

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

CRIMINAL WRIT PETITION NO. 886/2021

(Mohammad Rajik S/o Mohammad Akil Vs. State of Maharashtra &
anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Sk. Sabahatullah, Advocate for petitioner.
Mr. H. D. Dubey, APP for respondent No. 1/State.
Mr. M. P. Kariya, Advocate for respondent No. 2.

CORAM :- AVINASH G. GHAROTE, J.

DATED :- 10.03.2022

Heard Mr. Sk. Aabahatullah, learned counsel
for applicant and learned APP for respondent No.
1/State.

2. The petitioner seeks to challenge the order dated 23.09.2021 passed by learned Judicial Magistrate First Class, Pusad on an application under Section 457 of the Code of Criminal Procedure seeking interim custody of the cattle i.e. 16 bullocks and 3 calves and the vehicle being TATA Truck No. MH-22/N-0750, seized by the Police Station Khandala Tah. Pusad, Dist. Yavatmal in Crime 243/ 2021, whereby the said application has been rejected in so far as the bullocks and calves are concerned and the petitioner is directed to execute the bond within 3 days from the date of the order as per Rule 5(1) of the Prevention of Cruelty to Animals (Care & Maintenance of Case Property Animals) Rules 2017 (for short 'Rules

2017') and in case the bond is not so executed, the seized cattle shall stand forfeited to the objector. The petitioner was also directed to pay a sum Rs. 200 per day per cattle towards the daily maintenance of the seized cattle and the truck was to be held as security as per the provisions of Rule 5(4) Rules 2017. It was also further directed that in case of failure to execute the bond or to pay the amount towards the daily maintenance of seized cattle, then in that case the local authority is directed to undertake the costs involved and recover the same as arrears of land revenue.

3. This order was challenged by the petitioner before learned Sessions Court by way of revision, who by judgment dated 20.10.2021 has dismissed the revision holding that the order passed by the Learned JMFC , indicated proper exercise of discretion.

4. Th petitioner challenges the aforesaid orders and contended that since the license was issued to the petitioner as a broker by the APMC Murtizapur for sale and purchase of the bullocks and calves, the petitioner was entitled to deal in those animals. He however admits that the amount as directed by the learned JMFC towards maintenance of the seized cattle which has been placed in the custody of the respondent No. 2, has not been deposited, on the contrary, he claims the reduction of the same amount to Rs. 20 per day per animal. He further contends that all the animals were procured by him for

the purpose of agriculture and cultivation not for any business or sale or for the purpose of slaughter. He therefore submits that bullocks as well as the vehicle be released in the custody of the petitioner.

5. Learned counsel for the respondent No. 2 vehemently opposes the petition and submits that the impugned order does not require any interference. My attention is invited to the Notification dated 02.07.2019 issued by the Maharashtra Animal Welfare Board. It is contended that Rs. 200/- per day per animal is minimum fixed by the Board as being required for proper nourishment of the animal and therefore, the same would govern the field and the learned JMFC has rightly directed deposit of that amount for the purpose of maintenance of the animal. Further relying upon Rule 5 (4) of the Rules 2017. He submits that in case such bond is not executed for the cost of keeping the animals while pending the litigation, the vehicle involved in the offence has to be held as a security which has been so directed by the Magistrate. It is also submitted that though by an order dated 11.07.2017, the Hon'ble Apex Court had noted that the Prevention of Cruelty to Animal (Regulation of Live Stocks, Markets) Rules, 2017 and the prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 were stayed by the Madurai Bench of the Madras High Court, however, by subsequent order 11.08.2017, the direction contend in the order 11.07.2017, in so far as the Rules 2017 were

vacated. In view thereof, it is contended that the said Rules 2017 under which the order has been passed by the learned JMFC are still in force. It is contended that the intention of the petitioner not to maintain the animals, in case they are handed to him is manifest by his seeking reduction of the amount of maintenance from Rs 200/- to Rs. 20/- as no animal can be maintained at that cost. It is submitted that petition needs to be dismissed.

6. Considering the above rival contention and perusal of the impugned order of the learned JMFC and Judgment of the learned Sessions Court, it is apparent that the question whether the animals which admittedly were purchased for the purpose of trade by the petitioner, were to be used for the purpose of sale, slaughter or otherwise is a question which will have to be determined by the learned JMFC during the trial of the proceeding. It is admitted position that that animals have been given in the custody of the respondent No. 2 and the respondent No. 2 is taking care of them. The petitioner has not complied the direction of the learned JMFC, by which the cost of maintenance of the animals have been directed to be deposited. Rather on the contrary, a plea is now sought to be raised for reduction of the amount of maintenance from Rs. 200/- per day to Rs. 20/- per day which is contradictory to what has been fixed as the minimum cost of maintenance as per the Notification dated 27.02.2019 issued by the Maharashtra Animal Welfare Board. Under Rule 5(4) of

Rules 2017, which are presently in force, in view of the clarification of the Hon'ble Apex Court date 11.08.2017 in WP (C) No. 422, 419, 499, 497 of 2017, the vehicle has to stand as security for the purpose of cost of maintenance which admittedly has not been paid or deposited by the petitioner.

7. Considering above all these facts, I am not inclined to interfere in the well reasoned order of the learned JMFC and the Judgment of learned Sessions Court, considering which I do not find any merit in the petition and accordingly stands dismissed.

(AVINASH G. GHAROTE, J)