A MULTANI HANIFBHAI KALUBHAI

v.

STATE OF GUJARAT & ANR.

(Criminal Appeal No. 219 of 2013)

FEBRUARY 01, 2013

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[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

Gujarat Animal Preservation (Amendment) Act, 2011 – ss.6B(3) and 6A(3) – Gujarat Animal Preservation Act, 1954 C *– s.5(1A) – Truck of appellant seized by the police for transporting 28 buffalo calves – Application filed by appellant u/s.451 CrPC for release of the truck – Dismissed on the ground that as per s.6B(3) of the Gujarat Animal Preservation (Amendment) Act, 2011, the truck could not be released* D *before the expiry of six months from the date of its seizure – Propriety – Held: Sub-section (3) of s.6A of the Gujarat Animal Preservation (Amendment) Act, 2011 stipulates that whenever any person transports in contravention of provisions of Sub-section (1), any animal as specified in s.5(1A) of the Gujarat* E *Animal Preservation Act, 1954, such vehicle or any conveyance used in transporting such animal, shall be liable to be seized by the authority/officer concerned – Sub-section 1A of s.5 of the Gujarat Animal Preservation Act, 1954 stipulates a list of prohibited animals, viz. (a) a cow; (b) the* F *calf of a cow, whether male or female and if male, whether castrated or not; (c) a bull and (d) a bullock – In the case at hand, the vehicle impounded by the respondents was transporting 'buffalo calves' which does not fall under the list of prohibited animals mentioned in sub-section 1A of s.5 –* G *Thus, s.6B(3) of the Gujarat Animal Preservation (Amendment) Act, 2011 could not be invoked in order to deny the claim of release of the vehicle – In view of the same, it is not advisable to keep the seized vehicle in the police station in open condition which is prone to natural decay on account*

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of weather conditions – Further, it is of no use to keep the seized vehicle in the police station for a long period – Respondents accordingly directed to release the truck – Penal Code, 1860 – s.451.

The truck of the appellant was seized by the police for transporting 28 buffalo calves. The appellant filed application under Section 451 CrPC for release of the truck. The application was rejected by the Judicial Magistrate on the ground that as per Section 6B(3) of the Gujarat Animal Preservation (Amendment) Act, 2011, the seized truck could not be released before the expiry of six months from the date of its seizure. The order was upheld by the revisional court as also by the High Court, and therefore the instant appeal.

Allowing the appeal, the Court

HELD: 1. Sub section (3) of Section 6A of the Gujarat Animal Preservation (Amendment) Act, 2011 stipulates that whenever any person transports in contravention of provisions of Sub-section (1), any animal as specified in Section 5(1A) of the Gujarat Animal Preservation Act, 1954, such vehicle or any conveyance used in transporting such animal, shall be liable to be seized by the authority/ officer concerned. In the case at hand, the vehicle which has been impounded by the respondents was not carrying the category of animals which has been laid down under Section 5(1A). The vehicle in question was transporting the 'buffalo calves'. [Paras 8, 9] [656-F, G-H; 657-A]

2. The courts below including the High Court grossly erred by overlooking the correct position of law as stated in Section 6A(3) of the Gujarat Animal Preservation (Amendment) Act, 2011. Sub-section 1A of Section 5 of the Gujarat Animal Preservation Act, 1954 stipulates the schedule of animals which are as under: (a) a cow; (b) the calf of a cow, whether male or female and if male,

A whether castrated or not; (c) a bull; (d) a bullock. It is clear from the above description of animals that the buffalo calf does not fall under the list of prohibited animals. Thus, Section 6B(3) of the Gujarat Animal Preservation (Amendment) Act, 2011 cannot be invoked
B in order to deny the claim of release of the vehicle before the expiry of six months from the date of its seizure. [Para 11] [657-E-H; 658-A]

3. Section 5(1) of the Gujarat Animal Preservation Act, 1954 prohibits slaughtering of any animal without a
C certificate in writing from the Competent Authority that the animal is fit for slaughter. In other words, without a certificate from competent authority, no animal could be slaughtered. Sub-section (1A) to Section 5 mandates that no certificate under sub-section (1) shall be granted in
D respect of the abovementioned animals. In the said section, admittedly, 'buffalo calf' has not been mentioned as prohibited animal. In such circumstance, the prohibition relating to release of vehicle before a period of six months as mentioned in Section 6B(3) of the
E Amendment Act is not applicable since the appellant was transporting 28 buffalo calves only. In view of the same, it is not advisable to keep the seized vehicle in the police station in open condition which is prone to natural decay on account of weather conditions. In addition to the
F above interpretation, whatever be the situation, it is of no use to keep the seized vehicle in the police station for a long period. The respondents are accordingly directed to release the vehicle - Eicher Truck forthwith. [Paras 12, 13] [658-B-E, G]

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 219 of 2013.

From the Judgment & Order dated 25.09.2012 of the High Court of Gujarat at Ahmedabad in Special Criminal Application
H No. 2755 of 2012.

O.P. Bhadani, Rakesh Kumar Singh, Ashok Anand for the Appellant. A

Shomik Sanjanwala, Hemantika Wahi, Nandini Gupta for the Respondents.

The Judgment of the Court was delivered by B

P. SATHASIVAM,J. 1. Leave granted.

2. This appeal is directed against the judgment and order dated 25.09.2012 passed by the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 2755 of 2012 whereby the High Court dismissed the application filed by the appellant herein. C

3. **Brief facts:** D

(a) The vehicle of the appellant, Eicher Truck, was seized by the police, which was found to be transporting 28 buffalo calves. The First Information Report (in short "FIR") was registered against the appellant on 02.08.2012 for the offences punishable under Sections 279 and 114 of the Indian Penal Code, 1860 (in short "IPC"), Sections 184, 177 and 192 of the Motor Vehicles Act, 1988 (in short "M.V. Act"), Sections 5, 6, 8 and 10 of the Gujarat Animal Preservation Act, 1954 (hereinafter referred to as "the Principal Act") and Section 11 of the Prevention of Cruelty to Animals Act, 1960. E F

(b) The appellant filed an application being Criminal Misc. Application No. 9 of 2012 under Section 451 of the Code of Criminal Procedure, 1973 (in short "the Code") for the release of his Eicher truck before the Judicial Magistrate, First Class, Gandhinagar, Gujarat. Vide order dated 24.08.2012, the Judicial Magistrate rejected the said application on the ground that as per the provisions of Section 6B(3) of the Gujarat Animal Preservation (Amendment) Act, 2011 (hereinafter referred to as "the Amendment Act"), the vehicle shall not be released before the expiry of six months from the date of its seizure. G H

A (c) Aggrieved by the said order, the appellant filed an application being Criminal Revision Application No. 73 of 2012 before the District & Sessions Judge, Gandhinagar, which was also rejected on 01.09.2012

B (d) Dissatisfied with the order of the District & Sessions Judge, Gandhinagar, the appellant preferred Special Criminal Application No. 2755 of 2012 before the High Court. By impugned order dated 25.09.2012, the High Court dismissed the said application.

C (e) Challenging the said order, the appellant has filed this appeal by way of special leave.

4. Heard Mr. O.P. Bhadani, learned counsel for the appellant and Mr. Shomik Sanjanwala, learned counsel for the D respondents.

5. The only point for consideration in this appeal is whether the Courts below are justified in rejecting the prayer of the appellant as per the provisions of the amended Act?

E 6. The Bombay Animal Preservation Act, 1954 (in short "the Bombay Act"), which was enacted for the preservation of animals suitable for milch, breeding or for agricultural purposes was made applicable to the State of Gujarat. The following provisions of the said Act are relevant for the case in hand:

F **"Section 5 - Prohibition against slaughter without certificate from Competent Authority.** (1) Notwithstanding any law for the time being in force or any usage to the contrary, no person shall slaughter or cause to be slaughtered any animal unless, he has obtained in G respect of such animal a certificate in writing from the Competent Authority appointed for the area that the animal is fit for slaughter.

(1A) No certificate under sub-section (1) shall be granted H in respect of—

(a) a cow;

(b) the calf of a cow, whether male or female and if male, whether castrated or not;

(c) a bull;

(d) a bullock;

(2) In respect of an animal to which sub-section (IA) does not apply, no certificate shall be granted under sub-section (1) if in the opinion of the Competent Authority-

(a) the animal, whether male or female, is useful or likely to become useful for the purpose of draught or any kind of agricultural operations;

(b) the animal if male, is useful or likely to become useful for the purpose of breeding;

(c) the animal, if female, is useful or likely to become useful for the purpose of giving milk or bearing offspring.

(3) Nothing in this section shall apply to—

(a) the slaughter of any of the following animals for such bona fide religious purposes, as may be prescribed, namely :—

(i) any animal above the age of fifteen years other than a cow, bull or bullock.

(ii) a bull above the age of fifteen years

(iii) a bullock above the age of fifteen years.

(b) the slaughter of any animal not being a cow or a calf of a cow, bull or bullock, on such religious days as may be prescribed :

A Provided that a certificate in writing for the slaughter referred to in clause (a) or (b) has been obtained from the competent authority.

(4) The State Government may, at any time for the purpose B of satisfying itself as to the legality or propriety of any order passed by a Competent Authority granting or refusing to grant any certificate under this section, call for and examine the records of the case and may pass such order in reference thereto as it thinks fit.

C (5) A certificate under this section shall be granted in such form and on payment of such fee as may be prescribed.

(6) Subject to the provisions of sub-section (4) any order passed by the Competent Authority granting or refusing to D grant a certificate, and any order passed by the State Government under sub-section (4) shall be final and shall not be called in question in any Court."

In the Gujarat Animal Preservation Act, 1954, after Section E 6, the following new sections were inserted:-

"6A. (1) No person shall transport or offer for transport or cause to be transported any animal specified in sub-section (1A) of section 5 from any place within the State to any another place within the State for the purpose of its F slaughter in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be so slaughtered:

Provided that a person shall be deemed to be transporting such animal for the purpose of slaughter G unless contrary is proved thereto to the satisfaction of the concerned authority or officer by such person or he has obtained a permit under sub-section (2) for transporting animal for bona fide agricultural or animal husbandry purpose from such authority or officer as the State H Government may appoint in this behalf.

(2) (a) A person may make an application in the prescribed form to the authority or officer referred to in sub-section (1) for grant of permit in writing for transportation of any animal specified in sub-section (1A) of section 5 from any place within the State to any another place within the State. A B

(b) If, on receipt of any such application for grant of permit, such authority is of the opinion that grant of permit shall not be detrimental to the object of the Act, it may grant permit in such form and on payment of such fee as may be prescribed and subject to such conditions as it may think fit to impose in accordance with such rules as may be prescribed. C

(3) Whenever any person transports or causes to be transported in contravention of provisions of sub-section (1) any animal as specified in sub-section (1A) of section 5, such vehicle or any conveyance used in transporting such animal along with such animal shall be liable to be seized by such authority or officer as the State Government may appoint in this behalf. D E

(4) The vehicle or conveyance so seized under sub-section (3) shall not be released by the order of the court on bond or surety before expiry of six months from the date of such seizure or till the final judgment or the court, whichever is earlier. F

6B. (1) No person shall directly or indirectly sell, keep, store, transport, offer or expose for sell or bury beef or beef products in any form. G

(2) Whenever any person transports or causes to be transported the beef or beef products, such vehicle or any conveyance used in transporting such beef H

A or beef products along with such beef or beef products shall be liable to be seized by such authority or officer as the State Government may appoint in this behalf.

B (3) The vehicle or conveyance so seized under sub-section (2) shall not be released by the order of the court on bond or surety before the expiry of six months from the date of such seizure or till the final judgment of the court, whichever is earlier.

C Explanation – For the purpose of this section "beef" means flesh of any animal specified in sub-section (1A) of section 5, in any form."

7. Learned counsel for the appellant submitted that the D provisions of the Amended Act clearly mention the applicability of Section 6A(3) to the class of animals as given in Section 5 (1A) of the Principal Act, viz., cow, the calf of a cow, bull and bullock, however, this section nowhere mentions 'buffalo calves' which have been found in the seized vehicle. According to him, E in the absence of prohibited categories of animals as aforesaid, invoking of Section 6B(3) for not releasing the vehicle of the appellant before the expiry of six months from the date of seizure is not sustainable in law.

8. In context of the above, it is relevant to note that on F 12.10.2011, an amendment was brought in the Principal Act which was called the Gujarat Animal Preservation (Amendment) Act, 2011. By virtue of this Amendment Act, a new Section 6A was brought in the Principal Act. We have already extracted Section 6A of the Amended Act.

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9. Sub-section (3) of Section 6A of the Amended Act stipulates that whenever any person transports in contravention of provisions of Sub-section (1), any animal as specified in Section 5(1A), such vehicle or any conveyance used in H transporting such animal, shall be liable to be seized by the

authority/officer concerned. It is brought to our notice that the vehicle which has been impounded by the respondents was not carrying the category of animals which has been laid down under Section 5(1A). The vehicle in question was transporting the 'buffalo calves'.

10. A perusal of the FIR shows that one Sajidkhan Pirmohemmed Multani, driver of the vehicle and Rajubhai Kalubhai Multani had been passing from Sector 30 of Gandhinagar, Gujarat. The police tried to stop the said vehicle but when they did not stop, they followed and intercepted the same. On search being made inside the vehicle, they found 28 buffalo calves. Respondent No.2 herein arrested both the persons and seized Eicher Truck bearing Registration No. GJ-9-Z-3801, which is the vehicle in question.

11. The courts below rejected the application filed by the appellant for release of the vehicle under Section 451 of the Code on the ground that as per the provisions of Section 6B(3) of the Amendment Act, the vehicle of the appellant shall not be released before the expiry of six months from the date of its seizure. On going through the relevant provisions, we are of the view that the Courts below including the High Court grossly erred by overlooking the correct position of law as stated in Section 6A(3). Sub-section 1A of Section 5 stipulates the schedule of animals which are as under:

(a) a cow;

(b) the calf of a cow, whether male or female and if male, whether castrated or not;

(c) a bull;

(d) a bullock.

It is clear from the above description of animals that the buffalo calf does not fall under the list of prohibited animals. We have already noted and it is not in dispute that the vehicle in question

A was carrying 28 buffalo calves. Thus, Section 6B(3) of the Amendment Act cannot be invoked in order to deny the claim of release of the vehicle before the expiry of six months from the date of its seizure.

B 12. It is true that Section 5(1) prohibits slaughtering of any animal without a certificate in writing from the Competent Authority that the animal is fit for slaughter. In other words, without a certificate from competent authority, no animal could be slaughtered. Sub-section (1A) to Section 5 mandates that no certificate under sub-section (1) shall be granted in respect C of the abovementioned animals. In the said section, admittedly, 'buffalo calf' has not been mentioned as prohibited animal. In such circumstance, the prohibition relating to release of vehicle before a period of six months as mentioned in Section 6B(3) of the Amendment Act is not applicable since the appellant was D transporting 28 buffalo calves only. In view of the same, it is not advisable to keep the seized vehicle in the police station in open condition which is prone to natural decay on account of weather conditions. In addition to the above interpretation, whatever be the situation, it is of no use to keep the seized E vehicle in the police station for a long period.

13. In the light of the above conclusion, order dated 24.08.2012, passed by the Judicial Magistrate, Gandhinagar in Criminal Misc. Application No. 9 of 2012, order dated F 01.09.2012, passed by the District and Sessions Judge, Gandhinagar in Criminal Revision Application No. 73 of 2012 and order dated 25.09.2012, passed by the High Court in Special Criminal Application No. 2755 of 2012 are set aside and the respondents are directed to release the vehicle - Eicher G Truck bearing Regn. No. GJ-9-Z-3801 forthwith.

14. The appeal is allowed.

B.B.B. Appeal allowed.