



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

CRIMINAL WRIT PETITION NO. 708 OF 2022

with

CRIMINAL WRIT PETITION NO. 715 OF 2022

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PETITIONERS

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VERSUS

RESPONDENTS

- : 1] State of Maharashtra,
Thru. P.S.O., Gittikhadan, Nagpur.
- 2] Maa Foundation Gaushala,
Through its Authorized Representative,
Shri Kishor Dahiwalé,
R/o 758, New Indora, Jaripatka, Nagpur.

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Thru. P.S.O., Gittikhadan, Nagpur.

2] Maa Foundation Gaushala,
Through its Authorized Representative,
Shri Kishor Dahiwal, e,
R/o 758, New Indora, Jaripatka, Nagpur.

Mr. Laique Hussain, Advocate for the petitioners.
Mr. H. D. Dubey, A. P. P. for the respondent no.1/State.
Mr. D. R. Galande with Mr. Raju Gupta, Advocates for
respondent no.2

CORAM : G. A. SANAP, J.

Date of Reserving Judgment : April 19, 2023.

Date of Pronouncement of Judgment : June 06, 2023

JUDGMENT

1. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned advocates for the parties.

2. The issue involved in both the petitions is identical and therefore, both the petitions are being disposed of by the common judgment.

3. In both the writ petitions, filed under Article 227 of the Constitution of India, challenge is to the order dated 23.08.2022, passed by the learned Additional Sessions Judge-16, Nagpur, whereby

the learned Judge dismissed the revision applications filed by the petitioners challenging the order dated 11.04.2022 passed by learned Judicial Magistrate, First Class, Nagpur. Learned Magistrate by his order dated 11.04.2022 rejected the prayer for handing over custody of seized animals in crime bearing Nos. 121/2022 and 111/2022, respectively, registered with Police Station, Gittikhadan, Nagpur for the offences punishable under Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as 'the Act of 1960' for short) and Sections 66 and 192 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act." for short).

4. In Criminal Writ Petition No. 708/2022, Petitioner no.1 is claiming to be the owner of 18 cattle, petitioner no.2 is claiming to be the owner of 16 cattle and petitioner no.3 is claiming to be the owner of 15 cattle. It is the case of the prosecution that on 10.03.2022, the informant, who is a police officer, at about 5.20 p.m., received an information that animals are being illegally transported in the trucks bearing registration nos. MH-48/AY-0917 ; MH-20/EG-4051 ; and MH-20/ EL-7251. The informant with the other officers went to Katol Naka. He intercepted the trucks. He found 18 cattle in truck No. AY-

0917, 15 cattle in truck No. EG-4051 and 16 cattle in truck No. EL-7251.

5. In Criminal Writ Petition No. 715/2022, the sole petitioner is claiming to be the owner of 19 cattle. It is the case of the prosecution that on 01.03.2022, the informant, who is a police officer, at about 10.45 p.m., received an information that animals are being illegally transported in a truck bearing registration no. MH-40/CD-7666. The informant with the other officers went to Katol Naka. He intercepted the truck. He found 19 cattle in the said truck.

6. It is the case of the prosecution that the animals (buffaloes) were being transported in inhuman condition. The animals were dumped in the vehicles. The animals were subjected to unnecessary pain and suffering. The transportation of the cattle was contrary to the provisions of law and rules. Therefore, the informant / police officer by drawing panchanama on the spot of the factual situation, seized all the animals in both the crimes. The Investigating Officer handed over interim custody of the animals to respondent no.2 – Maa Foundation Goushala, a registered trust.

7. The petitioners, who are not the accused in these crimes, applied for custody of the animals. It is their case that they are having licence for purchase and sell of the animals from APMC market. The animals were purchased by them. The animals were being transported for sell to another APMC market. The animals include milching buffaloes. The petitioners being the owners of the milching buffaloes are entitled to get the custody.

8. The applications filed by the petitioners were opposed by the State. A separate application was filed by respondent no.2 – Maa Foundation with the prayer to issue directions to continue custody of the animals with the respondent no.2. In the reply, the prosecution reiterated the case set out in the first information report. It is contended that as per Section 35 of the Act of 1960, interim custody has to be handed over to any of the institutions mentioned in the Section. Respondent no.2 is the registered Gaushala. It is further contended that interim custody of the animals be retained with respondent no.2 inasmuch as the possibility of subjecting the animals to cruelty at the behest of the applicants, cannot be ruled out.

9. In the reply filed by respondent no.2, the object and purpose of establishment of the Foundation was stated. It is the case of the respondent no.2 that the Foundation is well equipped to take care of the animals. The Foundation is interested in protection, care and welfare of the animals.

10. Learned Magistrate, on consideration of the material and serious nature of crime, found that no case was made out to handover custody of the animals to the applicants. Learned Magistrate, therefore, rejected the applications. The petitioners preferred revision applications against the said order in the Sessions Court. The revisions came to be dismissed. The applicants are, therefore, before this Court against the orders passed by the Courts below.

11. I have heard Mr. Laique Hussain, learned advocate for the applicants, Mr. H. D. Dubey, learned Additional Public Prosecutor for the State and Mr. D. R. Galande and Mr. Raju Gupta, learned advocates for non-applicant no.2. Perused the record and proceedings.

12. Learned advocate for the petitioners submitted that the

petitioners possess valid trade licence for sell and purchase of the animals from APMC market. Learned advocate further submitted that the petitioners being the owners of the animals cannot be denied custody of the animals during pendency of the trial. Learned advocate pointed out that some of the buffaloes are milching and therefore, the petitioners are denied the income from the milching buffaloes. Learned advocate submitted that in this case, the crime alleged to have been committed is under Section 11(1)(d) of the Act of 1960 and the provisions of Sections 66 and 192 of the M.V. Act. Learned advocate submitted that there is no *prima facie* material to satisfy, at this stage that the animals were subjected to cruelty. Learned advocate submitted that the case may take its own time for adjudication and therefore, in the meantime, custody of the animals is required to be handed over to the petitioners. Learned advocate submitted that there is no specific bar under the law for handing over custody of the animals to the petitioners, being the owners of the animals.

13. Learned Additional Public Prosecutor at the time of his submissions reiterated the facts set out in the first information report. It is contended that *prima facie*, commission of the offence has been made

out and therefore, the petitioners are not entitled to get custody of the animals.

14. Learned advocate for respondent no.2 submitted that respondent no.2 is registered with the Charity Commissioner and therefore, is competent to take care of the animals handed over to it by police. Learned advocate further submitted that the material on record is *prima facie* sufficient to opine that the animals were subjected to aggravated form of cruelty. Learned advocate submitted that transport of the animals was contrary to the provisions of the Transport of Animals Rules, 1978 (hereinafter referred to as “the Rules of 1978’ for short) and the Transport of Animals (Amendment) Rules, 2001 (hereinafter referred to as ‘the 2001 Rules’ for short). Learned advocate further submitted that transport of the animals was contrary to Rule 125-E of Central Motor Vehicle Rules, 1989. Learned advocate submitted that during pendency of the trial, the petitioners cannot be allowed to dispose of the animals in any manner. Learned advocate further submitted that in view of the cruel conditions in which the animals were transported, would disentitle the petitioners to get custody of the animals during pendency of the trial. Learned advocate

submitted that respondent no.2 Foundation is well equipped to take care of the animals in all respect. Learned advocate further submitted that respondent no.2, for the purpose of maintenance and care of the animals, may waive off the maintenance charges to be paid by the petitioners. Learned advocate further submitted that the petitioners have not placed on record any material to show that they are equipped with proper shed, fodder etc. for maintenance and care of the animals.

15. In order to appreciate the rival submission and particularly the claim of the petitioners 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.*

16. In these cases, 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 owners. The animals were loaded 3-4 times beyond the capacity of the vehicles and number of animals per vehicle prescribed under the Rules. Similarly,

there was no provision of first-aid equipments in the vehicles. There was no arrangement of water and fodder in the vehicles. The animals were being transported by goods vehicles. Rule 56 lays down the conditions for transportation 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 vehicles, 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 vehicles. The number of animals transported in each vehicle would, therefore, clearly indicate that it was in violation of the above rules.

17. The Rules of 1978 were amended in 2001. Rule 96 of the 2001 Rules has been relied upon to contend that the certificate provided in this Rule was not procured. Rule 96 of the 2001 Rules 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 nay 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.*

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

19. 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 offence for which the accused have been prosecuted is under Section 11(1)(d) of the Act of 1960 with regard to conveyance of the animals contrary to the provisions of law and thereby subjecting the animals to unnecessary pain and suffering. It is seen on perusal of the facts brought on record that majority of the animals are milching buffaloes. Compared to the cow, milching buffalo is large in size. The milching buffaloes were cramped in the vehicle, which were not fitted with padding etc. There was no provision of water and fodder. It is to be noted that if transportation of buffaloes had been within the permitted limits or capacities, non-compliance of other provisions and rules could have been glossed over. It is, therefore, seen that the milching buffaloes were transported in a very cruel condition. It is seen on perusal of the record that the owners, who had played important role in these cases, have not been made the accused.

20. It is not out of place to mention that the animals have emotions, feelings and senses similar to a human being. The only difference is that the animals cannot speak and therefore, though their rights are recognized under the law, they cannot assert the same. The rights of the animals, welfare of the animals and protection of the animals has to be taken care of by the concerned in accordance with law. Before the Act of 1960, there was no enactment to deal with the aspects which are now taken care of in the Act of 1960. The Hon'ble Apex Court in the case of *Animal Welfare Board of India .vs. A. Nagaraja and others*, reported at *(2014) 7 SCC 47*, has aptly set out the object of the Act of 1960 and the duty of all concerned to implement the same. Paragraph 26 of the said decision is relevant for the purpose of these cases. It is extracted below :-

“26. PCA Act is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. It is trite law that, in the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. Court also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke-screen and discover the true state of affairs. Court can go behind the form and see the substance of the devise for which it has to pierce the veil and examine whether the guidelines or the Regulations are framed so as to achieve some other purpose than the welfare of

the animals. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the constitutional principles, Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. Court has also a duty under the doctrine of parents patriae to take care of the rights of animals, since they are unable to take care of themselves as against human beings.

21. It is to be noted that while considering the case of cruelty to the animals in any form, the case has to be approached and decided with great sensitivity. It is, therefore, necessary that whenever and wherever any contravention of the provisions is found, the same is required to be dealt with appropriately consistent with the object of the Act of 1960.

22. Section 35 of the Act of 1960 provides for treatment and care of animals in respect of which the offences under this Act have been committed. Section 35 provides for handing over of custody by order of Magistrate to any of the institute provided in the section. Consistent with Section 35, with the help of enabling provision in the form of Section 38, the rules have been made. The Prevention of Cruelty to Animals (Care and Maintenance of case Property Animals) Rules, 2017 (hereinafter referred to as “the Rules of 2017” for short) is

one of them. Rules 3, 4 and 5 of the Rules of 2017 provide for custody of animals pending litigation, the cost of care and keeping of animals pending litigation and execution of bond etc. by the owner of the animals or accused involved in the case, for the purpose of ensuring compliance of the order passed by the Court under the Rules. The Hon'ble Apex Court in the case of ***Shri Chatrapati Shivaji Gaushala .vs. State of Maharashtra and others***, in Criminal Appeal No. 1719/2022, has considered the violation of Rule 56 of the Rules of 1978. In the case before the Hon'ble Apex Court, 18 cattle were being transported in one vehicle. It was held to be contrary to Rule 56 of the Rules of 1978. There was no permit for transportation. Relevant observations made by the Hon'ble Apex Court are contained in paragraphs 19, 20 and 21.

The as same are extracted below :-

“19. In the present case, the High Court upon evaluating the circumstances in which the cattle were being transported arrived at a prima facie conclusion that as many as eighteen cattle were being transported in one vehicle. The High Court has also noted that this constituted cruelty as it violated Rule 56 of the Transport of Animal Rules 1978 framed in accordance with the enabling provisions of Section 38 of the PCA Act. The amended provisions of the Maharashtra Act have received the assent of the President.

20. The intention of the legislature in incorporating the proviso to Section 8(3) was to give effect to the object of the Maharashtra Act to preserve and protect cows, bulls, and bullocks useful for

milch, breeding, draught, or agricultural purposes. The proviso to Section 8(3) of the Maharashtra Act provides for handing over of the seized cow, bull, or bullock to the nearest gosadan, goshala, pinjrapole, hinsa nivaran sangh or such other animal welfare organization willing to accept such custody. In the present case, the appellant was willing and ready to accept custody of the seized cattle. In light of the prima facie observation that the private respondents were in violation of the Transport of Animal Rules 1978, it was incumbent upon the High Court to ensure that the seized cattle would be properly preserved and maintained until the conclusion of the trial proceedings.

21. The appellant has shown its willingness to accept the interim custody of the cattle. In view of the fact that private respondents were prima facie carrying the cattle in cruel conditions without a valid permit, the JMFC rightly concluded that the cattle would be safe in the custody of the appellant instead of the private respondents. In view of the above findings, the ultimate direction which was issued by the High Court was contrary to the proviso to Section 8(3) of the Maharashtra Act and would have to be set aside, while restoring the order of the JMFC. We order accordingly.”

23. It is to be noted that the only difference which can be seen is that the animals in these cases are buffaloes . The Hon’ble Apex court has held that considering violation of the rules and the manner of cruelty, the Courts below were not right in directing handing over of the custody to the owners. In my view, the facts of case before the Hon’ble Apex Court would be squarely applicable to the facts of the cases on hand.

24. The Hon'ble Apex Court has considered Rule 56 of the Rules of 1978 in the case of *Raghuram Sharma .vs C. Thulsi and another* in Criminal Appeal No. 230/2020. In this case before the Hon'ble Apex Court, 47 animals were being transported in a vehicle as against permissible norm of six cattle. Hon'ble Apex Court has held that such transportation affects the overall health of the cattle. Therefore, the interim custody to the owner was refused. The Hon'ble Apex Court has also held that during pendency of the criminal case, the Court is duty bound to ensure about maintenance of the cattle. In my view, in these cases, even if custody of the cattle is handed over to the petitioners, they would not be entitled to sell the same, though they are dealing in the business of sell and purchase of cattle. Disposal of the cattle seized in these cases would be subject to final outcome of the criminal case. Therefore, the Court has to see the interest, protection and proper care and maintenance of the animals during pendency of the trial. The animals cannot be again made to face the same amount of cruelty.

25. It is the contention of the petitioners that they are denied the income from the milk of milching buffaloes. It is their case that the

Court may pass appropriate order with regard to the disposal of the animals at the time of adjudication of the case. It is their submission that they cannot be denied their right to get custody of the buffaloes during the interim period. In these cases, *prima facie*, violation of the law and rules has been made out. The petitioners have not come before the Court with a specific contention with regard to the availability of provision for maintenance, shelter etc. As against this, respondent no.2 is well equipped to take care of maintenance, protection and welfare of the animals during pendency of the proceedings. Learned advocate for respondent no.2, in the facts and circumstances, submitted that the respondent no.2 in the interest of the animals, is prepared to waive off the maintenance charges, which the petitioners would be liable to pay to the respondent no.2. Learned advocate further submitted that such a concession made in this case may not be treated as precedent in any other case of this kind where respondent no.2 or similar organization is coming forth to take custody of the animals. In my view, this submission is just, proper and reasonable and therefore, has to be accepted.

26. It is not out of place to mention that while deciding such matter, the prime consideration must be the welfare, protection and

maintenance of the animals. The Court has to see who is comparatively better suited and equipped to provide the necessary comfort and protection to the animals. In this case, in my view, the Courts below have properly considered all the facts and law and rules and found that the petitioners were not entitled to get custody of the animals. On consideration of the matter afresh, I record my agreement with the view taken by the Courts below. Therefore, the petitions deserve to be dismissed. Accordingly, the petitions are dismissed.

27. It is to be noted that the learned Magistrate in terms of clause 12 (in Cri.WP. No.708/22) and clause 8 (in Cri.W.P. No.715/22) of his order dated 11.04.2022 has directed the Investigating Officer to ensure compliance of Rule 3(a) of the Rules of 2017. I am informed that this compliance has not been made. The Investigating Officer shall report the compliance of the order passed by the Magistrate, dated 11.04.2022 in all respect to the learned Magistrate, within a month from today. Learned Magistrate, depending upon the compliance or non-compliance, shall see that the order is complied with in letter and spirit. Learned Magistrate is further instructed to direct the in-charge of the concerned police station as well as the Veterinary Officer, within

whose jurisdiction respondent no.2 is situated, to pay bimonthly visits to the Gaushala for the purpose of observing maintenance, upkeep and protection of the animals, with a direction to report the same in writing to the learned Magistrate.

(G. A. SANAP, J.)

Diwale