

SLPR 412/2020

1

ITEM NO.40

COURT NO.2

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) Nos.412/2020

(Arising out of impugned final judgment and order dated 17-10-2019 in CRLWP No.762/2019 passed by the High Court of Judicature at Bombay at Aurangabad)

SHRI CHATRAPATI SHIVAJI GAUSHALA

Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

(With IA No.9562/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.9563/2020 - EXEMPTION FROM FILING O.T.)

Date : 30-09-2022 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE HIMA KOHLI

For Appellant(s)

Dr. Manish Singhvi, Sr. Adv.
Mr. Ayush Anand, Adv.
Mr. Shubhendu Anand, Adv.
Mr. Aprit Parkash, Adv.
Mr. Shivam Singhani, Adv.
Mr. Raju Gupta, Adv.
Mr. P.S.Sudheer, AOR
Mr. Bharat Sood, Adv.
Ms. Shruti Jose, Adv.

For Respondent(s)

Mr. Sachin Patil, Adv.
Mr. Siddharath Dharmadhikari, Adv.

**Mr. Aaditya Aniruddha Pande, AOR
Mr. Geo Joseph, Adv.
Mr. Rishvi Muhammed, Adv.
Mr. Durgesh Gutpa, Adv.**

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Leave granted.
- 2 The appeal is allowed in terms of the signed reportable judgment.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)

A.R. -cum-P.S.

(Signed Reportable Judgment is placed on the file)

(SAROJ KUMARI GAUR)

Assistant Registrar

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No 1719 of 2022
(Arising out of SLP (Crl) No 412 of 2020)

Shri Chatrapati Shivaji Gaushala

Appellant

Versus

State of Maharashtra and Others

Respondents

J U D G M E N T

1. Leave granted.

2. This appeal arises from a judgment and order dated 17 October 2019 of a Single Judge of the Aurangabad Bench of the High Court of Judicature at Bombay.

3. On 17 March 2019, a truck was intercepted and was found to be transporting eighteen heads of cattle – fifteen bullocks and three buffaloes. The eighth respondent was driving the truck and was unable to provide a satisfactory explanation about the relevant permits. The truck was taken to the police station and the cattle were seized. FIR No. 59 of 2019 was registered at Parbhani Rural Police

Signature: Not Visible
Digitally signed by
CHETAN KUMAR
Date: 2022.10.12
14:50:00 IST
Reason: I am a blind person

Station on 17 March 2019 for offences punishable under Section 5A of the Maharashtra Animal Preservation (Amendment) Act 1995¹ and Section 6 of the

¹ Amendment Act 1995 (brought into force on 4 March 2015)

Maharashtra Animal Preservation Act 1976², Section 11(1)(d) of the Prevention of Cruelty to Animals Act 1960³, Section 117 of the Motor Vehicles Act 1988 and other allied provisions.

4. The second to eighth respondents claim to be owners of the seized cattle. The appellant is a gaushala engaged in the welfare, preservation, and protection of animals in Parbhani, Maharashtra. An application dated 20 March 2019 was filed before the Judicial Magistrate First Class, Parbhani⁴ by the second to eighth respondents under Sections 451 and 457 of the Code of Criminal Procedure 1973 seeking interim custody of the cattle on the ground that they were the owners of the cattle. Thereafter, the appellant also filed an application on 22 March 2019 for interim custody of the cattle till the conclusion of the trial under the proviso to Section 8(b) of the Maharashtra Act and Rules 3, 4, and 5 of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017.

5. By an order dated 1 April 2019, the JMFC allowed the application filed by the appellant. The JMFC rejected the application by the private respondents, noting that they did not have proper permits for carrying the cattle in the truck at the relevant time. The JMFC observed that the cattle will be safe in the custody of the appellant. In addition, the private respondents were directed to pay an amount of Rs. 100/- per head of cattle per day towards maintenance and treatment of cattle to the appellant.

6. The Additional Sessions Judge-3, Parbhani allowed the revision preferred by the private respondents on 24 April 2019 and held that they were entitled to the custody of the seized animals, subject to the execution of an indemnity bond for the

2 "Maharashtra Act"

3 "PCA Act"

4 "JMFC"

preservation of the cattle. The Sessions Judge noted that being the owners, the private respondents had a preferential right to get interim custody of the seized cattle. The Sessions Judge allowed the revision noting that the trial court failed to take notice of Section 457 of the CrPC,.

7. The order of the Sessions Judge was questioned in a writ petition under Article 227 of the Constitution of India by the appellant. The High Court by its impugned judgment dated 17 October 2019 dismissed the petition. The High Court upheld the order of the Sessions Judge granting custody to the private respondents by relying on a decision of this Court in **Manager, Pinjrapole Deudar and Another v. Chakram Moraji Nat and Others**⁵. The High Court noted that prima facie, the material on the record indicated that the cattle were being subjected to cruel conditions for transportation since as many as eighteen cattle were loaded into one truck. In this context, the High Court held:

“16. Bearing in mind these principles, if one examines the matter in hand, the only material before the Magistrate which would prima facie show that the cattle was being treated cruelly is the fact that as many as eighteen cattle i.e. fifteen bullocks and three buffaloes were being transported in one vehicle. As has been pointed out by the learned advocate for the petitioner, the Transport of Animals Rules, 1978 framed pursuant to enabling provision contained in section 38 of Prevention of cruelty to Animals Act, 1960 clearly lay down various elaborate provisions laying down specification for transportation of animals. Chapter IV lays down provisions in Rules 47 to 56 for transaction of cattle. Rule 56 lays down that when cattle are to be transported by a goods vehicle the vehicle should have a special type of tail board and padding around the sides, it should provide anti sleeping material and no goods vehicle carry more than six cattle. In the matter in hand, as many as eighteen cattle were being transported in one vehicle and such transportation was clearly violative of this rule and constitutes cruelty.”

8. Nonetheless, the High Court held that there was no material to indicate that the cattle were physically harmed or that they were placed in danger or were

5 (1998) 6 SCC 520

being starved. The High Court noted that there was no apprehension that if they were returned to their owners, the cattle would face similar cruelty since the accused had prior criminal antecedents. Relying on the decision of this Court, noted above, the High Court held that the Magistrate while dealing with an application for interim custody of the animals ought to have regard to the circumstances which have been spelt out in the judgment of this Court in **Manager, Pinjrapole Deudar and Another** (supra). The High Court further held that the decision of the JMFC to grant interim custody to the appellant on the basis of the Section 8(3) of the Maharashtra Act without taking into consideration the relevant circumstances was clearly perverse and arbitrary. Hence, on these grounds, the order of the Sessions Court in revision was not interfered with by the High Court in the exercise of the writ jurisdiction.

9. We have heard Dr Manish Singhvi, senior counsel appearing on behalf of the appellant and Mr Sachin Patil, counsel for the State of Maharashtra.

10. Notice was issued to the private respondents. The office report indicates that they are served, but have not entered appearance.

11. The Maharashtra Act received the assent of the President on 16 February 1977 and was published in the Maharashtra Government Gazette on 1 March 1977. The enactment was amended by an Amending Act of 1995, which received the assent of the President nearly two decades thereafter on 26 February 2015 and was published in the Maharashtra Government Gazette on 4 March 2015.

12. Section 8 of the Maharashtra Act contains provisions for entry, search, seizure, and custody. The said provision is extracted below:

“Power of entry, search, seizure and custody.— (1) For the purposes of this Act, the competent authority or any person authorised in writing in that behalf by the competent authority (hereinafter in this section referred to as “the authorised person”) shall have power to enter and inspect any place where the competent authority or the authorised person has reason to believe that an offence under this Act has been, or is likely to be, committed.

(2) Every person in occupation of any such place shall allow the competent authority or authorised person such access to that place as may be necessary for the aforesaid purpose and shall answer to the best of his knowledge and belief any question put to him by the competent authority or the authorised person.

(3) Any Police Officer not below the rank of Sub-Inspector or any person authorised in this behalf by the State Government, may, with a view to securing compliance of the provisions of Sections 5-A, 5-B, 5-C or 5-D, for satisfying himself that the provisions of the said sections have been complied with may,—

(a) enter, stop and search, or authorise any person to enter, stop and search any vehicle used or intended to be used for the export of cow, bull or bullock;

(b) seize or authorise the seizure of cow, bull or bullock in respect of which he suspects that any provision of Sections 5-A, 5-B, 5-C or 5-D has been, is being or is about to be contravened, along with the vehicles in which such cow, bull or bullock are found and there after take or authorise the taking of all measures necessary for securing the production of such cow, bull or bullock and the vehicles so seized, in a court and for their safe custody pending such production:

Provided that pending trial, seized cow, bull or bullock shall be handed over to the nearest Gosadan, Goshala, Panjrapole, Hinsa Nivaran Sangh or such other Animal Welfare Organizations willing to accept such custody and the accused shall be liable to pay for their maintenance for the period they remain in custody with any of the said institutions or organizations as per the orders of the court.

(4) The provisions of Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall, so far as may be, apply to searches and seizures under this section.

(emphasis supplied)

13. Section 8(3) empowers a police officer not below the rank of Sub-Inspector or a duly authorized person to inter alia seize a cow, bull, or bullock in

respect of which he suspects that the provisions of Sections 5A, 5B, 5C, or 5D are being or are about to be contravened. The provision also authorizes the seizure of the vehicle in which the cattle are being transported. Section 5A of the Maharashtra Act is in the following terms:

“5-A. Prohibition on transport and export of cow, bull or bullock for slaughter.— (1) No person shall transport or offer for transport or cause to be transported cow, bull or bullock from any place within the State to any place outside the State for the purpose of its slaughter in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be, so slaughtered.

(2) No person shall export or cause to be exported outside the State of Maharashtra cow, bull or bullock for the purpose of slaughter either directly or through his agent or servant or any other person acting on his behalf, in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be slaughtered.”

14. The proviso to Section 8(3) of the Maharashtra Act was inserted by the Amending Act of 1995. The proviso stipulates that pending trial, the seized cow, bull or bullock shall be handed over to the nearest *gosadan*, *goshala*, *pinjrapole*, *hinsa nivaran sangh* or such other animal welfare organizations willing to accept such custody and the accused would be liable to pay for their maintenance for the period when they remain in custody. The appellants have invoked the proviso to Section 8(3) for claiming custody of the cattle.

15. Though the High Court noticed the provisions of Section 8(3) as amended, it has relied upon the decision of this Court in **Manager, Pinjrapole Deudar and Another** (supra). Now that case relates to the power conferred by Section 35 of the PCA Act. Section 35(2) of the said enactment is in the following terms:

“35. Treatment and care of animals: ***

(2) The Magistrate before whom a prosecution for an offence against this Act has been instituted may direct that the animal concerned shall be treated and cared for in an infirmary, until it is fit to perform its usual work or is otherwise fit for discharge, or that it shall be sent to a *pinjrapole*, or, if the veterinary officer in charge of the area in which the animal is found or such other veterinary officer as may be authorised in this behalf by rules made under this Act certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed.”

16. While interpreting the above provision, this Court in **Manager, Pinjrapole Deudar and Another** (supra) noted that:

“8. *** Under sub-section (2), the Magistrate may order that:

(a) the animal shall be treated and cared for in an infirmary till such time it is fit to perform its usual work or is otherwise fit for discharge;

(b) the animal shall be sent to a pinjrapole; or

(c) the animal shall be destroyed if it is certified by a Veterinary Officer, authorised under the Rules, to be incurable or if it is found that it cannot be removed without cruelty.”

17. It was in this backdrop that this Court in **Manager, Pinjrapole Deudar and Another** (supra) held that the Section 35(2) vests in the JMFC a discretion to give interim custody of the animals to a pinjrapole. This Court observed:

“10. Now advertent to the contention that under Section 35(2), in the event of the animal not being sent to an infirmary, the Magistrate is bound to give the interim custody to a pinjrapole, we find it difficult to accede to it. We have noted above the options available to the Magistrate under Section 35(2). That sub-section vests in the Magistrate the discretion to give interim custody of the animal to a pinjrapole. The material part of the sub-section (shorn of other details) will read, the Magistrate may direct that the animal concerned shall be sent to a pinjrapole. Sub-section (2) does not say that the Magistrate shall send the animals to a pinjrapole. It is thus evident that the expression “shall be sent” is a part of the direction to be given by the Magistrate if in his discretion he decides to give interim custody to a pinjrapole. It follows that under Section 35(2) of the Act, the Magistrate has discretion to hand over interim custody of the animal to a pinjrapole but he is not bound to hand over custody of the animal to a pinjrapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, the pinjrapole has no preferential right.

In deciding whether the interim custody of the animal be given to the owner who is facing prosecution, or to the pinjrapole, the following factors will be relevant:

- (1) the nature and gravity of the offence alleged against the owner;
- (2) whether it is the first offence alleged or he has been found guilty of offences under the Act earlier;
- (3) if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution;
- (4) the condition in which the animal was found at the time of inspection and seizure;
- (5) the possibility of the animal being again subjected to cruelty. There cannot be any doubt that establishment of the pinjrapole is with the laudable object of preventing unnecessary pain or suffering to animals and providing protection to them and birds. But it should also be seen:
 - (a) whether the pinjrapole is functioning as an independent organization or under the scheme of the Board and is answerable to the Board; and
 - (b) whether the pinjrapole has a good record of taking care of the animals given under its custody."

18. The above observations of this Court interpret Section 35(2) of the PCA Act. As the court noted, the said provision does not contain a mandate that the Magistrate shall send the animal to a pinjrapole. Under that provision, the Magistrate has a discretion to hand over interim custody of the animal to a pinjrapole, but is not bound to do so.

19. In the present case, the High Court upon evaluating the circumstances in which the cattle were being transported arrived at a prima facie conclusion that as many as eighteen cattle were being transported in one vehicle. The High Court has also noted that this constituted cruelty as it violated Rule 56 of the Transport of Animal Rules 1978 framed in accordance with the enabling

provisions of Section 38 of the PCA Act. The amended provisions of the Maharashtra Act have received the assent of the President.

20. The intention of the legislature in incorporating the proviso to Section 8(3) was to give effect to the object of the Maharashtra Act to preserve and protect cows, bulls, and bullocks useful for milch, breeding, draught, or agricultural purposes. The proviso to Section 8(3) of the Maharashtra Act provides for handing over of the seized cow, bull, or bullock to the nearest gosadan, goshala, pinjrapole, hinsa nivaran sangh or such other animal welfare organization willing to accept such custody. In the present case, the appellant was willing and ready to accept custody of the seized cattle. In light of the prima facie observation that the private respondents were in violation of the Transport of Animal Rules 1978, it was incumbent upon the High Court to ensure that the seized cattle would be properly preserved and maintained until the conclusion of the trial proceedings.

21. The appellant has shown its willingness to accept the interim custody of the cattle. In view of the fact that private respondents were prima facie carrying the cattle in cruel conditions without a valid permit, the JMFC rightly concluded that the cattle would be safe in the custody of the appellant instead of the private respondents. In view of the above findings, the ultimate direction which was issued by the High Court was contrary to the proviso to Section 8(3) of the Maharashtra Act and would have to be set aside, while restoring the order of the JMFC. We order accordingly.

22. The Court has been apprised of the fact that since the seizure of the cattle in February 2019, two of the cattle have died, leaving sixteen cattle in the

balance, with the appellant. In such matters, it is necessary that the trial for offences punishable under the Maharashtra Act must take place expeditiously and that it should be concluded preferably within a period of six months. This would ensure that the animals do not continue to remain in custody under the provisions of the proviso to Section 8(3) of the Maharashtra Act for an indefinite period. We issue a direction in those terms.

23. In an order of a two-Judge Bench of this Court dated 25 January 2022 in **Jagatguru Sant Tukaram Goshala v. The State of Maharashtra and Another**⁶, the Court noted a factual situation in which the cattle which were seized on 24 July 2012, continued to remain under custody for a decade and would have broadly outlived their commercial utility. In the present case, as noted above, two of the cattle have died. This leads to the conclusion that trials for offences punishable under the Maharashtra Act must be concluded expeditiously. The courts concerned shall take all necessary steps to conclude the trials within a period of six months so as to bring finality.

24. The appeal is allowed in the above terms. The impugned judgment and order of the High Court dated 17 October 2019 is set-aside. The order of the JMFC dated 1 April 2019 stands restored. However, the appellants have stated before this Court that they will not insist on claiming any compensation for the maintenance of the animals pending the trial. Since a substantial period has already elapsed, the JMFC shall conclude the trial within three months.

⁶ Criminal Appeal No. 132 of 2022

25. Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Hima Kohli]

New Delhi;
September 30, 2022
CKB