

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

**CRIMINAL WRIT PETITION NO. 878 OF 2026**

1. Vishal Kalsaria,  
Age- 44 years, Occ: Business,  
Having Address- 339A, 1<sup>st</sup> Floor  
Raghuleela Mall, Mahavir Nagar,  
Kandivali (W), Mumbai- 400 067.
2. Hatim Hussain Sakerwala,  
Age: 41 years, Occ: Businesss,  
Having address- S.No. 108/1/2, Behind  
Shree Kotiyar Katiyavadi Dhabha, Sasunavghar,  
Vasai, Palghar- 401 208.
3. Harish Vyas,  
Age 52 years, Occ: Business,  
Having address- Survey No.98/97,  
Plot No.505, NH-8, Sasunavghar,  
Vasai, Palghar- 401 208. ... Petitioners.

V/s.

1. The State of Maharashtra  
(At the instance of Naigaon Police Station). ... Respondent.

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Mr.Murtaza Najmi with Shambhu Jha, Farida Najmi, Nancy Kanungo, Afsar Ansari and Suraj Pandey for the Petitioners.  
Ms.Manisha Tidke, APP for the Respondent-State.

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**CORAM : RANJITSINHA RAJA BHONSALE , J.**  
**RESERVED ON : 6<sup>th</sup> AUGUST 2026.**  
**PRONOUNCED ON : 11<sup>th</sup> SEPTEMBER 2026.**

**JUDGMENT :**

1) By the present Petition filed under Articles 226 and 227 of the Constitution of India read with section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 (“BNSS” for short), the Petitioners seek quashing and setting aside of First Information Report (FIR) No.0287 of 2025 dated 7<sup>th</sup> June 2025 registered with Naigaon Police Station, District- Palghar for the offences punishable under sections 223, 270, 279 read with section 3(5) of Bharatiya Nyaya Sanhita, 2023 (“BNS” for short).

2) Perusal of the FIR indicates that the same has been filed under sections 223, 270, 279 read with section 3(5) of BNS on the complaint lodged by Village Revenue Officer (Gram Mahasul Adhikari). That, the Complainant, a Village Revenue Officer has lodged complaint regarding pollution by the Ready Mix Concrete (RMC) Plant in villages Sasunavghar and Maljipada. That, as certain complaints were received, the Complainant visited the RMC Plants and conducted an inspection. This was pursuant to the direction of the Tahasildar dated 22<sup>nd</sup> April 2025. That, the said RMC Plants are being run illegally and without licence.

2.1) That, on 25<sup>th</sup> April 2025 between 10.00 a.m. to 5.00 p.m., 28 RMC Plants and Asphalt Plants in the villages Sasunavghar and Maljipada were inspected. The FIR proceeds on the basis that either the said Plants did not have permission or the owners of the said Plants did not produce

permission before the said Officer. That, the said Plants were run without taking any permission and in violation of the Government orders. That, the said Plants are causing air and noise pollution. That, the water from the said Plants is discharged in natural source of water which is causing pollution of water which is otherwise used by the general public.

3) Mr. Murtaza Najmi, learned Advocate appearing for the Petitioners submits that,

3.1) The said RMC Plants were having all requisite licences, approvals and permissions from the competent Authorities such as MPCB, BV BMC etc.. That, the inspection was carried out pursuant to the directions of Tahasildar. That, on 13<sup>th</sup> May 2025, Enquiry Report was prepared recommending closure of RMC Plants and Asphalt Plants. That, the present FIR is based on the said report and observations therein.

3.2) That, pursuant to the notice dated 15<sup>th</sup> June 2025 issued by the Investigating Officer to the Petitioners under section 94 of the BNSS calling upon them to produce documents, the Petitioners have furnished all requisite and relevant documents along with their reply dated 25<sup>th</sup> June 2025 which includes necessary permissions, Licences and approvals obtained from various competent authorities.

3.3) As regards allegation in the FIR that the said RMC Plants are causing air and water pollution, he submits that Maharashtra Pollution

Control Board (“MPCB” for short) has been constituted by the State Government under section 4 of the Water (Prevention and Control of Pollution) Act, 1974. The MPCB functions as the State Board for air pollution control, and under sections 6 and 25 of the Environment (Protection) Act, 1986. The MPCB acts as the implementing and monitoring authority for various rules framed under the Act.

3.4) That, the allegations in the FIR are related to The Water (Prevention and Control of Pollution) Act, 1974 (“Water Act” for short) and Air (Prevention and Control of Pollution) Act, 1981 (“Air Act” for short). Both Acts clearly provide that, if there is violation of provisions of the said Acts, criminal case/ prosecution can be initiated only through Pollution Control Board or by an officer authorized by the Board. In the present case, as the same has not been done as the FIR in question is directly registered by the police. The registration of the FIR is completely illegal and unsustainable.

3.5) Section 223 of BNS cannot be the subject matter of the FIR because section 215(1)(a) of BNSS clearly provides that no court can take cognizance of the offence under sections 206 to 223 of BNS unless there is a written complaint from the public/government servant concerned whose order is violated. In the present case, there is no such written complaint.

3.6) Under section 4(2) of BNSS, the offence under any special law

shall be dealt in accordance with that special law and as per the procedure provided therein. That, both the Water Act and the Air Act are special enactments and provide for the procedure for initiating any prosecution or for taking cognizance of the prosecution. In view thereof, the general provisions of BNSS to register offence cannot be applied. That, the facts of the present case would clearly be covered by parameters 6 and 7 as enumerated by the Hon'ble Supreme Court in the case of *State of Haryana v. Bhajan Lal*.

4) Ms. Dhanalaxmi Krishnaiyer, learned A.P.P. appearing for the state submits that,

4.1) The action taken by the Village Revenue Officer is pursuant to the directions of Tahasildar and in accordance with law. That, no case of *mala fides* can be made out.

4.2) The inspection was carried out in respect of various RMC Plants and Asphalt Plants. Reading of the FIR would indicate that, offences under sections 223, 270, 279 and 3(5) of BNS are clearly made out.

4.3) Learned A.P.P., however, fairly submits that FIR has been filed by the concerned Village Revenue Officer and not in accordance with the provisions of the special Acts i.e. the Water Act and the Air Act.

5) Section 43 of the Air Act reads as under:

***“43. Cognizance of offences.—(1) No court shall take cognizance of any offence under this Act except on a***

*complaint made by—*

*(a) a Board or any officer authorised in this behalf by it; or*

*(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorised as aforesaid,*

*and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.*

*(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:*

*Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.*

5.1) Section 49 of the Water Act reads as under:

***“49. Cognizance of offences.—****(1) No court shall take cognizance of any offence under this Act except on a complaint made by—*

*(a) a Board or any officer authorised in this behalf by it; or*

*(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Board or officer authorised as aforesaid,*

*and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.*

*(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:*

*Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.*

*(3) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall*

*be lawful for any Judicial Magistrate of the first class or for any Metropolitan Magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act.”*

6) Perusal of the FIR would indicate that the offences alleged to have been committed are in respect of acts causing air or water pollution. Sections invoked by the said FIR are sections 223, 270, 279 and 3(5) of BNS. Section 223 pertains to disobedience of the order duly promulgated by a public servant. Section 215(1)(a) of BNSS states that, no court can take cognizance of any offence punishable under sections 206 to 223 of BNS except on written complaint from the public servant concerned or of some other public servant to whom he is administratively subordinate or of some other public servant who is authorised by the concerned public servant to do so. In the present case, the FIR does not clearly state as to which order was disobeyed. As such, as far as offence under section 223 of BNS is concerned, the FIR is unsustainable on this count.

7) Section 270 of BNS refers to public nuisance by a person who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity. Section 279 of BNS deals with fouling water of public spring or reservoir. FIR is filed

with the allegation that RMC Plants are being run without requisite permissions or licences from the competent authorities and the said Plants are causing air and water pollution in the said vicinity.

8) Section 2(e), (j) and (k) of the Water Act reads as under:

***“2. Definitions.- In this Act, unless the context otherwise requires,-***

*(a) to (d) .....*

*(e) “pollution” means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms;*

*(j) “stream” includes—*

- (i) river;*
- (ii) water course (whether flowing or for the time being dry);*
- (iii) inland water (whether natural or artificial);*
- (iv) sub-terranean waters;*
- (v) sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf;*

*(k) “trade effluent” includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any 3[industry, operation or process, or treatment and disposal system, other than domestic sewage.”*

9) Section 21 of the Water Act confers powers on the State Board

or any officer empowered by it in this behalf to take samples of effluents and also provides for the procedure to be followed. Section 22 thereof deals with the reports of the result of analysis on samples taken under section 21. Section 24 provides for prohibition on use of stream or well for disposal of polluting matter. Section 25 deals with restrictions on new outlets and new discharges. Section 33 thereof empowers the State Board to make an application to the Courts for restraining apprehended pollution of water in streams or wells. Section 41 provides for penalties in case of failure to comply with directions under sub-section (2) or sub-section (3) of section 20, or orders issued under clause (c) of sub-section (1) of section 32 or directions issued under sub-section (2) of section 33 or section 33A.

10) Most importantly section 49 of the water act provides for cognizance of offence under the said Act. The said section specifically provides that no Court shall take cognizance of any offence under the Act except on a complaint made by the Board or any officer authorised by it in that behalf or by any person who gives notice of not less than sixty days, in the prescribed manner, of the alleged offence and of his intention to make a complaint, to the Board or an officer authorised as aforesaid. It further provides that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under

the Act. Sub-section (2) of section 49 prescribes that where the complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person, unless the same, in the opinion of the Board, is against the public interest. A perusal of section 49 would indicate that the Water Act provides for the procedure and manner in which cognizance of the offence under the Act can be taken.

11) Similarly, air pollutant, air pollution and emission are defined in the Air Act as under:

***“2. Definitions.—In this Act, unless the context otherwise requires,—***

*(a) “air pollutant” means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;*

*(b) “air pollution” means the presence in the atmosphere of any air pollutant;*

.....

*(j) “emission” means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;”*

12) Section 19 of the Air Act confers powers on State Board to declare any area or areas within the State as air pollution control area or areas for the purposes of this Act. Section 22A speaks about power of the Board to make application to the Court for restraining a person from

causing air pollution. Section 24 of the Air Act gives power to the Board of entry and inspection. Section 27 thereof deals with the reports of analysis on samples taken under section 26. Section 31A empowers the State Board to give directions for restraining air pollution. Section 38 thereof provides for penalties in case of failure to comply with directions issued by the Board under section 31A. Section 43 of the Air Act deals with cognizance of offence under the Act in the same manner as is provided in section 49 of the Water Act as observed above.

13) In the case of *Swararaj @ Raj Shrikant Thackeray v. The State of Maharashtra*, Criminal Application No.670/2014 decided on 10<sup>th</sup> November 2023, the Division Bench of this court observed as under:

*“9. It would be apparent from perusal of Section 188 of IPC that, the provision is in two parts. The first part is that, there must be an order lawfully passed by a public servant, duly authorized in this regard directed towards a person directing him to abstain from a certain act or to take certain order with certain property in his possession or under his management. The order must be in the knowledge of the person to whom it is directed and the person who despite having the knowledge of the order disobeys such direction. The second part provides that, if such disobedience causes or tends to cause obstruction, annoyance or injury or such risk and if such disobedience causes or tends to cause danger to human life, health or safety or a riot or affray shall be punished with the sentence prescribed therein.*

*13. Section 195 of Cr.P.C. places an embargo on the power of the Court to take cognizance of an offence under Section 188 of IPC except on a complaint in writing of the public servant concerned. Complaint is defined under Section 2(d) of Cr.P.C. and police report has been defined under Section 2(r) of*

*Cr.PC. as under:*

*2. Definitions. –(d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.*

*(r) “police report” means a report forwarded by a police officer to a Magistrate under sub-section(2) of section 173;*

*14. Thus, from a reading of the definition of the word "Complaint", it would be crystal clear that, the complaint does not include a police report. Admittedly, in the present case, there is no written complaint filed by the public servant and provisions of Section 154 of Cr.PC have been invoked to lodge the first information report. Record indicates that, pursuant to the investigation, the final report was submitted under Section 173(2) of Cr.PC which is culminated in SCC No. 41/2011.*

*The meaning of the expression "taking cognisance" is no longer res integra and has been explained in various decisions to mean judicial application of the mind to the facts mentioned in the complaint with a view to taking further action. The scheme of the Cr.PC in regard to the cognisable cases is that, trial follows cognisance and cognisance is preceded by investigation. What is barred is taking of cognisance by the Magistrate except on a written complaint filed. The bar is absolute and the Court could not have taken cognisance except on written complaint.*

*15. The decisions relied upon by Mr. Nangre, learned counsel for the Applicant are squarely applicable to the facts of the present case. The decision of the Apex Court in the case of C. Muniappan & Ors. vs. State of T. ND. K. Rajendran & Ors. (supra) would also lend credence to the proposition that, the provision of Section 195 of Cr.PC. bars the Court from taking cognizance under Section 188 of IPC without a written complaint. That non compliance of it would vitiate the prosecution and all other consequential orders and in absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction."*

14) The Madras High Court in the case of *Jeevanandham v. State*, Cri.O.P. No.1356/2018 and others decided on 20<sup>th</sup> September 2018, observed as under:

*“25. In view of the discussions, the following guidelines are issued insofar as an offence under Section 188 of IPC, is concerned:*

*a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.*

*b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C. will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.*

*c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.*

*d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;*

*i) that there must be an order promulgated by the public servant;*

*ii) that such public servant is lawfully empowered to promulgate it;*

*iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed; and*

*iv) that such disobedience causes or tends to cause;*

*(a) obstruction, annoyance or risk of it to any person lawfully employed; or*

- (b) danger to human life, health or safety; or*
- (c) a riot or affray.*

*e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.*

*f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.*

*g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.*

*h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C.”*

15) In the case of *Raj Transit Infra Private Limited and another v. The State of Maharashtra*, Writ Petition No.15034/2025 decided on 13<sup>th</sup> November 2025, the Division Bench of this Court observed as under:

*“ This writ petition filed by the Raj Transit Infra Private Limited through one of its directors, namely, Mr. Rajendra Malayya Kalal seeks to challenge the closure directions dated 8th October 2025 issued by the Regional Office of the Maharashtra Pollution Control Board, Thane (for short, MPCB) under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (for short, Water Act) and*

*section 31A of the Air (Prevention and Control of Pollution) Act, 1981 (for short, Air Act).*

*9. For the aforesaid reasons, the communication dated 8th October 2025 containing the closure directions is quashed. However, we grant liberty to the MPCB to conduct an inspection of the RMC plant of the petitioner-company and, if any deficiency is detected, it may issue a show-cause notice after affording sufficient opportunity to the petitioner-company to rectify those deficiencies.”*

16) The Hon’ble Supreme Court in the case of *Jeewan Kumar Raut Vs. Central Bureau of Investigation* reported in AIR 2009 SC 2763 has observed that :

*“13. The Appropriate Authority, subject to exceptions provided for in TOHO, thus, is only authorized to investigate cases of breach of any of the provisions thereof, whether penal or otherwise. Ordinarily, any person can set the criminal law in motion. The Parliament and the State Legislatures, however, keeping in view the sensitivity and/ or importance of the subject, have carved out specific areas where violations of any of the provisions of a special statute like TOHO can be dealt with only by the authorities specified therein.*

*15. TOHO being a special statute, Section 4 of the Code, which ordinarily would be applicable for investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation, inquiry, trial, etc. according to the provisions of the Code. Sub-section (2) of Section 4, however, specifically provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences. TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code.*

16. *The investigation in terms of Section 13(3)(iv) of TOHO, thus, must be conducted by an authorized officer. Nobody else could do it. For the aforementioned reasons, the officer incharge of the Gurgaon Police Station had no other option but to hand over the investigation to the appropriate authority.*

19. *Section 22 of TOHO prohibits taking of cognizance except on a complaint made by an appropriate authority or the person who had made a complaint earlier to it as laid down therein. Respondent, although, has all the powers of an investigating agency, it expressly has been statutorily prohibited from filing a police report. It could file a complaint petition only as an appropriate authority so as to comply with the requirements contained in Section 22 of TOHO. If by reason of the provisions of TOHO, filing of a police report by necessary implication is necessarily forbidden, the question of its submitting a report in terms of Sub-section (2) of Section 173 of the Code did not and could not arise. In other words, if no police report could be filed, Sub-section (2) of Section 167 of the Code was not attracted.*

20. *It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorization under Section 13(3)(iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it. But, as it could not file a police report but a complaint petition only; Sub-section (2) of Section 167 of the Code may not be applicable. The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 of TOHO.”*

17) Neither section 43 of the Air Act nor section 49 of the Water Act

permits any Revenue Officer to file complaint under the said Acts. Under both the sections, either the complaint has to be filed by the Board or any officer authorized in that behalf by it, and if any person is aggrieved he should give 60 days notice to the Board of the alleged offence and his intention to make a complaint. In the present case, I do not find that the provisions of section 43 of the Air Act or that of section 49 of the Water Act have been complied with. The Water Act and Air Act are special Acts and provide for a complete procedure and manner in which action is to be taken in respect of any violations under the Act. Admittedly, the complaint has been filed by the Village Revenue Officer and not by Board i.e. MPCB. Further there is no notice issued by the Village Revenue Officer to the MPCB under the aforesaid sections. The said position has been fairly conceded by the learned A.P.P. appearing for the State.

18) For the aforesaid reasons, I find that the FIR in question as registered by the Village Revenue Officer against the Petitioners is without authority of law on the ground that as he had not given a notice required either under section 43 of the Air Act or under section 49 of the Water Act.

19) For the aforesaid reasons, I have no hesitation in taking the view that the F.I.R. in question, as registered by the police on the complaint made by a Village Revenue Officer against the Petitioners, is without authority of law both on the ground that he could not have registered such

F.I.R. on the complaint by Village Revenue Officer who had not given notice of 60 days to the MPCB, and, in any case, the F.I.R. is registered without prior sanction of the specified Authority.

20) In that view of the matter, the petition succeeds, and the F.I.R. No.0287 of 2025 dated 7<sup>th</sup> June 2025 registered with Naigaon Police Station, District- Palghar for the offences punishable under sections 223, 270, 279 read with section 3(5) of BNS is quashed and set aside.

21) It is made clear that quashing of F.I.R. does not result in condoning the unauthorised development, if any, by the Petitioners which is contrary to the law, particularly the Air Act and Water Act. Nor does it result in condoning any act of the Petitioners which leads to the contamination of the water or the air or the environment in general. It is made it clear that, the MPCB is at liberty to conduct a detailed inspection of the RMC Plants and take all further steps as required in accordance with law in respect of violations, if any. It will be open to the appropriate Authority under the Act to proceed against the Petitioners in that behalf in accordance with law.

**(RANJITSINHA RAJA BHONSALE, J.)**