

(2011) 07 BOM CK 0235

In the Bombay High Court

Case No : Criminal Application No. 121 of 2011

Go-Vigyan Anusandhan Kendra

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 457, 482
Maharashtra Animal Preservation Act, 1976 — Section 10, 6
Penal Code, 1860 (IPC) — Section 279, 304A, 429
Prevention of Cruelty to Animals Act, 1960 — Section 11(d)

Citation : (2012) BomCR(Cri) 469

Hon'ble Judges : Bhangale A.P., J

Bench : Single Bench

Advocate : R.M. Daga and Mohit Khajanchi, for the Appellant; D.M. Kale, Assistant Public Prosecutor, for Respondent No. 1-State and R.M. Patwardhan, for Respondent No. 2., for the Respondent

Judgement

Bhangale A.P., J.—By this application, the applicant has questioned order dated 21.2.2011 passed by the Ad hoc Sessions Judge-1, Nagpur in Criminal Revision No. 713 of 2010 whereby the revision was allowed and the Revisional Court set aside order dated 24.12.2010 passed by the Judicial Magistrate, FC, Kamptee in Misc. Cri. Application No. 154 of 2010 and restored the order dated 16.12.2010 passed by the learned Magistrate in Misc. Criminal Application No. 150 of 2010. Applicant Society claims that its aim and object is to monitor and to take care of the animals with utmost love and affection and provide accommodation, fodder, water along with health protection and treatment by veterinary doctors.

2. On 12.12.2010 a truck bearing Registration No. CG-04/DC-8904 met with an accident near village Ajani and in that accident one lady by name Smt. Padma Tekam died. The truck had also turned turtle. It was accosted on the spot and 14 cattle were found in the said truck. During inspection, it was noticed that two cattle had died and remaining 12 cattle were seriously injured. On the basis of complaint lodged by Timaji Khandate, father of deceased Padma, police

registered offences punishable under sections 279, 429, 304A of the Indian Penal Code read with section 11(d) of the Prevention of Cruelty to Animals Act and sections 5 and 6 of the Protection of Animals Act; vide Crime No. 241/2010. During the course of investigation, the investigating agency found that the animals were being transported illegally for the purpose of slaughtering and, therefore, the animals were deposited in the cattle pond of Gram Panchayat, Ajani.

3. On 14.12.2010 respondent No. 2 Salim, claiming to be the lawful owner of the cattle, filed application (being Misc. Cri. Application No. 150 of 2010) u/s 457 of the Code of Criminal Procedure for release of the animals on his supratnama. On 16.12.2010 present applicant Go-Vigyan Anusandhan Kendra also made similar application (being Misc. Cri. Application No. 153 of 2010). Learned Magistrate vide order dated 16.12.2010 allowed application of respondent No. 2 Salim for release of the animals on his supratnama. However, by separate order passed on the same day, learned Magistrate kept the order of release of animals on the supratnama of respondent No. 2 Salim in abeyance since he came across the judgment of this Court in the case of Krushi Goseva Sangh and Another Vs. State of Maharashtra and Others, . Learned Magistrate then called for report of the Investigating Officer to know as to whether the cattle were being carried for slaughtering. After receiving the report, learned Magistrate passed order dated 24.12.2010 and thereby rejected Misc. Cri. Application No. 150 of 2010 filed by respondent No. 2 Salim; filed Misc. Cri. Application No. 153 of 2010 of present applicant and allowed application of the present applicant being Misc. Criminal Application No. 154 of 2010 for custody of the animals on supratnama pending trial.

4. Respondent No. 2 challenged the said order in revision and the Revisional Court vide order dated 21.2.20011 allowed the same and thereby set aside order dated 24.12.2010 and restored order dated 16.12.2010 passed by the learned Magistrate in Misc. Cri. Application No. 150 of 2010 whereby animals were ordered to be released on supratnama of present respondent No. 2 pending trial. Being aggrieved by the revisional order, the applicant Go-Vigyan Anusandhan Kendra has filed application u/s 482 Cr. P.C. before this Court.

5. Learned Counsel for the applicant submits that in the present eventuality, the order u/s 457 Cr. P.C. would be of interlocutory nature and no finality would be attached to it since it would be an arrangement pending trial. He pressed into service judgment of this Court in the case of D'damas Jewellery India Pvt. Ltd. Vs. State of Maharashtra, Mr. Himanshu Kamlashankar Thakar and Mr. Rakesh L. Goda . This Court in paragraph 10 has observed thus:

As regards the third eventuality u/s 457 of the Code, the order in such an eventuality would be only for custody of the property during the trial, subject to condition that the same should be produced at any time required by the Court. Such an order would certainly fall within the category of interlocutory order as one cannot attach any finality to such an order since it does not decide any right

to the property nor it implies any adjudication of any issue as such.

6. Learned Counsel for respondent No. 2 contends that the learned Magistrate had committed error in reviewing his own order. When challenged, it has been corrected by the Revisional Court and rightly so. He submits that since respondent No. 2 is owner of the animals, he is entitled to be given custody thereof on supratnama and respondent No. 2 would abide by all the terms and conditions which the Court may impose on him for preservation, protection and production of the animals.

7. In Krushi Goseva Sangh's case (supra), this Court has observed that section 6 of the Maharashtra Animal Preservation Act imposes restrictions on slaughter of scheduled animals and offence punishable under the Act is declared as cognizable by section 10. It is further held that the animal which is the subject of crime can safely be held to be the "property" regarding which offence is committed and recourse can be taken to section 451 of the Criminal Procedure Code for seeking a direction from the Competent Court of law for the custody and disposal of the property pending trial. The order should be for preservation and protection of cows and scheduled animals and not for their slaughter or destruction. This Court further observed thus:

It is now well settled that what is directly forbidden cannot be indirectly permitted. The observations and guidelines of High Court in W.P. No. 714 of 1986 decided on 12.8.1996, Ejaz Ahmed vs. State of Maharashtra should be kept in view while passing an order u/s 451. If Organizations like Goseva Sangh or the Panjarapole come forward for taking responsibility of preservation and protection of cattle, then they should be preferred but before handing over the custody to any person or institution, the Court should ascertain whether they would be able to make adequate arrangements for maintenance, preservation and protection of cattle....

8. It is well settled position of law that the Magistrate has wide discretion u/s 457 Cr. P.C. to pass an order as he thinks proper. The discretion has to be exercised after due consideration of the interests of justice including the prospective necessity of the production of seized articles at the time of trial. The Magistrate shall not return the seized property at all where it is likely to be required for use at the trial. Although the Court has power to release the seized property, it does not mean that whenever the claimant asks for, the Court should give it back or direct its return. The question has to be decided on merits of each case and discretion has to be exercised after due consideration of the interest of justice including the prospective necessity of the production of the seized property at the time of trial. If the release of the property will in any manner affect or prejudice the course of justice at the time of trial, it will be a wise exercise of discretion to reject the claim for return.

9. Learned Revisional Court while restoring the order dated 16th December, 2010 did not examine and look into the merits of the order and restoration was done

only because the Magistrate had no power to alter, modify or review his own order. In view of the above discussion, it would be in the fitness of things to dispose of the present application by making the following order.

Orders dated 16.12.2010 and composite order dated 24.11.2010 together with revisional order dated 21.2.2011 are quashed and set aside. Matter is remanded to the Judicial Magistrate, First Class, Kamptee with direction that the learned Magistrate shall hear all the parties afresh on Misc. Criminal Applications No. 150 of 2010; 153 of 2010 and 154 of 2010 and then pass appropriate order bearing in mind the observations contained in paragraphs 6, 8 and 9 above. Interim arrangement as regards cattle preserved, protected and maintained at Cattle Pond of Gram Panchayat, Ajani, Tahsil Kamptee, District Nagpur shall continue till disposal of applications by the learned Magistrate.