



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 589 OF 2024

PETITIONER : Akbar Bhura Bhai Sindhi, Aged :
Major, Through Power of Attorney
Holder : Semana Somabhai Manabhai,
Aged about 43 Years, Occu. Driver,
R/o. Semana Was, Mauza Digdi, Tah.
& Distt. Pathan (Gujarat).

//VERSUS//

RESPONDENT : State of Maharashtra, through Police
Station Officer, Police Station
Hinganghat, Tah. Hinganghat, District
Wardha.

Mr. A.R. Ingole, Advocate for the Petitioner.
Ms. S.V. Kolhe, APP for the Respondent.

WITH

CRIMINAL WRIT PETITION NO. 590 OF 2024

PETITIONER : Abdul Samad S/o. Abdul Karim, Aged
about 35 Years, Occupation : Business,
R/o. Veer Bhagatsing Ward, Behind
Nahhashaha Baba Darga, Hinganghat,
Tq. Hinganghat, District Wardha.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, through Police
Station Officer, Police Station
Hinganghat, Tah. Hinganghat, District

Wardha.

2. Gorakshan Sanstha, Hinganghat, Tah. Hinganghat, Distt. Wardha, through its Manager/Authorised Signatory.

Mr. A.R. Ingole, Advocate for the Petitioner.

Ms. S.V. Kolhe, APP for Respondent No.1.

Mr. Raju Gupta, Advocate for Respondent No.2.

CORAM : G. A. SANAP, J.

DATED : 24th SEPTEMBER, 2024.

ORAL JUDGMENT

. **Rule.** Rule made returnable forthwith. The petition is heard finally by the consent of the learned advocates for the parties.

02] In both these petitions, challenge is to the order dated 4th July, 2024, passed by the learned Additional Sessions Judge, Hinganghat, whereby the learned Additional Sessions Judge dismissed the revision applications filed by the petitioners against the common order dated 19th April, 2024, passed by the learned Judicial Magistrate First Class, Court No.2, Hinganghat. As such, both petitions are disposed of by a common order.

03] BACKGROUND FACTS:

A crime bearing No.139/2024 came to be registered against the petitioners and others at Hinganghat Police Station for the offences punishable under Sections 11(1), 11(1)(c), 11(1)(d) and 11(1)(f) of the Prevention of Cruelty to Animals Act, 1960 (for short, “the Act of 1960”) and under Sections 11, 5(a) and 9 of the Maharashtra Animal Preservation Act, 1976 (for short, “the Act of 1976”). It is the case of the prosecution that 16 buffaloes had been crammed in the vehicle bearing registration No.GJ-02 AT-7244 in inhumane condition. The buffaloes were subjected to unnecessary pain and suffering in the vehicle. The transportation of six buffaloes is permissible in the vehicle. The vehicle was intercepted. The buffaloes have been seized. The panchanama shows the cruel manner in which the animals were crammed and tied in the vehicle. Two buffaloes died after handing over the custody to Goshala.

04] The petitioners made two separate applications before the Magistrate. One for the custody of the buffaloes and the second for the custody of the vehicle, pending the trial. The petitioners claimed that they purchased the buffaloes from the farmers. They were carrying the buffaloes in the vehicle to their village. They

have not committed any offence. They have not breached provisions or rules.

05] The State opposed the application, contenting that the manner in which the buffaloes were transported disclosed the commission of an offence under Section 11 of the Act of 1960 as well as an offence under Section 6 of the Act of 1976. It was further contended that, until the disposal of the criminal case, the petitioners cannot dispose of the buffaloes. Similarly, it was contended that, considering the conduct of the petitioners, it would not be safe and advisable to handover the custody of the buffaloes to the petitioners. It was further contended that the receipts of purchase of the buffaloes produced by the petitioners have been proved to be fabricated. The persons, whose names have been mentioned as sellers of the buffaloes, have stated during the investigation that the receipts were not signed by them.

06] The learned Magistrate, by his order dated 19th April, 2024, rejected the application for handing over the custody of the buffaloes to the petitioners. The learned Magistrate allowed the application for return of the vehicle subject to conditions set out in the operative part of the order.

07] The petitioners, being aggrieved by these two orders, filed the revision applications in the Court of Additional Sessions Judge, Hinganghat. The learned Additional Sessions Judge, for the detailed reasons recorded in his order dated 4th July, 2024, dismissed both the applications.

08] It is evident that, after seizure of the 16 buffaloes, the custody of the buffaloes has been handed over to Gorakshan Sanstha, Hinganghat. It has come on record that, after handing over custody, two buffaloes have died. It is the contention of the petitioners that the Gorakshan Sanstha, Hinganghat, has no infrastructure to take care of the buffaloes in all respects. The learned Magistrate as well as the learned Additional Sessions Judge rejected this contention.

09] On going through the record, I am satisfied that there is no substance in this contention. On handing over the custody of the animals to Goshala under above acts, the complete mechanism for taking care of the animals seized in the criminal cases has been provided. It would be too early for the petitioners to contend that the Gorakshan Sanstha, Hinganghat, has either flouted the rules or acted contrary to the directions of the police with regard to the

care, protection, and maintenance of the buffaloes. It needs to be stated that, as and when such grievance is made, the Court would conduct an inquiry through the police and, depending upon the outcome of the inquiry, may pass an appropriate order.

10] It is to be noted that the petitioners are claiming the custody of the buffaloes seized in the crime. Sixteen buffaloes have been seized. Two buffaloes have died after handing over the custody. The record shows that 16 buffaloes had been crammed in inhumane condition in the vehicle. The panchanama would show that the legs of two buffaloes were tied together. Their necks were tied in such a manner that they were almost strangulated. The petitions as well as the applications are silent about the valid certificate issued by a qualified Veterinary Surgeon certifying the fitness for the travel, etc. Similarly, it is silent about the issuance of certificate for transportation of the animals. The special requirements of motor vehicles transporting livestock have not been complied with. This Court, in the case of *Sohil Kureshi S/o. Rashid Kureshi Vs. State of Maharashtra, through P.S.O. Morshi, Amravati (Rural) [Writ Petition No.229/2023, decided on 22.07.2023]*, has elaborately dealt with the relevant Rules. It would be apposite to extract paragraphs 9, 10, 11, 12 and 13 of this

decision. The same are extracted below:

“09] In order to appreciate the rival submissions and particularly the claim of the petitioner that the animals were not subjected to cruelty in any form, it would be necessary to consider the relevant rules of the Rules of 1978. The relevant rules are Rules 47 to 50 and 56. For the purpose of convenience, these rules are extracted below :

“47. (a) A valid certificate by a qualified veterinary surgeon to the effect that the cattle are in a fit condition to travel by rail or road and are not suffering from any infectious or contagious or parasitic diseases and that they have been vaccinated against rinderpest and any other infectious or contagious or parasitic diseases, shall accompany each consignment.

(b) In the absence of such a certificate, the carrier shall refuse to accept the consignment for transport.

(c) The certificate shall be in the form specified in Schedule E.

48. Veterinary first-aid equipment shall accompany all batches of cattle.

49. (a) Each consignment shall bear a label showing in bold red letters the name, address and telephone number (if any) of the consignor and consignee, the number and types of cattle being transported and quantity of rations and food provided.

(b) The consignee shall be informed about the train or vehicle in which the consignment of cattle is being sent and its arrival time in advance.

(c) The consignment of cattle shall be booked by the next train or vehicle and shall not be detained after the consignment is accepted for booking.

50. The average space provided per cattle in Railway

wagon or vehicle shall not be less than two square meters.

51 to 55

56. When cattle are to be transported by goods vehicle, the following precautions are to be taken :-

- (a) Specially fitted goods vehicles with a special type of tail board and padding around the sides should be used ;*
- (b) Ordinary goods vehicles shall be provided with anti-slipping material, such as coir matting or wooden board on the floor and the superstructure, if low, should be raised ;*
- (c) No goods vehicle shall carry more than six cattle ;*
- (d) Each goods vehicle shall be provided with one attendant ;*
- (e) While transporting, the cattle, the goods, vehicles shall not be loaded with any other merchandise ; and*
- (f) to prevent cattle being frightened or injured, they should preferably, face the engine.*

10] In this case, undisputedly valid certificate by a qualified Veterinary Surgeon with regard to the fitness of the animals to transport by road with other particulars, was not obtained by the owner. The animals were loaded 3-4 times beyond the capacity of the vehicle prescribed under the Rules. Similarly, there was no provision of first-aid equipments in the vehicle. There was no arrangement of water and fodder in the vehicle. The animals were being transported by goods vehicle. Rule 56 lays down the conditions for transport of the animals by goods vehicle. Rule 56, clause (c) provides that no goods vehicle shall carry more than six cattle. It is further seen that in the vehicle, there was no special arrangement with regard to the special type of tail board and padding around the sides. Similarly, there was no anti-slipping material on the

floor of the vehicle. The number of animals transported in a tempo would, therefore, clearly indicate that it was in violation of the above rules.

11] The Rules of 1978 were amended in 2001. Rule 96 of the Rules of 2001 has been relied upon to contend that the certificate provided in this Rule was not procured. Rule 96 of the Rules of 2001 is extracted below :-

“96. Issue of certificate before transportation :-

- (1) A valid certificate issued by an officer or any person or Animal Welfare Organisation duly recognized and authorized for this purpose by the Animal Welfare Board of India or the Central Government shall be procured by any person making transport of any animal before transportation of such animal verifying that all the relevant Central and State Acts, rules and orders pertaining to the said animals including the rules relating to transport of such animals have been duly complied with and that the animal is not being transported for any purpose contrary to the provision of any law.*
- (2) In the absence of such certificate, the carrier shall refuse to accept the consignment for transport.*

12] Reliance has also been placed on amended Rule 125E of the Central Motor Vehicle Rules, 1989. For convenience, Rule 125E is extracted below :-

“125E-Special requirements of motor vehicles transporting livestock -

- (1) On and after, the 1st January, 2016, motor vehicles used for transportation of livestock by road shall be in accordance with the specifications of the Bureau of Indian Standards as provided in IS-14904:2007 ; or IS-*

5238:2001 ; or IS-5236:1982, as the case may be, as amended from time to time and the transporter or consigner of the livestock shall follow the code of practice laid down in the respective specification regarding the transport of the livestock.

(2) Subject to sub-rule (1), the motor vehicles for carrying animals shall have permanent partitions in the body of the vehicles so that the animals are carried individually in each partition where the size of the partition shall not be less than the following namely:-

- (i) Cowes and buffaloes = 2 sq.mts.*
- (ii) Horses and mares = 2.25 sq. Mts.*
- (iii) Sheep and goat = 0.3 sq. Mts.*
- (iv) Pig = 0.6 sq. Mts. And*
- (v) Poultry = 40 cm.sq.*

(3) No motor vehicles meant for carrying animals shall be permitted to carry any other goods.

(4) The regional Transport officer shall issue special licences for the motor vehicles meant for carrying animals on the basis of vehicles modified in accordance with the provisions of sub-rule (2)."

13] Rule 125E stipulates special requirements of motor vehicles transporting livestock, namely the space to be provided for each kind of livestock, the ban on use of said vehicle to carry any other goods and issuance of licence by the R.T.O. for motor vehicles meant for carrying animals on the basis of the vehicles modified in accordance with the provisions of sub-rule (2). Perusal of the above rules would show that the rules are mandatory. It is to be noted at this stage that the offences for which the accused have been prosecuted are under Sections 11(1), 11(1)(c) and

11(1)(d) of the Act of 1960, Section 119 of the Maharashtra Police Act, 1951 and Sections 83 and 177 of the Act of 1988.

11] It is to be noted that the petitions as well as the applications made before the learned Magistrate nowhere mention that all these rules have been scrupulously followed. The learned APP has placed on record the statements of the persons whose names have been mentioned in the receipts being the sellers of the buffaloes, with the pursis. It is stated that the investigation has revealed that the signatures of those persons are forged. They have stated, during the course of the investigation, that they did not sell the buffaloes to the petitioners. Similarly, they have stated that the receipts do not bear their signatures. In my view, this is a very serious matter.

12] The learned Magistrate has considered all these aspects. The facts recorded in the panchanama at the time of the seizure of the buffaloes cannot be overlooked. It *prima facie* shows that the buffaloes were treated cruelly. There was no attendant. In fact, the attendant had no place to stand in the vehicle. There was no provision of fodder, water, etc. In view of this, the Courts below were right in rejecting their prayer for custody of the buffaloes.

13] The next important issue is with regard to the conditions imposed by the learned Magistrate for release of the vehicle. The learned Additional Sessions Judge, on consideration of the matter afresh, concluded that the conditions imposed by the Magistrate for release of the vehicle are in conformity with the provisions of the act and the rules.

14] I have perused Rules 4 and 5 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017. Rule 4 provides for the cost of care and keeping of animal pending litigation. It is to be noted that in terms of Rule 4, the State Board has fixed the maintenance charges per animal. As per the decision of the State Board, the charge per animal per day is Rs.200/-. Rule 5, sub-rules (4) and (5), provides for the direction in case of the vehicle used in the crime. As per sub-rule (4), the Magistrate shall direct that the vehicle be held as security. Sub-rule (5) provides that in case of offence relating to transport of animals, the vehicle owner, consignor, consignee, transporter, agents, and any other parties involved shall be jointly and severally liable for the cost of transport, treatment, and care of animals.

15] The learned Magistrate, consistent with these provisions, directed the petitioners to execute an indemnity bond of Rs.14,00,000/- (Rs. Fourteen Lakhs). The learned Magistrate directed the petitioners to pay the maintenance charges to the Goshala in respect of 14 seized animals @ Rs.200/- per day per animal. The learned Magistrate also directed the petitioners to execute a bond of Rs.5,00,000/- (Rs. Five Lakhs) for payment of the maintenance amount as per rules.

16] On going through the record and proceedings, I am satisfied that the Courts below have not committed any illegality. The buffaloes have been seized in the crime. The petitioners are claiming to be the owners of the buffaloes. Therefore, they are required to pay the charges for care and maintenance of the buffaloes. I do not see any substance in their contentions that either they may be granted relaxation in the payment of care and maintenance charges or the same be reduced. In view of this, I do not see any substance in both the petitions. Accordingly, the petitions are **dismissed**. Rule is discharged.

17] It is brought to the notice of this Court in number of matters that the purchase receipts are prepared by using the names

of the persons, who are not the owners of the animals. It is to be noted that this fact has been noticed by this Court in more than one matter. It is seen that, at the stage of the investigation, proper care is not taken by the Investigating Officer. The Investigating Officer, at the initial stage of the investigation, is bound to record the statements of the persons whose names are mentioned in the receipts as sellers of the animals. It is expected of the Investigating Officer to record the statements of those persons to verify the correct factual position. It is also pertinent to mention that, as and when a reply is filed to any application for release of the vehicle or release of the animals, the Police Officer is expected to make a candid statement with regard to the collection of the receipts and the validity or otherwise of the receipts.

18] The learned Magistrate shall also see that, before deciding the matter, the police is questioned about the verification of the ownership of the cattle involved in the crime.

(G. A. SANAP, J.)