

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1118 OF 2025

Mohammad Sadiq Sharif Bangi ...Applicant
Versus

The State of Maharashtra and anr. ...Respondents
AND

CRIMINAL APPLICATION NO. 1119 OF 2025

Sharif Shafi Bangi ...Applicant
Versus

The State of Maharashtra and anr. ...Respondents

Mr. Mayuresh Modgi, for the Applicant in both APL.
Mr. Kiran Shinde, APP for State in APL/1118/2025.
Smt. R. S. Tendulkar, APP for the State in APL/1119/2025.
PSI Mr. J. B. Kadam, Nehru Nagar Police Station, Mumbai,
present.

CORAM: N. J. JAMADAR, J.
DATED: 16th OCTOBER, 2025

Oral Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in these applications is to the action initiated by the Executive Magistrate, Zone-1, Thane, under Section 130 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS, 2023"), requiring the applicants to show cause as to why the applicants should not be directed to execute a bail bond in the sum of Rs. 15,000/- for keeping the peace, for a period of one year.

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3. The applicant, in Application No.1118/2025, is the son of the applicant, in Application No.1119/2025.
4. The respondent No.2 has issued notices under Section 130 of the BNSS, 2023 asserting that NC Complaint No.27/2025 has been registered against the applicants at the instance of Hasina Iqbal Bangi, the sister-in-law of Sharif Bangi, and NC No. 30/2025 registered at the instance of Ahmed Iqbal Bangi, the nephew of Sharif, purportedly for the offences punishable under Sections 351(2) and 352 of the Bhartiya Nyaya Sanhita, 2023.
5. The learned Counsel for the applicants submitted that the initiation of the Chapter proceedings against the applicants is arbitrary. There is a civil dispute between the applicants and Ahmed Bangi, the nephew of Sharif. The applicants have been accused of having erected construction over the safety tank. The person, at whose instance, the action has been initiated, has, in fact, committed encroachment. A criminal flavour is given to the purely civil dispute between Sharif and his sister-in-law and nephew.
6. The learned APP supported the impugned orders. It was submitted that, on the basis of two NC complaints lodged

against the applicants, respondent No.2 has initiated the action under Chapter IX of BNSS, 2023.

7. Evidently, there seems a dispute between the Applicants and Ahmed Bangi, the complainant who is the nephew of Sharif and resides adjacent to the house of the Applicants. In fact, the Applicant Sharif and his family, on the one part, and wife and son and Sharif's brother, on the other part, appear to be at loggerheads over the use and occupation of the premises. The NC complaints, on the strength of which the notices have been issued, have their genesis in the said family dispute.

8. A perusal of the impugned notices would indicate that the said notices have been issued in relation to the acts and conduct of the Applicants falling within the ambit of Section 126 of BNSS, 2023 (Section 107 of the Code of Criminal Procedure, 1973). A prime condition for invoking the preventive measure, in the context of the acts and conduct referred to in Section 107, is that the Executive Magistrate must form an opinion that the concerned person is likely to commit a breach of peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and that there are sufficient grounds for proceeding

against such person. The recording of such satisfaction is a pre-requisite.

9. Section 130 of the BNSS, 2023 provides that when a Magistrate acting under Sections 126, 127, 128 or 129, deems it necessary to require any person to show cause under such Section, he shall make an order in writing,

10. In a case, where there are quarrels among the family members or between two private individuals, with no propensity of breach of peace or public tranquility, the preventive measures under Section 126 read with Section 130 of the BNSS, 2023 cannot be resorted to.

11. A useful reference, in this context, can be made to a decision of this Court in the case of **Christain Costa Vs State of Goa**,¹ wherein the circumstances in which proceedings can be initiated under Section 107 read with Section 111 of the Code, 1973 were expounded. The observations in paragraph 7 read as under:

"7. In my view all these submissions of Shri Nadkarni seems to be sound and deserve acceptance. As far as the last grievance is concerned a bare perusal of section 107 of Criminal Procedure Code read with section 111 shows that such

1 1993 Mh.L.J. 1409.

proceedings are to be instituted only in respect of information received by the Magistrate if he is satisfied that there is any danger or likelihood of somebody committing breach of the peace and disturbing public tranquillity. Obviously when there are quarrels between two private individuals it appears that this situation is not contemplated by these legal provisions. Quarrels between individuals are not normally creating any problem of public order and at the most it may lead to a problem of law and order to be dealt with by the appropriate penal law. Proceedings under section 107 are always dealing with preventive measures to be taken by the Magistrates in order to pre-empt any possibility of breach of peace and disturbance of public tranquillity. In the case of Jayant D.Shah and 4 others vs. State of Maharashtra, 1986(1) Crimes 305, this Court has held that the provisions of sections 107 to 110 cannot be used or exercised for satisfying private vendetta of a querulous person and the exercise of powers by the Magistrate under the aforesaid sections on the basis of incidents involving trivial quarrels without application of mind would amount to gross abuse of the process of law."

(Emphasis supplied).

12. Secondly, the Court does not find that there is scrupulous compliance of the mandate contained in Section 130 of the BNSS, 2023. It does not appear that the impugned notice dated 17th February 2025 was accompanied by an order passed by the

Executive Magistrate in terms of the provisions contained in Section 130 of the BNSS, 2023. Such an order under Sections 130 (Section 111 of the old Code) has been held to be mandatory.

13. In the case of **Vasantkumar Jivrambhai Majithia Vs State of Maharashtra & Anr**,² it was observed that the show-cause notice was required to be quashed and set aside only on the ground that there was no separate order passed by learned Magistrate as contemplated under Section 111 of the Code. Passing of such an order is a condition precedent for initiating proceedings.

14. In the aforesaid view of the matter, and having regard to the peculiar facts of the case, the initiation of the Chapter proceedings in connection with private disputes between the Applicant Sharif and the members of his brother's family, does not seem sustainable.

15. I am, therefore, inclined to allow the Applications.

16. Hence, the following order:

: O R D E R :

(i) The Applications stand allowed.

2 2005 SCC OnLine Bom 1296.

(ii) The impugned notices dated 17th February, 2025 and the further proceedings pursuant to the said notices stand quashed and set aside.

[N. J. JAMADAR, J.]