

Mr. Satyaram R. Gaud, for Applicants.
Mr. K.C.Shinde, APP for State.

DATE : 12 DECEMBER 2025

1. Heard the learned Counsel for the parties.
2. The Applicants, who are arraigned in C.C.No.775/PW/2025 arising out of C.R.No.267 of 2025 registered with Ghatkopar Police Station for the offences punishable under Sections 74, 189(2), 115(2), 351(2) and 352 of the Bharatiya Nyaya Sanhita, 2023 (BNS 2023), have preferred this application to quash and set aside the order dated 17 June 2025 passed by the learned Magistrate taking cognizance of the aforesaid offences, and the prosecution.
3. Mr. Gaud, learned Counsel for the Applicants, submitted that, in respect of the very same occurrence, the father of the applicant No.3 to 5 had lodged a report on the day of the alleged occurrence itself i.e. 29 March 2025, and a non-cognizable case for the offences punishable under Section 352, 351(2) of BNS 2023, was registered. After a delay of more than a month, the first information lodged the report making allegations of cognizable offences.

4. Thus, the registration of the FIR and the consequent investigation without obtaining the permission of the Magistrate under Section 155(2) of the Code of Criminal Procedure, 1973, (Section 174(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS 2023), was legally impermissible. The first informant and her parents have given a flavour of criminal case to an otherwise purely civil dispute over the possession of the flat which is in the occupation of the applicants. As the prosecution has been initiated malafide, and amounts to clear abuse of the process of the Court, the proceedings are liable to be quashed.

5. Reliance was sought to be placed on a Division Bench judgment of this Court in the case of **Shoeb Arif Memon and Ors. V/s. The State of Maharashtra and Anr.**¹ and the judgment of the Supreme Court in the case of **State of Haryana and Ors. V/s. Ch. Bhajan Lal and Ors.**².

6. The first informant lodged a report with the allegations that on 29 March 2025, she and her parents had gone to Flat No.C-2/68, Vrindawan Mukund Staff Co-op. Hsg. Soc. Ltd., LBS Marg, Ghatkopar (W), Mumbai, which belonged to her deceased grandfather, with a view to stay therein. The Applicant Nos.3 to 5, who are the sisters of her father, raked up quarrel. The Applicant No.1, who is the son of Applicant No.3, charged on her father and abused and threatened him with dire consequences. Her parents went to the

1 2021 ALL MR (Cri) 1864

2 AIR 1992 SC 604

police station to report the matter. While she stayed back, the accused raked up quarrel with her as well. She was abused and assaulted. The Applicant No.1 gave fist blows on her stomach. Exhorting that he would teach a lesson to the first informant, the applicant inappropriately touched the first informant and lifted her up by her waist and dumped her near the door. Hence, the report.

7. Prima facie, the incident which father of the first informant had reported on 29 March 2025, was distinct from the incident which the first informant reported. The allegations in the FIR indicate that, after the parents of the first informant had gone to the police station, the Applicants abused and assaulted the first informant, threw her out of home and in the process, the Applicant No.1 outraged her modesty.

8. The Applicants cannot draw mileage from the judgment in the case of **Shoeb Arif Memon and Ors. (supra)**, as in the said case, initially a NC complaint was registered, and, subsequently, FIR was lodged in respect of one and the same incident. In the case at hand, prima facie, the two incidents are different.

9. Moreover, what is of material significance is the fact that the first informant had lodged a complaint with the superior police officer on 23 April 2025 with the allegations that on the day of occurrence when she went to the Police Station to report the matter, her report was not recorded by the police.

She and her parents were made to wait at the police station till the next morning. Even the Sr. Police Inspector did not address her grievance and informed her that she would be called after two days. Thus, there is prima facie material to show that, upon refusal of the police to register FIR, the first informant had taken recourse to the provisions contained in Section 154(3) of the Code, 1973 (Section 173(4) of the BNSS, 2023).

10. A useful reference in this context can be made to a Division Bench judgment of this court in the case of **Asif Khan Pathan V/s. State through PP and Ors.**³, wherein this court had indicated the courses which were available to the first informant who was not satisfied with the recording of the report by the Police. The observations in paragraph Nos.40 and 41 read as under :

“40. In **Tulsidas Gopal Naik V/s. State of Goa**⁴, it was contended that initially the police registered a non-cognizable case on receiving the information and directed the informant to approach the Magistrate, but due to some pressure on the police officer from higher authorities, he registered it as a cognizable offence. The facts in the matter in hand are quite similar. The wife of Respondent No.3 went to the police station on the day of incident itself and lodged her complaint, which is already reproduced in para 26. This information was considered as non-cognizable case and the informant was advised to approach the proper Court of law under Section

3 2023 SCC Online Bom 2217

4 2022 SCC Online Bom 6691

155 of Cr.P.C.. On the next date, i.e. on 20.03.2023, Respondent No.3 filed another complaint in connection with the same incident and by giving some additional information, which Police considered as containing ingredients for registration of cognizable offence.

41. At this stage, it is necessary to note that Respondent No.3 went to the police station on the next day even though he very well knew that his wife lodged the complaint on the previous day and that it was registered as a non-cognizable case. The question remains as to whether the wife of Respondent No.3 failed to disclose all the facts to the police and/or on the other side, the Police failed to record all the facts disclosed by the wife of Respondent No.3 while registering NC complaint. On both counts, the law provides a specific procedure. If the informant was not satisfied with the recording of her complaint by the police, which is not at all the case put forth in this matter except claiming orally while arguing the matter, the said informant failed to approach the Superintendent of Police under Section 154(3) of Cr.P.C. The only inference is that whatever was disclosed by the wife of Respondent No.3 on 19.03.2023 and considered as non-cognizable case was properly recorded by the police. The said informant on showing dissatisfaction on recording the information correctly by the Police, ought to have approached the Superintendent of Police with all the details. No such procedure was adopted. Thus, it shows that the Police recorded the information correctly as disclosed by the informant on 19.03.2023, as non-cognizable case.”

11. Having regard to the nature of the allegations against the Applicants

which are specific and the events preceding the lodging of the report in the nature of lodging a complaint with the Superior Police Officer, in my view, it is not a fit case to exercise the powers under Section 482 of the Code, 1973 (Section 528 of BNSS, 2023). The veracity of the allegations would be a matter for trial.

12. Hence, the Criminal Application stands dismissed.

(N.J.JAMADAR, J.)