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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1714 OF 2025

1. Shivraj s/o Anil Jawade,
Aged 29 Years,
Occupation : Business,
R/o. Jawade Compound.
S. T. Stand Road, Amravati,
Taluka and District Amravati.
2. Ganesh s/o Sukhdeo Alaspure,
Aged 65 Years,
Occupation : Private work,
R/o. Mahalaxmi Nagar,
Amba Vihar, Amravati,
Taluka and District Amravati.

.... APPLICANTS

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Police Station, City Kotwali,
Amravati.
2. Dr. Rajesh s/o Shridharrao Jawade,
Aged about 45 years,
Occupation : Medical Practitioner,
R/o. Jawade Compound,
Bus Stand – Maltekdi Road,
Amravati,
Taluka and District Amravati.

....NON-APPLICANTS

Mr. Anil Mardikar, Senior Advocate a/b Mr. P. R. Agrawal, Advocate
for the applicants.

Mr. N. H. Joshi, APP for the State.

Mr. Yash Venkatraman, Advocate for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 01/04/2026

ORAL JUDGMENT :

1. Heard.

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2. **Admit.**

3. Heard finally with the consent of the learned Counsel for the applicants, learned APP for the State and learned counsel for the non-applicant No.2.

4. By this application, the applicants are seeking quashing of the FIR in connection with Crime No.52/2025 registered with Police Station City Kotwali, Amravati for the offence punishable under Sections 303(2) r/w 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') and the consequent proceeding arising out of the same bearing RCC No.1763/2025.

5. Heard learned Senior counsel for the applicants, who submitted that, as per the case of the prosecution, the report is lodged by the non-applicant No.2, who has kept iron material including certain thick iron pillars and other material which belonged to him and the present applicant No.1 and his driver has committed the theft of the same. On the basis of the said report, police have registered the crime. He pointed out from the recitals of the FIR, in fact, the said material was kept in the premises of the present applicants. He further invited my attention towards the documents which is the partition deed and the consent letter. He submitted that if these two documents are taken into consideration, no offence is made out against the

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present applicants. He submitted that even recitals of the FIR makes an allegations regarding the theft against the driver of the present applicant No.1. Thus, no *prima facie* is made out against the present applicants. In view of the partition deed, the property is already partitioned, but there was a dispute as to the area of the said plot and therefore, this false FIR came to be lodged against the present applicants. In view of that, he prayed for the quashing of the FIR and the consequent proceedings.

6. Learned APP and learned counsel for the non-applicant No.2/complainant strongly opposed for the same and submitted that there is specific allegations as the complainant has seen the driver of the present applicant No.1 committing the theft of the said articles which was kept with the consent of the father of the applicant No.1, in the premises of the applicant No.1, which was taken by him and therefore, the offence is made out against the present applicants. In view of that, the application deserves to be rejected.

7. Section 303 (2) deals with the offence of theft. In fact, section 2 will attract when there is a second offence. As far as the allegations in the FIR are concerned, there is no allegation that this is a second offence committed by the present applicants. Even considering the allegation as it is, in the light of Section 303 of BNS, which states that whoever, intending to take

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dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

8. Here, the entire goods were kept in the premises of the present applicant No.1. There appears to be a dispute regarding the area of the plot. The partition deed and consent letter are also on record, which sufficiently shows that the portion of the property is already divided between the present applicant No.1 and non-applicant No.2, who is the uncle of the present applicant No.1, but there is some dispute on account of the area, and therefore, the FIR apparently came to be filed. Though, it is alleged that the driver of the applicant No.1 has committed theft, but the investigation papers shows that the entire goods were kept in the premises of the present applicant No.1 and there is nothing on record to show that the said goods were owned by the non-applicant No.2. The statement of Mayur Sanjay Shinde shows that after cleaning the place again the said goods were kept at the same place, and therefore, the offence under Section 303(2) of BNS is not made out against the present applicants. In view of that, application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is **allowed**.

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(ii) The FIR in connection with Crime No.52/2025 registered with Police Station City Kotwali, Amravati for the offence punishable under Sections 303(2) r/w 3(5) of the Bharatiya Nyaya Sanhita, 2023 and the consequent proceeding arising out of the same bearing RCC No.1763/2025, are hereby quashed and set aside against the present applicants.

The application is disposed of.

(URMILA JOSHI-PHALKE, J)

Sarkate.