

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

CRIMINAL APPLICATION (APL) NO.688 OF 2018

Shafiqullaha Kha Ashfaqullha Kha,
aged about 28 years, Occ. Driver,
R/o. Indira Nagar,
Hiwarkhed, Tah. Telhara, District Akola.

.... **APPLICANT**

// **VERSUS** //

1) State of Maharashtra,
through Police Station Officer, Shivaji Nagar,
Khamgaon, District Buldhana.

2) Nilesh Chapalal Bardiya,
aged about 28 years, Occ. Business,
R/o. Satifail, Khamgaon,
District Buldhana.

.... **NON-APPLICANTS**

Shri A.V. Bhide, Advocate for applicant.
Shri N.S. Rao, Addl.PP. for State.

CORAM : **V. M. DESHPANDE AND**
ANIL S. KILOR, JJ.

DATE : **14th DECEMBER, 2020.**

JUDGMENT: [PER: A.S. Kilor, J.]

Rule. Rule made returnable forthwith. The matter is heard finally with the consent of the learned counsel for the parties.

2. The applicant, who is the accused in Crime No.265 of 2018, dated 15.07.2018, registered with Police Station, Shivaji Nagar, Khamgaon, District Buldhana, on a complaint of non-

applicant No.2 for the offences punishable under Section 5-(A), 5-(B), 5-(C), 9, 9-(A) of the Maharashtra Animal Preservation Act, 1976 (for short “the Act of 1976”) read with Section 188 of the Indian Penal Code and Section 105, 117 of the Bombay Police Act, is praying for quashing the aforesaid first Information Report by the present application filed under Section 482 of the Code of Criminal Procedure.

3. It is the case of the prosecution that the Pick Up Bolero van, bearing No.MH-37/J-1153, was found carrying animal’s skin and therefore, on a complaint lodged by non-applicant No2, who claims to be a President of Bajrang Dal, Khamgaon, the first Information Report in question was registered.

4. It is the further case of the prosecution that on verification, it was found that the vehicle was carrying 187 skins of cow species, which was verified by the Animal Husbandary Department.

5. We have heard Shri A.V. Bhide, the learned counsel for the applicant, Shri N.S. Rao, the learned Additional Public Prosecutor for the State. None for the non-applicant No.2, though he was served long back in the month of February, 2019.

6. Shri Bhide, the learned counsel for the applicant submits that the applicant is a driver on a Pick UP van MH-37/J-1153, which is involved in the present crime and owned by Shaikh Suleman Shaikh Chand. It is submitted that the skins were owned by Mohamad Ayub Shaikh Hussain, the Skin Merchant and Traders at Khamgaon.

7. It is further submitted that at the time of moving the application for release of the property on the Suprutnama, under Section 457 of the Code of Criminal Procedure, Mohamad Ayub Sheikh Hussain had produced the necessary documents, including Uddyog Aadhar Memorandum, license under the Maharashtra Shops and Establishment Act, and a bill prepared for selling of raw hide. Thus, he submits that there was no contravention of any provision of the Act of 1976.

8. Shri Bhide, the learned counsel for the applicant submits that from the First Information Report and from the reply of the prosecution, it has come on record that the said vehicle was carrying 187 skins of animal. He further submits that in view of the said undisputed fact, the provisions of Section 5-(A), 5-(B), 5-(C), 9, 9-(A) of the Act of 1976, would not attract in the present case.

9. To fortify his submission, the learned counsel for the applicant has relied upon the unreported judgment of the Division Bench of this Court in Criminal Application No.364 of 2018, decided on 21.06.2018, in the case of ***Shaikh Najir Shaikh Umar Vs. The State of Maharashtra and another.***

10. Per contra, Shri N.S. Rao, the learned Additional Public Prosecutor for the State strongly opposes the present application and prays for dismissal of the same.

11. The material allegations levelled against the applicant are for the offences under Section 5-(A), 5-(B), 5-(C), 9, 9-(A) of the Act, 1976. Thus, it is necessary to refer to the said provisions:

“Section 5.....

5A.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 of 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.

5B. Prohibition on sale, purchase, disposal in any other manner of cow, bull or bullock:

No person shall purchase, sell or otherwise dispose of or offer to purchase, sell or otherwise dispose of any cow, bull or bullock for slaughter or knowing or having reason to believe that such cow, bull or bullock shall be slaughtered.

5C. Prohibition on possession of flesh of cow, bull or bullock:

Notwithstanding anything contained in any other law for the time being in force no person shall have in his possession flesh of any cow, bull or bullock slaughtered in contravention of the provisions of this Act.”

Section 5(D) to 8....

9. Penalties for contravention of Sections 5, 5A or 5B:

Whoever contravenes [the provisions of sections 5, 5A, or 5B] shall, on conviction, be punished with imprisonment for a term which may extend to [five years], or with fine which may extend to [ten thousand rupees], or with both: [Provided that except for special and adequate reasons to be recorded in the judgement of the court such imprisonment shall not be of less than six months and such fine shall not be less than one thousand rupees.]

9A. Penalty for contravention of Sections 5C, 5D or 6:

Whoever contravenes the provisions of sections 5C, 5D or 6 shall, on conviction, be punished with imprisonment for a term which may extend to one year or fine which may extend to two thousand rupees.”

12. The interpretation basically involves an act of discovering the true meaning of the language which has been used

in the statute. The purpose behind interpretation is to clarify the meaning of the words used in the statute, which might not be that clear. The first rule of interpretation is that the words used in the text are to be given or interpreted in their nature or ordinary meaning.

13. On the aforesaid touchstone, from the reading of Provision of Section 5-(A), it is clear that it prohibits transfer within the State or export outside the State cow, bull or bullock for the purpose of its slaughter, in contravention of the provisions of the Act of 1976.

Section 5-(B) prohibits purchase, sell or otherwise dispose of or offer to purchase, sell or otherwise dispose of any cow, bull or bullock for slaughter.

Section 5-(C) prohibits possession of flesh of any cow, bull or bullock slaughtered in contravention of the provision of the Act, 1976.

14. In the present matter, the allegations are that the applicant was carrying 187 skins of cows in the van. There are no allegations that the applicant was transporting or exporting cow, bull or bullock for the purpose of slaughter in contravention of provision of the Act, 1976. There are also no allegations that the applicant

purchased or sold or otherwise disposed of or offered to purchase or sell or dispose of cow, bull or bullock for slaughter. Thus, no offence constitutes against the applicant either under Section 5-(A) or 5-(B) of the Act of 1976.

15. As far as Section 5-(C) is concerned the expression used in the said Section is 'flesh of any cow bull or bullock slaughtered'. It is therefore, necessary to consider whether 'flesh' includes the skin.

16. The flesh is the soft substance, consisting of muscle and fat, that is found between the skin and bones of a human or an animal. The main difference between 'skin' and 'flesh' is that the 'skin' is a soft outer covering organ of vertebrates and the 'flesh' is a soft substance of an animal body that consists of muscle and fat.

17. Having considered the difference between 'skin' and 'flesh' and having considered the basic rule of interpretation, it can not be said that the word 'flesh' used under Section 5-(C) of the Act, 1976, covers the skin of animal. The legislature has expressed its intention through the word 'flesh' used under Section 5-(C) of the Act, 1976 and therefore, the said word needs to be interpreted accordingly, as per the intention of the legislature.

18. This Court, in Criminal Application No.364 of 2018, ***Shaikh Najir Shaikh Umar Vs. The State of Maharashtra and another***, decided on 21.06.2018, by relying upon the judgment in the case of ***Israrul Haq Nisar Ahmed and Ors. Vs. State of Maharashtra and Ors.*** and ***Abdul Hafeez Vs. State of Maharashtra***, has held thus:

“4)The proceeding is filed on the ground that there was no contravention of provisions of the aforesaid special enactment. The learned counsel for the applicant took this Court through relevant provisions of the Act and submitted that the raw skin of cattle is not covered under the aforesaid Act. Learned counsel for the applicant submitted that this Court had occasion to consider similar case and this Court has held that the skin is not covered under the provisions of aforesaid Act. Copies of the decisions given by this Court in Criminal Application No.148/2017 (Abdul Hafeez v. State of Maharashtra) at Nagpur Bench and Criminal Application No.664/2016 (Israrul Haq v. State of Maharashtra) at Nagpur Bench are produced. This Court has considered the provisions of the Act including the aforesaid provisions and this Court has held that for the possession of skin of dead animals there is no prohibition. By making such observations the F.I.R. was quashed in those proceedings. This Court holds that no different view is possible in the present matter also. So, the application is allowed. Relief is granted in terms of prayer clause (B). Rule is made absolute in those terms.”

19. From the plane reading of the provisions refereed above and the judgment of this Court in the case of ***Shaikh Najir Shaikh Umar Vs. The State of Maharashtra and another*** (supra), there is no doubt that the skin is not covered under the provisions of the Act of Maharashtra Animal Preservation Act, 1976. Thus, there is no prohibition for the possession of skin of dead animals and in absence of such prohibition, we have of a convinced view that no offence under Section 5-(A), 5-(B), 5-(C) attracts in the present matter and consequently Section 9 and 9-(A) also would not attract.

20. Moreover, in absence of any statutory provision, which prohibits possession of skin of a dead animal, even if, any circular or notification or order has been issued by the State Government, prohibiting possession of skin, such circular, notification or order which has no statutory force will not prevail over the provisions of the statute and to that extent, it would be in contravention with the statute. Thus, the contravention of any such notification or circular or order as regards possession of skin will not attract Section 188 of the Indian Penal Code.

21. In view of the aforesaid discussion, as no offence constitutes against the applicant as alleged, we are of the opinion that the present case is a fit case to exercise jurisdiction under

Section 482 of the Code of Criminal Procedure for quashment of the First Information Report in question. Accordingly, we pass the following order:

ORDER

- i) The Criminal Application is allowed.
- ii) The First Information Report No.265 of 2018, registered with Police Station, Shivaji Nagar, Khamgaon, District Buldhana, for the offences punishable under Section 5-(A), 5-(B), 5-(C), 9, 9-(A) of the Maharashtra Animal Preservation Act, read with Section 188 of the Indian Penal Code and Section 105, 117 of the Bombay Police Act, is hereby quashed and set aside.
- iii) The application is disposed of, no order as to costs.

JUDGE

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