



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

CRIMINAL WRIT PETITION NO. 400 OF 2024

PETITIONER : Abdul Samad S/o. Abdul Karim, Aged about 55 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 Ralegaon, Tah. Ralegaon, District Yavatmal.
2. Goseva Savardhan Trust Kalamb, Tq. Kalamb, Dist. Yavatmal, 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 this petition, the petitioner, who claims to be the owner of the buffaloes, has challenged the order dated 28th March, 2024, passed by the learned Sessions Judge, Yavatmal, whereby the learned Sessions Judge rejected the revision filed by him against the order of learned Judicial Magistrate First Class, Court No.2, Ralegaon, dated 26th October, 2023. The learned Magistrate, by order dated 26th October, 2023, rejected the application made by the petitioner for custody of 17 buffaloes seized in Crime No.526/2023, dated 24th September, 2023.

03] It is the case of prosecution that seventeen buffaloes were being transported in the vehicle bearing registration No.MH-20 EL-2225. The buffaloes had been crammed in the vehicle in inhumane condition. The buffaloes were subjected to severe pain and suffering. The transportation was contrary to the rules and the provisions of law.

04] It is the case of the petitioner that he had purchased the buffaloes at the market from the farmers. He had purchased the buffaloes for his personal use. The buffaloes were neither intended to be sold nor slaughtered. It is stated that the Goshala, to whom the custody of the buffaloes had been handed over, has no basic

facilities and infrastructure to take care of the buffaloes.

05] The Investigating Officer opposed the application. It was contended that the persons found in the vehicle did not show the documents with regard to the ownership of the buffaloes. The petitioner did not initially show the ownership documents to the police. The ownership documents were produced for the first time with the application made in the Court of Magistrate. In this petition, it is further contended that, after filing this petition, the police has conducted further investigation. The persons, whose names have been mentioned in the purchase receipts of the buffaloes, have stated that they have neither signed those receipts nor sold the buffaloes to the petitioner. In short, it is submitted that those receipts are fabricated.

06] The learned Magistrate, as can be seen from the order, recorded a finding that, during the pendency of the criminal case, the custody of the buffaloes should be handed over to the Goshala.

07] I have gone through the record and proceedings. On going through the record and proceedings, and particularly the orders passed by the Courts below, I am satisfied that the Courts below have not committed any mistake or illegality while rejecting

the application. The vehicle carrying the buffaloes was intercepted by the Police Officers of Ralegaon Police Station. They found that 17 buffaloes had been crammed in the vehicle in inhumane condition. The buffaloes were made to suffer cruelty of a higher degree. The legs of the buffaloes were tied. Their necks were tied with the rope to the point of strangulation. There was no provision of food, fodder, or water.

08] It is to be noted that Section 11 of the Prevention of Cruelty to Animals Act, 1960 (for short, “the Act of 1960”) has been invoked in this case by the police. As per Section 11(1)(d) of the Act of 1960, to convey or carry any animal in such a manner or position as to subject it to unnecessary pain or suffering is an offence. Similarly, as per Section 11(1)(h), failure to provide such animal with sufficient food, drink or shelter is also an offence. There are rules with regard to the transportation etc. 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) Cows 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.

09] It is seen that the transportation of 17 buffaloes in one vehicle was contrary to the rules. It needs to be stated that, during the pendency of the criminal case, the buffaloes cannot be disposed of. The disposal of the buffaloes is subject to the final outcome and the order of the Court in the case. Even if the custody of the buffaloes is handed over to the petitioner, he would not be able to sell the same. The question is whether the petitioner deserves to get the custody of the buffaloes?

10] It is to be noted that the petitioner, being the owner of the buffaloes on the basis of the so-called receipts, was required to strictly comply with the provisions of the law and the rules. There was blatant violation of the rules as stated above. It is seen that further investigation conducted by the Investigating Officer has revealed that those receipts are forged. The petitioner is claiming ownership of the buffaloes on the basis of those receipts. The Investigating Officer has recorded the statements of the persons whose names have been mentioned in those receipts being the sellers of the buffaloes. It is further seen that in a similar crime registered at Hinganghat Police Station being Crime No.139/2024, the purchase receipts with the names of the same persons have been produced. In the said crime also, the statements of those

persons have been recorded and they have stated that there are not farmers and they have not at any time sold the buffaloes to the petitioner. These persons are common in this crime as well.

11] In my view, this appears to be a *modus operandi* of the petitioner to get the false receipts prepared through the Market Committee. In my view, in fact, after recording the statements of those persons, whose names have been mentioned in the receipts, it was the duty of the Investigating Officer to conduct further investigation and, depending upon the result of the investigation, add the crime of cheating and forgery etc. in both the crimes against the petitioner. The police shall not conduct halfhearted investigation. Such issue must be taken to a logical end by the police. In fact, it is the duty of the Police Officer in a crime of such nature to verify the ownership documents of the cattle or the animals seized in the crime. The Police Officer must record the statement of the person whose name is mentioned in the purchase receipts as the owner of the cattle. It is further necessary on the part of the Police Officer to make an enquiry with the concerned Officer of the APMC or the concerned officials of the Market Committee. It is seen that, now the persons whose names are mentioned as sellers of the buffaloes, have made their stand clear.

The Police would be required to make a thorough investigation in this crime and go to the root of the matter, and take appropriate action against the persons who are involved in such a syndicate. The police can even make the persons of the APMC market or the Market Committee as an accused in such a crime if it is found that the receipts are forged and fabricated.

12] As far as the main petition is concerned, I am satisfied that the learned Judge has not committed any mistake. The petition, therefore, deserves to be dismissed. The petition is accordingly **dismissed**. Rule is discharged.

13] The Investigating Officer, in terms of the above observation, shall conduct further investigation and unearth the truth.

(G. A. SANAP, J.)

Vijay