
(1998) 03 BOM CK 0007

In the Bombay High Court

Case No : Criminal Writ Petition No. 247 of 1998

Ashok L. Puranik

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-03-1998

Acts Referred:

Maharashtra Animal Preservation Act, 1976 — Section 11, 6, 9

Citation : (1998) 100 BOMLR 200

Hon'ble Judges : A.B. Palkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.B. Palkar, J.—Rule. The learned A.P.P. and the learned Advocate for the respondents Nos. 2 and 3 waive service rule. Heard forthwith by consent.

2. By this writ petition the petitioner has impugned order passed by learned Metropolitan Magistrate. 31st Court, Vikhroli. Mumbai in Criminal Miscellaneous Application No. 123 of" 1998 on 18.2.1998 directing to return seized cattle on executing bond of Rs. 5000/- to the applicant (Respondent No, 8) who is the owner of the cattle.

3. It is not necessary to go into the details of the aforesaid controversy as brief summary of facts would be sufficient. In all 11 buffaloes were seized by Ghatkopar Police Station in L.A.C. No. 2379 of 1997 under Sections 6, 9 and 11 of the Maharashtra Animals Preservation Act, 1977 and contravention of the Rules framed under Prevention of Cruelty to Animals Act, 1960. The offence was registered in the said case on the complaint of the present petitioner. Even according to the contesting respondent, respondent No. 3 Shafiulla Mohd. Shariff Shah was engaged to carry the buffaloes to Deonar Slaughter House. The same were loaded in a truck and were covered by tarpaulin which prima facie leads to a suspicion that they were being carried in a clandestine manner and therefore on the complaint of the present petitioner these cattle were seized and offence

was registered.

4. By now the charge-sheet has also been filed in the Court of learned Metropolitan Magistrate.

5. However, by order dated 4.11.1997 the learned Magistrate had given the cattle in the custody of the petitioner and were kept in Panjarapole at Ghatkopar. Thereafter, the respondent No. 2 moved an application before the learned Magistrate. On his application, after hearing the applicant and the other parties, including the State, the learned Magistrate passed the impugned order.

6. In this Court, on behalf of the petitioner Shri R.M. Agarwal learned Counsel seriously challenged the order of the learned Magistrate and contended that although number of judgment of this Court as well as judgments of the apex Court were brought to the notice of the learned Magistrate, the learned Magistrate did not go into these judgments and has passed the impugned order which is contrary to law. The learned Magistrate has rejected the contention of the petitioner that in such type of cases the animals are handed over to such organization which is devoted to the well-being and welfare of the animals and the applicant/petitioner is ready and willing to preserve, protect and maintain the animals till the conclusion of trial. While rejecting the aforesaid contention the learned Magistrate has stated in his order that although the respondent was licensed vendor for supply to the slaughter house the cattle were being carried in the vehicle in contravention of the permit granted to him. In any case, the allegations are that there was contravention of the permit and although the cattle owner was licensed vendor the cattle were being carried in contravention of the permit and offences stated earlier in para No. 3 are registered.

7. It appears that prima facie the allegations are justified as there was no permit for carrying the cattle in the said truck at the relevant time and there is nothing on record to show that they were being carried to the slaughter house after complying with the necessary provisions of the Act and Rules. Now it must be borne in mind that once the animals are taken to the slaughter house then nobody knows as to what would happen to them. Once they are slaughtered nothing can be done and preventive action is necessary to save their life. The facts remains that they were being carried in contravention of permit issued, and therefore, there was a prima facie case. If so it was not at all justified on the part of the learned Magistrate to return the cattle to the owner pending the trial, and it was necessary to continue their custody with organization devoted to the well-being and welfare of such cattle pending trial. This impugned order of the learned Magistrate has already been stayed and such custody has not been handed over to the respondent No. 2. In view of the peculiar facts and circumstances the learned Counsel appearing for the respondent Shri M.M. Taly requested that in case the order of the learned Magistrate is to be set aside, the trial be expedited. Shri Agarwal, learned Counsel appearing for the petitioner and learned Addl. Public Prosecutor Shri I.S. Thakur did not object to this request. The law laid down by the Division Bench of this Court in *Krushni Goseva Sangh v.*

State of Maharashtra 1988 Mh. L.J. 293 which is thereafter followed is clear. The Division Bench of this Court has quoted with approval observations in an earlier judgment of this Court in Ejaz Ahmad v. State of Maharashtra dated 12.8.1986 Writ Petition No. 714 of 1986. In para No. 5 of this judgment of the Division Bench the following observation is made :

The only question which now falls for our consideration is the provision that should be made to protect and preserve the cattle pending the proceedings. Mr. Parkar presses his client's claim that the cattle should be handed over to him on furnishing a bond. In view of the events which have taken place and also in view of the allegation against the petitioner that he has brought the cattle for slaughtering, according to us, the interest of all parties concerned will be best served if the cattle remain where they are. The maintenance charge of each of the animal is fixed at Rs. 7/- per day. If there are any much cows the Panjarapole or the individuals who have them in their custody, will maintain an account of the sale of milk. At the conclusion of the trial, the accounts should be worked out on the basis of the above arrangement.

8. In view of this legal position the learned Magistrate was in error in returning the cattle to the owner, pending trial and he ought to have continued the custody with the Panjarapole at the instance of petitioner as per earlier order. The observations of the learned Magistrate that prosecution itself is premature is to say the least totally uncalled for. It is not proper to make any such comment touching the merits of the case at the stage of such an application.

9. The petition is therefore, allowed. The cattle shall continue in the custody of petitioner and be kept in Panjarapole, Ghatkopar till decision of the Criminal Case, The order passed by the learned Magistrate on 18.2.1998 directing to return the cattle to the respondent No. 2 on executing bond of Rs. 50,000/- is hereby quashed. The learned Magistrate is directed to expedite the hearing of the case bearing No. 72/P/1998 of Ghatkopar Police Station and dispose of it within a period of six months from the date on which the writ of this Court received by the learned Magistrate. Writ to be sent forthwith. Rule is made absolute in the aforesaid terms.