. The petitioner No.1 was directed to pay maintenance charges in respect of three cows i.e. Rs.200/- per day per cow from the date of custody of the cows with a direction to execute Bond within seven days as per Rule 5(1) of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 (hereinafter referred to as “the Rules of 2017”).

4. The grounds of objection of this petition are as under :

The learned trial Court failed to consider that the petitioners are the owner of the said cows. The learned trial Court failed to consider that one of the pregnant cow died because respondent No.2 failed to maintain it properly. There is no justification for direction to the petitioners to pay such daily maintenance charges. The impugned order is

not legal and correct. It is, therefore, prayed to quash and set aside it.

5. The learned Advocate for the petitioners submits that the order directing to pay maintenance charges is not justifiable as the petitioners are the farmers and they cannot be held liable to pay that amount. He, therefore, prayed to set aside the part of the order. He further submits that, the application i.e. Criminal Misc. Application No.436 of 2023 was moved by the respondent and the order passed against them for directing the petitioner-Yusuf Khan to pay the maintenance charges. Further, the direction to pay Rs.200/- per day as maintenance charges is not justifiable in the eyes of law.

6. The learned Advocate for the respondent Nos.1 and 2 strongly objected the petition and submitted that, the order directing to pay maintenance charges as per Rule 5 of the Rules of 2017 particularly, Rule 5(1) of the Rules of 2017 is correct and legal. No illegality is committed by the learned trial Court while passing impugned order.

7. The learned Advocate for the respondents submitted that, revision is not filed against the impugned order and directly the writ petition is filed which is not

maintainable. The learned Advocate for the respondents lastly submitted to dismiss the writ petition.

8. The impugned order is not challenged by the petitioners by filing revision against it before the Sessions Court. The legal remedy of filing of revision is available. The writ petition is therefore not maintainable. Thus, the writ petition deserves to be dismissed as it is not maintainable. Hence, the following order :

9. The writ petition is **dismissed**. No costs.

(SANJAY A. DESHMUKH, J.)