

2. We have heard learned counsel appearing for the applicant as well as learned APP for the respondent State.

3. Respondent No.2 lodged first information report against the present applicant on 17.10.2006 alleging that land Gat No.863/1B admeasuring 26 R is owned by the applicant and the forefathers of the applicant had allotted the said land to the Muslim community prior 100 years for the purpose of graveyard/Kabrastan and since then the last rite ceremonies of dead persons belonging to Muslim community are performed in the said land/Gat No. and the Muslim community was/is using the same as Graveyard/Kabrastan.

4. On 16.10.2006, in between 6.00 to 6.30 p.m. the applicant, with the help of JCB machine, demolished the tombs in the graveyard. Therefore, the respondent and other persons visited the said spot and after verifying the same, they approached the police station and lodged complaint, on the basis of which, the concerned police have registered the offence against the present applicant at Crime No.75/2006 for the offence punishable under sections 295 and 297 of the Indian Penal Code.

5. Learned counsel appearing for the applicant, by referring to the copies of relevant documents i.e. 7/12 extracts of land Gat No. 853/1B as well as 187/2 and 592, has argued that, land Gat No.863/1B is owned and possessed by the applicant and the respondent or the other members of the community have no concern at all with the said land. The learned counsel further pointed out that the graveyard of the Muslim community is in the lands Gat Nos.187/2 and 592. The learned counsel further points out the spot panchanama, wherein, it is also not noticed that aforesaid land Gat No.863/1B was used by the Muslim community as graveyard.

6. As against this, the learned APP for the State submits that since the aforesaid land i.e. Gat No.863/1B of village Varangaon is being used by the members of Muslim community as graveyard/Kabrastan for last 100 years, therefore the police have rightly registered offence against the applicant.

7. We have gone through the relevant documents on record. On perusal of the same, it appears that 7/12 extract of land Gat No. 863/1B stands in the name of the applicant. Not only this, the aforesaid land is

mortgaged with a cooperative society for an amount of Rs.2 lakh. The entires in the revenue record have a presumptive value. From 7/12 extracts of lands Gat Nos.187/2 and 592, it appears that both the lands/Gat Nos. stand in the name of Muslim Samaj Kabrastan (Graveyard). So, the land of the Kabrastan/Graveyard is altogether different and that fact has been supported with the contents of the spot panchanama. On perusal of the spot panchanama, it appears that there is no evidence to show that there was/is tomb or the evidence to show that this land was/ is used by the Muslim community as Kabrastan for last rite ceremony of dead persons from Muslim community. Therefore, taking into consideration the face value of the documents, it appears that there is absolutely no evidence on record to show that the land Gat No.863/1B belonging to the present applicant was /is being used as Graveyard/Kabrastan by the Muslim community.

8. In view of the above, continuation of criminal proceedings initiated against the present applicant is nothing but an abuse of process of law and therefore, it needs to be quashed and set aside. Therefore, the

criminal application is allowed in terms of prayer
clause (B).

9. The Criminal application is accordingly disposed
of. No costs.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

JPC