

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Criminal Application No. 567/2009

Jivdaya Pashupakashi Saurakshan and
Sanwardha Sanstha, thr. Gajanan
Sudhakar Rao Hurpade, aged 39 years,
r/o Telipura, Anjangaon Surji, Tq. Anjangaon,
PS Anjangaon Surji .. **APPLICANT**

.. Versus ..

1. The State of Maharashtra,
thr. P.S.O. Anjangaon Surji,
Dist. Amravati.
2. Mohd. Naim s/o Sk. Yusuf,
aged about 36 years, Occ. Business,
r/o Qureshi Nagar, Anjangaon Surji,
Tq. Anjangaon, Dist. Amravati .. **NON APPLICANTS**

Mr. R. M. Daga with Mr. M. P. Khajanchi, Advocates
for applicant.
Mr. D. M. Kale, A.P.P. for non applicant no.1.
Mr. Habibuddin Ahmed, Advocate for non applicant no.2.

CORAM:- R. Y. GANOO, J.
DATED :- 8th October, 2009

J U D G M E N T

1. It would be appropriate to narrate the
circumstances under which present application came to
be filed. They are as under

2. Non applicant no.2 claiming to be a dealer in bullocks and resident of Anjangaon Surji is said to have purchased 21 bullocks from weekly bazar of Hiwarkhed on 02.12.2008. Between the night of 03.12.2008 and 04.12.2008 he lodged the said bullocks in the truck and when he was trying to transport the said bullocks from the place where he had purchased to Anjangaon Surji, they were intercepted by Police staff and the Police observed that the said bullocks had suffered various injuries and tails of some of them were noted as cut. It appears that no proper food and water was made available to the said bullocks. Non applicant no. 2 was not having permission to transport the said bullocks from one place to the other. No certificate of export under Section 5 of the *Prevention of Cruelty to Animals Act, 1996* (hereinafter referred to as the 'Said Act'). It was also noted by Police that non applicant no.2 had no license for purchase/sale of the bullocks. Based on these facts, Police apprehended non applicant no.2 and lodged First Information Report. The First Information Report came to be filed by PSI S. I.

Pusande attached to Police Station Anjangaon. Said bullocks were seized and they were sent to the pounding place at Anjangaon Surji. The said First Information number is 3146/2008 filed with Anjangaon Surji Police Station, district Amravati. Offence under section 66 and 192 of the Motor Vehicles Act also came to be registered against non applicant no.2 and one more person by name Shakir Ali Shafakat Ali. On the basis of charge-sheet, criminal case was launched against present non applicant no. 2 being Criminal Case No. 16/2009 before Judicial Magistrate First Class, Anjangaon Surji. The present applicant filed Application No. 141/2008 praying that the said bullocks be handed over to it as the applicant is an organization taking care of animals in accordance with the provisions of the said Act. Non applicant No. 2 filed application No. 142/2008 for return of the said bullocks. The learned Judicial Magistrate First Class, Anjangaon Surji, (Hereinafter referred to as the learned 'Trial Judge') by speaking order directed that the said bullocks be handed over to the present applicant.

3. Being aggrieved by the said judgment and order dated 06.12.2008, non applicant no. 2 filed Criminal Revision No. 95/2008 in the Sessions Court at Achalpur and the said revision came to be decided by the learned Ad hoc Additional Sessions Judge, Achalpur by judgment and order dated 31.01.2009. He, by the said order, granted the custody of said bullocks to non applicant no.2, thereby setting aside the order passed by learned trial Judge. Against this order dated 31.01.2009, the present applicants have filed present application. Judgment and order dated 31.01.2009 was stayed by this Court pending disposal of present application. On account of this, non applicant no. 2, who claimed to be owner of the said bullocks, filed an application for vacating the stay. As such, Application No. 931/2009 was taken up for hearing, ultimately, parties through their Advocates agreed that instead of deciding application for vacating stay and thereafter deciding main application, it would be appropriate if the main Criminal Application No. 567/2009 itself is heard and decided. In view of this, I have heard learned Advocates for both the sides.

4. It must be mentioned that in the course of hearing of this application, a question was posed by this Court as to what arrangement present non applicant no. 2 has to accommodate the said bullocks and to make arrangements for their care and custody. In reply to that question, non applicant no. 2 has filed pursis stating therein as to what arrangement, he has for keeping the said bullocks with him. He also filed certain photographs showing certain premises and the arrangement which he has made to keep the said bullocks.

5. I have extensively heard learned Advocates for both the sides. I have also perused the pursis filed by non applicant no.2 and various photographs. In the course of arguments some judgments were relied upon by both the sides in support of their contentions and I have referred to those judgments at an appropriate stage.

6. Non applicant no.2 had no license for purchase/sale or transfer of the of the bullocks as per provisions of the said Act. Certain facts, which can be

seen on the strength of the charge-sheet are as regards the condition, in which the said bullocks were being carried out, namely the said bullocks were being transported in a truck and all the 21 bullocks were kept in the said truck and they were tied to each other. They were kept in the said truck in cramped condition. The tails of some of the bullocks were found to be cut and the some of them were found to have suffered injuries.

7. On the basis of the pursis, which is filed, it is seen that certain property is claimed to be in possession of non applicant no.2 and the photographs do show that the said property is bounden by walls and in photograph no.3, a water tank with water stored therein is seen. Perusal of the photographs go to show that property, over which non applicant no. 2 claims to have control, is in the nature of courtyard open to sky. Though non applicant no. 2 claims that he is in possession of the property, which is reflected in the photographs, particulars of the said property such as survey number, name of village are not found in the pursis. Documentary evidence to show that

non applicant no.2 is entitled to said property is also not produced on record.

8. Learned Advocate Mr. Daga appearing on behalf of applicant submitted that perusal of charge-sheet would go to show that non applicant no. 2 intended to carry the bullocks for selling them to slaughter house and according to learned Advocate Mr. Daga, statements rendered by Gajanan and Ashok indicate that the bullocks are about to be taken to the slaughter house. Learned Advocate Mr. Daga had submitted that if non applicant no.2 was the owner of the said bullocks and had an intention to sell them, he would not have carried the said bullocks in cramped condition. According to him, the fact that the bullocks were being carried in cramped conditions, clearly indicates that non applicant no.2 wanted to dispose of the aforesaid bullocks to the slaughter house. Learned Advocate Mr. Daga submitted that non applicant no. 2 did not have license for purchase or sale of the bullocks and according to him, this is a factor which goes to show that bullocks were being

carried for sale to the slaughter house. According to Mr. Daga, if at all non applicant no. 2 was wholesale dealer in the bullocks, he would have had a proper license.

9. Learned Advocate Mr. Daga submitted that the the entire charge-sheet would go to show that non applicant no. 2 was not entitled to have the bullocks pending trial. Mr. Daga had also submitted that even if photographs and the pursis is read as it is, non applicant no.2 is not in a position to make arrangement to keep the said bullocks in healthy atmosphere and there is every likelihood that if bullocks are allowed to be given to non applicant no.2 pending trial they would be neglected because according to learned Advocate Mr. Daga, at the place where non applicant no. 2 proposes to keep bullocks they would be exposed to direct sunlight and other natural hazards. Mr. Daga had, thereafter, relied upon the judgments in;

(i) Ashok L.Puranik ..vs.. State of Maharashtra and ors.; 1998(2) B. Cr. C. 86;

(ii) Krushi Goseva Sangh & anr..vs..State of

**Maharashtra & ors., Writ Petition No.
373/1987;**

(iii) **Akhil Bharat Goa Seva Sangh..vs..State of
Maharashtra & anr., 1998 (1) B.Cr.C.317 and**

(iv) **State of U.P...vs.. Mustakeem & ors.; Criminal
Appeal Nos. 283-287/2002.**

Learned Advocate Mr. Daga had taken me through these judgments and submitted that the view expressed by this Court as well as the Supreme Court clearly indicates that pending trial under the said Act, the Court should see that the custody of animals should be given to an organization which is devoted to the well being and welfare of the bullocks. According to him, if bullocks are handed over to an Organization like the applicant, the welfare of the bullocks during the pendency of the trial will be attended to. Mr. Daga had impressed upon this Court that the interests of justice requires that the bullocks should be handed over to present applicant.

10. Learned Advocate Mr. Daga had further submitted that in view of order of the stay granted by this

Court, order dated 31.01.2009 passed by learned Ad hoc Additional Sessions Judge, Achalpur was not acted upon. It is noted that during the pendency of this application the present applicant has secured custody of 21 bullocks from the pounding place where bullocks were initially kept. Learned Advocate Mr. Daga, therefore, submitted that a strong case is made out by the applicant for retention of the bullocks by them till disposal of the main trial.

11. Learned A.P.P. Mr. Kale for the State submitted that this Court should look into welfare of the bullocks during the pendency of the case and pass appropriate orders. He also submitted that this Court should consider factual aspects as to whether non applicant no. 2 would be able to take care of bullocks during pendency of the trial based on the pursis and photographs filed by him which have been placed before the Court. He submitted that the pursis and the photographs depict picture which is against the interests of the bullocks. He also submitted that he is supporting the stand taken by the present applicant.

12. Learned Advocate Mr. Habibuddin for non applicant no. 2 submitted that non applicant no. 2 had purchased the bullocks from the open market and is owner thereof and, therefore, he has right over same. According to him, even if non applicant no. 2 does not possess any license for sale or purchase of the bullocks that should not come in the way of allowing non applicant no.2 to keep bullocks with him. Mr. Habibuddin had relied upon judgments in;

(i) **Manager, Pinjarpole Deudar and another ...vs.. Chakram Moraji Nat and others; 1998 Cri. L. J. 4082;** and

(ii) **Sk. Bismilla Sk. Buran ..vs.. Adarsha Gow-Seva Avam Anusandhan Prakalp; Criminal Application Nos. 3172 & 3173/2005**

Learned Advocate Mr. Habibuddin submitted that the Hon'ble Supreme Court has in the case of **Manager, Pinjarpole Deudar & anr.** (supra) indicated certain points which will have to be considered by the Court and upon consideration of those points and

applying them to the facts of this case, the Court should hold that non applicant no.2 has been able to make out a case for grant of custody of the bullocks with him. Learned Advocate Mr. Habibuddin appearing on behalf of non applicant no. 2 had also placed on record pursis filed by him and photographs. According to him, non applicant no.2 has appropriate arrangements to keep bullocks with him and that non applicant no.2 would take care of the bullocks and, therefore, a strong case is made out for return of the bullocks to non applicant no.2.

13. I have considered rival submissions. The fact that non applicant no.2 does not possess a license for purchase/sale of the bullocks is a factor against non applicant no.2. If at all non applicant no. 2 was bonafide dealer in purchase/sale of the bullocks, he would have entered into transaction of purchase of bullocks at the village bazar by obtaining license. In my view, if non applicant no.2 does not possess any license for purchase/sale of cattle, if bullocks are returned to him, it will mean that a person, who is not holding license to sale or

purchase the bullocks will get back possession of bullocks to that extent, there shall be violation of provisions of law.

14. I have considered the judgments, which have been cited across the bar. The common thread of said judgments is *“while passing order in regard custody of animals when the case is launched under the provisions of the said Act, the Court should make interim arrangement so as to see that till disposal of the case, cattles are kept in the hand of a person or authority, which would be able to take appropriate care and welfare and well being of the said animals is protected.”* With this principle in mind, I propose to deal with this application.

15. The learned Judicial Magistrate First Class has considered various judgments which were cited before him. Same judgments were cited before this Court. The learned Ad hoc Additional Sessions Judge seems to have been impressed by the fact that non applicant no.2 happens to be owner of the said vehicles. No material

was placed before the learned Additional Sessions Judge as to in what way non applicant no.2 will take care of the bullocks if they are returned to non applicant no.2. Learned Additional Sessions Judge appears to have given more importance to the fact that non applicant no.2 was owner of the said bullocks. He did not consider various judgments which were referred to in the order passed by learned Judicial Magistrate First Class which deal with the point namely order ultimately to be passed should be passed keeping in view the well being and welfare of the animals.

16. Learned Advocate for non applicant no.2 Mr. Habibuddin, no doubt had relied upon judgment in the case of **Manager, Pinjarpole Deudar & anr.** (*supra*). In the said judgment, the Supreme Court has given certain parameters on the basis of which application for return of the bullocks can be dealt with. Considering those parameters and applying them to the facts of the case, I am inclined to observe that the order passed by learned Judicial Magistrate First Class is appropriate and the order

passed by the learned Additional Sessions Judge is not in conformity with the various principles established and the facts discussed above and hence is required to be set aside. The reasons are as under.

17. Non applicant no. 2, does not possess license for sale and purchase of the bullocks. Non applicant no. 2 had carried said bullocks in the truck in cramped condition and injuries were found on the person of some of the bullocks and tails of some of the bullocks were noted to be cut. Apparently, bullocks were being carried from one place to the other when they were not in a fit condition. Assertion of non applicant no. 2 that he is going to sell the said bullocks in the market is something, which is required to be taken on the basis of events available keeping in view the conditions in which bullocks were found. *Prima facie*, it would be difficult to accept the stand of non applicant no.2 that bullocks could be sold in the market. It would be difficult to accept that there would be customers for the bullocks which have suffered various injuries and/or whose tails are cut. To that extent,

the case put up by non applicant no. 2 that he had taken bullocks for selling them in the market or for private individual is difficult to be accepted.

18. Apart from other factors, one will have to consider as to what arrangement non applicant no. 2 has for the purpose of keeping the said bullocks. It is seen that before the Court below, no material was placed to show as to what arrangements were made available by non applicant no.2 for keeping the said bullocks soon after they could have been successfully taken to his place. The number of bullocks, which were in the possession of non applicant no.2 at that time was not very small i.e. 2 or 3 and the said number was sizable i.e. 21 bullocks. In order to keep these 21 bullocks in proper condition, arrangements with proper shade and water should have been made. It is in the midst of hearing of this application and that too when a query was made by the Court across the bar about arrangement to keep the bullocks, the pursis along with photographs came to be filed. Bare perusal of the structure, which is appearing in the said

photographs appears to be a newly constructed structure. The walls are not even plastered.

19. The pursis and photographs clearly indicate that the premises where non applicant no. 2 wishes to retain the bullocks is an open courtyard without any arrangement of shade such as asbestos sheets or thatched roof. This will mean that if at all the bullocks are returned to non applicant no. 2, they will be simply kept within the four corners of the courtyard and the said bullocks would be eventually kept exposed to the Sun, cold winds and rain. Today, we are in the month of October. Very shortly Winter season would start and bullocks would be exposed to cold. To that extent, I am taking judicial note of this fact. Photograph no. 3 shows a water tank. The water stored therein can hardly be treated as fit for consumption by animals. It bares green colour and *algae* are seen to be floating on it. This clearly goes to show that non applicant no.2 does not have proper arrangement to provide water to the said animals.

20. It is also noted that in the pursis, the survey number of the land and village where non applicant no. 2 proposes to keep the bullocks is not mentioned. There is no material to show that the property reflected in the said photographs is owned by non applicant no.2 or that he has secured lease thereof for retaining the said bullocks. There is nothing to show that non applicant no.2 has direct control over the said property.

21. The above discussion shows that it would be unsafe to return the said bullocks to non applicant no.2. In my view, it would cause harm to the bullocks and it is not in the interest of welfare and well being of bullocks that they can be returned to non applicant no.2, of course, pending trial.

22. There is one more factor, which is required to be noted. Presently said bullocks are with the applicant and the applicant is an organization by name Jivdaya Pashupakashi Saurakshan and Sanwardha Sanstha. Bare look to the name of this organization would go to show

that the applicant is interested in protecting welfare and well being of the animals and the said bullocks are in the custody of the applicant for last ten months as the learned Advocate Mr. Daga had made statement that custody of bullocks was taken by applicant on 03.12.2008. This will go to show that for last about 10 months, the bullocks are in the custody of present applicant. There is nothing pointed out to this Court that during this period of last ten months, the applicant has not taken proper care of the bullocks. It is also required to be mentioned that it is not the case of non applicant no. 2 that present applicant is incapable of retaining the animals with them and they have no proper arrangement to keep animals with them. If this be the position, it is appropriate that *status quo* as of today should prevail particularly when non applicant no. 2 is not able to show that he has better arrangement to keep bullocks with him.

23. In view of the aforesaid discussion, following order is passed to dispose of the present application.

(a) Judgment and order dated 31.01.2009 passed by learned Ad hoc Additional Sessions Judge, Achalpur in Criminal Revision No. 95/2008 is quashed and set aside. Judgment and order dated 06.12.2008 passed by learned Judicial Magistrate First Class, Anjangaon Surji below Application No. 141/2008 is confirmed.

(b) Rule made absolute in terms of prayer clause (a).

JUDGE

Criminal Application No. 931/2009

In view of disposal of Criminal Application No. 567/2009, present application does not survive and disposed of accordingly.

JUDGE

kahale