

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1489 OF 2026

Lakhan Lalchand Dhamwani & Anr.

.. Applicants

Versus

The State of Maharashtra & Anr.

.. Respondents

.....

- Mr. Shailesh S. Kharat, Advocate for Applicants
- Ms. Sangeeta E. Phad, APP for State
- Ms. Madhumati Shinde, API, Pimpri Police Station

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 31, 2026

P. C.:

1. Heard Mr. Kharat, learned Advocate for Applicants and Ms. Phad, learned APP for State.

2. Present Application is filed under the provisions of Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "**BNSS**") seeking quashing and setting aside of FIR bearing No. 210 of 2023 registered with Pimpri Police Station for offence punishable under Section 85(1) of the Maharashtra Prohibition Act, 1949 (for short "**said Act**").

3. There are two Applicants before me who are arraigned as accused Nos. 1 and 2 in the present case. Allegation in the FIR and the chargesheet which has now been filed is that under the influence of alcohol they were both shouting on each other loudly on the public

street and therefore complaint alleged breach of public peace and disturbance to the public at large.

4. It is not the case of the prosecution that both the Applicants had shouted at any third party or disturbing public peace. *Prima facie*, on bare reading of the charges, I am of the clear opinion that no cognizable offences are made out and therefore interference of this Court is necessary.

5. One of the Applicant incidentally happened to be a person pursuing law studies. Apart from the fact that they were shouting loudly, there was no other specific allegation against the accused persons. Undoubtedly, consumption of alcohol cannot be an offence under Section 85 of the said Act but in order to invoke the said provision, improperly and disorderly behaviour is required to be culled out from the facts of each case. Save and except the *prima facie* case of both the Applicants shouting at each other, there is no charge of the prosecution of any element of obscenity, depravity or moral offensiveness as required by the regulation and the extant provisions of Section 85 of the said Act.

6. Mr. Kharat would persuade me to consider that mere volume cannot be equated to be in violation of decency which is apparently the act in the present case. He has referred to and relied upon the

decision of the Nagpur Bench of this Court in the case of ***Mahesh Sitaram Mankari & Ors. v. The State of Maharashtra***¹ wherein this Court had ascribed and considered the dictionary meaning of the term, *inter alia*, pertaining to "disorderly behaviour in society" to mean behaviour which is completely out of order, in confusion, irregular, lawless, defying the restraints of decency. That not having been seen in the facts of the present case and case of the prosecution hinges only on the issue of loud shouting or causing disturbance of peace, I am inclined to accept the submissions made by Mr. Kharat and allow the present Application.

7. Section 482 of the Criminal Procedure Code, 1973 conferred inherent powers on High Courts to pass such orders as are justified to give effect to any order in the Court, prevent abuse of process of any Court or secure the ends of justice. In the BNSS this provision stands incorporated with Section 528 which substantially reproduces the language and intent of Section 482 of the Cr.PC.1973 High Courts invoke this provision to step in where cases have been instituted with malafide motives or to harass the accused person thereby avoiding procedural harassment. It empowers Court to dismiss FIRs or criminal proceedings if there is no *prima facie* case or evidence against the accused person/s or if orders are made in violation of the principles of

1 Judgment dated 09.02.2026 in Criminal Application No. 151 of 2021

natural justice. The exercise of such powers under Section 482 of CRPC and now Section 528 of BNSS remains discretionary and varies from case to case.

8. In *State of Harayana vs Bhajan Lal*² the Supreme Court laid down model categories and guidelines in paragraph No. 102 of the said judgment in which the FIRs can be quashed. The Supreme Court has further asserted that power under Section 482 is an acknowledgment of "powers inherent" and not the source of powers additional. It has held that even non compoundable offences can be quashed where necessary. It has held that High Courts have to decide whether the prosecution of an offence would further or be against the interest of justice. It is also held that grievous offences such as murder, rape, and dacoity cannot ordinarily be quashed even after settlement because they involve societal implication.

9. In the above context, when parties settle their private dispute or the *lis* between them is purely civil and commercial or matrimonial and the offence is not heinous or does not impact the society at large, the Court can consider such request. In such a case awarding costs for putting the criminal law into motion on the act of the accused persons and thereafter both parties seeking quashing of proceedings by consent, in my opinion, can be considered by Court which can impose

2 1992 AIR 604

costs on the parties, especially so in matters coming before the Court by “consent quashing”.

10. For above levy of costs the legal principle rests on the logic that criminal law cannot be used as a bargaining chip or a tool for private settlements after draining the State and judicial resources. In simple words, Courts cannot be used as a recovery mechanism to settle scores and/or bring the parties into subjugation. I am of the firm opinion that imposition of costs in consent quashing matters is required to be levied for three main reasons viz., wastage of public resources, consumption of valuable judicial time and for deterrence against vexatious litigation. This is because after criminal machinery is set into motion, the Police Department is forced to take cognizance, conduct investigations, attend courts, deploy personnel, collect evidence and draft chargesheets, all using public funds/ public exchequer. Equally substantial judicial time of the Trial Courts and Sessions Courts is wasted for handling a case, presentation of a case, issuance of summons, scheduling of trial dates, appointment of prosecutors and their fees, etc. and ultimately if consent quashing is allowed such judicial time stands completely wasted, which could have otherwise been used for genuine Trial Court matters/ litigation. In one way such matters result in clogging the legal system and lead to humongous pendency which becomes difficult to tackle.

11. Another aspect to consider for imposing costs is that it curbs the growing trend of filing strategically exaggerated criminal complaints (especially matrimonial or commercial disputes) simply to force financial and legal settlements. In a given case made out on merits of the matter, even the Complainant can be put to costs while considering a quashing Petition purely on merits depending upon the facts of each case before Court. In some strong circumstances, even the State machinery can be put to costs if a purely civil dispute between parties strongly emanating from the facts on record is registered as criminal case and given the flavor of criminality. This Court is also equally conscious about not imposing costs blindly or mechanically if a particular party is not found to be remiss or at explicit fault for abusing the law, as also conscious about heinous offences impacting the society at large while considering consent quashing.

12. Applying the aforesaid principles to the facts of the present case, I am of the opinion that the Applicants for their actions resulting in the complainant invoking criminal proceedings and now both the parties seeking quashing by consent, the Applicants should pay costs. Applicants are directed to pay costs of Rs. 10,000/- to Anand Mangal Bahuuddeshiya Sanstha within a period of two weeks from the date of uploading of this order. Applicants are present in Court and through

their learned Advocate agree to pay the aforesaid costs amount to the charity.

13. I direct payment of costs to Anand Mangal Bahuuddeshiya Sanstha, registered NGO and Trust situated at Malegaon working at the grassroots level towards social welfare, holistic upliftment, sustainable community development of destitutes, marginalized women, elderly persons by providing them shelter, dignity, daytime care services, medical care, promoting women empowerment by livelihood training and practical vocational skill training programs in rural and urban areas, supports skill development and health care access and emergency relief for vulnerable community groups and at present providing complete shelter, nutritious meals and complete healthcare to 28 destitute seniors and 6 individuals with intellectual disabilities at their Malegaon Headquarters. The details of this Sanstha for payment of costs are as under:-

Name of Bank:	Bank Of Maharashtra
Account Number:	60434381304
IFSC Code:	MAHB0002075
MICR Code:	423014102

Registered Name: Anand Mangal Bahuuddeshiya Sanstha, Malegaon.

Registration No.: MAHA/2909/Nashik | F-15352 / Nashik,

Office Address: S.No. 39/2/4D/41/1, Plot No.13, Near Panchaganga Auto Showroom, Malegaon, Dist. Nashik, Maharashtra,

Mobile No.: +91 8208525304.

14. In view of the above matter, the present Application deserves to be allowed subject to payment of costs as directed herein above. It is so allowed in terms of prayer clause (a) which read thus:-

“a) This Hon'ble Court may be pleased to quash and set aside FIR bearing No 210 of 2023 registered at the instance of Pimpri Police Station for offence punishable under Section 85(1) of Mumbai Prohibition Act, 1998, on such terms and conditions this Hon'ble Court may deem fit and proper.

15. List the Application for compliance of the order regarding payment of costs on 15.09.2026.

16. Advocate for Applicants shall remain present and show compliance on behalf of Applicants on the returnable date for compliance. If he does not remain present and there is non-compliance of this order, Court will pass appropriate order for recall of this order, which shall be noted by the Applicant.

17. Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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