

Santosh

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

**SANTOSH
SUBHASH
KULKARNI**

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SANTOSH SUBHASH
KULKARNI

Date: 2025.11.15
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WRIT PETITION NO.5782 OF 2025

Kailas Kashinath Rathod ... Petitioner

versus

The State of Maharashtra ... Respondent

WITH

WRIT PETITION NO.5829 OF 2025

Ganesh Atmaram Mokashe ... Petitioner

versus

The State of Maharashtra ... Respondent

WITH

WRIT PETITION NO.5816 OF 2025

Seema Ganesh Mokashe ... Petitioner

versus

The State of Maharashtra ... Respondent

WITH

WRIT PETITION NO.5796 OF 2025

Anushka Ankush Kondra ... Petitioner

versus

The State of Maharashtra ... Respondent

Mr. RajeshMore, for Petitioners.

Mr. P.P.Malshe, APP for State in all matters.

PSI Asalam Mujawar, Kalewadi Police Station with HC Randhir
Bhosale, present.

CORAM : N.J.JAMADAR, J.

DATE : 13th NOVEMBER, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
2. As the genesis of all these petitions is the same, the Petitions were heard together and are being decided by this common judgment.
3. The Petitioners assail the legality and validity of the notice under Section 130 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and the subsequent summons issued to the Petitioners.
4. Ganesh Mokashe – Petitioner in WP No.5829 of 2025, was a member of the Five Garden Co-op. Hsg. Soc. Ltd., Pune. Ganesh Mokashe was the owner of Row House No.F-1207/08. Ganesh Mokashe has executed a Gift Deed in respect of the said Row House in favour of his wife Seema Mokashe – Petitioner in WP No.5816 of 2025.
5. The Society alleges, maintenance to the tune of Rs.6,50,000/- is outstanding qua the said row-house. On the said count, and over the management of the affairs of the Society, disputes arose between Ganesh and Seema, on the one part, and

the office bearers of the Committee and other members of the Society, on the other part.

6. On 1 December 2024, Ganesh Mokashe allegedly parked the cars across the road in the society, and, thereby caused obstruction to the movement of vehicles and persons. Seema Mokashe and Anushka Kondra, the Petitioner in WP No.5796 of 2025, allegedly addressed letters to the members of the Society, with a view to defame the first informant, who is the Chairman of the said Society. Kailash Rathod, the driver of Seema and Ganesh Mokashe, and the Petitioner in WP No.5782 of 2025, had abused and intimidated the women residents of the Society and had threatened Dheeraj Garg out of his life.

7. Thus, on 6 January 2025, the Chairman of the Society lodged a report with the aforesaid allegations, leading to registration of CR No.7 of 2025 with Kalewadi Police Station, Pimpri Chinchwad, for the offences punishable under Sections 126(2), 356(2), 79, 352 and 351(1) of BNS.

8. Prior to the registration of the said FIR, Seema Mokashe had lodged a report leading to the registration of CR No.6 of 2025 with

Kalewadi Police Station for the offences punishable under Sections 126(2), 49 and 356(2) of BNS against the office bearers/officials of the society. NC complaints were lodged on 1 December 2024 and 7 December 2024 by Seema Mokashe. Proceedings were also initiated before the authorities under the Maharashtra Co-op. Societies Act, 1960.

9. In the wake of the aforesaid dispute, the Executive Magistrate issued notices under Section 130 of the BNSS calling upon the Petitioners to show cause as to why the Petitioners shall not be directed to furnish bond and surety in the sum of Rs.20,000/- each, for keeping peace, under Section 126 of the BNSS. Asserting that the petitioners did not appear on the specified dates, the Executive Magistrate issued a summons under Section 132 of the BNSS.

10. The petitioners assailed the notice and summons in Revision before the learned Sessions Judge. By the impugned orders the Revision Application came to be dismissed.

11. Hence, the petitioners have invoked the writ jurisdiction assailing the impugned action as *mala fide* and illegal exercise of

power conferred under the provisions of Section 126 of the BNSS.

12. Mr. Rajesh More, the learned Counsel for the petitioners, submitted that, by no stretch of imagination, the dispute between Ganesh and Seema Mokashe, the members of the Society, and the office bearers and officials of the Society, can be said to be such as to warrant action under Section 126 read with Section 130 of the BNSS. On the basis of solitary FIR No.7 of 2025 registered against the petitioners by the Chairman of the Society, by way of a counterblast, to the FIR registered by Seema at a prior point of time, the Special Executive Magistrate has issued the notice under Section 130 of the BNSS. The dispute between the parties is essentially a private dispute with no possibility of breach of peace and public tranquility. Therefore, the impugned notice under Section 130 of the BNSS and the consequent Chapter-IX proceedings deserve to be quashed and set aside.

13. To lend support to these submissions, Mr. More placed reliance on the judgments in the cases of Rajesh s/o Shamsundar Kejriwal vs. State of Maharashtra and another¹, Smt. Christalin Costa and others vs. State of Goa and others², Sureshchandra

¹ 2018 All MR (Cri) 1481.

² 1993(2) Mh.L.J. 1409.

Mahabir Prasad Mantri and others vs. State of Maharashtra and another³ and Sandeep Shivaji Mhatre and ors. vs. State of Maharashtra and anr.⁴.

14. Per contra, Mr. Malshe, the learned APP, made an endeavour to support the impugned order. It was submitted that the Executive Magistrate has given an opportunity to the petitioners to show cause under Section 130 of the BNSS. The petitioners can very well appear before the Executive Magistrate and show the cause. No prejudice is likely to be caused to the petitioners if they participate in the proceedings before the Executive Magistrate and if they satisfy the Executive Magistrate that the proceedings are unwarranted, the Executive Magistrate may eventually drop the proceedings. Therefore, at this stage, no interference is warranted with the proceedings before the Executive Magistrate and, therefore, the learned Additional Sessions Judge was justified in rejecting the revision application.

15. At the outset, it is necessary to note that, the genesis of the proceedings is in the dispute between Ganesh and Seema, on the one part, and the office bearers and the officials of the Housing

³ 2000(2) Mh.L.J. 633.

⁴ 2014(3) Mh.L.J. (Cri) 45.

Society, on the other part, arising out of the alleged liability to pay the maintenance and over the management of the affairs of the Society. It appears that, the things came to such a pass that Seema had lodged reports against the office bearers and officials of the Society and the Chairman, in turn, has lodged the FIR on the strength of which the instant proceedings have been initiated. In addition, it seems, proceedings are sub-judice before the Registrar and Co-operative Court, as well. Evidently, the dispute between the parties has predominantly a civil flavour, nay it falls within the province of the authority of the Authorities under the Maharashtra Co-operative Societies Act, 1960.

16. The question that, thus, wrenches to the fore is, whether the initiation of the proceedings under Chapter IX of BNSS is justified. It is trite that the scope and nature of Section 126 of the BNSS (107 of the Code) is preventive and not punitive. Its object is to ensure that there be no breach of peace and that the public tranquility be not disturbed by any wrongful or illegal act. Section 126 authorizes the Magistrate to initiate the proceedings against a person, if upon information he is satisfied that such a person is either likely to commit breach of peace or disturb public tranquility

or likely to be commit any wrongful act that might probably produce the same result. The proceedings under Chapter IX are essentially preventive in nature and those provisions cannot be used as a measure to punish or otherwise bring the adversary to terms, where the element of likelihood of breach of peace and disturbance to public tranquility is absent.

17. The Courts have frowned upon initiation of the proceedings under Chapter-VIII of the Code (Chapter-IX of the BNSS) where the dispute is essentially private, with no apprehension of breach of peace and public tranquility. In the case of Madhu Limaye and another vs. Sub-Divisional Magistrate, Monghyr and ors.⁵, the Supreme Court expounded the scope and purpose of the provisions contained in Section 107, in particular, and Chapter-VIII of the Code, in general. The observations in paragraphs 34 and 47 are instructive and thus extracted below:

34. The section is aimed at persons who cause a reasonable apprehension of conduct likely to lead to a breach of the peace or disturbance of the public tranquility. This is an instance of preventive justice which the courts are intended to administer. This provision like the preceding one is in aid of orderly society and seeks to nip in the bud conduct subversive of the peace and public tranquility. For this purpose Magistrates are invested with large judicial discretionary powers for the preservation of public peace and order. Therefore the justification for such provisions is

⁵ AIR 1971 SC 2486.

claimed by the State to be in the function of the State which embraces not only the punishment of offenders but, as far as possible, the prevention of offences.

.....

47. The gist of the Chapter is the prevention of crimes and disturbances of public tranquility and breaches of the peace. There is no need to prove overt acts although if overt acts have taken place they will have to be considered. The action being preventive is not based on overt act but on the potential danger to be averted. These provisions are thus essentially conceived in the interest of public order in the sense defined by us. They are also in the interest of the general public. If prevention of crimes, and breaches of peace and disturbance of public tranquility are directed to the maintenance of the even tempo of community life there can be no doubt that they are in the interest of public order. As we have shown above 'public order' is an elastic expression which takes within it various meanings according to the context of the law and the existence of special circumstances."

(emphasis supplied)

18. In the case of Sandeep Mhatre (supra), wherein the Chapter VIII proceedings were initiated on the basis of registration of FIR against the petitioners therein in connection with a private dispute, a Division Bench of this Court observed, *inter alia*, as under:

"12. It is also pertinent to note that in the present case, the proceedings are initiated under Section 107 of the Cr.P.C. on 05.03.2014 solely on the basis of C.R. No.250 of 2013, which was registered by Byculla Police Station on 19.11.2013 and which is pending trial before the Metropolitan Magistrate, Mazgaon. The said dispute was essentially between two individuals and does not involve any community or public at large. There is nothing in the Roznama entry or the notice to indicate that the petitioner was a habitual offender or that he was involved in criminal activity or that his conduct during the interregnum period was subversive of the peace and public tranquility. The Magistrate has

not conducted minimal required preliminary inquiry to arrive at a satisfaction that the alleged incident or the conduct of the petitioner was likely to cause breach of the peace or disturbance of the public tranquility but has formed his opinion mechanically, solely on the basis of the solitary FIR and the report forwarded by the Police. It is a settled principle that powers under Section 107 of the Cr.P.C. have to be exercised only in cases of serious nature likely to occasion breach of the peace or disturbance of the public tranquility and not as a vehicle for private vendetta. Since foundation of an order is an apprehension or likelihood of a breach of the peace or public tranquility, such order could not be justified merely on the basis of solitary incident of violence between two individuals.”

(emphasis supplied)

19. The aforesaid pronouncement was followed by another Division Bench in the case of Rajesh Kejriwal (supra). In that case also, the Division Bench quashed the proceedings as the dispute between the petitioner and one Ashok Kumar, was essentially a dispute between two individuals and did not involve any community or public at large. There was nothing in the impugned notice indicating that the petitioner was habitual offender or that he was involved in criminal activity or that his conduct in the intervening period was subversive of peace and tranquility.

20. In the case of Sureshchandra Mantri (supra), a learned Single Judge of this Court observed that, the proceedings under Chapter VIII of the Code were not to be used as a vehicle for private vendetta. In that case also, like the case at hand, there

were complaints and cross-complaints and the relations between the parties were strained and the parties were harbouring feeling of vendetta against each other and, thus, professed to take help of police to avenge each other.

21. In the light of the aforesaid position in law, reverting to the facts of the case, it becomes abundantly clear that, a dispute between one member and the office bearers and other members of the Society has spiralled out into multiple proceedings, including the report and cross-reports to the police. The proceedings have been initiated before the authorities under the Maharashtra Co-operative Societies Act, 1960 as well. In the backdrop of these strained relations and the parties having turned astray, the initiation of the proceedings under Section 126 of the BNSS on the basis of a sole FIR registered against the petitioners, in the absence of any material to show that the petitioners were either habitually involved in offences, or otherwise posed threat to maintenance of peace and public tranquility, appeared to be wholly unwarranted. The element of apprehension of breach of peace and disturbance to public tranquility is clearly missing. Therefore, the impugned notice under Section 130 of the BNSS and all

consequent actions deserve to be quashed and set aside.

22. These factors were not adequately considered by the learned Additional Sessions Judge. The justifiability of the action was not decided keeping in view the object and purpose of the proceedings under Chapter-IX of the BNSS.

23. Resultantly, the impugned orders passed by the learned Additional Sessions Judge deserve to be quashed and set aside. Consequently, the notice under Section 130 of the BNSS and all consequential actions also deserve to be quashed and set aside.

24. Hence, the following order:

: O R D E R :

- (i) The petitions stand allowed.
- (ii) The impugned orders passed by the learned Additional Sessions Judge stand quashed and set aside.
- (iii) The impugned notices Under Section 130 of the BNSS and all consequent actions by the Executive Magistrate stand quashed and set aside.
- (iv) Rule made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]