



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

921 CRIMINAL WRIT PETITION NO. 1813 OF 2023

Maltidevi Mewalalji Jaiswalji Gaushala
Bhadwad, Tal – Navpur, Dist – Nandurbar
(operated under Amar Asha Multipurpose
Society, Nandurbar),
Society Registration No. 96/2016/
Nandurbar, Trust Registration No.4842/4016/
Nandurbar, Through its authorized
representative Shri Sharad Jaysingh Padavi,
Age – 46 years, Occu. Labour,
R/o Nalve Khurd, Tal. Nandurbar
Dist. Nandurbar

....Petitioner

Versus

1. The State of Maharashtra,
At the instance of Police Inspector,
Visarwadi Police Station,
Dist-Nandurbar.
2. Ganpatbhai Pratapbhai Thakare
Age – 34 years, R/o Faliya,
Tal – Sagbara, Dist – Narmada, Gujrat.

....Respondents

WITH

921. CRIMINAL WRIT PETITION NO. 1818 OF 2023

Maltidevi Mewalalji Jaiswalji Gaushala
Bhadwad, Tal – Navpur, Dist – Nandurbar
(operated under Amar Asha Multipurpose
Society, Nandurbar),
Society Registration No. 96/2016/
Nandurbar, Trust Registration No.4842/4016/
Nandurbar, Through its authorized
representative Shri Sharad Jaysingh Padavi,

Age – 46 years, Occu. Labour,
R/o Nalve Khurd, Tal. Nandurbar
Dist. Nandurbar

....Petitioner

Versus

1. The State of Maharashtra,
At the instance of Police Inspector,
Visarwadi Police Station,
Dist-Nandurbar.
2. Shabirbhai Kasambhai Sindhi
Age – 49 years, R/o Pansoli,
Tal – Dabhoi, Dist – Vadodara (Gujrat).

....Respondents

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Advocate for the Petitioner : Mr. Ajay T. Kanawade
APP for Respondent No.1: Mr. V. M. Jaware
Advocate for Respondent No.2 : Mr. Vakil Afzal Husain M.

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 10.12.2024

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. With consent of both the sides heard finally at the stage of admission.
2. In both these matters, common issues which arise for consideration are; (i) whether the real owner of the cattle can be entitled for possession of the cattle which has been seized in a Crime registered with concerned Police Station for the offences punishable

under Section 11(1)(d) of Prevention of the Cruelty to Animals Act, 1960 and under Sections 66/192, 3/181 of the Motor Vehicle Act? and
(ii) Whether, the owner of the vehicle is entitled for custody of vehicle or not?

3. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the paper books of both the petitions.

4. In Writ Petition No. 1813/2023, the registered Gaushala challenged the order dated 07.11.2023 passed by the learned Additional Sessions Judge, Nandurbar in Criminal Revision Application No. 22/2023, thereby 14 buffaloes are released in favour of Respondent No.2, owner of the cattle.

5. In Writ Petition No.1818/2023, the registered Gaushala challenged the order dated 07.11.2023 passed by the learned Additional Session Judge, Nandurbar in Criminal Revision Application No. 21/2023 to the extent of releasing of Eicher Company Truck bearing No. GJ-6-AX-2913 in favour of the truck owner.

6. It is a matter of record that, on 28.08.2023, the informant Police Head Constable Suresh Segga More, attached with Visarwadi Police Station, District Nandurbar lodged a F.I.R. alleging that, on 28.08.2023

at about 03.33 hours, he received a message about illegal transportation of cattle for slaughtering. Since he was on patrolling duty and found that one Eicher Company Truck bearing No. GJ-6AX-2923 was parked near village Bhadwad. Thereafter, he verified said truck and found 14 buffaloes stuck in the said truck. After necessary inquiry with the truck driver, he came to know that said cattle was loaded at Taloda and they are being transported to village Malegaon. So also, the truck driver was not having permit for transportation of the cattle, therefore, he seized the cattle and the truck. Thereafter, custody of cattle was given in favour of the present Petitioner being interim custody.

7. Subsequently, the owner of the cattle and truck filed two separate applications under Section 457 of the Code of Criminal Procedure and prayed for custody of cattle and truck in pending trial. The Respondent No.2- Shri Ganpatbhai Pratapbhai Thakar is the owner of cattle, whereas, Shri Sindhi Shabbirbhai Kasambhai is the registered owner of Eicher Truck No. GJ-06-AX- 2923.

8. On 17.10.2023, the learned Judicial Magistrate First Class, Navapur, Dist. Nandurbar passed the order below Criminal M. A. No. 320/2023 and Criminal M.A. No.334/2023 and thereby released the

cattle as well as the seized truck on supratnama in favour of owner of the cattle as well in favour of the truck owner.

9. Being aggrieved by the said order, the Petitioner Gaushala approached before the Revisional Court under Section 397 of Cr.P. C. by filing Revision Application No. 21/2023. On 07.11.2023, the learned Revisional Court passed the impugned order. The learned Session Court held that, the preservation and protection of seized cattle and truck until conclusion of the trial as a requisite condition. The owner of the cattle is under obligation to pay maintenance of the seized cattle to the present Petitioner. So also, the owner of the vehicle is entitled for custody of the vehicle during the pendency of trial.

10. The learned counsel appearing for the Petitioner Gaushala canvassed in vehemence that the Petitioner is entitled to retain the custody of seized cattle just to prevent the animals from cruelty. So also, if the truck has been released in favour of the truck owner in that event it would be again used for illegal transportation of the cattle.

11. To buttress these submissions, the learned counsel appearing for the Petitioner relied on judgment dated 30.09.2022 passed by the Hon'ble Apex Court in the case of ***Shri Chatrapati Shivaji Gaushala Vs. State of Maharashtra, in Criminal Appeal No.1719 of***

2022, wherein the Gaushala /Appellant had shown willingness to accept the interim custody of the cattle and to safeguard custody, the Appellant was granted custody of the cattle.

12. Per contra, the learned counsel for the Respondent supported findings recorded by both the Courts below that, the Respondent is the owner of cattle licence and one Shri Sindhi Shabbirbhai Kasambhai is the registered owner of Eicher Truck No. GJ-06-AX- 2923. Further, the present Respondent No. 2 is ready to bear expenses for maintenance of the cattle. Therefore, findings recorded by both the Courts below are just and proper, hence, prayed for dismissal of the petitions.

13. It is needless to say that Section 457 of the Code of Criminal Procedure provides as under :

“(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”

14. In the case in hand, the Respondent No.2 in Writ Petition No. 1813/2020 is the owner of cattle. Further, Shri Sindhi Shabbirbhai Kasambhai is the registered owner of Eicher Truck No. GJ-06-AX- 2923. The present Petitioner has not denied that, the Respondent No.2 is owner of cattle or Shri Sindhi Shabbirbhai Kasambhai is the registered owner of Eicher Truck No. GJ-06-AX- 2923. Therefore, considering provisions of Prevention of Cruelty to Animal Act, 1960, Sec. 457 of Cri. P. C., as well as law laid down by the Hon'ble Apex Court cited therein, the custody of seized cattle and truck are given in favour of the owners, which does not appear to be illegal, bad in law.

15. Needless to say that, the learned Revisional Court passed the impugned order considering the provisions of Animals Welfare Laws including Rule 5 (5) of Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules 2016, and granted the custody of seized cattle and truck in favour of the respective owners, therefore, no perversity is found. Therefore, I am not inclined to interfere with the said findings. Accordingly, both the Petitions are dismissed. Accordingly, Rule is discharged.

(Y. G. KHOBRAGADE, J.)