



Equivalent Citation:2015-GLH-2-492

2014 (0) AIJEL-HC 231675

GUJARAT HIGH COURT

Hon'ble Judges:S.G.Shah, J.

Shri Bhavnagar Panjrapole Thro Manager Brijesh Himatlal Shah Versus State Of Gujarat

Criminal Revision Application No. 601 of 2013 ;  
Criminal Miscellaneous Application No. 15818 of 2013 ; \*J.Date :- SEPTEMBER 08, 2014

- PREVENTION OF CRUELTY TO ANIMALS ACT, 1960 Section - 11(1)(d), 11(1)(h), 35
- CODE OF CRIMINAL PROCEDURE, 1973 Section - 451

10 Code of Criminal Procedure, 1973 - S. 451 - Prevention of Cruelty to Animals Act, 1960 - S. 11(1)(d), (h), 35 - application for custody of 6 buffaloes and 1 calf of buffalo - allegation that all such animals were cruelly loaded in a small truck and hidden below cover for transferring from Mahuva to Ahmedabad for selling them to slaughter house for slaughtering purpose - there is prima facie evidence to the effect that there was no permit to transfer the cattles from one place to another place and there is lack of basic safety of the animals being transferred - learned Judicial Magistrate rejected the application for the custody of cattles - Sessions Court allowed Revision Application and quashed and set aside order of learned Judicial Magistrate First Class - Revision Application - held, if cattles are given to respondent, there is every possibility of selling them to a slaughter house and thereafter there would not be any information about such cattle - all such cattles are not required to be handed over to respondent No. 2 only because he is claiming ownership of the cattles - ownership of respondent no. 2 is doubtful - it would be appropriate to continue the custody with Panjarapole, which is developed to well being and well care of such cattles - investigating agency and petitioner shall manage to put identification mark on such cattles - petitioner to look after and protect cattles pending and disposal of the matter - this court directed to investigating agency to inquire about ownership of the cattles and after filing of charge sheet, the parties are at liberty to alter or modify the order regarding custody of cattles - Revision Application allowed.

Imp.Para: [ 4 ] [ 5 ] [ 6 ]

Cases Relied on :

1. Ashok L. Puranik V/s. State Of Maharashtra And Ors., Criminal Writ Petition No. 247 of 1998
2. Bharat Amratlal Kothari V/s. Dosukhan Samadkhan Sindhi, AIR 2010 SC 475 : 2010 (1) GLH 221 : 2010 (1) GLR 571 : 2010 CrLJ 379 : 2009 AIJ SC 47781
3. Dayodhya Pashusheva Kendra V/s. Islamuddin & Ors., SLP (Cri) No. 2238 of 2001
4. Jivdaya Mandal Panjrapole V/s. State Of Gujarat, Special Criminal Application No. 1948 of 2000
5. Shri Devi Prasad Mishra V/s. State Of U. P., SLP (Cri.) No. 1900 - 2002 of 1990



3.1 Unfortunately the Sessions Court has failed to realize certain facts which are emerging from the record and rightly pointed out by the applicant herein viz;

1) Looking to the FIR, specific allegation is made that animals were taken for slaughtering. The conduct of the accused is relevant regarding treatment to animals. Animals were taken in the early morning, truck was covered by tarpatri, and animals were tied in cruel fashion.

2) The certificate by Talati on page 15 is unreliable. If village form No. 15 required to be maintained under The Bombay Land Revenue Manual is seen, any person, in the business of animals has to disclose and file such form. Talati cannot issue any certificate in absence of village form No. 15 in the name of respondent No.2. On the certificate, no inward or outward no. is mentioned. Certificate is issued by Talati of Dudheri village, however in the application before the Magistrate on page No. 16, by Arjanbhai, respondent No.2, the address is mentioned as Dhareshware, Taluka - Rajula, District - Amreli. Thus, the certificate is concocted. Though claimed before the Sessions Court that animals were taken to Ankleshwar to provide water and fodder, such story is not mentioned in the certificate of the Talati and in the application before the Magistrate on page 16. There was heavy rain in the district of Amreli and Bhavnagar in the first week of June 2013 and therefore such story is false.

3) The distance of Mahuva from Ahmedabad is 300 km. The distance of Panoli 200 km. from Ahmedabad. Accused No.2 is resident of Jamalpur, the area of slaughter house in Ahmedabad which is nearby the area of Jamalpur. In this area, no animals are kept for dairy purpose.

The person claiming custody is from Amreli, obtaining certificate from the village of Bhavnagar, taking animals to Panoli, Ankleshwar, vehicle is registered at Vadodara, drivers of the vehicle are from Ahmedabad.

4) The opinion of the police is also against the respondent No.2. The Magistrate's Court rejected the application of muddamal and Sessions Court did not consider those findings.

5) The judgments considered by the Sessions Court and referred before this Court are not applicable on aforesaid grounds as well as on following grounds, because aforesaid factual position and following legal position were not considered in the judgments cited by the respondent No.2.

A) The applicant is declared infirm by the State of Gujarat within the meaning of Section 35 of the Prevention of Cruelty to Animals Act and under Section 35, animals are to be sent to the infirm.

B) The claim of ownership is contrary to the requirement of law, the requirement of disclosure before the Talati in form No. 15 and also the requirement to supply the details to the the district supply officer for obtaining the ration card.

C) There is mandatory provision for registration of cattle premises under the P.C.A. (Registration of Cattle Premises) Rules 1978 which are also violated.

D) Under the Gujarat Panchayat Act, the Talati has no power to issue the certificate regarding the ownership of the animals.





6. Sihor Panjarapole V/s. State Of Gujarat, Special Criminal Application No. 1516 of 2006 with 1953 of 2006  
7. State Of U. P. V/s. Mustakeem & Ors., 2002 3 GLH(UJ) 8 : 2002 AUJ\_SC 35740 : 2002 GLHEL\_SC 35740

5 Equivalent Citation(s):

2015 (2) GLH 492 : 2014 JX(Guj) 685

JUDGMENT :-

1 Applicant has challenged the judgment and order dated 18.09.2013 by the 3rd Additional Sessions Judge, Bhavnagar at Mahuva in Criminal Revision Application No. 11 of 2013, whereby  
10 the learned Sessions Judge has while allowing the revision application, quashed and set aside the order dated 29.06.2013 by the learned Judicial Magistrate First Class, Talaja in Criminal Misc. Application No. 268 of 2013. Such application was preferred by present respondent No.2 for possession of 6 buffaloes and one calf of buffalo under Section 451 of Code of Criminal Procedure. Such animals were taken into custody by the police pursuant to First Information  
15 Report registered with Talaja Police Station being II - C. R. No. 91 of 2013 filed by Indrajitsinh Kumarsinh Vala under Section 11(1)(d)(h) of Prevention of Cruelty to Animals Act, 1960 read with Section 132A and 41(II)D of the Motor Vehicles Act with an allegation that all such animals were cruelly loaded in a small truck and hidden below cover for transferring from Mahuva to Ahmedabad for selling them to slaughter house for slaughtering purpose. At the relevant time,  
20 such castles were found in the possession of Ashokbhai Somabhai Vasava and Mustaqmiya Alimiya Malek being driver and cleaner of vehicle in question. From the police record, it becomes clear that while transferring such cattles from one place to another place respondent No.2, who is claiming to be owner of the vehicle and accused, does not follow the rule under both the Transfer of Animals Act and under Motor Vehicles Act. In both such statutes, there are specific provisions  
25 and necessity to get permit to transfer live stock from one place to another place. Therefore there is prima facie evidence to the effect that there was no permit to transfer the cattles from one place to another place and there is lack of basic safety of the animals being transferred.

2 Pursuant to application by the respondent No.2, first trial Court being the Court of Judicial Magistrate First Class, Talaja has by considering all relevant factual details pleaded by the  
30 respondent No.2 and after referring relevant provisions which are to be followed in such situation, came to the conclusion that prima facie there is no substance in the prayer by the respondent No.2 in as much as he has not followed law and rule and that documents produced by him are not reliable and that if cattles are handing over to respondent No.2 then certainly he would sale it to the slaughter house and therefore when cattles were in custody of the present applicant, application  
35 for the custody of cattles by respondent No.2 was rejected.

3 Unfortunately the Sessions Court has failed to appreciate the same in the Revision Application and dismissed the order passed by the learned Judicial Magistrate First Class. At one place the Sessions Court has referred the decision by the Supreme Court in the case of "Disa Panjarapole vs. State of Gujarat", however, failed to disclose the citations. Whereas so far as statutory breach are  
40 concerned, based upon which the Judicial Magistrate First Class has dismissed the application, the Sessions Court has remained silent by recording the submissions only, but without giving cogent reason that why such breach is not considered. What is considered by the Sessions Court is only to the effect that criminal case may continued for long period for which Panjarapol may not be in position to take care of cattle and that applicant - respondent No.2 will suffer financial loss.

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E) The buffalo is mentioned as the scheduled animal in Gujarat Animal Preservation Act under which slaughter of buffalo is not permitted in the absence of satisfaction of specific conditions.

F) Provisions of Rule 96, 97, 98 of the P.C.A. (Transport of Animals) Rules are not followed.

5 G) No reply to the present petition is filed and therefore the allegations against the respondent No.2 have remained uncontroverted.

H) Provisions of Section 9 of the Carriage by Road Act are violated to avoid the disclosure of identity of the real owner. The goods receipt mentioning the details of owner were not mentioned.

10 4 The issue of custody of such animals/cattles has been dealt with in several other matters and as usual one will find different cases, so as the decision on the issue of custody of such animals also. Though it can be argued that Panjarapoles have no preferential rights over an animal, it cannot be ignored that while deciding such application, facts and circumstances of each case is to be looked into and decision is to be taken solely based upon the facts and circumstances of each case  
15 independently rather than relying upon any observations from any of such judgment without considering the factual details.

5 In the present case, as pointed out herein above, there is a serious question about ownership of respondent No.2 and therefore it cannot be said that custody of the cattle in question should be handed over to respondent No.2 only because of some judgment when he claimed custody, without  
20 realizing the possibility that if cattle are given to respondent, there is every possibility of selling them to a slaughter house and thereafter there would not be any information about such cattle. Both the sides have relied upon following citations. I have gone through all such citations but could not confirm that only because of such citations all such cattle are required to be handed over to the respondent No.2 only because he is claiming ownership of the cattle. Therefore, since  
25 such orders are interlocutory orders, though we are not deciding final ownership of the cattle, cattle could not be handed over to respondent No.2, whose ownership is doubtful.

Citations relied upon by the petitioners are as below:

1. Special Criminal Application No. 1516 of 2006 with 1953 of 2006 between Sihor Panjarapole vs. State of Gujarat
- 30 2. Special Criminal Application No. 1948 of 2006 between Jivdaya Mandal Panjarapole vs. State of Gujarat
3. SLP (Cri.) No. 1900 - 2002 of 1990 between Shri Devi Prasad Mishra vs. State of U. P.
4. Criminal Writ Petition No. 247 of 1998 between Ashok L. Puranik vs. State of Maharashtra and Ors.
- 35 5. SLP (Cri) No. 2238 of 2001 with SLP (C) No. 2239 - 2040 of 2001 between Dayodaya Pashusheva Kendra vs. Islamuddin & Ors.
6. Criminal Appeal No. 555 of 1989 from SLP (Cri) No. 755 of 1989





7 Criminal Appeal No. 283 to 287 of 2002 between State of U. P. vs. Mustakeem & Ors. reported in 2002(3)GLH(UJ)8 Citations relied upon by the respondents are herein below:

1. AIR 1998 SC 2769 = 1998 AIR SCW 2943 between Manager, Panjrapolice Deudar & Anr. vs. Chakram Moraji Nat & Ors. 2. AIR 2010 SC 475 between Bharat Amratlal Kothari vs. Dosukhan Samadkhan Sindhi

6 Therefore, it would be appropriate to continue the custody with Panjarapole, which is developed to well being and well care of such cattles, during pendency of Criminal Misc. Application. Thereby present Revision Application is allowed by quashing and setting aside the judgment and order dated 18.09.2013 by the 3rd Additional Sessions Judge at Mahuva passed in Criminal Revision Application No. 11 of 2013 by restoring the judgment and order dated 29.06.2013 passed by the learned Judicial Magistrate First Class, Mahuva passed in Criminal Revision Application No. 268 of 2013. However, with directions that investigating agency and petitioner shall manage to put identification mark on such cattles and petitioner to look after and protect cattles pending and disposal of the matter. If respondent No.2 wants to remain present for identification, he should be permitted to do so. Having regard to above directions, Criminal Case is required to be disposed of as expeditiously as possible.

6.2 The investigating agency is also directed to inquire about ownership of the cattles and after filing of charge - sheet, the parties are at liberty to alter or modify the order regarding custody of cattles. Such application should be considered by the concern Court on its own merits.

6.3 With above directions, this Revision application is allowed. Rule is made absolute to that extent.