

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1054 OF 2017

Bhartiya Govansh Rakshan Sanvardhhan	]	
Parishad	]	
Through its authorized representative	]	
Dr. Vinod B. Kothari Jain	]	
aged. 37 years, Occupation : Business	]	
having office at 36, Piroja Mansion,	]	
Grant Road (East), Mumbai – 400 007	]	...APPLICANT

VERSUS

- | | | |
|----|---|---|
| 1. | The State of Maharashtra |] |
| | (at the Instance of Worli Police Station) |] |
| 2. | Mumbai Municipal Corporation, |] |
| | Through its Commissioner, |] |
| | Head Officer, Opp. CST Station, |] |
| | Fort, Mumbai – 400 001 |] |
| 3. | Mohammad Hanif Rafiq Sheikh, |] |
| | Antophill, Dargah Jhopadpatti, |] |
| | Antophill, Mumbai |] |
| 4. | Ali Akbar Akhtar Qureshi, |] |
| | Antophill, Dargah Jhopadpatti, |] |
| | Antophill, Mumbai |] |
| 5. | Raes Sharfuddin Nishandar |] |
| | 56/39, Worli BDD Chawl, Worli, |] |
| | Mumbai – 400 018 |] |
| 6. | Hanif Rafiq Qureshi |] |
| | 56/39, Worli BDD Chawl, Worli, |] |

Mumbai – 400 018

] ...RESPONDENTS

Mr. Raju R. Gupta a/w. Mr. Dhruv V. Gupta i/by. Mr. D.S. Joshi for the Applicant.

Mr. Prashant Kamble a/w. Mr. Kunal Waghmare for Respondent No. 2 – MCGM.

Mrs. Rutuja Ambekar, APP for Respondent – State.

CORAM
RESERVED ON
PRONOUNCED ON

: S. S. SHINDE J.
: 18th SEPTEMBER 2019
: 11th OCTOBER 2019

(JUDGMENT)

1. Rule. Rule made returnable forthwith, with the consent of counsel appearing for the parties application is being heard finally.

2. This Application takes an exception to the order dated 17.06.2017 passed in APPL. No. 394/MISC/2017 in F.I.R. No. 102 of 2017 and in APPL. No. 422/MISC/17 in F.I.R. No. 184 of 2017 by the learned Metropolitan Magistrate 62nd Court, Dadar under Section 451 of the Code of Criminal Procedure.

3. It is the case of the applicant that, the applicant is registered trust and is engaged in looking after the welfare of animals for its preservation and protection. The main object of this organization is to prevent cruel treatment and

illegal slaughtering of animals in the State of Maharashtra. They are a law abiding organization, following all legal procedures which are envisaged under the law and take legal recourse for any violation from time to time which are reported to the police Station. It is the case of the applicant that, present application arises in view of the procedures that are mandated and which shall be followed under the Code of Criminal Procedure, Prevention of Cruelty to Animals (Care and Maintenance of Case Property animals) Rules, 2017 after the seizure taken place post registration of the crime. The present applicant is challenging two orders of the learned Metropolitan Magistrate, 62nd Court, Bhoiwada, Dadar under Section 451 of the Code of Criminal Procedure rejecting the claim of interim custody of property (45 Goats) seized under crime. Two FIRs came to be registered with the Worli Police Station having C.R. No. 102 of 2017 and 184 of 2017 dated 13.03.2017 and 28.05.2017 respectively. The facts of the FIR came to be registered on 13.03.2017 and 28.05.2017 respectively under Section 429 IPC, Section 11 of the Prevention of Cruelty of Animals Act, 1960, and other various provisions of Bombay Municipal Act Laws.

4. It is the case of the applicant that, the contents of the FIR are almost similar in both the registered crimes and it is the contention of the first

informants that 4 and 41 goats respectively in each FIR were seized by the Worli Police Station after information was received by the Police Station that an illegally slaughtering of an animal has been carried out by the Respondent no. 6 at back side of BDD chawl no. 76 and 77, Worli, Mumbai.

5. It is the case of the applicant that, applicant is neither the informant nor the complainant in either of the FIRs mentioned above. It is the contention of the applicant that, they have '*locus standi*' to plead and act on behalf of the speechless animals, as per several rulings of the Hon'ble Supreme Court. It is the case of the applicant that, post the seizure of animals in the subject FIR, the police sent the seized animals to the BMC cattle pound / Panjarapole / animal shelter at Deonar Slaughter house. The present applicant in order to seek custody of the seized animals i.e. 45 goats, filed 2 separate applications for return of property in F.I.R. No. 102 of 2017 and F.I.R. No. 184 of 2017 before the learned Metropolitan Magistrate 62nd Court at Bhoiwada, Dadar, Mumbai under Section 451 of the Criminal Procedure Code. The learned Metropolitan Magistrate was pleased to reject both the applications under Section 451 of Criminal Procedure Code for interim custody of the animals to the applicant on the ground that police after seizing the animals have handed over the animals to the BMC and

are now in custody of BMC. Hence, this Application.

6. Learned counsel appearing for the applicant submits that, the reasons given by the learned Metropolitan Magistrate is that, the goats which are seized are in safe hands, and there is no need to interfere with the said process of the seizure. He further submits that, the learned Metropolitan Magistrate erred in not seeking clarification of the conditions, of the goats, when the application for return of property was filed by the present applicant in the Metropolitan Magistrate Court. Learned counsel further submits that, the present application is filed in this Hon'ble Court seeking custody of the goats so also seeking direction to Respondents to place on record procedure being following during seizure and after seizure of animal also. It is submitted that, and to seek clarification that when such seizure happens, the procedure to be followed after such seizure falls under the ambit and scope of Section 102 of the Code of Criminal Procedure. In the present case the FIR was filed under Section 429 of the IPC and various other sections of the Prevention of Cruelty to Animals Act and the Mumbai Municipal corporation Act. It is to be noted here that once a seizure takes place in an IPC offence the procedure that it needs to be followed by the police officer is envisaged under Section 102 of the Code of Criminal Procedure.

7. Learned counsel appearing for the applicant invites attention of this Court to the provisions of Section 102 of the Code of Criminal Procedure and submits that, when the seizure of animals happens and, in the present case goats, the procedure required to be followed after such seizure is provided under Section 102 of the Code of Criminal Procedure.

8. Learned counsel further submits that, the Section 30 and 32 of the Prevention of Cruelty to Animals Act, 1960 (for short said Act) also provides for procedure, how to deal with seized animals so also the accused who committed offence of killing the goats or cows or its progeny, contrary to the provisions of said Act. Learned counsel invites attention of this Court to Sections 30 and 32 of the said Act.

9. Learned counsel further submits that, the applicant apprehends that, the 45 goats are not safe with the Respondent No. 2 and the animals are handed over to a Contractor who has slaughtered all of them therefore, the applicant written a letter dated 13.09.2017 to Respondent No. 2, and also to General Manager of Deonar Abattoir for inspection of 45 Goats, till date no inspection and / or reply whatsoever has been given either by Respondent No. 2 or by

General Manager of Deonar Abattoir.

10. Learned counsel submits that, in the facts of the present case the law under which the seizure of the goats has taken place mandates the police officer to forthwith report such seizure to the concern Magistrate. If the property seized by the police officer is of such nature that it cannot be conveniently transported to the Magistrate, then the Police is at liberty to handover the property to any person, but the law mandates that while handing over the property to such person the police officer shall take a bond from such person so as to make sure that the property which has been returned will be produced before the Magistrate if needed and for the orders of its proper disposal. It is submitted that, in the facts of the present case the offences were registered and there are eye witnesses for illegal killing and slaughtering of the goats happen in front of the police officer.

11. It is submitted that, the learned Magistrate's order under Section 451 of the Criminal Procedure Code is not just flawed but perverted and does not follow the necessary provisions of the law. It is also to be noted that Rules under the Prevention of Cruelty to Animals Act, 1960 has been framed with regards to the custody and maintenance of the animals which has come into effect from 23.05.2017. There has been an amendment to Section 38 of the Prevention of

Cruelty to Animals Act, 1960, whereby they have made certain rules post seizure of such animals. Rule 3 and Rule 4 post the seizure specify that the police officer needs to clearly establish the identity of the seized animals and lodge the seized animals in a nearby infirmary, Panjarpol, SPCA, Animal Welfare organization or a Goshala pending the litigation. It is also necessary for the police officer to get the animals checked in a Government Veterinary Hospital by registered Veterinary practitioner. It is pertinent to note that the first FIR is registered on 13.03.2017 and the second FIR registered on 28.05.2017 seizing 4 goats and 41 goats respectively. The Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2016 came into force on 23.05.2017.

12. Learned counsel invites attention of this Court to Rules 3 and 4 of the said Act and submits that, when the animals has been seized under the provisions of Said Act or the rules made thereunder, the authorities seizing the animals shall ensure health inspection, identification and marking such animals, through the jurisdictional veterinary officer deployed at Government Veterinary Hospital of the area, and marking may be done by ear tagging or by shipping or by any less irksome advance technology, but marking by not branding, cold branding and other injurious marking shall be prohibited. It is also provided in

clause (b) of the said Section that the Magistrate may direct the animal to be housed at an infirmary, pinjrapole, SPCA, Animal Welfare Organization or Gaushala during the pendency of the litigation.

13. Learned counsel for the applicant submits that, the learned Metropolitan Magistrate Courts order, under Section 451 of Code of Criminal Procedure in proceedings arising out of the Crime No. 102 of 2017 and 184 of 2017 registered with the Worli Police Station is not legally sustainable. It is further submitted that, it is mandatory for the police officer to follow certain rules and regulations under Section 102 of Code of Criminal Procedure. Respondent No. 1 has not taken any bond neither has he produced before the learned Metropolitan Magistrate's Court any document showing of taking such bond, which would give the guarantee of the animals being in a good health. Applicant apprehend that the animals that were seized by invoking the various IPC sections and provision of Prevention of Cruelty to Animals Act, 1960 are already killed / slaughtered and given back to the owners and / or the contractors without following due procedure of law.

14. It is submitted that, the learned Metropolitan Magistrate's Court was not correct in determining that, once the animals are given to BMC and then

forwarded to the Panjarapol, it is not necessary to intervene in the matter and the custody be with the Panjarapol itself. It is further submitted that, even if the custody is with Panjarapol it was necessary for the learned Metropolitan Magistrate Court to see whether the bond under Section 102 Cr.P.C was executed between the Panjarapol and the police officer. It is submitted that, the well being of the seized animals is under question today and it is highly imperative to know, whether the animals were disposed off in a cruel manner or are they kept until the litigation is pending.

15. It is submitted that, the learned Metropolitan Magistrate was also not correct in arriving at a conclusion that once the animals are with a BMC Panjarapol no further orders are needed in this matter. The learned Metropolitan Magistrate's Court failed to conclude that the BMC will run into losses if organization like the applicant do not come forward and seek the custody of the animals. It is further submitted that, not just a bond but it was for the Magistrate to determine and to direct the police officer as to how the seized property shall be kept pending litigation. No rules and regulations were followed by the Respondents and this, nothing but a mockery of the law.

16. It is further submitted that, the animals are mute and they cannot talk for themselves and the applicant being a social organization wants to take up the social cause as it is seen frequently that in all cases that the police officers do not follow the mandated of Section 102 of the Cr.P.C. The Magistrate Court's also sometimes mechanically, passing the orders for return of property either to Panjrapol to BMC or the owner without even considering Section 102 of Cr.P.C. It is submitted that, it is important that Section 102 followed in such cases so as to safe guard the animals pending the litigation and once the litigation is over the property can be disposed off in a appropriate manner by the Court presided over by the Magistrate.

17. Learned counsel appearing for the applicant has tendered across the bar written notes of arguments on 24th July 2019. It is stated in written notes that, it seems that, the learned Magistrate was quite assured that the goats are safe with the Respondent No. 2 – MCGM. The learned Magistrate ought to have called for report seeking current status and well being of goats to assure and confirm that the goats are indeed safe and assured. The learned Magistrate failed to consider that the Respondent No. 2 – MCGM does not take care of animals for indefinite period. Therefore, he should have handed over to the applicant

who has approached the learned Magistrate court for seeking custody of goats. It was necessary for the learned Metropolitan Magistrate to see whether the bond under Section 102 was duly executed between the Respondent No. 2 Panjarapol and the Respondent No. 1.

18. It is stated that, the Respondent No. 2 was duly bound to care, protect and preserve the goats till pendency of the litigation as the same were the case properties, however, to shock and surprise, the applicant came to know that all the goats were illegally sold out to a contractor who has ultimately slaughtered them. The handing over the goats to the contractor was illegal and bad in law. The handling of animals to the contractor should be prohibited permanently since Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 has been enacted to save and preserve the animals and not to destroy them. The contractors still exist as the Respondent No. 2 issues regular tender and the illegal handing over of the animals to the contractors have not been stopped, and the case properties in the form of animals are getting killed illegally and against the law. It is further stated that, as per Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 even the vehicle has to be held as a security.

19. As directed by this Court the applicant has filed the affidavit dated 31.07.2019 explaining as to how the applicant is in custody of the documents annexed to the written notes of arguments. It is stated in the affidavit that, on 29.07.2019 after arguments was over applicant called an RTI activist Shri. Ganesh Vitthal Nakhate who has filed several RTI's and has also filed complaints with Respondent no. 2 and other authorities. Apart from this he has filed various Writ Petitions and Public Interest Litigations before this Hon'ble Court. It is stated that, upon request made by the Applicant to Shri. Ganesh Nakhate handed over relevant documents pertaining to the appointment of the contractors and issues related therewith. During the handing over the paper he informed us that he has gathered all these documents through RTI. It is further stated that, Shri. Ganesh Nakhate further informed to the applicant that the Respondent No. 2 had appointed him as contractor between the year 01.02.2010 to 31.01.2011 and Respondent No. 2 arbitrarily canceled the contractor license issued to him and put his name in the black list and forfeited Rs. 700,000/- which was paid by him as security deposit. Being aggrieved by the said action, Shri Ganesh Nakhate has filed a Petition in this Hon'ble Court. Being an RTI activist and also being an Animal Activist he has filed various RTI's and that is how he is in possession of

the said documents and the same were handed over upon to the Applicant on his request.

20. In support of the submissions made herein before learned counsel appearing for the applicant pressed into service the following judgments of the Supreme Court and Bombay High Court in the cases of State of Gujarat v/s Mirzapur Moti Kureshi Kassab Jamat and Ors¹, Shaikh Zahid Mukhtar and Ors. v/s. The State of Maharashtra and Ors², Animal Welfare Board of India v/s. A. Nagaraja and Ors³, N. Nagendra Rao & Co. v/s State of Andhra Pradesh⁴, Dawood Shaikh Biban v/s. The Municipal Corporation of Gr. Bombay and Ors⁵. Therefore, learned counsel appearing for the Applicant prays that Application may be allowed.

21. On the other hand learned counsel appearing for Respondent No. 2 – MCGM submitted that, the applicant is a third-party association or group or organization and therefore, there is no locus to file the application under Section 451 of the Code of Criminal Procedure for the return of the property as the applicant is not the owner of the property in question in the aforesaid FIR No.

1 (2005) 8 SCC 534

2 In WP No. 5731 of 2015 Bombay High Court decided on 06.05.2016.

3 (2014) 7 SCC 547

4 (1994) 6 SCC 205

5 In WP No. 3743 of 1998 decided on 01.09.1993.

102 of 2017 filed by one Advocate Raju Gupta and another FIR No. 184 of 2017. It is submitted that, applicant has now made MCGM party to the proceedings before the learned Metropolitan Magistrate and therefore, MCGM was not aware of the application under Section 451 of Cr.P.C. filed by the applicant for return of the property and moreover no claims came from any of the concerned parties to the property in question within reasonable time after the said property in question was sent to the Deonar Abbatoir in accordance with the routine procedure followed by MCGM market department. He therefore submits that, in the present application, the MCGM ought not to have been made party as the MCGM was not made party in the original proceedings before the learned Metropolitan Magistrate and therefore, MCGM as it was not aware of the proceedings before the learned Metropolitan Magistrate, could not be blamed for the fault of the third party applicant.

22. It is further submitted that, goats seized by the Police from the accused persons, who claim to be owner of the goats, were carrying out illegal slaughtering without the permission from MCGM and outside the Deonar Abattoir. The police handed over the goats to MCGM for further necessary action and thereafter the MCGM Market Department after registering the FIR,

has followed the routine procedure of transferring to Deonar Abbatoir after waiting for reasonable time for any claims from the concerned parties to the property in question in the aforesaid FIRs and therefore, applicant is not entitled for the return of the property in question in view of the mistake committed by the applicant by not making the MCGM party to the proceedings before the learned Metropolitan Magistrate and therefore, the prayer for custody of the property in question now cannot be asked before this Hon'ble Court.

23. Learned counsel appearing for Respondent No. 2 – MCGM has tendered across the bar additional affidavit-in-reply on behalf of Respondent No. 2 – MCGM. It is stated in the reply that, at Deonar Abattoir before slaughter of any animals anti-mortem and post-mortem inspection is carried out in terms of Slaughter House Rules, 2001 and the rejected animals for slaughter, those are unfit for human consumption, are dealt with in accordance with bye-laws. It is stated that, the Municipal Corporation invited tenders / quotations to sell the goats seized under Section 412 of MMC Act.

24. It is stated that, the General Manager of Deonar Abattoir has not admitted that the Market Department of Respondent No. 2 are handing over sick and small baby goats to contractors for slaughtering against the law related to

animal cruelty. However, the intention of the letter was to bring in new contractor and adhere to rules and include the provision of Prevention of Cruelty to Animals Act, 1960. It is further stated that, the animals are slaughtered for food as per Food Safety and Standards Act, 2006 at Deonar Abattoir in accordance with the rules made under the Prevention of Cruelty to Animals Act, 1960 and Clause 3 and Clause 6 of the Slaughter House Rules, 2001. Hence, learned counsel appearing for the Respondent No. 2 submits that, application is devoid of merits and liable to be dismissed.

25. Heard learned counsel appearing for the applicant, learned APP appearing for Respondent No. 1 – State and learned counsel appearing for the second Respondent. With their able assistance perused the averments in the application so also grounds taken therein, annexures thereto and reply and additional reply filed by the second Respondent.

26. The applicant has prayed for quashing the order dated 17.06.2017 passed in APPL. No. 394/MISC./2017 in F.I.R. No. 102 of 2017 and in APPL. No. 422/MISC/17 in F.I.R. No. 184 of 2017 passed by the learned Metropolitan Magistrate, 62nd Court, Dadar. The applicant herein filed an application for interim custody of the seized goats which are seized in FIR No. 102 of 2017 by

Worli Police Station. However, it is admitted position that, the subject goats are already slaughtered and therefore, the question of granting custody of said goats to the applicant would not arise. The remaining issues which are raised by the applicant are only for the academic purpose, and seeking general directions to the concern respondent Authorities to follow the relevant provisions and procedure before seizure of the animals and after seizure of animals. The applicant has raised various issues in the present application. The applicant is seeking mandatory directions to the State Government and Municipal Corporation / Municipal Councils to follow the procedure before seizure and after seizure taking recourse to Section 102 of the Cr.P.C. The applicant also want to know what procedure is being followed by the concern Authorities before seizure and after seizure of the animals. According to the applicant whenever the animals are in the custody, health inspection is necessary. An identification and marking of the animals should be done in the proper manner, known to the relevant procedure and rules. The applicant has also raised concern about non adherence of rules 3 and 4 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2016. The applicant has also raised concern about the manner in which animal are returned to the owner or given to the contractor without following proper procedure. In substance applicant seeks

mandatory directions to the State Government and Respondent Authorities to follow the mandate of Section 102 of the Cr.P.C. so also provisions of Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2016 and other procedure prescribed under the aforesaid rules. In my opinion, the State Government so also other authorities who are dealing with the seizure of animals are expected and obliged to follow the mandate of aforesaid provisions and therefore no mandatory directions are necessary. It is the statutory obligation of the respondent authorities to strictly adhere to the aforesaid provisions. There are various reported judgments of the Supreme Court and this High Court which are relied upon by the learned counsel appearing for the applicant. It needs no mention that, law laid down in the said judgments and directions issued are binding to all concern.

27. In the light of the discussion in foregoing paragraphs and since the subject goats are already slaughtered, the question of giving custody of the subject goats to the applicant has become redundant. In the light of discussion in foregoing paragraphs no relief can be given to the applicant. However, as already observed the Respondents are obliged to follow the mandate of aforesaid legal provisions so also law laid down by this High Court and the Supreme Court in

the cases cited by the learned counsel for the Applicant. With the above observations without causing interference in the impugned orders, the application stands disposed of. Rule stands discharged.

[S.S. SHINDE, J.]