

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1799 OF 2023

1. Mushtaq Khan Musa Khan	
2. Manoharlal Rajaldas Lochwani	..APPLICANTS
VERSUS	
1. State of Maharashtra	
2. Amol Mulchand Shinde	..RESPONDENTS

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Mr. N.R. Shaikh, Advocate for applicants
Mr. A.R. Kale, A.P.P. for respondents

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 03rd OCTOBER, 2023**

PER COURT :

1. Heard.

2. The applicants herein are the accused, alleged to have committed offence under Section 5 of the Environment (Protection) Act, 1986 ('the Act'). The F.I.R. was lodged by a police constable, based on which crime was registered and investigated as well. On conclusion of investigation, a police report under Section 173 of Code of Criminal Procedure has been filed, whereupon the Court of Judicial Magistrate First Class, Aurangabad has taken cognizance and issued process.

3. Section 19 of the Act reads thus :-

“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 authorized 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.”

4. Close reading of the aforesaid section would indicate that there is interdict to the Court to take cognizance of any offence under the Act, except on a complaint made by the Central Government or any authority or officer authorized by that Government. Admittedly, the complaint has not been filed by a person authorized under Section 19 of the Act. As such, taking cognizance of the said offence is illegal and non-est, and therefore, liable to be set aside. Although learned A.P.P. tried to contend that let him examine whether the complaint was filed or whether the police report was treated as complaint, the law in that regard is settled. There is distinction between the police report under Section 173 of Code of Criminal Procedure and the complaint. Suffice it to say, cognizance of the offence has not been taken on complaint, but on police report. The same is not permissible in law.

5. In view of above, criminal application is allowed. Order passed by the Court of Judicial Magistrate First Class, Aurangabad thereby taking

cognizance of the offence and issuing process therein against the present applicants is hereby set aside. Needless to mention, the authorities concern may avail remedy available under the Act.

SSD (SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)