

Criminal Writ Petition No. 703 of 2015

Ujjawal Gorakshan Trust v. State of Maharashtra

2017 SCC OnLine Bom 8419

In the High Court of Bombay at Nagpur

(BEFORE P.N. DESHMUKH, J.)

Ujjawal Gorakshan Trust, having its registered Office at Bahadura Fata, Umred Road, Nagpur [Public Trust No. F-1425 (Nagpur)], through its Authorized Member Shri. Shyam S/o Ramchandra Kale, aged about 61 years, occupation: private, R/o 5-F2, Satya Sai Apartment, near Somalwar School, Khamla, Nagpur
Petitioner

v.

1. State of Maharashtra, through Police Station Officer, Police Station, Koradi, District Nagpur.
2. Raju S/o Pandhari Chahande, aged about 44 years, occupation: business, R/o Gadeghat, Gondagaon, Juni Kamptee, District Nagpur Respondents

Criminal Writ Petition No. 703 of 2015

Decided on September 8, 2017

Shri. R.M. Daga, Advocate for petitioner.

Shri. S. Sirpurkar, Additional Public Prosecutor for respondent no. 1.

The Judgment of the Court was delivered by

P.N. DESHMUKH, J.:— Heard Shri. Daga, learned Counsel for petitioner, and Shri. Sirpurkar, learned Additional Public Prosecutor for respondent no. 1. None appears for respondent no. 2 though served. Even on the earlier date, none was present for respondent no. 2 and with a view to give opportunity to defend the petition on merits, the petition was adjourned for today. Despite that, nobody appears for respondent no. 2 even today.

2. Challenge in this petition is to order dated 27/8/2015 passed by learned trial Court granting custody of 33 bullocks to respondent no. 2 on his executing a supratnama bond of Rs. 5 lakhs and by imposing conditions not to sell animals and to produce the same as and when directed during pendency of trial.

3. Petitioner is a registered public trust having Public Trust No. F-1425 (Nagpur), which is dedicated for the welfare of animals and engaged in taking care, preservation and protection of animals. It is noted that on 3/7/2015 report came to be lodged by A.P.I. Laxman Kendre that while he was on patrolling duty with other staff, they intercepted two trucks bearing Registration No. MH-04-CG-3419 and MH-40-N-887, which were found carrying cattle illegally. The total cattle were 33 in number and they were found being illegally transported by respondent no. 2 without valid permission from the Authorities including R.T.O. and in contravention of the provisions of Prevention of Cruelty to Animals Act, 1960 and, therefore, offences came to be registered under Section 11(3) and 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 and Sections 66, 192 and 130(1) of the Motor Vehicles Act vide Crime No. 3090/2015.

4. Thereafter, on an application made by respondent no. 2, impugned order came to be passed, thereby granting custody of seized animals in his possession. It is noted

that application made by petitioner was rejected, however, on an application made by respondent no. 2, learned trial Court released the cattle on supratnama in his favour observing that respondent no. 2 is owner of the cattle. Shri. Daga, learned Counsel for petitioner, has submitted that by transporting 33 cattle in two vehicles, they were found to be travelling by providing cruelty to them, which aspect is also not considered by learned trial Court. According to learned Counsel for petitioner, after seizure of cattle was effected, they were given in the custody of petitioner Institute having sufficient infrastructure to take care of them and as such, cattle are under due protection. It is, therefore, submitted that pending trial, custody of such animals should be kept with petitioner in their interest.

5. On perusal of the impugned order, it is noted that learned Magistrate has not considered provisions of the Maharashtra Animal Preservation Act, 1976 as amended in the year 2015 by which pending trial, custody of seized cattle is required to be handed over to the nearest Goshala, Gosadan, Panjrapole, Hinsra Nivaran Sangh or such other Animal Welfare Organizations willing to accept custody of animals. According to Rule 56(c) of the Transport of Animals Rules, 1978, there is restriction to carry more than six cattle in a vehicle at a time while from the facts involved in the present petition, it is found that 33 cattle were being transported in two trucks at one time.

6. This Court after considering facts as aforesaid, had granted stay to the impugned order dated 27/8/2015 on 1/9/2015, which is in force today. Apart from above facts, it is noted that there is no valid certificate issued by Veterinary Surgeon certifying that the cattle were in a fit condition to be transported and were not suffering from any disease, which is in breach of Rules 47(a) & (b), 96 and 98 of the Transport of Animals Rules, 1978. It is pointed out that contravention of aforesaid Rules is made separately punishable under Section 38(3) of the Prevention of Cruelty to Animals Act, 1960. Moreover, even if it would be the case of respondent no. 2 that he is owner of said cattle and had purchased the same, there could be no identification mentioned in any such receipt, which should co-relate animals with such purchase by respondent no. 2 as perusal of such receipt would not ascertain whether cattle mentioned in the purchase receipt of cattle involved in the present proceedings are one and same and as such, even if any such purchase receipt is relied by respondent no. 2, that cannot establish his case any further.

7. Admittedly, respondent no. 2 has not chosen to defend the petition and thus, there is nothing to establish that he is in a position to make necessary arrangement for preservation of cattle, custody of which is granted to him by the impugned order. The petition is thus liable to be allowed.

8. In the result, impugned order dated 27/8/2015 passed by learned Judicial Magistrate, First Class, Nagpur in Miscellaneous Criminal Application No. 2526/2015 directing release of cattle in custody of respondent no. 2 is quashed and set aside. Needless to say that custody of cattle involved in this case shall remain with petitioner till conclusion of trial. The petition is accordingly allowed.

9. Rule is made absolute in the above terms. No order as to costs.

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