

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

CRIMINAL WRIT PETITION NO. 3697 OF 2019

Manish Sobhraj Chandnani	...	Petitioner
Versus		
The State of Maharashtra & Anr.	...	Respondents

Ms. Poonam Ankleshwaria a/w Harsh Dattani i/by Rajesh Chandwani
for the Petitioner.

Mr. J. P. Yagnik, APP for the Respondent No.1-State.

Mr. Vijay D. Patil for the Respondent No.2.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 5th JULY, 2023

P.C. :-

. After having heard the learned counsel for the petitioner in the light of the statement of allegations reflected in the FIR and the charge-sheet wherein offence is alleged to have been committed under Sections 20(A) and 21(1) and (2) of the Maharashtra Urban Areas (Protection and Preservation of Trees) Act, 1975. It has to be inferred that the offence alleged is non-cognizable and as such, before initiating investigation and the prosecution, the Authority must take recourse to the provisions of Section 155(2) of the Cr.P.C.

2. Admittedly, in the case in hand, the offence being non-cognizable the prosecution ought not to have been initiated without the prior sanction from the Magistrate as contemplated under Section

155(2) of the Cr.P.C.

3. In view of the matter, the claim of the petitioner that the prosecution is against the petitioner for the offence alleged under the aforesaid act is not sustainable and appears to be quite justified. We can draw support from the provisions of Section 21 of the aforesaid Act so also Section 155(2) of the Cr.P.C. in support of the aforesaid finding. Apart from the above, the issue is no more *res integra* as the Division Bench of this Court in the matter of ***Frank Augustin Lopes v/s. State of Maharashtra & Ors.***, reported in ***2018 SCC OnLine Bom 6851*** has already observed that the offence under the said Act is non-cognizable and as such, the prior permission of the Magistrate is mandatory.

4. In that view of the matter, the petition stands allowed in terms of prayer clause (a).

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

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