



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

947 CRIMINAL WRIT PETITION NO. 1775 OF 2023

Shaikh Sadam S/o Shaikh Samad
VERSUS
The State of Maharashtra and another

...
Advocate for the Petitioner : Mr. Shaikh Abid R
APP for Respondent No.1: Mrs. Pratibha J. Bharad
Advocate for Respondent No.2 : Mr. Shrimant Mundhe and Mr. Raj
Gupta

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

PER COURT :-

1. This writ petition is directed against the judgment and order dated 02.11.2023 passed by the learned Additional Sessions Judge-2, Nanded, in Criminal Revision Application No.107 of 2023 thereby confirming the order dated 18.9.2023 passed by the learned J.M.F.C. Ardhapur, in Other Misc. Criminal application No.151 of 2023.

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

Crime No. 341 of 2023 is registered against the driver of the vehicle No. MH 04 FU 5735 and one another under Sections 3, 11, 11(3)(d) of the Protection of Animals from Cruelty Act, 1986 alleging that 13 buffaloes and 3 calves were illegally carried out in the said vehicle.

3. According to the petitioner, the petitioner is agriculturist and he does the side business of milk. He is possessing 2 Hectare and 90 Are land in block No.22 /2-A situated at village Bitergaon, Tq. Umarkhed, district Yavatmal. He therefore, purchased those 13 buffaloes and 3 calves. He was transporting those animals in Eicher truck bearing No. MH 04 FU 5735 via Nanded. That time, police stopped the truck bearing No. MH 04 FU 5735 at Ardhapur, district Nanded and crime was registered with Ardhapur police station against the driver and one more accused under Sections 3, 11, 11(3) (d) of the Protection of Animals from Cruelty Act, 1986 as there was no such permission etc.

4. The petitioner contended that no any injury is caused to any of the animals and those animals are wrongly seized. The family of the petitioner is depending upon the animals. Though those animals are kept in the field of Pandit Sakharam Landge, there are no sufficient facilities for animals for food and shelter. Therefore, the petitioner filed an application OMCA No.151 of of 2023 for custody of those animals.

5. The respondent had objected the said application and submitted that those animals were brought for slaughtering purpose. Owner of the animals are not yet traced out. It is lastly prayed to reject the application.

6. The learned trial court held that petitioner has not followed the procedure of obtaining permission for transporting those animals from the R.T.O. concerned and no certificate of veterinary doctor was obtained. Intervener trust has right to keep those buffaloes and calves with it.

7. Learned advocate for the petitioner submits that the petitioner is agriculturist and he is having agricultural land. He was carrying out those buffaloes from Umarkhed to Nanded. The distance is about 60 to 70 kilometers. He is relying upon the authority of Shri Guru Ganesh Shri Guru Mishri Gaurakshan Charitable trust Prajrapol vs. State of Maharashtra and another (criminal writ petition No.1341 of 2022 and other connected writ petitions decided on 12.5.2023) in para 18 of it, this Court observed as under:-

“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.”

8. Learned advocate for the petitioner submitted that the petitioner being farmer, no such RTO certification and Veterinary doctor's certificate are required for carrying the animals. He, therefore, prayed to allow the writ petition.

9. Learned A.P.P. for respondent No.1 State and learned advocate for respondent No.2 strongly opposed the writ petition and submitted that necessary permission from RTO was not taken for transporting the animal from one place to another place. Further, there is no medical certificate of Veterinary doctor about the health condition of 13 buffaloes and 3 calves to show that they were not being transported from Umarkhed to Nanded illegally for slaughtering purpose. At this stage, the orders passed by both the courts having concurrent findings that the petitioner was carrying out the buffaloes and calves illegally are legal and correct. The learned Magistrate has rightly exercised the judicial discretion and given interim custody to Pandit Sakharam Landge. He lastly submitted the authority of this Court (Nagpur Bench) in the case of ***Dhyan Foundation vs. The State of Maharashtra and another***, (criminal writ petition No.575 of 2023 decided on 31.1.2024), in which this court in para 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 owner 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.”

Learned advocates for the respondents lastly prayed to dismiss the writ petition.

10. Perused both the impugned judgments and orders. It is an admitted fact that the petitioner is agriculturist and having agricultural land. However, he has not taken permission from the RTO and also certificate from the Veterinary doctor for carrying those buffaloes and calves from Umarkhed to Nanded. The receipts in respect of purchase of buffaloes from A.P.M.C. Umarkhed are filed, however, it was not difficult for the petitioner to take permission from the RTO and also to take certificate from the Veterinary doctor about fitness of the animals to transport them in the vehicle. Considering this crucial aspect, the authority *Shri Guru Ganesh Shri Guru Mishri Gaurakshan Charitable trust Prajrapol vs. State of Maharashtra and another* (cited *supra*) by the petitioner is not helpful to the petitioner.

11. As far as the submission of learned advocate for the

petitioner that two buffaloes died, as those were suffering from illness. However, it was the duty of the respondent to communicate the concerned Court as to how those buffaloes died and for that the petitioner can file an application from the concerned court for considering the reasons for death of those buffaloes.

12. Considering all these aspects and nature of this proceeding, it would be appropriate to direct the trial court to hear and decide the case as expeditiously as possible and in any case within three months from today. For that purpose, the trial court is directed to hear the case and decide it on merits by fixing the dates of hearing at least twice or thrice in a week. There is no substance in the grounds of objections. The writ petition, therefore, deserves to be dismissed.

13. The writ petition is dismissed. No costs.

(SANJAY A. DESHMUKH, J.)

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