

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

WRIT PETITION NO.3140 OF 2024

Shridhar Kashinath Bhagat
V/s.

....*Petitioner*

1. Sub-Divisional Officer at Panvel and
Ors.

.... *Respondents*

**WITH
WRIT PETITION NO.3141 OF 2024**

M/s. Bhavesh Stone Crushing
represented through Shashikala
Bholanath Patil
V/s.

....*Petitioner*

1. Sub-Divisional Officer at Panvel and
Ors.

.... *Respondents*

**WITH
WRIT PETITION NO.3142 OF 2024**

M/s. Bluestar Construction represented
herein through proprietor Pandurang
Gajanan Thakur
V/s.

....*Petitioner*

1. Sub-Divisional Officer at Panvel and
Ors.

.... *Respondents*

**WITH
WRIT PETITION NO.3143 OF 2024**

Narayan Gajanan Thakur
V/s.

....*Petitioner*

1. Sub-Divisional Officer at Panvel and
Ors.

.... *Respondents*

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Mr. A.Y. Sakhare, senior advocate i/b. Mr. Sanket Thakur for the Petitioner.

Mr. Hiten S. Venegaonkar, Public Prosecutor with Ms Shilpa K. Gajare-
Dhumal, APP for Respondents-State in WP/3143/2024.

Mr. Hiten S. Venegaonkar, *Public Prosecutor with Ms Shilpa G. Talhar, APP for Respondents-State in WP/3141/2024.*

Mr. Hiten S. Venegaonkar, *Public Prosecutor with Ms Anuja Gotad, APP for Respondents-State in WP/3142/2024.*

Mr. Hiten S. Venegaonkar, *Public Prosecutor with Ms Shilpa K. Gajare-Dhumal, APP for Respondents-State in WP/3140/2024.*

Mr. Jitendra Jagtap *with Ms Eshikaa Sood & Ms Maria Shaikh for Respondent No.4-MPCB*

Mr. Sameer Palsuledessai *i/b. M/s. M.V. Kini and Co. for Respondent No.5.*

Dr. Sunil Kadhav, *Naib Tahasildar, SDO Office Panvel, present.*

Mr. Uddhav Kadam, *Tahasildar, Uran, present.*

CORAM : SANDEEP V. MARNE, J.

Dated : 12 August 2024

JUDGMENT:

1) These Petitions are filed by Petitioners, who operate stone crushing plants and are aggrieved by orders dated 28 June 2024 passed by the Sub-Divisional Officer-cum-Sub-Divisional Magistrate, Panvel, under provisions of Section 133 of the Code of Criminal Procedure, 1973 (**the Code**) directing closure of their crusher plants.

2) Brief facts leading to filing of the present Petitions are that Petitioners claim to be owners and occupants of various lands at Village -Jasai, Taluka - Uran, District-Raigad. Maharashtra Pollution Control Board (**MPCB**) has granted 'Consent to Operate' in favour of Petitioners for manufacture of Asphalt Mix Plant, crushing and washing sand, stone metal, crushed stone and grit powder, etc, which are commonly referred to as 'stone crushing plants' in the present order.

- 3) According to Petitioners, MPCB is the principal regulator tasked with overseeing and managing pollution control efforts relating to their stone crushing plants. Petitioners claim to have acquired various other permissions and NOCs required for operation of stone crushing plants. They also have been issued mining licenses under the provisions of Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013. Petitioners have given details of various permissions, licenses and NOCs, issued by various statutory authorities in the Petitions.
- 4) Petitioners' stone crushing plants are located near Mumbai Trans Harbour Sea Link named as '*Atal Setu*'. According to Petitioners, location of their plants near Mumbai Trans Harbour Sea Link does not cause any hazard as Petitioners are not permitted to use blasting or explosives and that they use various suppression systems to prevent air and sound pollution. According to Petitioners, no public nuisance is therefore caused by reason of operation of crushing plants by them.
- 5) Mumbai Trans Harbour Sea Link was inaugurated for public use in January 2024. Commissioner, Mumbai Metropolitan Region Development Authority (**MMRDA**) wrote to Collector, Raigad, bringing to his notice operation of various mining and quarry works in the villages of Uran and Panvel Talukas and their effect on the Trans Harbour Link. It appears that that orders were issued on 23 January 2024 for closure of stone crushing plants. According to Petitioners, inspection was conducted on their stone crushing plants by MPCB and a report was submitted to Sub-Divisional Officer, Panvel. It appears that after receipt of letters from MPCB, the Sub-Divisional Officer, Panvel wrote to the Respondent No.5-Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**) for reconnection of electricity supply in

respect of the plants and also instructed the Circle Officer, Jasai, to remove the seal on the plants. After MPCB's recommendations, the plants were restarted.

6) In the above background, notices were issued by Sub-Divisional Officer-cum-Sub-Divisional Magistrate, Panvel on 27 May 2024 to Petitioners calling them upon to show cause as to why they should not be enjoined from operating the stone crushing plants. In the said show cause notices it was stated that operation of stone crushing plants as well as blasting activities were endangering the structural stability of Mumbai Trans Harbour Sea Link in addition to causing destruction of the environment. It was stated that food mall is proposed near the toll plaza and regular blasting activities would endanger the bridge as well as buildings. The show cause notices referred to letters of Commissioner, MMRDA dated 14 December 2023, 10 April 2024 as well as Collector's letter dated 5 May 2024. Petitioners were called upon to remain present for hearing on 10 June 2024. Petitioners submitted their written submissions/ replies to the show cause notices. The Sub-Divisional Magistrate proceeded to pass orders on 28 June 2024 under provisions of Section 133 of the Code ordering stoppage of Petitioners' crushing plants till the time committee constituted for examining threat to Mumbai Trans Harbour Sea Link on account of Petitioners' plants submits its reports. The order directs that since some time was required for verifying the concerns expressed by MMRDA through the constituted Committee, it was necessary to immediately close the stone crushing plants of Petitioners. The MSEDCL is directed to disconnect the electricity supply to the said plants. Petitioners are aggrieved by the orders dated 28 June 2024 and have accordingly filed present Petitions.

7) Mr. Sakhare, the learned senior advocate appearing for Petitioners would submit that the impugned orders dated 28 June 2024 are passed in gross violation of provisions of Section 133 of the Code. He would submit that

under Section 133, the Magistrate is required to first pass a conditional order, whereafter the person against whom said order is passed, can either accept the order or question the same. That Sections 135, 137, 138, 139 deal with following of detail procedure before making the conditional order absolute. That in the present case, no conditional order is passed by the Sub-Divisional Magistrate and he has straightaway proceeded to pass final orders directing closure of stone crushing plants of Petitioners. Inviting my attention to clause No.1 of the operative portion of the impugned orders, Mr. Sakhare would submit that orders themselves direct that the process of passing of final order is completed. That the order does not contemplate any further adjudication proceedings. Relying on judgments of the Apex Court in **C.A. Avarachan V/s. C.V. Sreenivasan and Another.**¹ he would submit that drawing of a preliminary order is a *sine qua non* for initiation of proceedings under Section 133 of the Code and that in absence of such a preliminary order, the closure order passed by the Sub-Divisional Magistrate is illegal and liable to be set aside. Mr. Sakhare would submit that the entire procedure followed by the Sub-Divisional Magistrate is faulty, who initially issued a show cause notice on 27 May 2024 and thereafter proceeded to pass final order under Section 133. That this course of action is contrary to the statutory framework.

8) Mr. Sakhare would further submit that the power under Section 133 of the Code is exercised in a casual manner without recording a finding of fact that the activities carried out by Petitioners actually amount to public nuisance. That as of now, there is no material to indicate that any damage is caused to Mumbai Trans Harbour Sea Link on account of operation of stone crushing plants by Petitioners. He would rely upon judgment of the Apex Court in **Kachrual Bhagirath Agrawal and Ors. V/s. State of Maharashtra and Ors.**² in support of his contention that in absence of any imminent danger to the

¹. (1996) 7 SCC 71

² (2005) 9 SCC 36

property and a consequential nuisance to the public, power under Section 133 of the Code cannot be exercised. He would also rely upon judgment of the Apex Court in *Suhelkhan Khudyarkhan and Anr. V/s. State of Maharashtra and Ors.*³ in support of his contention that the conduct of trade must be injurious in *presenti* to the health or physical comfort of the community and that an order under Section 133 or 138 of the Code cannot be exercised in absence of any findings of fact that the activities have caused any injury 'at present'. He would submit that the very basis for passing of the impugned orders about blasting activities causing damage to Mumbai Trans Harbour Sea Link or to its buildings, suffer from total non-application of mind in the light of the fact that Petitioners do not carry out any blasting activities at the site. That they have not been issued blasting licenses. That they merely conduct crushing activities at the site, which could not cause damage to Mumbai Trans Harbour Sea Link. That in such circumstances an order of wholesale closure of the plants is totally unwarranted. Lastly, Mr. Sakhare would point out that though the impugned orders are passed on 28 June 2024, till date no steps are taken for constituting of committee nor any inspections are conducted. That the constitutional rights of Petitioners to carry on trade is suspended on account of arbitrary actions by Respondents. He would therefore pray that the impugned order be set aside.

9) Petitions are opposed by Mr. Venegaonkar, the learned Public Prosecutor appearing for the Respondent -State Government. He would submit that the orders dated 28 June 2024 are not final orders and that the same merely suspend the operations of stone crushing plants of Petitioners during pendency of findings to be submitted by Committee of experts. That the concerned authorities are in the process of appointing committee of experts in consultation with Indian Institute of Technology, Bombay (IIT). That final order would be passed after taking into consideration the report of the Committee as well as after following procedure under Sections 133 to 140 of

³. (2009) 5 SCC 586

the Code. That it is premature at this stage to entertain Petitions filed by Petitioners when the Sub-Divisional Magistrate is yet to pass a final order. He would submit that considering the importance of vital project of Mumbai Trans Harbour Sea Link for the Nation, as well as to protect the structure as well as safety of the passengers, the Sub-Divisional Magistrate has taken a *pro tem* measure to suspend operation of Petitioners' stone crushing plants and a final decision would be taken after examining the recommendations of the Committee. He would submit that there are newspaper reports indicating presence of cracks on some portions of Mumbai Trans Harbour Sea Link and considering the importance of the project, the measures taken by the Sub-Divisional Magistrate are in the interest of public safety warranting no interference in exercise of writ jurisdiction of this Court. He would pray for dismissal of the Petitions.

10) Rival contentions of the parties now fall for my consideration.

11) The impugned orders dated 28 June 2024 are shown to have been passed in exercise of jurisdiction under Section 133 of the Code. It would be necessary to examine the statutory scheme under Chapter X of the Code dealing with 'Maintenance of Public Order and Tranquility'. Part-B of Chapter X deals with 'Public Nuisances' whereas Part -C deals with "Urgent Cases of Nuisance or Apprehended Danger'. The statutory scheme for dealing with Public Nuisances is to be found under Sections 133 to 143 of the Code. It would be necessary to reproduce Sections 133 to 143 as under:

133. Conditional order for removal of nuisance.-Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers.-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

- (b) that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or
- (c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or
- (d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or
- (e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or
- (f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

Such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order-

- (i) to remove such obstruction or nuisance; or
- (ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or
- (iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or
- (iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or
- (v) to fence such tank, well or excavation; or
- (vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any civil Court.

Explanation – A “public place” includes also property belonging to the

State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Section 134 – Service or notification of order

1. The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons.
2. If such order cannot be so served, it shall be notified by proclamation, published in such manner as the State Government may, by rules, direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

135 – Person to whom order is addressed to obey or show cause .-The person against whom such order is made shall-

- (a) perform, within the time and in the manner specified in the order, the act directed thereby; or
- (b) appear in accordance with such order and show cause against the same.

Section 136 – Consequences of his failing to do so

If such person does not perform such act or appear and show cause, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code (45 of 1860,) and the order shall be made absolute.

Section 137 – Procedure where existence of public right is denied

- (1) Where an order is made under section 113 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 138, inquire into the matter.
- (2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Court; and if he finds that there is no such evidence, he shall proceed as laid down in section 138.
- (3) A person who has, on being questioned by the Magistrate under Sub-Section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial.

Section 138 – Procedure where he appears to show cause.- (1) If the person against whom an order under section 133 is made appears and shows cause

against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case.

Section 139 – Power of Magistrate to direct local investigation and examination of an expert.- The Magistrate may, for the purposes of an inquiry under section 137 or section 138-

- (a) direct a local investigation to be made by such person as he thinks fit;
or
- (b) summon and examine an expert.

Section 140 – Power of Magistrate to furnish written instructions, etc.-(1)
Where the Magistrate directs a local investigation by any person under section 139, the Magistrate may-

- (a) furnish such person with such written instruction as may seem necessary for his guidance;
 - (b) declare by whom the whole or any part of the necessary expenses of the local investigation shall be paid.
2. The report of such person may be read as evidence in the case.
 3. Where the Magistrate summons and examines an expert under section 139, the Magistrate may direct by whom the costs of such summoning and examination shall be paid.

Section 141 – Procedure on order being made absolute and consequences of disobedience

1. When an order has been made absolute under section 136 or section 138, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code (45 of 1860).
2. If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of

such person within or without such Magistrate's local jurisdiction and if such other property is without such jurisdiction, the order shall authorise its attachment and sale when endorsed by the Magistrate within whose local jurisdiction the property to be attached is found.

3. No suit shall lie in respect of anything done in good faith under this section.

Section 142 – Injunction pending inquiry.- (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

Section 143 – Magistrate may prohibit repetition or continuance of public nuisance

A District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (45 of 1860), or any special or local law.

12) Thus, a District Magistrate or a Sub-divisional Magistrate. who receives information after taking such evidence as he thinks fit, forms an opinion *inter alia* that conduct of any trade or occupation is injurious to health or physical comfort of the community and that such trade or occupation should be prohibited or regulated, he can first make a conditional order reporting the person carrying on such trade or occupation to desist from carrying out such trade or occupation. If the person carrying on such trade or occupation objects to the conditional order, the Magistrate can require him to appear before him and to show cause as to why the order shall not be made absolute. Explanation to Section 133 provides that the expression “public place” includes property

belonging to the State. Under Section 135, the person, to whom the conditional order made under Section 133 is addressed, is required to either perform the order or appear in accordance with such order and show cause against the same. If such person shows cause against the order, the Magistrate is required to take evidence and either make the order absolute or direct that no further proceedings be taken in the case. Under Section 139 of the Code, Magistrate is empowered to direct local investigation or examination of an expert. Under Section 142, the Magistrate is empowered to make an order of injunction to prevent imminent danger or injury of a serious kind to the public. This is the broad statutory scheme for dealing with cases of public nuisances.

13) It is Mr. Sakhare's submission that in the present case, the Sub-Divisional Magistrate has proceeded to straightaway pass a final order in absence of unconditional order to be made under Section 133 of the Code. I am unable to agree. The orders dated 28 June 2024 specifically refer to Section 133 of the Code. There is no provision for passing a final order under Section 133, which can be passed either under Section 136 (where party fails to show cause) or under Section 138 (after considering the cause shown). Since Orders dated 28 June 2024 do not refer to provisions of Section 136 or 138, it cannot be stated that final orders are passed by the Sub-divisional Magistrate directing closure of Petitioners' stone crushing plants. Confusion of orders being 'final' is possibly created possibly on account of use of expression '*completion of procedure under Section 133 of the Code*' in operative paragraph 1 of the orders. Operative part of Orders dated 28 June 2024 are translated as under:-

- (i) On the basis of the conclusions drawn from the findings recorded in the judgment, the process commenced by this office under provisions of Section 133 of the Code of Criminal Procedure, 1973 is hereby completed.
- (ii) Tehsildar shall immediately send a proposal to Collector and District Magistrate for constitution of Committee of technically competent

organization for examining whether there is a danger as expressed in the letter of Commissioner, MMRDA, Mumbai.

- (iii) Till examination by the aforesaid Committee and considering the imminent danger to the lives of passengers travelling on Atal Setu, I order closure of the Crusher Plant in exercise of my powers under the Code of Criminal Procedure, 1973.
- (iv) Concerned Tahsildar and concerned police inspector shall forthwith implement this order.
- (v) Superintending Engineer, Maharashtra State Electricity Distribution Co., Vashi shall disconnect electricity supply to the concerned Crusher.
- (vi) Police Inspector shall initiate penal action against persons violating the order.
- (vii) All parties be informed about the order.

14) This is how, the language employed in paragraph (i) of operative portion of the order dated 28 June 2024 creates a possible impression as if this is a final order for closure of Crusher Plants. However on close scrutiny, it can be seen that what is ordered by the Sub-Divisional Magistrate is 'completion of process' only under Section 133 of the Code. As observed above, no final order can be passed under Section 133, which provides for making of only a preliminary order or a conditional order requiring a person to desist from carrying on a trade or occupation. I am therefore, unable to accept the submission of Mr. Sakhare that orders dated 28 June 2024 are final orders for closure of the stone crushing plants.

15) If there is any ambiguity in the operative portion of the impugned orders, the same is clarified in the following findings recorded by the Sub-divisional Magistrate:

उक्त नमुद परिच्छेदात नमुद धोक्याची पडताळणी करण्यासाठी तांत्रिक दृष्ट्या सक्षम असलेल्या IIT किंवा इतर संस्थांची नेमणूक करण्याचा प्रस्ताव मा. जिल्हाधिकारी तथा जिल्हा दंडाधिकारी यांचेकडे पाठवल्यानंतर अशी पडताळणी होण्यास काही कालावधी लागण्याची शक्यता आहे. परंतु अशा कालावधीमध्ये सदर पूलास धोका नाही व या पुलास आलेल्या घेक्यामुळे लोकांच्या जिविताला धोका नाही याची खात्री होत नाही, मा.आयुक्त, एमएमआरडीएमुंबई यांचे पत्र पाहता असा धोका असल्याचे प्रथमदर्शनी माझ्या निर्दशनास आणून दिल्याने IIT किंवा इतर संस्थांची नेमणूक करून त्याची खात्री होत नाही तोपर्यंतच्या कालावधीत सदरची प्रक्रिया व सदरची क्रशर प्लांट ताबडतोब बंद करणे आवश्यक असल्याची माझी खात्री झाली आहे.

The above findings are translated as under:-

After sending proposal is sent to District-Collector-cum- District Magistrate, some time would be required for verification by technically competent institutes like IIT or other institutes for verifying the danger noted in the above paragraph. However, I am not convinced that during such period, there is no danger to the project or to the lives of the passengers on account of danger to the bridge. By letter of Commissioner, MMRDA, it has been *prima facie* brought to my notice that there is such danger and therefore till IIT or other institute performs the same, the operations of Crushing Plants need to be immediately closed till such time.

16) Thus, the order clearly indicates that the directions issued for closure of stone crushing plants are nothing but a *pro tem* measure till the IIT, or other competent institute conducts inspection and verification and submits its report as to whether Petitioners' stone crushing plants are really causing any damage to the Trans-Harbour Link or endangering lives of passengers travelling thereon. In that view of the matter, the orders dated 28 June 2024 are required to be treated as conditional orders or preliminary orders within Section 133 of the Code.

17) The statutory scheme under Part B of Chapter X of the Code is such that Sub-divisional Magistrate can straightaway pass a conditional order requiring a person to desist from carrying on trade or occupation and thereafter grant an opportunity to show cause. In the present case though show cause notices were issued on 27 May 2024, in fact the Sub-divisional Magistrate could have straightaway passed conditional orders under Section 133 directing closure of stone crushing plants of Petitioners and thereafter granted them opportunity to show cause. There is nothing on record to indicate that Sub-divisional Magistrate has made the conditional orders absolute. On the contrary, it appears that the Sub-Divisional Magistrate has exercised power

under Section 139 of the Code to direct local investigation. Upon receipt of report of local inspection, Magistrate will have to follow procedure under Section 140 and thereafter proceed to make an order under Section 138 either by making the conditional order absolute or by directing that no further proceedings be taken in the case. Since the orders dated 28 June 2024 are not final orders, reliance of Mr. Sakhare on judgment of the Apex Court in C.A. Avarachan (supra) is clearly misplaced.

18) So far as reliance of Mr. Sakhare on judgment of the Apex Court in Suhelkhan Khudyarkhan Kachrual Bhagirath Agrawal (supra) are concerned, in my view there is no reason to doubt wisdom of Sub-divisional Magistrate in initiating action under Section 133 of the Code after receipt of specific letter from Commissioner, MMRDA in at least verifying the concern expressed relating to danger caused to the structural stability of Trans Harbour Link as well as passengers travelling thereon. Trans Harbour Sea Link is one of the premier infrastructure projects of the Country undertaken after incurring of expenditure thousands of crores of rupees. It offers a crucial link for entry and exit to Mumbai City. As observed above, public place includes property belonging to the State under Explanation to Section 133 of the Code. Such a structure cannot be put to risk on account of operation or activities such as mining, blasting and stone crushing. Apart from the apprehended danger to the structure of the bridge, what is also important is the concerns expressed about possible cause of injury to health of passengers using the Link. All that the Sub-Divisional Magistrate is doing at this juncture is to examine whether the activities at Petitioners' plants are causing injury to health of passengers or risk to the structural stability of the Trans Harbour Link. In my view therefore the powers under Section 133 have been validly exercised by the Sub-Divisional Magistrate.

19) Mr. Venegaonkar has contended that there are reports of the Trans Harbour Link suffering cracks. Mr. Sakhare disputes this position and has sought to place on record some of the published news articles, in which the claims of the bridge developing cracks have been denied by MMRDA itself. In my view whether cracks have occurred or not and whether blasting, mining or stone crushing activities have caused any damage to the bridge is concerned, position would be clear only after the expert agencies come out with their reports. Alleged developing of cracks to the structure is only one of the reasons why the closure order is made for now. The authorities would also examine whether the stone crushing activities would be hazardous for passengers travelling on Trans Harbour Link. MMRDA is proposing a food court near Toll Plaza and effect of the activities at plants of Petitioners will have to be examined from that angle as well. It is too premature at this stage to form a definitive opinion in this regard. The show cause notice as well as orders dated 28 June 2024 do indicate that the stone crushing activities cause air and sound pollution, which is not conducive to the health of lakhs of passengers using the Trans Harbour Link. Considering this position, if the Sub-divisional Magistrate has taken steps to at least conduct a verification into the concerns raised by the MMRDA. Therefore cannot be stated that the exercise of jurisdiction by the Sub-divisional Magistrate is arbitrary so as to invoke jurisdiction of this Court under Article 227 of the Constitution of India.

20) So far as the concerns about the delay in verification process expressed by Mr. Sakhare is concerned, Mr. Venegaonkar has assured the Court, after taking instructions from the officers present before the Court, that efforts shall be made to complete the necessary process of verification through IIT or other technical institutes within a period of two months from today. Statement is recorded and accepted.

21) After considering the overall conspectus of the case, I do not find any valid ground to interfere in the orders dated 28 June 2024.

22) The Writ Petitions are accordingly dismissed. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]