

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPLICATION NO. 187 OF 2019**

|                             |   |               |
|-----------------------------|---|---------------|
| 1. Pramod J. Gadrel         | } |               |
| 2. Sham Jiyalal Gadrel      | } |               |
| 3. Sagar Jiyalal Gadrel     | } |               |
| 4. Hemand Phulchand Itoriya | } |               |
| 5. Dharam Ramesh Solanki    | } | ...Applicants |

V/s.

|                              |   |                |
|------------------------------|---|----------------|
| 1. The State of Maharashtra  | } |                |
| 2. Santosh Rustamrao Sabale. | } | ...Respondents |

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Mr. Priyal G. Sarada for applicant.

Ms. S.D. Shinde-APP for the State.  
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**CORAM : SUNIL B. SHUKRE &  
M.M. SATHAYE, J.J.**

**DATED : MAY 02, 2023.**

**ORAL JUDGMENT : (PER SUNIL B. SHUKRE, J)**

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

3. In this case, the F.I.R. has been registered for the offences punishable under Section 135 of Maharashtra Police Act. It is well settled position of law that section 135 of Maharashtra Police Act is

about a non-cognizable offence. This position of law has been settled by the Division Bench of this Court in the case of '*Sunilkumar S/o Raosaheb Hake and Others vs The State of Maharashtra and Another*' in Criminal Application No. 3572 of 2019 together with Criminal Application No. 1654 of 2020 in the case of '*Chetan S/o Chandrakant Karade vs. The State of Maharashtra and Another*' decided on 3<sup>rd</sup> January 2022.

4. Of course, police officer can investigate non-cognizable offence if there is an order passed by the concerned Magistrate granting permission to him, although, even after such permission, investigating officer would not have any power to arrest the accused without warrant, as provided under sub sections 2 and 3 of section 155 of Cr.P.C. In the present case, no such permission has been granted by the Magistrate to the investigating officer for making investigation and it means that investigating officer could not have registered F.I.R. for a non-cognizable offence.

5. Thus, the F.I.R. so registered and consequently the investigation made by the investigating officer both are bad in law and if any charge-sheet has been filed in pursuance of the investigation made, same shall also be vitiated in law. This application, therefore,

deserves to be allowed.

6. The application is allowed.

7. The F.I.R. registered against the applicant vide C.R. No. I-308 of 2018 and all consequent proceedings taken thereafter are hereby quashed and set aside.

8. The Rule is made absolute in the above terms.

9. The application is disposed of.

(M.M. SATHAYE, J)

(SUNIL B. SHUKRE , J)