

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION (A.PL.) NO. 301 OF 2025**

Jubie Maathew (Juby Mathew)

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Ms. Varsha Mishra for Applicant.

Smt. Prajakta P Shinde, A.P.P for Respondent No.1-State.

Mr. Sharad Pathak, PSI, Juhu Police Station, Mumbai, present.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.****DATE : 3rd September 2025.****P.C. :**

1) By this Application under Section 482 of the Code of Criminal Procedure (Cr.PC), the Applicant, accused in C.R. 0951 of 2024, dated 10th October 2024, registered with Juhu Police Station, Mumbai under Sections 3(5) and 329(4) of the Bharatiya Nyaya Sanhita (BNS), is seeking quashing of the said crime.

2) As recorded in para No.1 of Order dated 18th August 2025, the investigation of present crime is completed and the police have filed charge-sheet in the Court of Judicial Magistrate First Class (Court No.10), Andheri, Mumbai and the trial Court has already taken cognizance of the said case.

2.1) The Hon'ble Supreme Court in the case of *Neeta Singh & Ors.*

Vs. The State of Uttar Pradesh & Ors., Special Leave to Appeal (Cri.) No(s). 13578 of 2024, dated 15th October 2024, in para Nos. 3, 4 and 5, has held as under:

*“3. We have no doubt in our mind about the contours of jurisdiction of a high court when a challenge is presented asserting that the impugned FIR ought to be quashed on the settled parameters. However, sight cannot be lost of the settled legal position that it is entirely within the discretion of a high court whether to interfere or not when other remedies are available. If during the pendency of a writ petition under Article 226 of the Constitution before a high court where an FIR is challenged the investigation is completed and charge-sheet filed, in pursuance whereof the competent criminal court takes cognizance of the offence, the court would be disabled in proceeding with the writ petition owing to a judicial order having intervened. We can profitably refer to the decision of the bench of three Judges of this Court made on a reference in *Radhey Shyam vs. Chhabi Nath* (2015) 5 SCC 423. While disapproving the view expressed in *Surya Dev Rai vs. Ram Chander Rai* (2003) 6 SCC 675, it was held that judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution and that jurisdiction under Article 227 is distinct from jurisdiction under Article 226 (para 29 of *Radhey Shyam*). We may also note from such decision that upon considering decisions of high authority, a principle of law was laid down that challenge to judicial orders could lie by way of an appeal or a revision or under Article 227 of the Constitution and not by way of a writ under Articles 226 and*

32.

4. *The underlying reason why judicial orders are not amenable to challenge in a writ petition under Article 226 of the Constitution seems to be that such orders cannot be legitimately claimed to have been passed by the presiding officer of a court in breach or violation of a fundamental right, any right conferred by the Constitution or a statutorily conferred right, which could be corrected by issuance of a writ of certiorari in exercise of high prerogative writ jurisdiction of the high courts. After all, should any right of a person be infringed as a consequence of a judicial order, the laws provide for the fora where such order is amenable to challenge and it is such fora, which ought to be approached for redress of one's grievance. This position flows from Constitution Bench decisions of this Court in Naresh Shridhar Mirajkar & Ors. vs. State of Maharashtra AIR 1967 SC 1 and Rupa Ashok Hurra vs. Ashok Hurra (2002) 4 SCC 388, as well as the decision of a bench of three Judges in Sadhana Lodh vs. National Insurance Co. Ltd. (2003) 3 SCC 524.*
5. *Although Radhey Shyam (supra) dealt with judicial orders passed by civil courts, there cannot be a different standard for judicial orders passed by criminal courts. If a judicial order passed by a civil court cannot be challenged in a writ petition under Article 226 of the Constitution, a fortiori, a judicial order passed by a criminal court cannot also be challenged in a writ petition under Article 226."*

- 3) In view of the ratio laid down by the Hon'ble Supreme Court in the case of *Neeta Singh (supra)*, learned Advocate for the Applicant seeks

leave to withdraw Application with liberty to either challenge the Order of taking cognizance or to file an Application for discharge before the trial Court.

3.1) Leave and liberty granted.

4) Disposed off as withdrawn with aforesaid liberty.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)