

(2016) 10 BOM CK 0082

In the Bombay High Court

Case No : Criminal Application (APL) No.72 of 2011

Shri Go-Vigyan Anusandhan Kendra

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-10-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 192, Section 39, Section 41
Prevention of Cruelty to Animals Act, 1960 — Section 11 (A), Section 11(D), Section 11(E), Section 11(H), Section 11(I)

Citation : (2017) 7 FLT 161

Hon'ble Judges : Kum. Indira Jain, J.

Bench : Single Bench

Advocate : Shri Khajanchi, Advocate, for the Applicant; Shri P.S. Tembhare, Assistant Public Prosecutor, for the Respondent No. 1; None, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Kum. Indira Jain, J. (Oral)—By this application applicant is challenging the order dated 02-02-2011 passed by the learned Judicial Magistrate First Class, Nagpur in Misc. Criminal Application No.150 of 2011 thereby releasing 23 cows and bulls seized in Crime No. 3068 of 2011 registered under Section 11(A), (D), (E), (I), (H) of the Prevention of Cruelty to Animals Act, 1960 read with Sections 39, 41 and 192 of the Motor Vehicles Act by Kalamana Police in favour of the accused.

2. The facts giving rise to the present application may be stated in brief as under :-

A report was lodged at Police Station Kalamana, District Nagpur that some cattle were illegally transported in a Metador without due care of providing them food and safety.

On the basis of complaint crime was registered and 23 cows and bulls were

seized by Kalamana Police. Pending investigation accused moved an application for release of cattle on the ground that he purchased cows and bulls seized by Police and he is the owner thereof.

3. On hearing the parties trial Court allowed the application filed by accused and directed the investigating authority to handover cattle i.e. seized 23 cows and bulls to the accused on executing indemnity bond of Rs.3 lacs. It is this order which is the subject matter of the instant application.

4. Shri Khajanchi, learned Counsel for applicant submitted that applicant had filed an application bearing Criminal Application No.166 of 2011 for releasing cows and bulls seized in crime and handing over the custody to applicant-Go-Vigyan Kendra but the same was kept pending and the trial Court instead of deciding both the applications by common order proceeded to decide the application filed by accused. Learned Counsel submits that learned Magistrate ought to have considered that proper arrangements for food and safety of the cattle were not made and from the First Information Report it is revealed that cattle were kept totally in unhygienic condition. Applicant expressed an apprehension that cattle were being transported for slaughtering. A grievance is made that all these important aspects were not at all looked into and impugned order which is ex-facie contrary to the provisions of law and rules came to be passed.

5. None appears for respondent no.2 even on second call. Learned Assistant Public Prosecutor supports the contentions raised on behalf of applicant. By reply affidavit it is submitted on behalf of the State that accused was intercepted at Pardi Naka at around 01.45 p.m. He had no permit to transport 23 cattle in a Metador. He could not show R.T.O. permission to carry 23 cattle in a Metador. According to respondent no.1 provisions of Prevention of Cruelty to Animals Act and the Rules thereunder have been violated by accused and since he could not provide proper food and safety to the cattle seized from him it would be appropriate that the cattle should remain in the custody of Go-Vigyan Kendra.

6. By our order dated 04-02-2011 ad-interim relief was granted and the cattle remained in the custody of applicant. Learned Counsel submits that even today 23 cows and bulls are in the custody of applicant.

7. It appears from the impugned order that accused produced some receipts to indicate that he is the owner of cattle seized and based on receipts order to release the cattle in favour of accused came to be passed. The very fact that 23 cows and bulls were being carried in one Metador speaks a volumes at this stage to show that accused did not care about the health, safety and protection of the cattle.

8. Needless to mention here that provisions of Prevention of Cruelty to Animals Act and Rules thereunder will have to be strictly adhered to when it comes to health, shelter, safety and protection of animals. In this connection learned Counsel for applicant vehemently placed reliance on the decision of this Court in

Deorao s/o Sadsashivji Navghare v. State of Maharashtra and another[2010 ALL MR (Cri) 45].

9. In the light of the above this Court finds that the order passed by the learned Magistrate releasing the cattle in favour of accused only on the basis of receipts is unsustainable in law. Hence the following order :-

(a) Criminal Application No.72 of 2011 is allowed.

(b) Impugned order dated 02-02-2011 passed by the Judicial Magistrate First Class, Nagpur in Misc. Criminal Application No.150 of 2011 is quashed and set aside.

(c) Interim order passed on 04-02-2011 by this Court to continue pending criminal proceedings before the Trial Court if final report is filed by the investigating agency.

(d) Rule is made absolute in the aforesaid terms.