



Jose

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.40 OF 2025**

Shri. Noberto Paulo Sebastiao Fernandes,
75 years of age,
Son of late Shri. Jose Piedade Fernandes,
Resident of House No.794,
Vithaldas Waddo, Morjim,
Pernem, Goa,
Through his constituted
Power of Attorney Holder,
Mr. Neil Fernandes,
35 Years of age,
Constituted vide the Power of Attorney
dated 19/06/2019 bearing
Registration No.5640,
Resident of House No.794,
Vithaldas Waddo, Morjim,
Pernem, Goa.

... Petitioner.

Versus

1. Shri. Pankaj Vithal Tan Volvoikar,
Son of late Vithal Tari,
40 years of age,

2. Shri. Rohan Vithal Tari Volvoikar,
Son of late Vithal Tari,
39 years of age,
Both Residents of House No.492/2,
Amrai, Savoi - Verem,
Ponda, Goa.

3. The Police Inspector,

Mandrem Police Station,
Mandrem, Pernem, Goa.

4. The Public Prosecutor,
High Court of Bombay at Goa,
Porvorim, Goa.

... Respondents.

Mr. S.S. Katak, Senior Advocate with Mr. C. Angle and Ms.
Neha Kholkar, Advocates for the Petitioner.

Mr. Nigel da Costa Frias with Mr. Vishal Sawant and Mr.
Vineet Surlakar, Advocates for the Respondents.

Mr. S.G. Bhobe. Public Prosecutor for the State.

CORAM: VALMIKI MENEZES, J.

DATED: 25th July, 2025

ORAL JUDGMENT:

1. Registry to waive office objections and register the matter.
2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is disposed of finally.
3. In this Writ Petition, the Petitioner takes exception to an order dated 23.07.2025 passed by the Additional Sessions Judge, Mapusa in a Criminal Revision Application No.47/2025, whereby an application at Exhibit D-17 of the file of the Sessions Court has been allowed. The facts relevant to arriving at a decision in this matter are as under:
4. The Petitioner claims to be the owner of property bearing

Survey No.171/6 of Village Morjim. The Respondents had filed an application for declaring themselves as mundkars in relation to a house structure under House No.793 of Village Morjim before the Mamlatdar of Pernem. These proceedings bore Case No. MAM/PER/MND/2/2014. The Mamlatdar, by an order of 09.07.2019 has dismissed the application of the Respondents, seeking to declare their right as mundkars of the structure, against which they filed an appeal before the Deputy Collector and SDO at Pernem under Case No. DCP/MND/APL/3-7/2019. This appeal of the Respondents came to be dismissed on 24.11.2020 against which there is a Revision Application filed under the Mundkar Act pending before the Administrative Tribunal of Goa which bears No. MUND/REV/APPL/NO.11/2021. There is no application in the nature of any interim relief to protect the possession claimed by the Respondent over the suit premises in any of these proceedings.

5. According to the Petitioner, since the Respondents trespassed over the property under Survey No.171/6 claimed by them, a complaint dated 21.01.2025 came to be filed with the P.I., Mandrem Police Station seeking intervention of the Police and filing of an FIR. A further complaint came to be made to the same Police Station on 23.01.2025, complaining of trespass by the Respondents over the said property, despite, according to the Petitioner, they having not succeeded in obtaining an order of declaration of their claim as mundkars over the house standing in the property. In both the

complaints, the Petitioner has claimed to be in possession of the structure existing on the property. The second complaint alleges that the Respondents are threatening to dispossess the Petitioner of the property under Survey No. 171/6 and the structures standing thereon, and further alleges that there is serious apprehension of a law and order situation at the site.

6. On the basis of the Petitioner's complaint dated 23.01.2025, the Deputy Collector and Sub-Divisional Magistrate recorded his satisfaction that there exists a dispute, likely to cause breach of public peace or tranquillity and may disturb the communal harmony in the locality, with respect to property under Survey No.171/6 of Village Morjim, and exercised jurisdiction under Section 164 of the BNSS, issuing notice to the parties i.e. both the Petitioner and the Respondents. This notice was issued on 29.01.2025 and was made returnable on 10.02.2025. After both the parties filed replies to the notice, the SDM passed an order dated 07.04.2025 disposing of the proceedings with the following observations:

“The Party No. I is entitled to be in possession of the property bearing Survey No.171 sub-division 6 of village Morjim. Pernem, Goa and the subject structure existing therein. The Party - II and any person claiming through or under them are hereby directed to not interfere with the possession of the Party - I in respect of the property bearing Survey No .171 sub-division 6 of village Morjim, Pernem, Goa and the subject structure existing therein. The Party - II is hereby restrained from in any manner interfering with the possession of Party - I and causing any breach of peace in

respect of the property bearing Survey No.171 sub-division 6 of village Morjim. Pernem, Goa and the subject structure existing therein. The Mandrem Police Station is directed to maintain vigil and ensure that no law and order situation is created.”

7. The Sub-Divisional Officer has effectively restrained the Respondents from entering the property under Survey No.171/6 and the structure thereon and also restrained them from causing any breach of peace in the said property and structure. Whilst passing this order, the SDM has given a specific finding that the Petitioner is in possession of the property under Survey No.171/6 of Village Morjim and the structure existing therein, and has held that he has a right to possess the property and structure. On this basis, the SDM has passed his order exercising powers under Section 164 of the BNSS.

8. The Respondents challenged this order in a Criminal Revision Application No.47/2025 before the Sessions Court at Mapusa. After the Criminal Revision Application was filed invoking powers of the Sessions Court under Section 438 BNSS, the Sessions Court heard arguments on an application for stay of the order dated 07.04.2025 passed by the SDM. In the Roznama of 24.04.2025, the Sessions Court recorded that during the course of the arguments being advanced on the application for stay of the order of the SDM, with the consent of the Advocates for the rival parties, and without prejudice to their respective defences, it directed the Mandrem

Police Station to lock and seal the premises/structure existing in Survey No.171/6 of Village Morjim and to submit the keys to the Sessions Court. It directed that the structure shall remain closed until further orders of the Court.

Accordingly, the P.I., Mandrem Police Station has sealed the structure and deposited the keys with the Sessions Court, pending disposal of the Criminal Revision Application. This arrangement continued until the Respondents filed an application dated 19.07.2025 at exhibit D-17 of the file of the Sessions Court, praying for allowing the Respondents to open the sealed structure and to use the same to perform religious rituals from 28th morning to 30th morning of July, 2025, claiming that the Respondents celebrated the Nagpanchami festival for years in that structure. The application also seeks a similar order from the Sessions Court between 24/08.2025 to 03.09.2025 for the Respondents to celebrate Ganesh Chaturthi festival, on the same claim that this festival was celebrated from the structure in question, to which the Respondents claim a right to being mundkars.

9. The application was opposed by the Petitioner who filed a reply dated 23.07.2025. In the reply, a preliminary objection has been taken to the maintainability of the application, on grounds that the provision of Section 438 BNSS, does not confer the jurisdiction on a Revisional Court to grant the reliefs sought in the application at Exhibit D-17. In the reply, it is also claimed that since the order of the

SDM was passed on 24.04.2025, there has been no breach of peace in the area and granting the application at Exhibit D-17 would lead to a possible situation where the peace would be breached. Apart from these objections, the application was also objected to on its merits with a detailed reply.

10. It appears from the Roznama of 23.07.2025 that the arguments were heard on Exhibit D-17 and as recorded therein, the application was partly granted, directing the P.I., Mandrem Police Station to collect the keys of the suit property on 28.07.2025, to open the suit house for the Respondents herein to conduct the panchanama thereof and retain the keys with himself and after the Respondents made use of the house, to lock the same on 30.07.2025 at 10:00 a.m. and reseal the structure under panchanama and return the keys to the Court. The Roznama order notes that the order was passed without prejudice to the rights and interests of the parties and the Respondents shall not make use of the order before any other authority pertaining to the subject matter of the Revision Application. It further directed that the P.I. Mandrem Police Station should depute a Police Constable three times a day to visit the suit premises and ascertain that peace is maintained and no alteration of any kind is made to the suit structure or the suit property.

11. The order was uploaded by the Sessions Court on 24.07.2025, on which date the matter was listed for the Respondents to file certain

undertakings on 24.07.2025.

SUBMISSIONS

12. The learned Senior Advocate Mr. Subodh Kantak for the Petitioner has advanced the following submissions:

13. It was submitted that the provisions of Section 438 of the BNSS empower a Sessions Court or a High Court to examine the record of any proceedings, in revision, and in such a proceeding, the Court may direct that the execution of any sentence or order be suspended. It is the submission of the learned Counsel that no part of Section 438 BNSS empowers the Sessions Court to grant applications in the interim to put a party in possession of the use of premises, in the manner that the Sessions Court has done whilst disposing of the application at Exhibit D-17 on its file.

It was further submitted that the Sessions Court has transgressed the jurisdiction vested in it under Section 438 by even entertaining an application that would in any manner even temporarily vary the order of the SDM or put a party in possession, contrary to the orders passed in the original proceedings under Section 164 BNSS.

14. It was further contended that the SDM has arrived at a specific finding that the Petitioners were in possession of both, the property under Survey No.171/6 and of the structure standing thereon. The

finding was rendered after considering the documents and replies of both the parties to this petition. It was further submitted that the Sessions Court would be within its powers under Section 438 of the BNSS if it considered the record of the SDM and granted stay of the operation of the order of the SDM or suspended that order, but there was no power that would be exercised in granting application to put the Respondents into possession of the structure in the land under Survey No.171/6. It was argued that the whole purpose of the powers given to a SDM under Section 438 are to maintain peace and to avoid any situation which would cause a breach of peace of public tranquillity. The Sessions Court, therefore, has transgressed the jurisdiction vested in it under Section 438 of the BNSS by granting the application.

15. Reference was made to the affidavit dated 25.07.2025 of the Petitioner to contend that the statement recorded in the impugned order of the Sessions Court, that the Advocate for the Petitioner had consented to the passing of the impugned order, was an erroneous fact, as the application under Exhibit D-17 was not only vehemently opposed by filing a reply, but arguments were heard of the parties on the relevant date before the Court passed its order. It was further contended that it was only when the Court disclosed its inclination to grant the application that the Advocate for the Petitioners stated to the Court that if the application were to be allowed, certain curbs should be placed upon the Respondents whilst being allowed to

celebrate Nagpanchami in the land under Survey No.171/6.

16. Opposing these submissions, Shri Nigel da Costa Frias for the Respondents submits that this is not a case that calls for interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. He submits that the supervisory jurisdiction ought to be exercised in extremely rare cases only where there is gross injustice brought to the party or that the order is in flagrant violation of a provision of law. He would submit that the order impugned herein has incorporated various safeguards to maintain the peace and tranquillity in the area while imposing upon the Respondents certain conditions and taking from them undertakings. He further places reliance on the following Judgments to buttress his objections to the entertaining of this petition in writ jurisdiction of this Court under Article 227 of the Constitution of India:

- a) *Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil* reported in (2010) 8 SCC 329.
- b) *High Court of Gujarat v. Hitendra Vrajlal Ashara & Anr.* reported in (2014) 15 SCC 614.
- c) *M.S. Sanjay v. Indian Bank & Ors.*, Civil Appeal No. 1188/2025.
- d) *Municipal Corporation of Greater Mumbai & Ors. v. Vivek V. Gawde Etc. Etc.*, arising out of SLP (Civil) Nos.19602 - 19619 of 2022.

17. It was further his submission that the affidavit filed in support

of the Petitioner's submission that there was no consent given by the Advocate for the Petitioner before the Sessions Court, has been filed by an Attorney of the Petitioner, and the affidavit does not state that the person was conversant with the facts stated therein was a witness to the Court proceedings on 23.07.2025. The statements made in the affidavit to the effect that there was no consent given by the Advocate to the passing of the impugned order are disputed and that there was actual consent given by the Petitioners to the order, as was recorded in the impugned order itself. It was further submitted that the affidavit ought to have been sworn by the Advocate who appears for the Petitioner before the Sessions Court to record that he had not given his consent to the passing of the impugned order granting the Respondents the right to celebrate Nagpanchami on the two days as directed by the Court.

18. The following points would fall for my determination in this petition:

- a) Whether the impugned order has been passed contrary to the scheme of Section 438 BNSS.
- b) Whether this is a fit case to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

19. The order impugned in the Revision Application arises from a proceeding concluded under Section 164 of the BNSS. Under Sub-

Section 1 of Section 164, when an Executing Magistrate is satisfied from a report of the Police Officer or upon other information, that a dispute is likely to cause breach of peace or such dispute exists and concerns any land or water or the boundaries thereof within its legal jurisdiction, he is empowered to make orders in writing stating grounds of his being so satisfied and requires the parties concerned in the dispute to attend his Court and to put in writing statements of their respective claims as to the fact of actual possession of the subject matter of dispute. Under Sub-Section 4 of Section 164, the Magistrate is required to, without reference to the merits or the claims of the parties to any right to possess the subject matter of dispute, and after hearing the parties and going through their statements, and receiving of evidence as may be produced, decide whether any or which of these parties was, at the date of the order made by him under Sub-Section 1, in possession of the subject matter of the dispute. In other words, after considering the entire record, the Executive Magistrate, without considering the merits of the rival contentions of the parties as to the possession, is required to arrive at a satisfaction as to which of these parties was in possession on the first date of issuance of notice.

20. Whilst disposing of the proceedings, the Executive Magistrate in the present case has held that the Petitioner has shown that he is in possession of the land under Survey No.171/6 of Village Morjim and of the structure standing thereon. At this juncture, I am not

concerned with the correctness or the legality of the finding, since this question is to be considered and decided by the Sessions Court in its revisional jurisdiction under Section 438 of the BNSS. That matter is pending before the Sessions Court and will have to be decided on its own merits. The Sessions Court, in its revisional jurisdiction would have to examine whether such finding has been correctly arrived at based on the records before the Executive Magistrate.

21. What I am concerned about, however, is that the original proceedings was one under Section 164 of the Cr.P.C., which by its very nature concerns maintenance of public peace and tranquillity. The Revisional Court has to, therefore, approach the entire matter and exercise its power of revision under Section 438 of the BNSS keeping in mind the nature of the original proceeding, which was a proceeding instituted for maintenance of public order and tranquillity.

22. The original proceeding is not a proceeding where the rights of the parties are to be determined or agitated or even be considered by the Executive Magistrate. The Executive Magistrate was only required by the provisions of Section 164 of the BNSS to determine which party was in possession for the purpose of requiring one of the parties to be put to terms, in exercise of powers under Sub-Section 4 of Section 164 for maintaining of public order and tranquillity. It was

expected that the Revisional Court ought to be mindful of the scope of the original proceeding before entertaining interim applications during the pendency of the Revision Application. This is more so, considering that the original proceedings were of the nature as aforesaid.

23. In the present case, the parties, and the Sessions Court appear to have approached the entire matter, which was otherwise a Criminal Revision Application, as if the rival claims of the parties, one to the right of mundkarship and right of possession over the house in question, and the other to the right of ownership to the land under Survey No.171/6, were to be determined at an interim stage. In my opinion, the Sessions Court ought to have been alive to the fact that the only jurisdiction vested in a Revisional Court exercising powers under Section 438 of the BNSS at the interim stage was to either grant a stay of the operation of the order impugned before it or to suspend that order. There was no other power to exercise at that stage.

24. The application for stay of the impugned order is still pending before the Sessions Court or at least from the reading of the Roznama dated 24.04.2025, the prayer for stay of the impugned order does not seem to have been considered or disposed of. At least, the Roznama does not record that it has been disposed of by directing sealing of the premises in question, because the fact remains that the order

dated 24.04.2025 does not restrain the Respondents in any way from entering the property under Survey No.171/6.

25. Considering the scope of the original proceeding under Section 164 of Cr.P.C., and that they were instituted for the purpose of maintaining peace and tranquillity in the area, the powers under Section 438, the Sessions Court ought to have exercised revisional jurisdiction, keeping in mind the scope of the original proceeding. In my opinion, even entertaining any application for temporarily putting the Respondents in possession of the structure in Survey No.171/6 would be contrary to the powers vested in the Sessions Court. As clarified by me above, the only power that could be exercised by the Revisional Court at the interim stage, and in pursuance of the final orders that would be passed, would be to direct the execution of a sentence or an order to be suspended until disposal of the Revision Application itself. In the fact scenario of the present case, the Revisional Court ought to have attempted at finally disposing the Revision Application itself without entertaining any application that would change the status quo with regard to the property or the possession of the parties, contrary to the finding given by the Executive Magistrate at page 380 of the paper book. In that paragraph, the Executive Magistrate has recorded that the Petitioner has shown that he is in possession of the property and the structure existing thereon. For these reasons, the impugned order cannot be sustained and would have to be quashed and set aside and application

at Exhibit D-17 be dismissed.

26. It is the objection of the Respondents that this is not a fit case to exercise the supervisory jurisdiction of this Court under Article 227 of the Constitution of India as the impugned order could not be termed to be illegal or contrary to the provisions of law. It was also submitted that the impugned order contains enough of safeguards whilst permitting the Respondents to use the structure in question for two days to celebrate Nagpanchami, which would act as a detriment and advance the cause of maintaining peace and tranquillity in the area.

27. In *Shalini Shetty* (supra), the Supreme Court has made the following observations whilst considering the principles in the exercise of supervisory jurisdiction of the Court under Article 227 of the Constitution of India. The same are quoted below:

“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh V. Amarnath; AIR 1954 SC 215 and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the

jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases

but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.”

28. Whilst it is true that the High Court should not exercise its jurisdiction at the drop of a hat and the same should be sparingly used, as held in *Shalini Shetty* (supra), but where Court subordinate to the High Court have not acted within the bounds of their authority or their orders suffer from patent perversity, interference in the supervisory jurisdiction of the Court would be called for. In the present case, as held by me in the preceding paragraphs, considering that the case on its genesis in a proceeding to maintain peace and public tranquillity and was one under Section 146 of the Cr.P.C., the revisional jurisdiction which was to be exercised by the Sessions Court would have to be exercised within the bounds of the original proceeding. Section 438 is the power of revision vested in the Sessions Court and the High Court to be exercised in various matters against which revisions are permitted. Obviously, therefore, the Revisional Court would have to exercise this jurisdiction after being conscious of the scope of the original proceeding and act within the bounds of the powers conferred upon it under Section 438 in tandem

of the original proceeding and the order passed thereon which is under revision. In the present case, as stated by me above, the Sessions Court ought to have approached the entire matter by first being mindful of the scope of the original proceeding, which would then obviously not permit it to, at the interim stage, grant orders of the nature as the impugned order.

29. For reasons stated above, the impugned order dated 23.07.2025 is quashed and set aside. Rule is made absolute in terms of prayer clause (A). The Trial Court is requested to endeavour at disposing of Revision Application No.47/2013 as expeditiously as possible, considering that the subject matter of the Revision Application is one of law and order. The Revision Application shall be disposed of preferably by 20.08.2025.

VALMIKI MENEZES, J.