

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1859 OF 2022

1. Madhavan Vijayan Pillai,
Age:- 66 Years, Occ: Retired,
R/at:- D-503, Plot No. :- 1,
Om Shiv Darshan CHS,
Sec. 15, CBD Belapur,
Navi Mumbai.
2. Mr. Ashwani Anand,
Age:- 63 Years, Occ:- Service,
R/at:- Flat No. A 603, Plot No. 1,
Om Shiv Darshan CHS, Sec 15,
CBD Belapur, Navi Mumbai.
3. Dineshkumar Vishwakarma,
Age:- 63 Years, Occ:- Consultant,
R/at:- C-602, Plot No. 1,
Om Shiv Darshan CHS, Sec 15,
CBD Belapur, Navi Mumbai.
4. Mrs. Sunita Sharma,
Age:- 48Years, Occ:- Housewife,
R/at:- Flat No. 702, Plot No. 1,
Om Shiv Darshan CHS, Sec 15,
CBD Belapur, Navi Mumbai.
5. Meghana Sachin Gawde,
Age:- 36 Years, Occ:- Society
Manager,
R/at:- Vinayak Avadh CHS,
Flat No. 601, Plot No. 1, Sec 15,
Karanjade, Navi Mumbai.
6. Mr. Karn Raghunath Gedam,
Age:- 24 Years, Occ:- Security
Supervisor,
R/at:- Room No. 970, Chaya Circle,
Sector 14, Diwale Gaon,
CBD Belapur, Navi Mumbai.

7. Mr. Pankaj Mishra,
 Age:- 19 Years, Occ:- Security
 Guard,
 R/at:- Room No. 202, Diwale Gaon,
 Sector 14, Fish Market,
 Near Sanjivani Hospital,
 CBD Belapur, Navi Mumbai.

... **Petitioners**

V/s.

1. State of Maharashtra.
 At the instance of N.R.I.
 Sagari Police Station, Navi Mumbai.

2. Mr. Kamalchand Shriram Gupta,
 Age:- 32 Years, Occ:- Employee,
 R/at:- New Sahyadri Nagar Slum,
 New Medal High School,
 Vashi Naka, Navi Mumbai.

3. Senior Inspector of Police,
 NRI Coastal Police Station,
 Belapur, Navi Mumbai.

4. Deputy Commissioner of Police,
 Zone 1, 1st floor, Plot No. 180,
 Sector 19C, APMC Market,
 Near YJ Petrol Pump,
 Vashi, Navi Mumbai.

5. The Commissioner of Police
 Opposite RBI, Sector 10,
 CBD Belapur, Navi Mumbai.

... **Respondents**

Mr. Kartik Garg a/w Ms. Aashka Shell for the Petitioners.

Ms. Megha Bajoria, APP for the Respondent-State.

Ms. Sonam Pandey a/w Ms. Shifa Ansari i/by Mr. Jay Daryani for the
 Respondent No. 2.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 7th AUGUST 2026.

PRONOUNCED ON : 12th OCTOBER 2026.

JUDGMENT :-

1) By the present petition filed under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure (for short, “CrPC”), the Petitioners seek to quash FIR bearing No. 67 of 2022 dated 7th March 2022 registered with the N.R.I Sagari Police Station, for the offence punishable under Sections 149 and 341 of the Indian Penal Code (for short, “IPC”) and the resultant chargesheet bearing SCC No. 3720 of 2022 pending before the learned JMFC, Vashi, Navi Mumbai.

2) By an Order dated 28th July 2023, this Court had issued Rule and stayed all further proceedings in the matter. During the pendency of the petition, the parties have made attempts to settle the matter, which have not succeeded. The Petition was heard finally with the consent of the parties.

3) Heard Mr. Kartik Garg, learned Advocate for the Petitioners, Ms. Megha Bajoria, APP for the Respondent-State and Ms. Sonam Pandey, learned Advocate for the Respondent No. 2.

4) Briefly put the allegations in the FIR are as under :-

4.1) The FIR has been filed by Respondent No. 2 against the Petitioners under Sections 149 and 341 of the IPC. It is alleged that, Respondent No. 2 is an employee with one Mr. Vinay Gupta, who owns shops

Nos. 1 to 4, 4A, 5 to 16 in Om Shiv Darshan Co-operative Housing Society, Belapur,(the said society).

4.2) Mr. Vinay Gupta, instructed Respondent No. 2 to get the new water connection installed. In order to put a new water connection in the said shops, Respondent No. 2, along with three plumbers, went to the said Society on 15th January 2022 at about 11.00 a.m., when they were restrained at the gate by the watchman of the Society. They were informed by the watchman (Petitioner No. 7) that, they were being restrained at the directions of the Society members/Petitioner Nos. 1 to 4.

4.3) Respondent No. 2 and the others then entered the Society from the different entrance and, started the work of installing new connection/pipeline work. At that time, the Petitioner No. 7, the manager (Petitioner No. 5) and other members/Petitioners gathered there and stopped the work. It was insisted that permission of the Society be obtained. The entrance from which Respondent No. 2 and other people had entered was locked. The work could not be done.

4.4) On 5th March 2022, Respondent No. 2, along with plumbers, again went to the Society for carrying out the plumbing work; however, they were again stopped by the watchman and were not allowed to enter the Society. On this basis, FIR came to be registered. Initially, the FIR was registered against Petitioner Nos. 4 to 7. Subsequently, Petitioner Nos. 1 to 3 were also implicated in the offence as accused.

5) Mr. Kartik Garg, learned Advocate for the Petitioners submitted that :-

5.1) The FIR is filed belatedly and is a clear afterthought. It is an arm-twisting tactic and an abuse of the process of law. The first alleged attempt was made on 15th January 2022, the FIR is filed only on 7th March 2022. The Respondent No. 2 and others visited the society on 5th March 2022, only to create an explanation for the delay. No offence as alleged in the FIR is made out. The FIR is an offshoot of a purely a civil dispute between member Mr. Vinay Gupta and the Society, which has been converted into criminal proceedings to pressurize and harass the members of the Society.

5.2) There are various disputes between Mr. Vinay Gupta, i.e. the employer of Respondent No. 2, and the Society members/Society. Mr. Vinay Gupta, despite being a promoter member of the Society, has failed to pay the maintenance charges of Rs. 34,16,323/-, carried out various unauthorized and illegal activities activities such as encroachments, illegal constructions and unauthorized alterations, which are detrimental to the Society and its members.

5.3) Mr. Vinay Gupta had not paid the Society maintenance since the year 2009 and also not made payments for repairs undertaken by the Society. In August 2009, Mr. Vinay Gupta encroached part of the common driveway leading to 'A' and 'B' Wing, constructed a toilet inside the 'B' Wing area and blocked 'A' Wing fire gate and fire exit on the first-floor stilt area by

constructing a wall on the iron gate. The said acts have severely restricted 'A' Wing members access to the first-floor common area and driveways.

5.4) Mr. Vinay Gupta had constructed walls around the front common walls around 'B' Wing without permission of the Society. Various other illegal encroachments, including but not limited to unauthorised installations on the walls and common spaces, removing parapet grills of the Society, dumping of debris and waste in the common space, etc., have been done by Mr. Vinay Gupta. Common areas like the staircase, lift, etc. in the 'B' Wing remained encroached and barred for the other Society members and residents' access.

5.5) In September 2019, the Society decided to carry out essential building repairs, including painting, installation of fire-fighting systems, obtaining comprehensive building insurance and procedures for deemed conveyance. Due to the encroachment and installations by Mr. Vinay Gupta, it was not possible for the Society to carry out the work. During the Society repair work, resistance was faced by the Society members from Mr. Vinay Gupta and his employees, and complaints in respect thereof were made to the concerned authority.

5.6) Between June and November 2020, various emails were written to Mr. Vinay Gupta requesting him to remove the encroachment and carry out essential repairs. Due to the said emails, Mr. Vinay Gupta has started making false and frivolous complaints to NRI Sagari Police Station.

5.7) In the present case, Respondent No. 2 and his persons had not

followed the specific security protocol for entering the Society premises through the Society's MyGate app. The Officer of the NRI Sagari Police Station, Mr. Samir Chaskar, has intimidated the office bearers of the Society and directed them to compromise and settle all issues with Mr. Vinay Gupta. The criminal proceeding is malafide and filed with oblique motive to pressurize and harass the Petitioners.

6) Ms. Sonam Pandey, learned Advocate for the Respondent No. 2 submitted that, perusal of the FIR would indicate that, the offence has been clearly made out. Respondent No. 2 and the other 3 people were restrained from carrying out their work. The offence of wrongful restraint has been clearly made out, as various attempts to enter the Society premises and carry out the work of the water pipeline have been obstructed by the Petitioners. Considering that the chargesheet has been filed, the Court cannot enter into the evidence and cannot conduct a mini-trial at this stage.

7) Ms. Megha Bajoria, the learned APP appearing for the state supported the arguments advanced by the advocate appearing for the Respondent No. 2.

8) Perused the entire record. Perusal of the allegations made in the FIR would indicate that, on 15th January 2022, Respondent No. 2 and other 3 persons (plumbers) wanted to enter the Society premises to install new water connections. It appears that, vide letter dated 7th January 2022, the Navi Mumbai Municipal Corporation had given permission to install new water

connection. It is alleged that, the water storage of the 'B' Wing is situated at the ground floor and, therefore, it was necessary to make a pipeline to release the water in the tank on the terrace. Therefore, it was necessary to do some work in respect of the said water pipeline.

9) On 15th January 2022, when they made an attempt to enter the Society, they were stopped by the watchman and informed that the Petitioners had instructed the watchman not to allow Respondent No. 2. Attempts were made by Respondent No. 2 and the other 3 persons to enter from another entrance of the B Wing. At that time, Petitioner Nos. 4 to 7 came there and restrained Respondent No. 2 and the other 3 persons from carrying out the work. It is the contention of Respondent No. 2 that, the Municipal Corporation has given permission and, as Mr. Vinay Gupta was not a member of the Society, there was no requirement of Society permission and NOC.

10) Perusal of the record would indicate that, on 15th January 2022, the Society had registered the complaint with the police authorities, informing that 4 unknown persons entered the Society without any permission. The acts of the unknown persons were dangerous for the Society residents i.e for the welfare, security and safety of the Society residents. It is contended by Petitioners that, the said 4 unknown persons tried to enter the Society's main gate without making any entry into the My Gate Security App by threatening and abusing the security guards. There was a breach of the society security protocol. The persons forcefully attempted to dig up the common parking area

around the B Wing ground-floor entrance encompassing the car parking areas. Such unauthorized conduct/digging without any approval or permission or an intimation to the Society Managing Committee was attempted to be stopped by the Petitioner Nos. 5 to 7 at the first instance.

11) Perusal of the chargesheet and material on record would indicate that, the watchman had only restricted entry of Respondent No. 2 and 3 unknown persons on the basis that, they had not complied with the security compliances/protocol of the society. Further, it is not in dispute that, no intimation was given to the Society nor was any prior permission obtained to enter and carry out the purported work. The Petitioner Nos. 1 to 4 are members of the Om Shiv Darshan Cooperative Housing Society. Considering the fact of the present matter, it is clear that Petitioner Nos. 5 to 7 were carrying out their duties and responsibilities as the manager, security guard/watchman of the Society. Petitioner Nos. 1 to 4, being members of the Society, were concerned in respect of the safety and security of the residents.

12) The FIR pertains to an allegation of Section 341 of the IPC i.e. the offence of wrongful restraint and Section 149, i.e the offence of unlawful assembly. Apart from the FIR, it is also necessary to take into consideration the other relevant attending facts and circumstances of the matter. In the present matter, there are various disputes and issues between the Society/members, and Mr. Vinay Gupta, the employer of Respondent No. 2. The dispute pertains to illegal constructions, encroachment, causing nuisance, non-payment of

maintenance and other issues between the Society/members and Mr. Vinay Gupta.

13) The allegation in the present matter pertains to an act of wrongful restraint and an offence of unlawful assembly. As far as the offence of wrongful restraint is concerned, a bare perusal of the allegation in the FIR does not make out a case for wrongful restraint. An offence of wrongful restraint is made out if a person is voluntarily obstructed so as to prevent the person from proceeding in any direction in which that person has a right to proceed. Wrongful restraint is defined in Section 339 of the IPC. The statute provides for an exception to the section which provides that, an obstruction of a private way over land and water which a person in good faith believes himself to have a lawful right to obstruct is not an offence within the meaning of the said Section. To make out an offence of wrongful restraint it is necessary that, there should be voluntary obstruction, the obstruction should be to prevent the person from proceeding in any direction and most importantly the person obstructed must have a right to proceed in the said direction. The contention of the Petitioners is that, the Respondent No. 2 and the 3 plumbers were stopped as they had not complied with the security protocol and to ensure safety/ security of the society, and its members. Further, no permission had been taken from the society to carry out any work. The NMMC permission which Respondent No. 2 has relied upon, itself provided that Mr. Vinay Gupta was required to contact and get the work of the

new water connection done from the junior engineer of concerned department. It is not the case of Respondent No. 2 that, the work was being carried out by the junior engineer of the concerned department or through his office.

14) Perusal of the record would prima facie indicate that, the Petitioner Nos. 5 to 7 obstructed Respondent No. 2 and other persons on the instructions of the members of the Society, more particularly Petitioner Nos. 1 to 4. They were only performing their duties. There is no other allegation. Considering the background, chequered history of litigation and dispute between the parties, it would appear that, the Petitioners had acted under a bona fide belief and based on their understanding of the dispute in respect of the membership of Respondent No. 2. More importantly, I have noted that, the record also indicates that, on 15th January 2022, the Petitioners, via email, filed a complaint with the police authorities complaining of security threats that certain unknown persons who were trying to enter the Society premises. It is the contention of the Petitioners that, Respondent No. 2 and the said persons were trying to enter the Society premises without following the security Compliances/protocol and procedure and without carrying out the necessary entries in the security app of the Society. In these background facts, the conduct of the Petitioner appears to be justifiable, bona fide and reasonable. It would be necessary to note here that, the exception to section 339 of the IPC provides that obstruction of a private way over land or water

which a person in good faith believes himself to have a lawful right to obstruct is not an offence within the meaning of section 339 of IPC. The exception will also be required to be seen in the facts of this case.

15) To consider as to whether a case for an offence under Section 341 IPC prima facie made out, it is necessary to consider the surrounding facts and circumstances such as:

(i) Prima facie there are disputes between the members of the society/ Petitioners and Respondent No. 2. The dispute pertains to the non-payment of maintenance of rupees 34,16,323/- and certain acts of encroachment, illegal modifications, and construction etc.

(ii) There is a dispute in respect of the status of Mr. Vinay Gupta as a member and in respect of the payment of the maintenance.

(iii) The first incident took place on 15th January 2022. The Petitioners immediately filed a complaint. The present FIR is in filed on 7th March 2022 alleging that even on 5th March 2022, he was obstructed. The present FIR appears to be afterthought.

(iv) Complaints were filed with the Commissioner of Police Navi Mumbai against Respondent No.2 as he was misbehaving with the members of the society and throwing garbage.

(v) Society letter dated 16th July 2021 requires Mr. Vinay Gupta to comply with the rules of society.

(vi) The society complaint dated 15th January, 2022 informs the

police that some unknown persons had attempted to enter the society premises. This was on the day on the alleged first incident.

16) On considering the totality of facts of the case, the pending dispute/litigations and most importantly the allegation in the FIR, it prima facie appears that no offence has been made out against the petitioners. The petitioners have only carried out their respective duties and responsibilities. The Respondent No. 2 and other 3 persons had not sought the permission of the society. Even the letter dated 7th January, 2022 required the Respondent No. 2 to approach the junior engineer for putting up the new water connection. What the petitioner Nos. 5 to 7 did were the part of the duties and the responsibilities, which cannot be structured and termed as an offence of wrongful restraint. The society members immediately on the same day lodged their complaint with the police authorities raising safety and security issues of the members due to the incident of 15th January 2022. The FIR is filed only on 7th March 2022 complaining of the incident of 15th January 2022 and 5th March 2022. In the background of the facts of this present case, the said conduct of the Respondent No. 2 appears to be malafide. There is no complaint in respect of the incident of 15th January 2022.

17) Considering the attending circumstances, the dispute and litigations, it is clear that Respondent No. 2 has attempted to convert a complete non-issue and security compliance into a criminal offence. Prima facie no offence of wrongful restraint is made out. The criminal prosecution is

nothing but a complete and thorough abuse of process of law.

18) In my considered view, the petitioners have made out a case to invoke the provisions of Section 482 of CrPC and seek quashing of the criminal prosecution. The FIR and the allegation even if accepted in the entirety do not make out a case for an offence under Section 341 of the IPC. It is therefore necessary and in the interest of justice to invoke the provisions of Section 482 of CrPC to secure the ends of justice and to prevent the abuse of process of law.

19) A useful reference can be made to the Judgment of the Hon'ble Supreme Court in the case of *State of Haryana V. Bhajan Lal* reported in 1992 *Suppl (1) SCC 335*, wherein the Hon'ble Supreme Court has observed as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the

accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

20) Considering the facts of the present case, I am of the view that category 1,5 and 7 of the case of *State of Haryana V. Bhajan lal (supra)* squarely applies to the facts of the present case. I am of the view that, it would neither be just or in the interest of justice to permit the present prosecution in respect thereof to continue.

21) In view of the above, the Petition is allowed in terms of prayer clause (a) and (aa). Rule is made absolute.

(RANJITSINHA RAJA BHONSALE, J.)

SAGAR
SANTOSH
MAGAR

Digitally signed by
SAGAR SANTOSH
MAGAR
Date: 2026.10.14
21:22:40 +0530