

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.6212 OF 2025**

Prasanna Vasant Rohanekar ... Petitioner
versus
Special Executive Magistrate and Anr. ... Respondents
WITH

WRIT PETITION NO.6213 OF 2025

Amardeep Singh Sethi ... Petitioner
versus
Special Executive Magistrate and Anr. ... Respondents

Mr. Vaibhav Ugle with Mr. Vikas somwanshi, Mr. Santosh Shukla, for
Petitioners.

Mrs. R.S.Tendulkar, APP for State in WP No.6212 of 2025.

Mr. K.C.Shinde, APP for State in WP No.6213 of 2025.

CORAM: N.J.JAMADAR, J.

DATE : 28 NOVEMBER 2025

ORDER :

1. Rule. Rule made returnable forthwith, and, with the consent of the Counsel for the parties, heard finally.
2. These Petitions assail the orders dated 6 October 2025 passed by the learned Sessions Judge in Revision Application Nos.31 of 2025 and 60 of 2025, whereby the revisions preferred by the Petitioners against the orders passed by the Special Executive Magistrate, Zone II, Panvel, Navi Mumbai, directing the Petitioners to execute personal bonds and furnish surety for keeping peace for a term of one year under Section 126 of the Bharatiya

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Nagarik Suraksha Sanhita, 2023 (BNSS 2023), came to be dismissed.

3. As both the Petitions arise out of identical set of facts and similar incidents, both the Petitions were heard together and are being decided by this common order.

4. The Petitioners are the office bearers of Kharghar Empire Estate Society Ltd. Disputes have arisen between the office bearers of the Society, on the one hand, and, few members of the society, on the other hand. Certain proceedings before the authorities under the Maharashtra Co-op. Societies Act, 1960, were also initiated. Disputes have led to altercations and resultant lodging of non-cognizable complaints by and against the Petitioners.

5. Thus, by referring to five non-cognizable complaints lodged against Amardeep Singh Sethi – Chairman of the society and the Petitioner in WP No.6213 of 2025, and two non-cognizable complaints lodged against Prasanna Vasant Rohanekar – Secretary of the Society and the Petitioner in WP No.6212 of 2025, the Executive Magistrate issued notices under Section 130 of BNSS. Post inquiry, by the orders dated 24 January 2025, the Executive Magistrate directed the Petitioners to execute bond to maintain peace for a term of one year under Section 126 of the BNSS.

6. Being aggrieved, the Petitioners preferred Revision Applications before the learned Sessions Judge. By the impugned orders, the learned Sessions Judge dismissed the Revision Applications opining that the cases and cross

cases have been registered in the wake of the disputes between the Petitioners and the members of the Society, and, thus, the orders passed by the Special executive Magistrate under Section 136 of the BNSS, did not warrant any interference.

7. Being further aggrieved, the Petitioners have invoked the Writ jurisdiction.

8. Mr. Ugle, learned Counsel for the Petitioners, submitted that, being the office bearers of the society, the Petitioners have demanded the members, who lodged the complaints, to pay the outstanding maintenance charges and follow the rules and bye-laws of the society. In the wake of the disputes, the Petitioners have also lodged non-cognizable complaints against the complainants who have, in turn, lodged non-cognizable complaints against the petitioners. Having regard to the nature of the dispute, the Special Executive Magistrate, committed gross error in initiating proceedings under Chapter IX of the BNSS. Learned District Judge also did not properly appreciate the nature of the material and the justifiability of the prohibitory action.

9. In opposition to this, Mrs. Tendulkar and Mr. Malshe, learned APP, supported the impugned orders. It was submitted that on account of the constant disputes and quarrels, there was indeed threat to public peace and tranquility. Thus, no interference is warranted in the impugned orders.

10. The question that, thus, wrenches to the fore is, whether the initiation of the proceedings under Chapter IX of BNSS was 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.

11. In the case of Madhu Limaye and another vs. Sub-Divisional Magistrate, Monghyr and Ors.¹, 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

¹ AIR 1971 SC 2486.

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 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)

12. Expounding the import of the provisions contained in Section 107 of the Code of Criminal Procedure, 1973, precursor of Section 126 of the BNSS, the Supreme Court in the case of **Istkar V/s. The State of Uttar Pradesh and Anr.**², observed as under :

“11. As noticed, the scope and nature of Section 107 CrPC

² (2022) SCC Online 1801

is preventive and not punitive. It aims at ensuring that there be no breach of peace and that the public tranquillity be not disturbed by any wrongful or illegal act. The action being preventive in nature is not based on any overt act but is intended to forestall the potential danger to serve the interests of public at large. In other words, this provision is in aid of orderly society and seeks to avert any conduct subversive of the peace and public tranquillity. The provision authorises the Magistrate to initiate proceedings against a person if upon information, he is satisfied that such person is either likely to commit breach of peace or disturb public tranquillity or is likely to commit any wrongful act that might probably produce the same result. Simply stated, the provisions of Chapter VIII of the Code are merely preventive in nature and are not to be used as a vehicle for punishment.”

13. Reverting to the facts of the case, non-cognizable complaints lodged by and against the Petitioners have their genesis in the disputes between the Petitioners, as office bearers of the housing society, on the one side, and the members of the housing society, on the other side. Non-cognizable complaints, in a sense, arose out of a private dispute between the individuals. The dispute did not appear to have the propensity to cause breach of peace and public tranquility. The Courts have frowned upon the invocation of the Chapter proceedings in the dispute between the individuals, sans an element of breach of peace and disturbance to public tranquility.

14. In the case of Sandeep Shivaji Mhatre and ors. vs. State of

Maharashtra and anr.³ 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)

15. In the case at hand, in my considered view, the resort to the provisions

³ 2014(3) Mh.L.J. (Cri) 45.

contained in Chapter IX of BNSS 2023, was wholly unwarranted. Learned Sessions Judge failed to appreciate the context in which non-cognizable complaints came to be lodged. The mere fact that the non-cognizable complaints and cross-complaints have been lodged, would not be a sustainable foundation to pass orders under Section 136 read with 126 of BNSS, as the order to furnish bonds to keep peace has serious ramifications.

16. For the foregoing reasons, the impugned orders deserve to be quashed and set aside.

17. Hence, the following order :

ORDER

(i) The Writ Petitions stand allowed.

(ii) The impugned orders dated 6 October 2025 passed by the learned Sessions Judge in Criminal Revision Application Nos.31 of 2025 and 60 of 2025 stand quashed and set aside.

(iii) Consequently, the orders dated 24 January 2025 passed by the Special Executive Magistrate under Section 136 of the BNSS, directing the Petitioners to furnish bond to keep peace also stand quashed and set aside.

(iv) Rule made absolute in the aforesaid terms.

(N.J.JAMADAR, J.)