
Abdul Hafeez son of Shaikh Kareem Vs State of Maharashtra**192 of 2017**

Court: BOMBAY HIGH COURT**Date of Decision:** April 4, 2017**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 457](#) - Procedure by police upon seizure of property#[Indian Penal Code, 1860](#), [Section 420](#), [Section 468](#),

Hon'ble Judges: S. B. Shukre**Bench:** SINGLE BENCH**Advocate:** Laique Hussain, J. Y. Ghurde**Final Decision:** Allowed

Judgement

1. Rule. Heard forthwith by consent of parties.

2. Petitioner is one of the accused persons against whom Crime No. 4500/2016 has been registered at Jaripatka Police Station for the offences

punishable under Sections 255, 420, 468 and 429 of the Indian Penal Code and Section 5, punishable under Section 9 of the Maharashtra Animal

Preservation Act.

3. The allegations are that this petitioner was found to be in possession of 4200 hides and skins of dead animals and 1500 tins of processed fat. All

these articles have been seized by the police. As major part of the investigation was over, this applicant filed an application under Section 457 Cr.

P. C. for release of those articles in his custody on furnishing supratnama on the ground that no offence was made out against him and in any case,

the seized articles were perishable. The application was, however, rejected by the learned Magistrate by an order passed on 14th February 2017

on the ground that there was prima facie case made out against the petitioner and that the investigation was still in progress. It is this order which is

under challenge in the present writ petition.

4. So far as the considerations for granting of interim custody of the seized articles under Section 457 Cr. P. C. are concerned, I must say, the

Court must be mindful of the factors such as the nature of allegations; nature of seized articles - whether perishable or not; likelihood of misuse of

the goods while in custody of the applicant; the prospects of the goods being confiscated to the State on conviction and so on and so forth.

Keeping in mind these factors, the case of the petitioner would have to be considered.

5. The investigating agency has not specified as to which particular sub-section of Section 5 of the Maharashtra Animals Preservation Act has been

prima facie made out in the instant case. The other offences which are alleged against the petitioner are under Sections 255, 420, 468 and 429 of

the Indian Penal Code. But, given their nature, they would not be of any relevance for the purpose of determining the point of release of the seized

articles to the applicant and it is mainly the offence under Section 5 of the said Act which could be relevant for this purpose. Since particular sub-

section has not been mentioned in the First Information Report, this Court would be required to go through the provisions of Section 5 of the said

Act and on carrying out such an exercise, I find that at the most an offence as prescribed under Section 5D of the said Act could be slapped

against this applicant. It lays down that no person shall have in his possession flesh of any cow, bull or bullock slaughtered outside the State of

Maharashtra. But, as pointed out by learned counsel for the petitioner, this Section has been struck down from the Statute Book by the Division

Bench of this Court as unconstitutional in the bunch of cases starting with the case of Sheikh Zahid Mukhtar v. The State of Maharashtra (WP No

. 1314 of 2015), decided on 6th May 2016. So, no offence could have been registered against this applicant under Section 5D of the said Act and

if this is so, I do not think that the interim custody of these articles to this applicant could be denied on any legal ground.

6. Apart from what is stated above, I must say that I am in disagreement with the submission of learned Additional Public Prosecutor that the

seized articles are by their very nature, perishable. Of course, there is a report submitted by the State Animal Husbandry Department which lays

down that these articles are not perishable. However, it seems that the Animal Husbandry Department is totally unmindful of the observations of

the Hon'ble Apex in M. C. Mehta v. Union of India reported in 1993 Supp (1) SCC 434, which are based on a study report, that hides and skins

are obtained from either slaughtered or dead animals. The raw hides and skins thus obtained are known to be in the Sreen Statea. These are easily

putrescible and if no proper precautions are taken they would easily rot and decay. In the present case, it is not known whether the seized articles

consisting of animal skins are the processed one or in raw form. Even if they are processed ones, if proper precautions are not taken, they would

be subject to natural decay and would also be amenable to being consumed by ants, teats and other similar insects. Therefore, it is better that they

are released into the custody of proper person which the applicant is, as early as possible.

7. All these aspects have not been considered by the trial Court in any manner and, therefore, I find that the impugned order being against the

settled principles of law, calls for interference by this Court in exercise of its extraordinary writ jurisdiction.

8. Accordingly, writ petition is allowed. Impugned order is quashed and set aside. The application filed by the petitioner under Section 457 Cr. P.

C. is allowed. The seized articles be released by way of interim custody to the applicant on his furnishing a supratnama of Rs. 2 lacs on the

condition that he shall preserve the articles carefully and shall produce the same before the trial Court as and when required. The order of

supratnama shall be valid subject to final outcome of the trial.

Rule is made absolute in the above terms.