

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

CRIMINAL APPLICATION NO.343 OF 2025

Mr. Ayyappa Swami
Age 42 Years, Occ. Private Banking Sector,
R/o. Flat No.D-101,
Megapolis Mystic,
Hinjewadi Phase-3, Pune-411 057

... Applicant

V/s.

1. State of Maharashtra
Through Police Station Officer,
Police Station, Hinjewadi, Pune
 2. Mrs.Rushali Purushottam Gupta
(Informant)
Age 42 Years, Occ. Service at TCS
Private Sector.
R/o. Flat No.B-1606, Megapolis
Sangariya Society, Hinjewadi Phase-3,
Bhairwadi, Pune-411 057
- ... Respondents

Mr. Mohan Anant Vishnu for the Applicant.

Ms. Gauri S. Rao, A.P.P. for Respondent No.1-State.

Mr. Sumit Gadade i/b Mr. Shubham Gadade for Respondent No.2.

Ms. Seema Mundhe, Hinjewadi Police Station, Chinchwad, Pune,
present.

**CORAM : REVATI MOHITE DERE &
SANDESH D. PATIL, JJ.**

RESERVED ON : 20th NOVEMBER, 2025

PRONOUNCED ON: 18th DECEMBER, 2025

Judgment (Per Sandesh D. Patil, J.)

1) Heard learned Counsel for the Applicant, learned A.P.P. for the Respondent No.1-State and learned Counsel for the Respondent No.2.

2) **Rule.** Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Ms. Gauri S. Rao, learned A.P.P. waives notice on behalf of Respondent No.1- State and Mr. Sumit Gadade, learned Counsel waives notice on behalf of the Respondent No.2.

3) By the present Criminal Application, the Applicant is praying for quashing and setting aside of the F.I.R. registered vide C.R. No.51 of 2025, with the Hinjewadi Police Station, Pune on 24th January, 2025, against the Applicant for the offences punishable under Sections 126(2), 351(1), 351(2) of the Bhartiya Nyaya Sanhita, 2023 (hereinafter referred to as the “**BNS Act**”).

4) As chargesheet was filed during the pendency of this Application, the Applicant sought quashing of the chargesheet and consequently, the proceeding, bearing R.C.C. No.58669 of 2025, pending before the learned J.M.F.C., Pune.

5) The case of the Respondent No.2 (Original Complainant), as evident from the F.I.R. is, that she is a resident of Flat No.C-503, Rama Melange Society, Hinjewadi Phase-3 and working at TCS; that she frequently visited Megapolis Sangaria Society, Phase 3, Hinjewadi; and that on 12th September 2024, that she and her colleagues tried to capture a stray dog at Megapolis Mystic Society, but were unsuccessful due to lack of professional catchers and equipment. According to the Respondent No.2, one of her colleagues, Neha informed her, that the Applicant was opposing them from feeding stray dogs in the area, pursuant to which, she turned back and went to Megapolis Mystic Society (hereinafter referred to as '**the society**'), and that at that time, the Applicant and some other members of the society alongwith the security guard were present on the common road between the society and the Sagarika Society. The Respondent No.2 has alleged that the Applicant objected to feeding stray dogs in the area and questioned one, Neha,

whether they had permission to do so. It appears that the Respondent No.2 started recording the argument on her phone, pursuant to which, the Applicant allegedly tried to snatch her phone. Thereafter, it appears that the Respondent No.2 returned saying that the Applicant cannot stop anybody from feeding the animals in the society and that the Applicant cannot ask her (Respondent No.2) whether she has permission. The Respondent No.2 has further alleged that when she started going back towards her car, the Applicant stood in front of her car and as such prevented her from leaving the spot. Pursuant thereto, the Respondent No.2 lodged the present F.I.R., on **24th January 2025**.

6) Mr. Mohan Vishnu, learned Counsel for the Applicant contended that the F.I.R. is an abuse of process of law, as even on a plain reading of the F.I.R. as well as chargesheet, no offences can be said to have been committed by the Applicant. Learned Counsel for the Applicant contended that the Respondent No.2 and her friends were feeding stray dogs illegally in the society premises. He contended that, this feeding of dogs had caused significant nuisance and hardship to the residents of the society. He further submitted that over the past 11 months, around 40 incidents of dog bites had occurred in the society. He submitted that on

1st September 2024, a child was bitten by a dog, resulting in injuries and that pursuant to the said incident, the father of child had filed a complaint with the Hinjewadi Police Station on 1st September, 2024. He further stated that the residents of the society had signed a joint petition, which was submitted to the management of the society, aiming to address safety concerns related to the presence of stray dogs in the area. It is stated that the first informant (Respondent No.2) and her friends were feeding stray dogs in the society premises during school hours, specifically near the school bus pick up area and the entry/exit footpath of the society, and hence, the Applicant alongwith the Chairman and Secretary of the society requested the informant to reveal her identity and requested her to feed the dogs in isolated areas of the society to ensure the safety of the children using the footpath to go to school. Learned Counsel for the Applicant submits that in response to the same, the Respondent No.2- Informant and her friends began abusing the Applicant and his wife, body-shaming her, threatening the safety of their child and making threats of removal of Applicant from his job by issuing a notice to his employer.

7) Pursuant to the threats, the Applicant filed a complaint with the

Hinjewadi Police Station, Pune, as against the Respondent No.2 on **13th January 2025**. In the complaint, the Applicant has alleged that an oral altercation took place between him and the Respondent No.2, in which the Respondent No.2 threatened to file a false police complaint and also to send a notice to the Applicant's employer. It appears that thereafter, the Applicant received a notice on **12th September 2024**, from SAS INDIA NGO, through its President. The said notice alleged that the Applicant and others had wrongfully restrained the Respondent No.2 and her friends from feeding the stray dogs. On **17th September 2024**, the Applicant replied to the said notice dated **12th September 2024** and denied all the allegations made therein.

8) On **27th September 2024**, the Applicant through his Advocate sent a legal notice to the Respondent No.2. The said notice as received by the Respondent No.2, however, was not responded to, by her on **13th January, 2025**, the Applicant lodged a Non-cognizable Report bearing No.57 of 2025 at Hinjewadi Police Station, Pune. The said non-cognizable complaint is at Exhibit 'J' to the present Application.

9) Learned Counsel for the Applicant contended that on a plain

reading of the F.I.R., offence under Section 126 of the BNS cannot be said to have been made out against the Applicant. He submitted that there should be voluntary obstruction to any person, so as to prevent that person from proceeding in any direction in which that person has a right to proceed. He relied on *Exception* to Section 126 of the BNS Act and relying upon the said exception, contended that no offence under Section 126(2) of the BNS, could be said to have been committed. He further submitted that, as far as the offence under Section 351 of the BNS is concerned, the said offence relates to criminal intimidation, which is also not made out; and that Section 352 of the BNS which refers to the offence of intentional insult with intent to provoke breach of peace, is also not disclosed. He submitted that the Applicant and other society members did so, only to restrain the Respondent No.2 from feeding the stray dogs near the entry/exit points of the society and also near the school bus stop of the society, and that the Respondent No.2 has twisted the facts. He further contended that the offences under Sections 351(1) and 351(2) of the BNS are non-cognizable and that, since no offence under Section 126 of BNS is disclosed, the Police could not have taken cognizance of the same and should not have registered the F.I.R. It is submitted that the Respondent No.2 had filed an F.I.R.,

only as a counterblast to Applicant's complaint. The learned Counsel for the Applicant prayed for allowing the Criminal Application.

10) Mr. Sumit Gadade, learned Counsel for Respondent No.2, in turn argued that the present Criminal Application is not maintainable. He submitted that the Applicant had suppressed several facts and that there was no substance in the Application filed by the Applicant. He submitted that the Respondent No.2 is a member of the Megapolis Sangria Society. He stated that the Applicant had on multiple occasions misbehaved with the Respondent No.2 and her fellow dog-feeders. He stated that the Applicant had previously attempted to hit one of the feeders in sheer anger (Admittedly, there is no complaint on record *vis-a-vis*, the said incident). He stated that the Respondent No.2 is a social worker and works for the benefit of the people as well as for animals. The Respondent No.2 has denied that the F.I.R. is a counterblast to the non-cognizable report filed by the Applicant. He stated that the offences under the provisions of Section 126, 351(1) and 352(2) of the BNS are made out and that chargesheet is already filed. Learned Counsel for the Respondent No.2 accordingly prays for dismissal of the Application.

11) Ms. Gauri S. Rao, learned A.P.P. for Respondent No.1- State supported the F.I.R. and prayed for dismissal of the Criminal Application.

12) We have heard the learned Counsel for the parties and with their assistance, have perused the documents placed on record, more particularly the chargesheet filed by the Respondent No.1- State.

13) On a perusal of the chargesheet, the F.I.R., statements of the witnesses recorded, it appears that the allegations of the first informant are; (i) that the Applicant and others unlawfully restrained her and her friends, from feeding the stray dogs in the society premises; and (ii) that the Applicant threatened the Respondent No.2 with dire consequences, pursuant to which, she lodged the F.I.R. Chargesheet is filed in the said case. The offences alleged against the Applicant are Sections 126, 351(1) and 351(2) of the BNS. Admittedly, all Sections, except Section 126 of the BNS, are non-cognizable. Section 126 of the BNS reads as under:

Section 126 of Bharatiya Nyaya Sanhita, 2023:

126. Wrongful restraint- (1) *Whoever voluntarily*

obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception - The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

(2) Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both.

14) The gravamen of the allegation is that the Applicant obstructed the Respondent No.2 from feeding the stray dogs. It is also alleged that the Applicant stood in front of the car of the Respondent No.2 and obstructed the road. The essence of Section 126 of the BNS is the voluntary obstruction of any person, so as to prevent a person from moving in any direction they have a legal right to proceed. This signifies that the person is immobilized from proceeding in any direction. Feeding of the stray dogs in an particular areas, more particularly, footpath, entry and exit points of the society and school bus stop, where the kids of the society board and alight of the school buses, is very crucial for the safety of the children and that obstructing from feeding the stray dogs in these areas cannot be said to be a voluntary obstruction within the meaning of

Section 126 of the BNS.

15) The allegation that the Applicant blocked the Respondent No.2's car is also very vague. The Respondent No.2 has not stated as to whether she was driving the car and then there was obstruction or the standing car was stopped by the Applicant. If the Respondent No.2 was not driving the car, there was no question of the Applicant obstructing the same. The statement of the witness *viz.* Neha Vakil Shaikh, shows that the Applicant stated that the place where the Respondent No.2 and her friends were feeding the stray dogs, is not a “**feeding spot**”. The statement of witness Shreeniwas Shreerammurthi Bhamidipati is mostly similar, to the statement of Neha. These are the only witnesses whose statements were recorded during the investigation.

16) Having regard to the peculiar facts, we find, that obstructing a person from feeding stray dogs in a non-designated area and the area, where the school children board and alight school buses, as well as near the entry and exit points of the society, cannot be said to be ‘wrongful restraint’ within the meaning of Section 126 of the BNS.

17) The Apex Court in the judgment in Re: ***“City Hounded by Strays, Kids Pay Price” reported in AIR Online 2025 SC 783*** had considered that approximately 37,15,713 dogs bites occurred in India in 2024, and in several cases, human lives were lost due to trauma and rabies infection. The reports mention that the presence of aggressive stray dogs on streets are causing grave risk to the lives of children and elderly people, as well as other vulnerable sections of society and that they are unable to access streets and parks because of the fear of being attacked and bitten by the rabies infected stray dogs. The Apex Court in the said judgment had issued several directions and after issuing directions had observed as under:

“The aforesaid directions are being issued in view of the reports regarding untoward incidents caused by unregulated feeding of stray dogs and to ensure that the practice of feeding dogs on roads and in public places is eliminated, as the said practice creates great difficulties for the common man walking on the streets.”

18) Animal Birth Control Rules, 2023 (hereinafter referred to as the “ABC Rules”) also provides for designated feeding area for the stray dogs. In any event, stopping a person from wrongfully feeding the stray dogs in a non-designated area cannot be said to be restraint within the

meaning of Section 126(1) of the BNS Act. *Exception* to Section 126(1) is quite eloquent, which says that the obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

19) In the judgment of *Noor Mohamed @ Mohd. & Ors. v. Nadirshah Ismailshah Patel & Anr. [(2003) SCC OnLine Bom 1233]*, this Court held as under:

10. Whoever obstructs a person from proceeding to a direction to which that person has a right to proceed, commits an offence of wrongful restraint. While dealing with the offence which is punishable under Section 341 of I.P.C. and which has been defined by Section 339 of I.P.C. the Court is obliged to see following ingredients.

- (1) Whether the person so obstructed had a lawful right to proceed to a direction to which he has been obstructed;*
- (2) Whether such obstruction was for enforcement of a legal right of the obstructor;*
- (3) Whether such obstructor obstructed such person in good faith.*

20) The alleged obstruction was not for committing any illegal act, but

for ensuring the safety of the children of the society, in light of the fact that about 40 incidents of dog attack/bites, had occurred in the society. This was sufficient for the Applicant to prevent the Respondent No.2 and her friends from feeding the stray dogs in the society. By no stretch of imagination, it can be stated that such an obstruction was illegal.

21) It is the case of the Respondent No.2 herself, that the Applicant thought that the Respondent No.2 was not from their society, it is but natural, any person from of the gated society would obstruct feeding of stray dogs by a person outside the society. In such an event, the exception to Section 126(2), would very well apply and on this ground alone, the offence as alleged cannot be said to have been committed under Section 126(2) of the BNS Act.

22) The present F.I.R. is an abuse of the process of law. Even otherwise on a plain reading of the averments of the F.I.R., the said offence cannot be said to have been made out. As far as offences under Sections 351(1) and 351(2) of the BNS, are concerned, both these offences are non-cognizable offences.

23) It is worthwhile to note, at this juncture that there was an oral altercation between the parties and as a matter of fact, it was the Applicant, who had filed a complaint at the Hinjewadi Police Station, prior in point of time, against the Respondent No.2, for abusing and threatening the Applicant and his wife. That complaint was filed on 12th September 2024. It is at Exhibit 'E' to the Application. Later on, since the Police did not register any offence, once again the Applicant went to the Police Station, pursuant to which a non-cognizable offence was registered. The said Report annexed at Exhibit 'J' to this Criminal Application, was lodged on 12th January 2025. The said report shows that an N.C. Report was registered against the Respondent No.2 at the behest of the Applicant under Section 351(1) and 351(2) of the BNS Act.

24) Another striking feature in this matter is that the alleged offences had taken place on 12th September, 2024. The Applicant had already lodged a complaint against the Respondent No.2 on 12th September 2024, pursuant to which a non-cognizable complaint was recorded with the same Police Station, on 13th January, 2025. Thereafter, the Applicant had sent a legal notice through his Advocate on 21st September, 2024 to the Respondent No.2. It appears that, after more than four months, the

present F.I.R. is lodged, by the Respondent No.2 to the Applicant. Thus, there is delay of 4 months.

25) As a conspectus of the above discussion, we feel that this is a fit case for invoking the provisions of Section 528 of the BNSS. We, therefore, allow the present Criminal Application in terms of prayer clause (a) which reads as under:

(a) Quash and Set aside First Information Report bearing Crime No.51/2025, registered with Hinjewadi Police Station, on 24.01.2025, against the Applicant for the offences punishable under Sections 126(2), 351(1), 351(2) of the Bharatiya Nyaya Sanhita, 2023 and subsequent proceedings R.C.C. No.58669 of 2025, pending at JMFC Court, Pune.”

26) **Rule** is made absolute in the above terms.

27) The Criminal Application no. 343 of 2025 is allowed and thereby stands disposed of.

28) All concerned parties to act on an authenticated copy of this Order.

(SANDESH D. PATIL, J.)

(REVATI MOHITE DERE, J.)