

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

CRIMINAL APPLICATION NO.697 OF 2017

- | | |
|---|--------------|
| 1) Mr. Vinod P. Mahajan, of Mumbai |] |
| Indian Inhabitant in his capacity as Chief |] |
| Promoter of Shree Swami Samarth |] |
| Prasanna Co-operative Housing Society |] |
| (proposed) having office at 11-A, |] |
| Suyash, Near Amar Hind Mandal |] |
| Gokhale Road (North), Dadar, Mumbai |] |
| 400 028 |] |
|
2) Vikas Kamlakar Walawalkar |
] |
| Partner of Samarth Development |] |
| Corporation, a Partnership Firm |] |
| registered under the provisions of the |] |
| Indian Partnership Act, 1932 having his |] |
| Registered address at 11-A, Suyash, |] |
| Near Amar Hind Mandal, |] |
| Gokhale Road (N), Dadar (West), |] |
| Mumbai 400 028 |] |
|
3) Satish Prabhakar Shetye, an adult male |
] |
| of Mumbai, Indian Inhabitant residing at |] |
| 306/B, Jupiter Co-operative Housing |] |
| Society, Apna Ghar, Swami Samarth |] |
| Nagar, Oshiwara, Andheri (West), |] |
| Mumbai 500 058 |] |
| |].Applicants |

Versus

- | | |
|---|---------------|
| 1) State of Maharashtra, |] |
| Through Secretary, Home Department, |] |
| Mantralaya, Mumbai 400 032 |] |
|
2) Nandkumar Balsaraf, Circle Officer |
] |
| through the Tahsildar, Andheri, having |] |
| his office at Dadabhai Nowroji Road, |] |
| Andheri (West), Mumbai 400 058 |] |
| |].Respondents |

Mr. A. H. Ponda a/w Mr. Amrut Joshi, Mr. Shailesh Mahimtura, Mr. Ooril Panchal, Mr. Ashish Raghuvanshi i/by Mahimtura and Company for the Applicants.

Mr. K. V. Saste, Addl. P. P. for the for the Respondent - State.

**CORAM : R. M. SAVANT &
SANDEEP K. SHINDE, JJ.**

**RESERVED FOR JUDGMENT :- 19th SEPTEMBER, 2017
PRONOUNCEMENT OF JUDGMENT :- 10th OCTOBER 2017**

JUDGMENT (Per R. M. SAVANT, J)

1 The above Criminal Application has been filed by the Applicants for quashing the charge-sheet dated 11th December, 2012, the FIR No.3 of 2012 registered with the Oshiwara Police Station for offences punishable under Section 15(1) and (2) of the Environment (Protection) Act, 1986 (for short “the EPA 1986”). The Applicants also seek quashing and setting aside of the order dated 11th December, 2012 passed by the Learned Magistrate taking cognizance of the offence.

2 The Applicant No.1 herein is the Chief Promoter of Shree Swami Samartha Prasanna Co-operative Housing Society who granted development rights in or around 1975 to one Samartha Development Corporation which is a partnership firm registered under the provisions of the Indian Partnership Act, 1932. The Applicant No.1 is the original

accused in the FIR No.3 of 2012 dated 7th January 2012 registered with the Oshiwara Police Station, Andheri West, Mumbai. The Applicant No.1 has been arraigned as accused No.6 in CC No.2263/PW/2012 pending on the file of the Learned Metropolitan Magistrate, 65th Court, Andheri, Mumbai. The Applicant No.2 is a partner of Samartha Development Corporation which has been entrusted with the development of the land which is the subject matter of the FIR. The Applicant No.3 is the manager working with the said Samartha Development Corporation. The Applicant No.3 has been shown as accused No.4 in the said CC No.2263/PW/2012. It seems that the Applicant Nos.2 and 3 were not originally named in the FIR but were subsequently named in the charge-sheet.

3 The subject FIR has been registered by the Circle Officer, Andheri under Section 15(1) and (2) of the Environment (Protection) Act, 1986. The subject land is Plot No.124 which forms part of a scheme sanctioned by the Municipal Corporation vide order No.CE/649/BS 1/Lokhandwalla. The said land bears CTS No.1/48/1A/2 of village Oshiwara, Taluka Andheri and admeasures 7747.1 sq. mtrs. As indicated above, it is the Samartha Development Corporation which is entitled to develop the said plot in respect of which it has obtained approvals for construction of buildings on the said plot which buildings comprise of three wings.

4 The plans for the said buildings have been sanctioned by the Municipal Corporation for Greater Mumbai (for short “MCGM”) on 3rd July, 2012 and commencement certificate has been issued on 6th April, 2013. The MCGM has also issued NOC dated 19th July, 2012 from the Water Works Department. The Tree Authority has issued NOC on 5th September, 2012 and provisional NOC has been issued by the MTNL on 26th July, 2012. Since the plot falls in the CRZ area, the Maharashtra Coastal Zone Management Authority (for short “MCZMA”) has vide letter dated 11th November, 2011 recommended the proposed residential construction on the said plot as per the decision taken at the 71st meeting of the MCZMA.

5 It seems that some persons made a complaint to the Tahsildar alleging that mangroves were being destroyed on the said plot of land. Pursuant to the said complaint it seems that a site visit was carried out by the Circle Officer, Nandkumar Balsaraf and the other officers of the Revenue Department on 29th December, 2011. It seems that thereafter a letter came to be addressed by the office of the Tahsildar, Andheri on 5th January, 2012 to the Oshiwara Police Station. The Circle Officer thereafter visited the said Police Station on 6th January, 2012 and ultimately FIR came to be registered on 7th January, 2012. The gist of the allegations in the FIR is to the following effect :-

- “(a) That an offence has been committed under Section 15(1) and (2) of the Environment (Protection) Act, 1986 (for short “the EP Act, 1986”) by the said Shree Swami Samartha Prasanna Co-operative Housing Society (proposed) which is of the Samartha Development Corporation.
- (b) That two or three mangrove trees exist inside a nala which flows at some distance away from the northern boundary of the plot of land, the Applicants have allegedly dumped on the said plot earth/debris at a distance of 15 or 20 from the roots of 2 or 3 mangrove trees which are growing inside the nala.
- (c) That the Applicants have dumped the said debris at the said location without seeking prior permission from the concerned department.
- (d) That it is the apprehension of the complainant that on account of the said unauthorized filling at the said location, harm may be caused in future to the 2 to 3 mangrove trees which are located inside the nala.
- (e) That by dumping the said debris at the said location, the Applicants have violated the order passed by this Court for protection of the mangrove trees and that it cannot be ruled out that in future damage will be caused to the environment.”

6 It seems that after the said complaint came to be lodged, the Applicants carried out enquiries, upon they came to know that the complaint was made by an organization called “Save Open Space”.

7 Against the said FIR, the Applicants had filed Criminal Writ Petition No.1130 of 2012 in this Court. The said Writ Petition had come

up for admission before the Division Bench of this Court. The Division Bench on 22nd August, 2012 whilst disposing of the said Writ Petition observed that there is no manner of doubt that the Investigating Officer would submit appropriate report to the concerned Court. It was further observed by the Division Bench that on the said location if damage has been done to any mangroves, the Investigating Officer will record the said fact in the final report to be submitted to the concerned Court. The Division Bench further observed that the Investigating Officer shall do the needful in the matter in right earnest. The Division Bench accordingly disposed of the said Writ Petition. Hence, the said Writ Petition was filed before the final report was filed and before cognizance being taken.

8 The Investigating Officer thereafter filed the report under Section 173 of the Cr.P.C. in the Court of the Learned Metropolitan Magistrate, 65th Court, Andheri, Mumbai on 11th December, 2012. The said report was against the Applicants and the other accused. In the charge-sheet the Applicant Nos.2 and 3 have also been made accused. The Learned Metropolitan Magistrate on the same day has taken cognizance of the offence by passing the following order :-

“Charge-sheet is filed today. Cognizance of offence is taken.
Issue summons to the accused.”

As indicated above, it is the charge-sheet dated 11th December, 2012 as also the order passed on the said day i.e. 11th December, 2012 taking cognizance of the offence which is taken exception to by way of the above Application.

9 Heard the Learned Counsel for the Applicants and the Learned Additional PP for the State.

10 The principal contention of the Learned Counsel for the Applicants in assailing the charge-sheet and the order dated 11th December, 2012 is that the procedure and or the due process of law for registering an offence under Section 19 of the EPA 1986 was not followed. It was the contention of the Learned Counsel that Section 19 of the EPA requires the Central Government or its officer to file a complaint or a private citizen to give an advance notice of 60 days to the Central Government or its officer before filing a complaint. It was further the submission of the Learned Counsel that a combined reading of Section 19 of the EPA 1986 and Section 2(d) of the Cr.P.C. indicates that for cognizance of an offence under Section 19 a complaint has to be filed before the Magistrate and such complaint does not include a police report under Section 173 of the Cr.P.C. It was the submission of the Learned Counsel that in the present case neither a proper authority has instituted

the complaint nor has the procedure prescribed has been followed for taking cognizance of the said complaint.

In support of the said submissions, the Learned Counsel relied upon the following judgments of the Division Benches of this Court :-

- 1] 2016 (6) ABR 533 in the matter of Dr. Mahesh Vijay Bedekar Vs. State of Maharashtra and others.
- 2] Unreported judgment dated 22nd December, 2016 in PIL No.218 of 2013 in the matter of Navi Mumbai Environment Preservation Society and another Vs. Ministry of Environment.
- 3] Unreported judgment dated 26th August, 2014 in Criminal Application (Main) No.116 of 2014 in the matter of Mr. Subhash Shirodkar Vs. State of Goa.
- 4] 2014 SCC OnLine Bom 787 in the matter of State of Maharashtra Vs. Ajay Jagdish Pande and 3 ors.
- 5] The Learned Counsel also relied upon the judgment of the Apex Court reported in (1986) 4 SCC 326 in the matter of A. K. Roy and another Vs. State of Punjab and others.

11 The Learned Counsel also sought to make submissions on merits by contending that the area wherein three mangrove plants are situated cannot come within the mangrove area as defined in the notification dated 2011. The Learned Counsel would also submit that the

factum of the MCZMA lifting the stay granted by it would indicate that no offence has been committed by the Applicants in as much as no mangrove has been destroyed by the Applicants in any area which can be described as a mangrove area within the definition in the notification dated 2011.

12 The Learned Additional PP, Mr. K. V. Saste sought to justify the registration of the FIR, filing of the charge-sheet and the cognizance being taken by the Learned Magistrate, but the submissions made by the Learned Additional PP were not with any deal of conviction faced with the judgments of this Court on which reliance was placed by the Learned Counsel for the Applicants.

13 In the context of the challenge raised in the above Petition, it would be necessary to advert to Sections 15 and 19 of the EPA 1986. The same are reproduced herein under for the sake of ready reference :-

“15. Penalty for contravention of the provisions of the Act and the rules, orders and direction.- (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in subsection (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.”

“19. Cognizance of offences.- No Court shall take cognizance of any offence under this Act except on a complaint made by -

(a) the Central Government or any authority or officer authorised in this behalf by that Government; 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 Central Government or the authority or officer authorised as aforesaid.”

Hence under Section 15, it is provided that a person who fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, may be punished by imprisonment which may extend to five years or with a fine of one lakh rupees, or with both. In case of continuation of the contravention for a period of one year after the conviction term of imprisonment may extend to seven years.

14 In so far as Section 19 of the EPA 1986 is concerned, it provides for the manner in which cognizance of an offence under Section 15 can be taken. The said provision being worded in the negative, cognizance can only be taken of the offence under the EPA 1986 if the complaint is made by the Central Government or any authority or officer

authorised in this behalf by the Central Government or the complaint made by any person who has given notice of not less than sixty days, in the manner prescribed.

15 The issue of the action to be taken for contravention of the Noise Pollution Rules framed under the EPA 1986 had come up for consideration in ***Dr. Mahesh Vijay Bedekar's*** case (*supra*). The Division Bench held that the contravention of the Noise Pollution Rules would amount to an offence under Section 15 of the EPA 1986 and therefore complaint in that regard would have to be made by persons authorized to do so. The Division Bench in the said case referred to the notification issued by the Central Government being S.O.394/E which shows that under clause (a) of Section 19 of the EPA 1986. The power to set the criminal law in motion has been conferred on the Chairman or the Member Secretaries of the State Pollution Control Board as well as the Regional Officers of the State Pollution Control Board. In the said notification, even the Collector is authorized under clause (a) of Section 19 to set the criminal law in motion under clause (a) of Section 19. The Division Bench in the context of the said notification and having regard to Section 19 held that the Police Officers are not empowered to set the criminal law in motion unless there is a compliance with clause (b) of Section 19. The relevant paragraphs of the said judgment are paragraphs

47, 67 and 68 which are reproduced herein under :-

“47. In view of the aforesaid notification issued by the Government of India, the Chairman or the Member Secretary or the Regional Officers of the Maharashtra Pollution Control Board have been authorised in terms of clause (a) of Section 19 to file complaints. If such Officers file complaints, they are not required to give notice of sixty days as provided in clause (b) of Section 19. It is for this reason that in the said Civil Application filed by the Intervenor, specific directions have been sought against the Pollution Control Board enjoining the nominated officers to set the criminal law in motion under Section 19 as even the Police Officers are not empowered to set the criminal law in motion unless there is compliance with clause (b) of Section 19. In the said Central Government Notification, even the Collector is authorised under clause (a) of Section 19 to set the criminal law in motion.”

“67. On plain reading of Section 19, if any person other than Central Government or authority or officer authorised in this behalf by that Government in accordance with clause (a) thereof wants to set criminal law in motion, that person has to give notice of 60 days of the alleged offences and of his intention to make a complaint as provided in clause (b) of Section 19. Thereafter, if the authority under the Noise Pollution Rules or any police officer wants to file a complaint, he has to abide by clause (b) of Section 19. Therefore, an offence cannot be registered at least for a period of 60 days from the date of its commission. As far as clause (a) is concerned, there is a notification issued by the Central Government which is annexed to CA(St.) No.1817 of 2016. As per the said notification, the District Collectors have been appointed as authority under clause (a) of Section 19. The Chairpersons, member Secretaries and regional officers of the State Pollution Control Board who have been delegated powers under Section 24 of Air

Pollution Act are also authorities under clause (a) of Section 19.”

“68. Therefore, we propose to direct the authority under the Noise Pollution Rules to ensure that as soon as a complaint is received or information is received from the Police Officer or information is otherwise received regarding any major violation of the Noise Pollution Rules, immediate information thereof shall be provided to the officers of the Maharashtra State Pollution Control Board or the District Collector who have been authorised under (a) of Section 19 to take action. As soon as such intimation is received, either the District Collector or officers of the Pollution Control Board will have to take immediate steps to make a complaint contemplated by Section 19 of the Environment Protection Act inasmuch as if the Collector or the authorised officers make a complaint, it is not necessary for them to follow requirement of giving 60 days notice under Section 19. Even the police officers can set criminal law in motion after taking recourse to clause (b) of Section 19.”

16 The said issue had again come up before the Division Bench of this Court sitting at Goa in *Mr. Subhash Shirodkar's* case (*supra*). Paragraph 10 of the said judgment is material and is reproduced herein under :-

“10. By order dated 11/11/1998, the Dean of Goa Medical College and Ex-officio Additional Secretary has sanctioned provision of cadavers from Anatomy Department of Goa Medical College to Kamaxidevi Homeopathic Medical College and Hospital, Shiroda, for dissection and teaching purpose. The Goa State Pollution Control Board (GSPCB, for short), under Rule 8(4) of the Bio Medical Waste Rules, has authorised the Medical Superintendent (occupier) to

generate, store, treat and dispose of the bio-medical waste at the premises of M/s. Kamaxidevi Homeopathic Medical College and Hospital, Karai, Shiroda, Ponda, Goa. As per clause 14 of the said authorisation, the occupier should construct deep burial pit of two metres depth and no shallow well should be closed to the deep burial site. The occupier should maintain all records of pit for deep burial. From the above provisions of Rules 4, 5 and 6 of the Bio-Medical Waste Rules, and the authorisation dated 01/03/2013 given by GSPCB, it is clear that it is the “occupier” of the institution, who will be responsible for the alleged offence under Section 5 of the Act read with Rules 5 and 6 of the Bio-Medical Waste Rules. None of the petitioners is the occupier and the occupier is the Medical Superintendent of the said Hospital. Considering the provision of Section 19 of the Act, the complaint ought to have been lodged by the Central Government or any authority or officer authorised, in this behalf, by that Government or in the manner as specified by clause (b) of Section 19. However, the said provision has not been complied with. The provision is mandatory. Hence, the learned J.M.F.C., Ponda could not have taken cognizance of the said offence. On this ground alone, the F.I.R. under Section 5 of the Act read with Rules 5 and 6 of Bio-Medical Waste Rules and the Charge Sheet filed for the said offence are liable to be quashed and set aside.”

Thereafter the said issue had come up before another Division Bench in *Ajay Jagdish Pande's* case (*supra*). In the said case, a submission was advanced on behalf of the accused by the Learned Counsel that the Police could not have filed a charge-sheet in respect of an offence punishable under Section 15 of the EPA 1986. It was further submitted that there was no question of the Court taking cognizance of an offence punishable under the EPA 1986 on the basis of the charge-sheet filed by the police in

view of the provisions of Section 19 of the EPA 1986. The Division Bench held that the Court would have no jurisdiction to take cognizance of the offence punishable under Section 15 of the EPA 1986 on the basis of the documents submitted to it by the Police. Paragraph 38 of the said judgment is material and is reproduced herein under :-

“38. Clearly, the Court would have no jurisdiction to take cognizance of the offence punishable under section 15 of the Environment Act, on the basis of the document submitted to it by the police. Even if any action has been taken by the Court pursuant to the filing of such document, such action would be without jurisdiction, void and *ab initio*. The cognizance taken in violation of a specific provision would be no cognizance at all, and would be *non-est*.”

17 Thereafter the issue had once again come up before a Division Bench of this Court in ***Navi Mumbai Environment Preservation Society's*** case (*supra*). The question which arose before the Division Bench was whether the registration of an FIR at the instance of a person who is not authorised under clause (a) of Section 19 and the investigation carried out on the basis of the FIR becomes illegal. The Division Bench culled out the principles and issued the directions which are contained in paragraph 15 of its judgment. The said paragraph 15 is reproduced herein under for the sake of ready reference :-

“15 Hence, we issue further interim directions.

- (I) We direct the Committee headed by the Divisional Commissioner, Konkan Division to co-ordinate the work of filing of complaints by the authorised officers under clause (a) of Section 19 of the said Act of 1986. Proper procedure shall be laid down by the said Committee to ensure that the authorised officers promptly file complaints in case of the violations attracting the penal provisions under Section 15. The Committee will have to ensure that the authorised officers properly co-ordinate with the concerned Police officers;
- (II) We direct the Central Government to consider the question of appointing Police officers of appropriate rank as authorised officers under clause (a) of Section 19 of the said Act of 1986 in different areas with a view to make implementation of the said Act of 1986 more effective. Appropriate decision shall be taken by the Central Government within a period of one month from the date on which an authenticated copy of this order is produced by the Petitioners in the office of the Secretary in charge of the Department of Environment of the Central Government. The concerned Ministry shall act upon an authenticated copy of this order;
- (III) We clarify that registration of offences by the Police under Sub-Section (1) of Section 15 of the said Act of 1986 and the investigation carried out thereon is not *per se* illegal. The officers authorised under clause (a) of Section 19 can always file complaints in accordance with the said Code by relying upon the material collected during the investigation and material forming part of the charge sheet prepared by the Police;

(emphasis supplied)

- (IV) We direct the Committee appointed under the

Chairmanship of the Division Commissioner to ensure that the prosecutions which are lodged for commission of offences punishable under Sub-Section (1) of Section 15 are properly conducted;

(V) For considering the compliance by the Central Government and for issuing further directions on the basis of the decision taken by the Committee headed by the Divisional Commissioner, the Petition shall be listed on 27th January, 2017 before this Court (a Division Bench presided over by A. S. Oka, J. in terms of the directions of the Hon'ble the Chief Justice);

(VI) Issue of compliances made by the Committee, CIDCO and other authorities shall be considered on that date.”

18 A reading of the aforesaid judgments (*supra*) therefore reveals a common thread running in them. In so far as cognizance of an offence under the EPA 1986 is concerned, the weight of the aforesaid judgments is overwhelmingly leaning towards holding that to take cognizance of an offence under Section 15 of the EPA 1986 the complaint has to be made by the Central Government or any authority or officer authorized by the government, but does not include a police report under Section 173 of the CPC. In so far as the alternative contained in Section 19 is concerned, no doubt, a private individual can file a complaint but the same has to be filed by following the mandate of clause (b) of Section 19 of the EPA 1986 i.e. by giving a notice in a prescribed manner of the alleged offence to the Central Government or its concerned officer of

State that he intends to make a complaint on the said basis and individual would have to state that if within sixty days does not get response then would proceed further. It is well settled by the judgments of the Apex Court that if a statute requires a thing to be done, it has to be done in the said manner only and not in any other manner. It is in the aforesaid context that the relief sought in the instant application would have to be considered.

19 In so far as the instant case is concerned, there is no dispute about the fact that the FIR has been registered by the Circle Officer, Andheri and there is nothing on record to indicate that the said Circle Officer has been authorized by the Central Government to file an FIR in respect of an offence under the EPA 1986. It is pursuant to the registration of an FIR that investigation was carried out by the local police and a final report under Section 173 came to be filed by the local police. It is pursuant to the final report filed that cognizance under Section 19 of the EPA 1986 has been taken by the concerned learned Metropolitan Magistrate. Hence, in the instant case, the cognizance of the offence has been taken by the learned Magistrate on the basis of a police report which is impermissible as per the law enunciated by the Division Benches of this Court. Hence, the consequences of the cognizance being taken on the basis of a police report which is not the modality prescribed

under Section 19 would have to be followed.

20 A useful reference could also be made to the judgment of the Apex Court in **A. K. Roy's** case (*supra*). In the said case, Section 20 of the Prevention of Food Adulteration Act, 1954 which provides for cognizance and trial of offences, was in contention. The said provision reads thus :-

“20. Cognizance and trial of offences. - (1) No prosecution for an offence under this Act, not being an offence under Section 14 or Section 14-A, shall be instituted except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government.”

Paragraphs 9 and 10 of the said judgment are relevant and are reproduced herein under :-

“9. It is common ground that the prosecution in the instant case has not been launched either by or with the written consent of the Central Government or the State Government. It therefore becomes necessary to ascertain whether the Food Inspector, Faridkot was duly authorized to launch a prosecution. The Food Inspector had been conferred powers of the State Government under Section 20(1) of the Act viz. to initiate prosecutions for an offence under the Act, by the Food (Health) Authority i.e. the Director of Health Services. A mere perusal of the impugned notification dated September 7, 1972 makes it manifest that it was the Director of Health Services and not the State Government who had authorised the Food Inspector to launch prosecutions for an offence under the Act. It is therefore clear that the Food Inspector is not a person who has been authorised by any general or special

order issued by the Central Government or the State Government. There would be no problem if the State Government were to issue a notification under Section 20(1) of the Act conferring authority on the Food Inspector, Faridkot under Section 20(1) to launch prosecutions for an offence under the Act as is the practice in the other States.

10. A careful analysis of the language of Section 20(1) of the Act clearly shows that it inhibits institution of prosecutions for an offence under the Act except on fulfillment of one or the other of two conditions. Either the prosecutions must be institute by the Central Government or the State Government or a person authorised in that behalf by the Central Government or the State Government, or the prosecutions should be instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. The provision contained in Section 20(1) of the Act does not contemplate the institution of a prosecution by any person other than those designated. The terms of Section 20(1) do not envisage further delegation of powers by the person authorised, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorised. The use of the negative words in Section 20(1) "No prosecution for an offence under this Act.....shall be instituted except by or with the written consent of" plainly make the requirements of the section imperative. That conclusion of ours must necessarily follow from the well known rule of construction of inference to be drawn from the negative language used in a statute stated by Craies on *Statute Law*, 6th edn., p. 263 in his own terse language :

If the requirements of a statute which prescribes the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will

invalidate the whole proceeding.
(emphasis supplied)

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the legislature in enacting Section 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise.”

The Apex Court in the facts of the said case where the prosecution was launched not with the written consent of the Central Government or the State Government, but by the Food Inspector, Faridkot held that the Food Inspector, Faridkot not being authorized to launch prosecution for an offence under the said Act found fault with the launching of the said prosecution. The Apex Court held that the provision contained in Section 20(1) of the said Act does not contemplate the institution of a prosecution by any person other than those designated. The Apex Court further held that the terms of Section 20(1) do not envisage further delegation of powers by the person authorised, except that such prosecution must be instituted with the written consent of the Central Government or the State Government or the person authorised. The Apex Court accordingly in the said case set aside the judgment and order passed by the High Court as well as the Special Divisional Judicial Magistrate. The said judgment in *A. K. Roy's* case (*supra*) therefore supports the case of the Applicants that in the instant case the cognizance

could have only been taken if the mandate of Section 19 was fulfilled.

21 The Applicants have assailed the registration of the FIR and filing of the charge-sheet inter-alia on the ground, that on the basis of the GPS readings and spot inspection it was recorded that there are no mangroves on the said plot, the permission granted by the MCZMA to carry out construction on the said plot and that there is no mangrove area of more than 1000 sq.mtrs. within 50 mtrs. distance from the proposed building on the said plot. That the two or three mangrove trees on the said plot as stated in the FIR do not qualify as a “mangrove area” because an area of 1000 sq.mtrs. must be covered by mangroves for there to be a mangrove area. That the said plot falls within CRZ-II and not CRZ-I and therefore there is no question of any mangroves growing on the said plot which is acknowledged by the MCGM and MCZMA. That the stop work notice dated 29th June 2013 being withdrawn by the MCZMA in its 114 meeting dated 2nd November 2016 and that the restrictions imposed vide order dated 6th October, 2005 passed by this Court in PIL No.87 of 2006 do not apply to the plot in question as the said order applies to mangrove areas which are notified and which order provides for a mechanism for the purposes of identification and notification of the mangrove areas. It is on the aforesaid grounds that the Applicants have questioned the registering of the FIR and filing of the charge-sheet by the

police. Since we have come to a conclusion that the cognizance taken by the learned Magistrate is not in terms of Section 19 of the EPA 1986 and therefore the order dated 11th December, 2012 taking cognizance would have to be set aside. It is not necessary for us to go into the grounds afore-stated questioning the registering of the FIR and the charge-sheet. It would be for the Applicants to urge the said grounds in appropriate proceedings, if the occasion arises in future.

22 Though we have come to a conclusion that the order dated 11th December, 2012 passed by the learned Magistrate of taking cognizance of the offence under Section 15 of the EPA 1986 would have to be set aside, it would not be out of place to revisit the direction of the Division Bench as contained in the order dated 22nd December, 2016 (clause III of the order passed by the Division Bench in PIL No.218 of 2013). Since by the said direction, the Division Bench has held that the investigation carried thereon is not per-se illegal that the officer under clause (a) of Section 19 can always file complaints in accordance with the said Code by relying upon the material collected during the investigation and material forming part of the charge-sheet prepared by the police. It is therefore not necessary to quash and set aside the FIR, however, we are required to modulate the relief which is to be granted in the above application accordingly. Hence, the following order :-

- I) The order dated 11th December, 2012 passed by the learned Magistrate taking cognizance for the reasons stated hereinabove is set aside. The filing of the charge-sheet by the police dated 11th December 2012 is also set aside.

- II) It is however clarified that the investigation carried out by the police pursuant to the FIR as well as the material collected by the police is kept intact and it would be open for the officers authorized under clause (a) of Section 19 to file a complaint by following the directions as contained in clause III of paragraph 15 of the order dated 22nd December, 2016 passed in PIL No.218 of 2013. The same to be done within twelve weeks from date.

- III) If the procedure as contemplated by Section 19 of the EPA 1986 and as interpreted by the various judgments of this Court and especially clause III of paragraph 15 of the judgment and order dated 22nd December, 2016 in PIL No.218 of 2013 is followed, the concerned learned Magistrate would passed appropriate orders

thereon as regards cognizance.

IV) Needless to state that the contentions of the Applicants on merits are kept open for being urged at the appropriate time in appropriate proceedings. The Criminal Application is allowed to the aforesaid extent.

V) Rule is accordingly made absolute.

[SANDEEP K. SHINDE, J]

[R. M. SAVANT, J]