

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 88 OF 2023
IN
CRIMINAL WRIT PETITION NO. 695 OF 2023

Dhyan Foundation
Through Auth. Rep. Swati Suhas Shilker ...Applicant
Vs.
The State of Goa
Thr. Ponda Police Station and Anr. ..Respondents

Mr. Harish Pandya, a/w Mr. Raju Gupta and Ms. Swati Kamat-Wagh, for Applicant.
Mr. Gaurish Nagvekar, Addl. Public Prosecutor holding for Mr.Nikhil Vaze, Addl. Public Prosecutor for the Respondent No.1.
Mr. Ryan Menezes a/w Mr. Nigel Fernandes for Respondent No.2.
Mr. Umesh G. Pawaskar, (A.S.I.) Porvorim Police Station, present.

CORAM : PRAKASH D. NAIK, J.

RESERVED ON : 12th JANUARY 2024
PRONOUNCED ON : 23rd JANUARY 2024
(Through V.C.)

P.C.:

1. The Applicant is seeking recall and modification of order dated 17th October 2023, passed by this Court in Criminal Writ Petition No.695 of 2023.
2. Criminal Writ Petition No.695 of 2023 was preferred by applicant challenging the order dated 13th September 2023, passed by learned J.M.F.C., 'B' Court, Ponda, Goa in Misc. Application No.105 of 2023,

allowing the application and releasing the animals in favour of Respondent No.2, on executing indemnity bond and other conditions. The Petition was rejected vide order dated 17th October 2023. At the request of Advocate for Applicant/Petitioner, interim stay granted by this Court to the operation of impugned order, was continued for a period of two weeks from the date of uploading the order.

3. The applicant preferred Criminal Misc. Application No.853 of 2023 of 2023 for extension of stay granted by this Court. Vide order dated 15th November 2023, stay was extended by two weeks from the date of order.

4. This application was heard on 5th December 2023. At the request of the applicant/petitioner, stay was extended for further period of two weeks. Thereafter, vide order dated 20th December 2023, stay granted by this court was further extended till next date.

5. Learned Advocate for Applicant Mr. Pandya submitted that, the order dated 17th October 2023 is required to be recalled as the Respondent No.2 had relied upon false health certificate of animals. This Court while passing the order dated 17th October 2023 has considered the certificate of fitness produced by Respondent No.2 contending that, the same were obtained before the animals were transported. The said fitness certificate of the animals were fabricated.

Since the petitioner had doubt about authenticity of fitness certificate, RTI applications dated 21st October 2023 were filed by the authorized representative of the applicant before the office of Public Information Officer, Deputy Director, Department of Animal Husbandry Bangalkote, Karnataka enclosing the copies of the health certificates submitted by Respondent No.2. The applicant was in receipt of RTI letter dated 25th October 2023 from the office of Veterinary Officer, Veterinary Dispensary, Mantur, Taluka Mudhol, District Bangalkote. The letter stated that, transport certificate of fitness (sheep & Goat) dated 10th August 2023 in the name of (consignor) Taldappa Sittappa Hosmani (Vehicle No. GA 06 T 7423) is fake, seal and signature is also fake and it is not issued by the Veterinary Officer, Veterinary Dispensary, Mantur, District, Bagalkot. The applicant filed complaint dated 11th November 2023 for registering the FIR against respondent No.2 and others with Ponda Police Station. Thus, the order dated 17th October 2023 is based on the health certificate of the animals produced by Respondent No.2 which were found to be false which warrant recall of the said order. It is submitted that, the applicant had filed an application before the concerned Court seeking directions under Section 156(3) of Cr.PC. and post disposal of the petition, the Court had issued such directions. While passing order dated 17th October 2023, this Court had noted that

except non-cognizable complaint, no other action is initiated against Respondent No.2. Hence, the order needs to be recalled.

6. Reliance is placed on the order dated 6th August 2019, passed by this Court in Criminal Public Interest Litigation No. 33 of 2017 where certain directions were issued to take stringent measures and prevent violation of Breach of Prevention of Animals Act, 1960 and Prevention of Cruelty to Animals (Transport of Animals on foot) Rules 2001.

7. Respondent No.2 has filed reply opposing the relief sought in this Application.

8. Learned Advocate for Respondent No.2 Mr.Menezes submitted that, the application is not maintainable in law. As per Section 362 of Cr.PC., no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error. Reliance is placed on the decision of this court in the case of Venus Steel Products through its proprietor Vs. Michael Francis Pinheiro and Another¹. Mr.Menezes further submitted that no case is made out to recall the order dated 17th October 2023 passed by this Court. Goats and sheep in question were sourced purchased and transporter was arranged to transport them to Goa. The transporter/driver of the transport vehicle accordingly collected the

¹ 2005 (2) Bom. C.R. (Cri.) 901

animals in question and subjected them to examination. To the best of his knowledge Respondent No.2 learnt from the driver of the transport vehicle that, the Veterinary Officer of the Department of Animal Husbandry examined the animals and issued a fitness certificate. The certificate also mentions the name of the driver as consignor. Based on the information received by respondent No.2, the animals were subjected to examination to determine their fitness for transport. On the date of seizure of animals on 11th August 2023, all animals were examined in the presence of concerned Police Officers of Ponda Police Station and all the animals were found to be healthy as borne from their certificate dated 12th August 2023 issued by Veterinary Officer, Department of Animal Husbandry and Veterinary Services, Usgao, Goa. None of the animals seized were found to be pregnant as alleged by the applicant. After the animals had been in custody of the applicant for week, they started dying one after another, and as on date large number of them have passed away. The applicant is attempting to re-agitate the issues raised in Criminal Writ Petition No. 695 of 2023 in the guise of application to recall of the judgment of this Court. The applicant has not shown any flaw in the other documents submitted by Respondent No.2. There was no reason for respondent No.2 to fabricate documents. While passing the order dated 17th October 2023, this Court has referred

to the fact that immediately after seizure of animals, they were examined by the Veterinary Officer, Government Department and the animals were found to be fit. The decision of this Court dated 17th October 2023 is not based only on the dispute certificate alleged to be fabricated as contended by applicant but it is based on several other factors. Hence, no case is made out for recall of the order dated 17th October 2023.

9. In rejoinder, the learned Advocate for applicant submitted that the application for recall of order is maintainable. This Court can exercise inherent powers under Section 482 of Cr.PC. for recalling such order. The acts committed by Respondent No.2 were in violation of Prevention of Cruelty to Animals Act. The party relying upon the documents is required to check its genuineness. Reliance is placed on affidavit of Shri. Vishvar Naik dated 13th September 2023 filed before the Court of learned JMFC, 'B' Court, Ponda, Goa stating that he has been appointed as District Society for Prevention of Cruelty to Animals Officer in Goa since 2022. On 11th August 2023 he was with the staff of Dhyan Foundation from the point the vehicle stuffed with animals was apprehended by Ponda Police. He was present when the animals Husbandry Veterinary Officer and staff members were carrying out medical examination of the goats and sheep at Usgaon Police outpost on

11th August 2023. They carried out general medical examination of animals without touching any single animal. He found that the animals were having fever. The cash bill produced by respondent is doubtful. E-Way bill was produced.

10. It is pertinent to note that the affidavit relied upon by Applicant is dated 13th September 2023. Order sought to be recalled is passed on 17th October 2023. Same submissions were advanced while adjudicating Criminal Writ Petition No. 695 of 2023. It is apparent that, the applicant is trying to re-agitate the same issues. From the affidavit relied upon by applicant it is apparent that the deponent is doubting the examination conducted by animal husbandry Veterinary Officer and his staff and trying to raise debatable issues.

11. Criminal Writ Petition No. 695 of 2023 was heard extensively. Detailed order was passed on 17th October 2023. Order would indicate that, it is not based merely on the certificate given by transporter. In para 12, 13 and 14 of the decision, this Court has considered several factors while confirming the order passed by the Court of learned JMFC, Ponda, Goa. Apart from the certificate of fitness before the Animals were transported, this Court considered the license with regard to the shop, the report dated 12th August 2023 about examining animals conducted by Government of Veterinary Officer, this Court take note of

report dated 13th August 2023, which referred to the frail condition of the animals and relied upon by applicant/petitioner and observed that examination was conducted by retired Veterinary Officer. This Court also noted that several animals had died continuously, while they were in custody of applicant. This Court also relied upon the documents of purchase of animals and license of *mutton* shop. The applicant has not challenged the order dated 17th October 2023 before the higher Court. However, the applicant had sought extension of stay granted by this Court repeatedly without resorting to the remedy of challenging the order before the highest Court, if the applicant is aggrieved by said order.

12. Considering the aforesaid circumstances, no case is made out to recall the order dated 17th October 2023.

ORDER

- (i) Criminal Misc. Application No. 88 of 2023 is rejected and disposed off.
- (ii) At this stage, learned Advocate for the applicant requested for extension of stay granted by this Court for a period of four weeks.
- (iii) Request is opposed by learned Advocate for Respondents.
- (iv) Order sought to be recalled was passed on 17th October 2023 and thereafter, on several occasions stay was granted.

(v) Considering the request, stay granted by this Court earlier is extended by two weeks from today.

(vi) The respondent No.2 is at liberty to file undertaking in consonance with order dated 17th October 2023 after the period of stay expires.

[PRAKASH D. NAIK, J.]