

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3063 OF 2017**

Binod Kumar Singh & Ors

..Petitioners

Vs.

State of Maharashtra & Anr

..Respondents

Mr. Dinesh Tiwari a/w Mr. Swapnil Ambure & Mr. Mikhail Dey i/b Dinesh Tiwari & Associates for the Petitioners

Mr. J. P Yagnik APP for the Respondent State

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL,JJ**

DATE : 20th APRIL, 2018

P.C.

1 The above Writ Petition has been filed for quashing of the FIR being No.II-1 of 2016 registered with the Kinhavali Police Station, Thane for offences punishable under Sections 52 and 56 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act for short). The said FIR has been filed by the Talathi pursuant to the direction which was communicated by the Assistant Director of Town Planning, Shahapur to the Tahsildar Shahapur who in turn directed the Talathi.

2 The gravamen of the allegations against the Petitioners is the alleged unauthorised construction carried out by the Petitioners. It is required to be noted that the Petitioners were served with a notice dated 19-3-2016 under Section 174 of the Maharashtra Land Revenue Code by which the Petitioner was directed to deposit an amount of Rs.24,44,805/- as penalty for

the construction which was carried out on the land in question. It seems that the Petitioners have already paid the said amount as is reflected in the letter dated 15-7-2016 addressed by the Petitioners to the Tahsildar, Shahapur, Thane. The said payment was after the FIR came to be registered on 18-3-2016. The FIR has been challenged principally on the ground that the procedure contemplated by Section 53 prior to the registration of the FIR has not been followed by the authorities.

3 The Learned Counsel for the Petitioners sought to place reliance on the mandate of Section 53 of the MRTP Act which necessitates for a notice under the said provision is required to be issued in respect of any unauthorised construction which is carried out which attracts Section 52 of the MRTP Act, and if there is non compliance by the noticee then the avenue of filing the FIR is available. Though as indicated above the FIR has been registered at the behest of the Planning Authority i.e. the Assistant Director of Town Planning, Shahapur Thane. The requirement of a notice being issued and the FIR being lodged on the non compliance thereof has not been fulfilled.

4 The Learned APP Mr. Yagnik fairly states that no notice under section 53 has been issued and the only notice issued is under the provisions of the Maharashtra Land Revenue Code.

5 In our view, the reliance placed on behalf of the Petitioners on the judgment of the Division Bench of this Court in the matter of **Mahesh Shivram Puthran Vs. The Commissioner of Police & Ors.**¹, is apposite. The Division Bench in the said case explicated that a notice has to be issued under Section 53 before the FIR can be registered in respect of the offence under Section 52 of the MRTP Act. The Division Bench has also held that the prosecution could only be instituted upon taking prior sanction of the specified authority.

6 In that view of the matter, the above Petition would have to be allowed and is accordingly allowed and made absolute in terms of prayer clause (a). We however, make it clear that though we have quashed the FIR on the grounds as aforesaid, it would be open for the authorities to lodge an FIR by following the procedure as mandated by Section 53, if so advised.

[SARANG V. KOTWAL, J]

[R.M.SAVANT, J]

¹ 2011(113) BOMLR 1158