

MHRT010013002019



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	<u>IN THE COURT OF ADHOC DISTRICT JUDGE-1, RATNAGIRI</u> (Before S.G.Baokar Addl. Sessions Judge, Ratnagiri) Decided on 30/07/2026 Sessions Case No.102/2019 <u>Exh. No. 128.</u>
	(Crime No.06/2016, Jaigad Police Station, Tal. & Dist.Ratnagiri)
Prosecution	The State of Maharashtra Through API Shri. Deepak Tukaram Salvi. Jaigad Police Station, Tal & Dist.Ratnagiri
REPRESENTED BY	APP Shri. A. A. Phansekar.
ACCUSED	1. Somu Shankar Rathod, Age- 38 years, Occupation-Agriculture, 2. Vivek Vilas Surve, Age- 36 years, Occupation-Agriculture, 3. Vaibhav Vilas Surve Age- 34 years, Occupation- Agriculture, 4. Mahesh Mansing Patil, Age- 24 years, Occupation-Agriculture, Accused No.1 to 4 R/o. Sandkhol, Tal. & Dist. Ratnagiri. 5. Mukesh Vaman Gadade, Age- 40 years, Occupation- Agriculture, R/o. Nandivade, Tal. & Dist. Ratnagiri.
REPRESENTED BY	Shri. N.C. Nalawade, Advocate

Offences punishable under Section 353,
379, 143, 147, 341, 506 r.w. 149 of
Indian Penal Code.

Date of offence	15.03.2016
Date of FIR	15.03.2016
Date of Chargesheet	15.03.2016
Date of Framing Charges	23.11.2022
Date of commencement of evidence	20.06.2023
Date on which judgment is reserved	--
Date of the Judgment	30 .07.2026
Date of the Sentencing Order, if any	---

Accused details

Accused Name	Arrested on	Released on bail	Charge	Decision	Sentence Imposed	Detention Period Undergone
1. Somu Shankar Rathod	17.03.2016	08.01.2020	Offences punishable under 353, 379, 143,147, 341, 506 r. w. 149 of the Indian Penal Code, 1860	30.07.2026 Acquitted	--	--
2 Vivek Vilas Surve	17.03.2016	08.01.2020	Offences punishable under 353,379,143,147,341, 506 r. w. 149 of the Indian Penal Code, 1860	30.07.2026 Acquitted	--	--
3. Vaibhav Vilas Surve	17.03.2016	08.01.2020	Offences punishable under 353,379,143,147,341, 506 r. w. 149 of the Indian Penal Code, 1860	30.07.2026 Acquitted	--	--
4.Mahesh Mansing Patil	17.03.2016	08.01.2020	Offences punishable under 353,379,143,147, 341, 506 r. w. 149 of the Indian Penal Code, 1860	30.07.2026 Acquitted	--	--
5. Mukesh Vaman Gadade	17.03.2016	08.01.2020	Offences punishable under 353,379,143,147,341, 506 r. w. 149 of the Indian Penal Code, 1860	30.07.2026 Acquitted	--	--

LIST OF PROSECUTION WITNESSES

A. Prosecution

Rank	Name	Nature of evidence	Exh. No.
PW 1	Sadashiv Bapu Nade	Panch witness	51
PW 2	Sudhir Dattaram Yadav	Eye witness	63
PW 3	Sitaram Anaji Kadam	Informant/ Eye witness	72

PW 4	Bhau Balu Galande	Witness	87
PW 5	Deepak Tukaram Salvi	Investigating Officer	93

B. Defence Witnesses, if any: NIL

C. Court Witnesses, if any : NIL

LIST OF PROSECUTION COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	52 /PW1	Signature on Seizure Panchnama as panch
2	53/PW1	Signature on Spot Panchnama as panch
3	73 /PW3	FIR
4	88/PW4	Challan
5	94 to 98/PW5	Arrest Forms of accused No.1 to 5

B. Defence Exhibits - NIL

C. Court Exhibits: NIL

D. Material Objects:

Sr. No.	Material Object /Article Number	Description
1	Article A	Challan
2	Article B	Documents of three vehicles
3	Article C	R.C Card
4	Article D	R.C Book of

J U D G M E N T

(Delivered on 30th day of July ,2026)

The accused No. 1 to 5 are facing trial for the offences punishable under 353, 379, 341, 506 r.w.149, 143 and 147 of Indian Penal Code.,1860 (hereinafter referred as 'IPC' in

brief).

2. Brief fact of the case of prosecution are as follows -

Informant Sitaram Anaji Kadam was serving as Talathi at Talathi Office, Watad, Tal. Dist. Ratnagiri in Year 2016. On 09/03/2016, monthly meeting of Talathi was conducted by Tahasildar, Ratnagiri and in that meeting, Tahasildar, Ratnagiri orally directed to all Talathi serving in Ratnagiri Taluka to take strict action against illegal transport of minor minerals and sand. As per oral direction of Tahasildar, Ratnagiri, on 15/3/2016, Circle officer Mr. Kamalakar Jadhav called informant and Talathi of Saitawade office and Chaferi office to come at Khandala. All these revenue officers gathered there and they went at Chaferi Titha and started inspecting the transport vehicles road proceeding from Khandala to Jaigad looking for illegal transport of minor minerals.

3. On 15/3/2016 at about 2.30 p.m., one red colour Goods Truck bearing Registration No.MH 08 H 2904 was seen by informant and his colleagues proceeding from Nivali to Jaigad road. When informant and his colleagues signal the truck driver to stop the truck, the truck driver had not stopped it and proceeded with truck towards Jaigad. So, informant and his colleagues have suspicion that transport of minor minerals may be done in said truck. So, informant and his colleagues started following said truck on their motor cycles. The informant and his colleagues caught said truck on upward slope road at Chaferi ringiwadi at about 2.38 p.m. and stopped it.

4. When informant and his colleagues inspected said

truck, it revealed that there was five brass black sand of price of Rs. 50,000/-(Rs. Fifty Thousand only) stocked in the truck. When informant demanded permit of transport of sand from driver of truck, the driver told him that he do not possess any document. The driver called one Mr. Vivek Surve on phone and told informant that the truck is owned by Vivek Surve and you may talk with him on phone. The driver of truck hand over phone to informant. The informant made conversation with Vivek Surve about the illegal transport of sand in the truck. At that time, one Mahindra Xylo vehicle bearing registration no.MH 08 R 5253 came there and two persons in the age group of 25 to 30 years alighted from it. Then one Innova vehicle bearing registration no.MH 08 Z 6575 came there and two persons alighted from it. The informant was not knowing them at that time. One out of them inquired about Kadam Talathi. The informant told them that he is Mr. Kadam Talathi. One of them introduced him to informant as Vivek Surve, R/o. Nandivade and he is representative of people in the vicinity.

5. Vivek Surve told informant to release the truck. The informant and his colleagues told Vivek Surve to pay the penalty for illegal transport of sand first and then they will release the truck. Vivek Surve told informant that he will not pay penalty and he will take away the truck, you may do whatever you want to do. Vivek Surve told truck driver to start the truck. As truck was about to leave from spot, informant and his colleagues made phone call to Jaigad police station for help. But before arrival of police there, Vivek Surve and other persons took away the truck stopped by informant. As Vivek Surve and other five unknown persons obstructed in the public duty of informant, took away sand without permit by transporting it in truck and threatened the informant.

Informant lodged FIR against Vivek Surve and other five persons for the offences p/u/s. 379, 353, 506 r. w. Section 34 of Indian Penal Code on 15/3/2016 at Jaigad police station.

6. It is further case of prosecution that on the basis of FIR lodged by informant, C.R No.6/2016 was registered at Jaigad police station in the offence punishable under Section 353, 379, 341, 506 r. w. 149, 143 and 147 of Indian Penal Code.,1860. Police Head Constable Mr. Deepak Tukaram Salvi has done further investigation of it. He recorded supplementary statement of informant. He seized truck filled with Sand, Innova vehicle and Xylo vehicle used by accused in crime on 15/3/2016 before two panchas and prepared seizure panchanama of it. On 16/03/2016, he visited spot of incident and prepared spot panchanama in presence of two panchas. On 16/3/2016, informant delivered copy of order of District Collector, Ratnagiri, receipts of sand extraction and correspondence to him. He arrested five accused in presence of panchas on 17/3/2016. The accused produced xerox copy of registration documents of three vehicles seized in crime which were caught by him. After completion of investigation, he has filed charge-sheet against accused.

7. As the offence alleged against accused punishable under Section 353 of IPC is exclusively triable by Court of Sessions. Ld. 2nd Judicial Magistrate First Class, Ratnagiri committed the case for trial before the Sessions Court as per order Dtd. 17-10-2019. The Hon'ble Sessions Judge, Ratnagiri allotted this case for trial to this Court.

8. My Ld. Predecessor has framed charge against accused nos.1 to 5 for the offence punishable under Section 353, 379,

341, 506 r. w 149, 143 and 147 of Indian Penal Code at Exh. No. 38. The accused nos.1 to 5 pleaded not guilty to the said charge and claimed to be tried and their plea is recorded accordingly.

9. In the trial, the prosecution has examined five witnesses which are reproduced at the relevant point in this judgment afterwards.

10. After recording the evidence of prosecution, prosecution has closed its evidence as per pursis at Exh. No.102.

11. I have recorded statements of accused as per Section 313 of Code of Criminal Procedure, 1973 at Exh. No.103 to 107 respectively. The defence of accused is of total denial. The accused denied to lead evidence in their defence.

12. I heard Ld. APP Mr. Phansekar for prosecution and Ld. Adv. Mr. Nalawade for accused. I also went through the written notes of argument given by the prosecution and citations relied upon by both parties.

13. Considering charge against accused, evidence on record and arguments advanced by rival parties, following points arise for my determination and my findings on it and reasons therefore are as follows :-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the prosecution prove that on 15.03.2016 at about 2.48 p.m. at Jaigad to Nivali Road at Village Chaferi ringiwadi, Tal.	No.

	&Dist. Ratnagiri, accused Nos.1 to 5, in prosecution of common object of the unlawful assembly, used criminal force or assaulted the informant Sitaram Anaji Kadam and witness namely Sudhir Dattaram Yadav being a public servant in execution of their public duty as such public servant with intent to prevent or deter them from exercising their duty as such public servant and thereby accused have committed an offence punishable under section 353 r./w. 149 of IPC ?	
2	Whether the prosecution prove that on aforesaid date, time and place, accused No. 1 to 5 in prosecution of the common object of their unlawful assembly intending to take dishonestly movable property i.e. Sand owned by Government out of the possession of informant who is public servant without his consent and moved it in order to such taking and thereby accused have committed an offence punishable under section 379 r./w. 149 of IPC ?	No.
3	Whether the prosecution prove that on aforesaid date, time and place, accused No. 1 to 5 in prosecution of the common object of their unlawful assembly threatened the informant and witness by name Sudhir Dattaram Yadav and	No.

	committed mischief by taking away the truck bearing registration no. MH 08 H 2904 along with sand in it and accused nos.1 to 5 have committed offence punishable under Section 143 of IPC?	
4	Whether the prosecution prove that on aforesaid date, time and place, accused No. 1 to 5 in prosecution of the common object of their unlawful assembly used force or violence to informant and his colleagues, thereby committed an offence of rioting and thereby accused nos.1 to 5 have committed offence punishable under Section 147 of IPC ?	No.
5	Whether the prosecution prove that on aforesaid date, time and place, accused No. 1 to 5 in prosecution of the common object of their unlawful assembly wrongly restrained informant and witness Sudhir Dattaram Dalvi and his other colleagues and thereby accused nos.1 to 5 have committed offence punishable under Section 341 r. w. 149 of IPC?	No.
6	Whether the prosecution prove that on aforesaid date, time and place, accused No. 1 to 5 in prosecution of the common object of their unlawful assembly criminally intimidated the informant and	No.

	his colleagues by threatening them and thereby accused nos.1 to 5 have committed offence punishable under Section 506 r. w. 149 of IPC?	
7	What order?	As per final order.

REASONS

14. Ld. APP Mr. Phansekar has argued for the prosecution that the prosecution has proved in the evidence of informant (P.W.3) and Mr. Sudhir Yadav (P.W.2) that accused no. 1 was found driving the truck filled with sand without permit on road proceeding from Nivali to Jaigad at Chaferi Titha on the day of incident. When informant and his colleagues inquired with accused no.1 about transport permit of said sand, accused no.1 called accused no.3 on phone and thereafter accused no.2 and 4 came on spot in vehicle and accused no.3 and 5 came on spot in another vehicle. The accused no.3 when called upon to pay penalty about illegal transport of sand, accused no.3 denied to pay the same and accused no.3 told accused no.1 to take away the truck and accused no.2 to 5 went away from the spot in other vehicle. The evidence of informant and Mr. Sudhir (p.w.2) have proved that accused took away the truck filled with sand which is stopped by informant by using criminal force. Nothing came on record during the cross examination of these witnesses which may discredit the prosecution story. The accused have not denied that informant and his colleagues were public servant on the day of incident and they were doing their public duty as

revenue officer to prevent illegal transport of minor minerals and loss of Government revenue. Informant (PW3) as well as Mr. Sudhir Yadav (PW2) have proved that they were doing vehicle inspection at spot of incident as per oral direction of Tahasildar, Ratnagiri at the spot of incident as public servant. The prosecution has proved that accused used criminal force by forcibly taking away the truck loaded with sand without permit by obstructing the informant and his colleagues and thereby accused committed offence punishable under Section 353 of IPC.

15. According to the prosecution, there are five accused involved in the crime. The presence of accused at spot of incident at the time of incident is not denied by the defence. The conduct of all accused prove that they formed unlawful assembly at the time of incident in prosecution of their common object to commit offence of using criminal force against accused and theft of sand. Prosecution has proved in the evidence of informant and Mr. Dalvi (P.W.2) that accused formed unlawful assembly and remained members of unlawful assembly. He has relied on following citations :

1	State of Rajasthan Vs. Smt. Kalki and Ors.
	It is held by the Hon'ble Supreme Court that in the depositions of witnesses, there are always natural discrepancies due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence and the like. Minor discrepancies are insignificant, natural and not material.
2	Gian Chand & Ors. Vs. State of Haryana AIR 2013 SC 3395

	The Hon'ble Supreme Court has held that defence not putting any question to the investigating officer in respect of missing chits from the bags containing the case property/ contraband articles. Then the same has to be accepted and no issue can be made at a later stage.
3	Mahavir Singh Vs. State of Haryana AIR 2014 SC 2615
	It is held by the Hon'ble Supreme Court that questions which are not put to witnesses in cross examination in respect of any fact, then correctness or legality of those facts or issues could not be raised.

16. Ld. Adv. Mr.Nalawade has argued for accused that if revenue officials have to conduct inspection of vehicles in respect of illegal sand transport which is minor mineral, then they should be member of the squad prepared by the committee at Taluka level of Tahasildar, Police Inspector and officer of RTO department which include one officer each of Revenue, police and RTO department. In this case, the informant as well as Mr. Sudhir Yadav (P.W.2) has admitted in their cross-examination that they were not members of any such squad. So the informant and his colleagues were not authorized at the time of incident to stop, inspect of vehicles and took custody of vehicles which found transporting minor mineral and sand as per GR of Government of Maharashtra bearing GR No. गौखनी १०/२००५/ प्र.क्र २४५/ख दि.१७.१०.२००५. So their act of stopping the truck transporting sand is not lawful one. The prosecution has not produced any document on record to show that informant (PW3), Mr. Sudhir Yadav (P.W.2) and their colleagues were doing public duty as a public

servant at the time of incident. The prosecution has not examined Tahasildar Ratnagiri as witness in this case. The oral evidence of informant and Mr. Sudhir Yadav (P.W.2) do not prove that accused have used any criminal force against informant and his colleagues at the time of incident. Therefore, prosecution has failed to prove the guilt of accused for the offence punishable under Section 353 of IPC.

AS TO POINTS NO. 3 and 4

17. As these points are interlinked with each other, I am deciding them jointly.

18. It is case of prosecution that accused No. 1 to 5 formed unlawful assembly at spot of incident and in prosecution of common object of such assembly, accused used criminal force against informant and his colleagues who are public servants and thereby accused committed offences punishable under S. 143 and 147 of IPC.

19. Ld. APP Mr. Phansekar has argued for the prosecution tht though both eye witnesses of incident examined by the prosecution were serving as Talathi at the time of incident and as such Public Servants, they can not be said to be interested witnesses. Their evidence can not be disbelieved as evidence of interested witnesses. In support of his argument, he relied upon the Judgment of **Hon'ble Supreme Court in case of State of Rajasthan Vs. Smt. Kalki and Another (1981) 2 SCC 752.**

20. Ld. Adv. Mr. Nalawade has argued for the accused that the informant Mr. Kadam and Talathi Mr. Yadav, to whom

prosecution has examined as eye witnesses of incident, were serving as Talathi at the time of incident. The offence charged against accused punishable under S. 353 of IPC provides punishment for using criminal force or assaulting public servant on duty in order to prevent or deter him from performing his duty. Considering said facts, the eye witnesses of incident examined by the prosecution are interested witnesses and their testimony is doubtful in absence of corroboration from independent witnesses. So he has prayed not to rely upon evidence of both eye witnesses examined by the prosecution in absence of evidence of independent witness.

21. I have read the Judgment of **Hon'ble Supreme Court in case of State of Rajasthan Vs. Smt. Kalki and Another (1981) 2 SCC 752**. In that Judgment, the Hon'ble Supreme Court has held that " a witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case , or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be interested. "

22. Considering said ratio laid down by the **Hon'ble Supreme Court in case of State of Rajasthan Vs. Smt. Kalki and Another (1981) 2 SCC 752**, in this case, the eye witnesses of the incident examined by the prosecution in this case are two Talathi I.e. informant Mr. Kadam (P.W.3) and Talathi Mr. Yadav (P.W.2). Both are public servants. It is not case of accused that they were with enemical terms with these two eye witnesses examined by the prosecution in this case since prior to incident. The eye witnesses of incident

examined by the prosecution in this case are servants of Revenue department and in absence of prior animosity between them and accused since prior to incident, there is no possibility that these 2 witnesses are interested to see the accused punished in crime. Merely because they are servants of Revenue department, they can not be held as interested witnesses. So, I do not find substance in the submission of Ld. Adv. Mr. Nalawade of accused that both eye witnesses examined by the prosecution in this case are interested witnesses and so their testimony is not reliable in absence of corroboration from independent witnesses. Even though witness Mr. Yadav (P.W.2) and informant Mr. Kadam (P.W.3) are servants of Revenue department, their testimony can not be discarded on that ground alone holding them as interested witnesses.

23 Ld. APP Mr. Phansekar has also argued that when questions are not put on any fact to the witnesses of prosecution in their cross examination by the accused, then correctness of those facts could be raised afterwards. In support of his argument, he relied upon the Judgment of **Hon'ble Supreme Court in case of Mahavir Singh Vs. State of Haryana 2014(6) SCC 716** and Judgment of **Hon'ble Supreme Court in case of Gian Chand and Ors. Vs. State of Haryana 2013(14)SCC 420**.

24 I have read both the citations above. The ratio laid down in both these citations is applicable in every criminal trial.

25. To prove the guilt of accused for the offences punishable under S. 143 and 147 of IPC, prosecution shall

prove beyond reasonable doubt that accused formed unlawful assembly at spot of incident at the time of incident. To prove formation of unlawful assembly by the accused at the spot of incident, prosecution is bound to prove following facts :

- a) There must be five or more persons in an assembly;
- b) The assembly of such persons shall have common object as contemplated in S. 141 of IPC.

In order to prove formation of unlawful assembly by the accused at the time of incident, prosecution has examined two eye witnesses namely Sitaram Kadam-Informant (P.W.3) and Sudhir Yadav (PW2). Both of them deposed that when they were on duty along with other Talathi of Chaferi Village and Circle Officer Mr. Kamlakar Jadhav at Chaferi Titha on Niwali to Jaigad road for inspection of vehicles transporting minor minerals illegally on 15-03-2016, they saw a truck bearing Registration No. MH 08 H 2904 coming from Niwali towards Jaigad and when they signaled said truck to stop there, truck driver without stopping truck proceeded towards Jaigad. Then they saw truck loaded with goods and so they followed it and stopped it in the Ghat section at Chaferi Ringiwadi. During inspection, as they found sand stored in truck, they demanded permit and documents of truck which are required for sand transport from truck driver and truck driver found not possessing the same and truck driver shown his inability to pay fine. When they inquired with truck driver, truck driver told them that he would connect phone call to owner of truck and requested informant to talk with him on phone. Then truck driver made phone call to the person named as Vaibhav Surve and gave phone to informant for conversation. Informant talked with that

person on phone. After some time, one Mahindra Xylo vehicle came there and accused no.3 and 5 alighted from it. Informant was initially not knowing them. Then one Innova car came there and accused no.2 and 4 alighted from it. Accused no.2 Vivek inquired there about Kadam Talathi and when informant introduced himself as Kadam Talathi to accused No. 2 Vivek, accused No. 3 Vivek came near informant and inquired as to why he intercepted his truck. He and his colleagues told accused no.2 that as there was no valid permit with driver of truck, they stopped the truck. The accused no.2 told his name as Vivek Vilas Surve to him. He told accused no.2 to deposit fine for illegal transport of sand in his truck and accused no.2 denied to pay the fine. The accused no.2 instructed driver to start the truck and then truck went away. At the same time, accused left the spot in their respective vehicles.

26. The evidence of informant (PW3) and Mr. Sudhir Yadav (PW2) that accused No. 1 was truck driver, accused No. 3 Vaibhav Surve and accused No. 5 were the persons arrived after some time since stoppage of truck at spot of incident in Mahindra Xylo car and thereafter accused No. 2 Vivek and accused No.4 came there in Innova car. But at spot of incident, conversation took place only between informant and accused No. 1 Somu first and then between informant and accused No. 2 Vivek only. The accused No. 3 to 5 have neither had dialogue with informant and his colleagues nor have dialogue with accused No. 1 and 2 at spot of incident. Also they have not done any act against informant and his colleagues at spot of incident.

27. It has come on record in evidence of both eye witnesses that accused No. 2 instructed truck driver to take away the truck from the spot. The evidence of these witnesses reveals that accused No. 3 to 5 have not done any act at spot of incident except their mere appearance there. It is settled law that mere presence of any person in the mob at spot of incident, ipso facto, is not sufficient to hold them as member of unlawful assembly gathered there unless it is shown that the persons present there gathered in prosecution of common object of such assembly.

28. But in this case, it is clear from evidence of witness Mr. Sudhir Yadav (P.W.2) and informant Mr. Kadam (PW3) that both of them were not knowing accused No. 2 to 5 when arrived there at spot of incident. The accused No. 2 to 5 have not appeared at spot of incident together. Moreover accused No. 3 to 5 remained silent spectator at spot of incident and they have neither spoken with informant and his colleagues there nor spoken with accused No. 1 and 2. Although accused No. 3 to 5 have left the spot with accused No. 2 after truck left the spot, merely that single circumstance is not sufficient to hold that accused No. 3 to 5 have shared common object of unlawful assembly with accused No. 1 and 2 there. So the evidence of both eye witnesses examined by the prosecution has failed to prove beyond reasonable doubt that accused No. 3 to 5 have formed unlawful assembly with accused No. 1 and 2 at spot of incident in prosecution of common object of such assembly to use criminal force against informant and his colleagues present at spot of incident.

29. Also Mr. Sudhir Yadav (P.W.2) and Informant Mr. Kadam (P.W.3) have not deposed that accused used force or

violence against them or their other colleagues at the time of incident. So in absence of such evidence on record and for want of proof of formation of unlawful assembly by accused No. 1 to 5 at spot of incident at the time of incident, the prosecution has failed to prove beyond reasonable doubt that accused No. 1 to 5 committed offences punishable under S. 143 and 147 of IPC. Hence I answer Point No. 3 and 4 in the negative.

AS TO POINT NO. 1

30. To prove the offence punishable under Section 353 of IPC charged against accused, the prosecution must prove following facts -

a) That informant and other eye witnesses who are revenue officers were doing their public duty as a public servant at spot of incident on the day of incident.

b) The accused used criminal force or assaulted informant and his colleagues while doing their public duty as a public servant with intent to prevent or deter to them exercising their duty as such public servant.

Informant on Public Duty as Public Servant

31. Ld. APP Mr. Phansekar has argued for the prosecution that the informant Mr. Kadam (P.W.3) and Mr. Sudhir Yadav (P.W.2) were serving as Talathi on the day of incident which were revenue officers and they have authority to make inspection of vehicles transporting minor minerals. The informant (P.W.3) and Mr. Yadav

(P.W.2) have deposed to that effect in this case. The accused have not denied that they were not revenue officers on the day of incident. Both witnesses have proved that they were doing public duty at spot of incident as per oral direction of Tahasildar, Ratnagiri as well as on the call of Circle Officer Mr. Kamlakar Jadhav and while acting as such, they stopped the truck driven by accused No. 1 with black sand of 5 brass in it without permit. So prosecution has proved beyond reasonable doubt that informant (PW3) and Mr. Yadav (P.W.2) were serving as public servant on the day of incident and they were doing their public duty at spot of incident on the day of incident as per oral direction of Tahasildar, Ratnagiri and on the call of Circle Officer Mr. Kamlakar Jadhav.

32. Ld. Adv. Mr. Nalawade has argued for the accused that Talathi or Circle officer have no right to take action about the transport of minor mineral including sand unless they are inducted as member in team prepared for that purpose by the Taluka level committee consisting of Tahasildar, Police Inspector and officer of RTO department as per G.R. of Sytate of Maharashtra bearing GR No. गौखनी १०/२००५/ प्र.क्र २४५/ख दि.१७.१०.२००५. The informant Mr. Kadam (PW3) and Mr. Sudhir Yadav (PW2) have admitted in their cross examination that there is Taluka Level Committee to be formed as per said GR and that committee has to form teams for taking action against transport of minor minerals in breach of rules which shall consist of one employee each of Revenue,

Police and RTO department of that Taluka. They have further admitted in their cross examination that they are not appointed as member of any team constituted by the Taluka Committee for taking action against transport of minor minerals. The prosecution has failed to prove that informant and his colleagues at spot of incident were authorized to take action against transport of minor minerals by the Taluka Committee as per GR at Exh. No. 119. The prosecution has also not examined Tahasildar, Ratnagiri to prove the fact that it has orally directed the informant and his colleagues present at spot of incident to inspect the vehicles transporting minor minerals and take action against transport of minor minerals without permit. The prosecution has not examined Circle Officer Mr. Jadhav to prove that informant and other Talathi came at spot of incident on the day of incident on his call. In absence of such evidence on record, mere oral evidence of informant Mr. Kadam (PW3) and Mr. Yadav (PW2) is not sufficient to prove that they were doing their public duty at spot of incident as public servant at the time of incident. So prosecution has failed to prove beyond reasonable doubt that both these witnesses were doing their public duty at spot of incident at the time of incident.

33. In order to prove the fact that informant Mr. Kadam (P.W.3) and Mr. Yadav (P.W.2) were doing their public duty as public servant at spot of incident on the day of incident, Prosecution has examined 2 witnesses namely Mr. Yadav (P.W.2) and Mr. Kadam (P.W.3). Prosecution has examined Mr.

Sudhir Dattaram Yadav (P.W.2) who is a Talathi serving at Talathi Office, Saitawade on the day of incident. He has deposed that on 9/3/2016, meeting of all revenue officers in Ratnagiri Taluka was conducted by Tahasildar, Ratnagiri and Tahasildar, Ratnagiri instructed to all Talathi of Taluka Ratnagiri to take steps to prevent illegal transport of minor products and increase recovery of fine. Tahasildar appointed him as member in the team prepared for inspection of vehicles transporting sand illegally. On 15/3/2016, he alongwith Circle Officer Mr. Jadhav, Talathi of Village Saitawade and Talathi of village Chafe were inspecting transport vehicles at Chaferi Titha and while making inspection there, he saw one red colour Truck bearing registration no.MH 08 H 2904 coming from Nivali side towards Jaigad. When he and his colleagues gave signal to the truck to stop there, truck driver had not stopped said truck and proceeded further. So, he and his colleagues followed the truck on their motor cycle and stopped it on the road at Chaferi ringiwadi Ghat. During inspection of truck, he found 5 brass black sand in it. When he demanded permit from driver, driver of truck i.e. accused no.1 was not possessing any valid permit.

34. Mr. Sudhir Yadav (PW2) has admitted in his cross examination that certain guidelines about taking action against illegal excavation and transportation of sand which laid down in GR 10/2005 dated 17/10/2005 of Government of Maharashtra and as per those guidelines, District Collector has to form one committee consist of himself, RTO and DSP. The Collector has to constitute one committee at Taluka level consisting of Tahasildar, Police Inspector and Inspector of RTO and that committee has to form various teams for taking

action. The members of these teams include employees of Revenue Office, RTO Office and Police department. No written order was issued to him by his superior to be a part of such team for taking action. He has stated in his cross examination that he did not receive any written order that he is appointed as member of such team and he has not given any document to IO showing that such team was formed in Ratnagiri Taluka.

35. The informant Mr. Sitaram Kadam (P.W.3) is another eye witness of the incident. He has deposed that on 9/3/2016, Tahasildar, Ratnagiri convened meeting of Talathi and directed to take action against illegal excavation and transport of minor mineral and to give co-operation to Circle Officer in the said action. On 15/3/2016, at 2.35 p.m., he along with Circle Officer Mr. Jadhav, Talathi of village Saitawade and village Chaferi came at Chaferi Titha for taking action against transportation of minor minerals in illegal manner. He saw one red colour truck bearing registration no. 2904 proceeding from Nivali towards Jaigad and when they signal to stop the truck, it did not stop and went away. Then he and his colleagues chased truck on their motor cycles and they stopped it on ascending road of Chaferi. When they inspected the truck, 5 brass sand was found loaded in it. They demanded the papers of said sand from driver who was not having any papers or receipts.

36. Mr. Sitaram Kadam (P.W.3) has stated in his cross examination that he knows circular issued by Government of Maharashtra dated 17/10/2005 in respect of minor and minerals. He has admitted that "as per said circular, Collector has to appoint one committee consists of Collector, SP and

RTO Officers, the Collector has to constitute Taluka committee which consists of Tahasildar, Police Inspector and Inspector of RTO, Taluka committee has to constitute one team at local level consists of employees of revenue office, police department and RTO office, on 15/3/2016, no team of such officers was appointed at local level and as per G.R, except such team, nobody has right to take any such action, no written order issued by Tahasildar to them in that respect.”

37. Considering the evidence of both eye witnesses i.e. Mr. Kadam (PW3) and Mr. Yadav (PW2), it came on record that as per GR of Maharashtra State Government at Exh. No.119, a District Committee is to be constituted at District level under the authority of District Collector and Taluka Committee at each Taluka under the authority of Tahasildar of such Taluka and Taluka Committee has to form various teams consisting personnel of Revenue, Police and RTO department in each team to take action against extraction and transport of minor minerals in breach of rules. It has further come in evidence of both these eye witnesses that they were not members of any such team formed by Taluka Committee in Ratnagiri Taluka at the time of incident. Both the eye witnesses have admitted in their cross examination that the members of such teams formed by Taluka Committee are authorized to take action against illegal transport of minor minerals and they are not appointed as members of any such team. It impliedly shows that the informant and his colleagues were not members of any team formed by Taluka Committee at Ratnagiri as per GR at Exh. No.119 on the day of incident, they were not authorized to take action against illegal extraction and transport of minor minerals on the day of incident as per GR at Exh. No.119.

38. The prosecution has contended that every revenue officer including Talathi and Circle Officer has power to take action against illegal extraction and transport of minor mineral and as informant and his colleagues were officials of Revenue Department doing their duty as per oral direction of Tahasildar, Ratnagiri while stopping the truck at spot of incident transporting the sand illegally without permit, prosecution has proved beyond reasonable doubt that informant and his colleagues were doing their public duty at the time of incident as public servant.

39. The defence, on the other hand, contended that the informant and his colleagues were not authorized to take action against illegal transport of minor mineral at the time of incident as per GR at Exh. No. 119. The prosecution has not examined Tahasildar, Ratnagiri as witness in this case to prove that meeting of Talathi in Ratnagiri Taluka was convened by him on 09-03-2016 and in that meeting, Tahasildar orally directed all Talathi in the Taluka to help Circle Officers in taking action against illegal extraction and transport of minor minerals in Taluka. The prosecution has not examined Circle Officer Mr. Jadhav as witness in this case to show that informant and other Talathi came at Chaferi Titha on the day of incident on his call for inspection of vehicles. So prosecution has failed to prove beyond doubt that informant and his colleagues were doing their public duty at spot of incident at the time of incident as public servant.

40. A Talathi is servant of revenue department in a village. Talathi of any village has jurisdiction to serve as public servant within the jurisdiction of such village only unless

specifically authorized in writing by his superior officer like Tahasildar or District Collector to do any work of revenue department at any other place in Taluka or District respectively excluding his village where he serves as Talathi.

41. In this case, the informant Mr. Sitaram Kadam (P.W.3) was serving as Talathi of village Watad and he was not Talathi of Chaferi village where incident was happened on that day. The informant has not produced any written order issued by his superior officer in this case to show that he was authorized by his superior officer to do his public duty at spot of incident at Village Chaferi on the day of incident and he was acting there as such in the capacity of public servant. So he was public servant on duty on the day of incident within the jurisdiction of village Watad only on the day of incident.

42. It came on record in evidence of Mr. Sudhir Yadav (P.W.2) that on the day of incident, he was serving as Talathi of Village Saitawade. So Mr. Yadav (P.W.2) was not serving as Talathi of Village Chaferi within whose jurisdiction incident was happened. So Mr. Sudhir Yadav was serving as public servant on the day of incident at Village Saitawade. He has also not produced any documentary evidence in this case to show that he was authorized by his superior officers on the day of incident to do duty as Talathi at Village Chaferi. So he was public servant on duty on the day of incident within the jurisdiction of village Saitawade only on the day of incident.

43. More over prosecution has not examined Tahasildar, Ratnagiri as witness in this case to prove that he convened monthly meeting of all Talathi in Ratnagiri Taluka on 09-03-2016 and orally directed them to help Circle Officer in taking

action against illegal extraction and transport of minor mineral and sand. The informant has also not produced any document on record to show that Tahasildar, Ratnagiri convened monthly meeting of all Talathi in Ratnagiri Taluka on 09-03-2016 and informant has attended it. In absence of such evidence, prosecution has failed to prove beyond reasonable doubt that Tahasildar, Ratnagiri had convened monthly meeting of all Talathi in Ratnagiri Taluka on 09-03-2016 and Tahasildar, Ratnagiri orally directed all Talathi to help Circle Officer in taking action against illegal extraction and transport of minor mineral and sand.

44. It is the case of prosecution that Mr. Yadav (P.W.2) and Mr. Kadam (P.W.3) came at Chaferi Titha within the jurisdiction of Village Chaferi on the call of Circle Officer Mr. Jadhav of Circle Office at Jaigad. If Talathi has to leave his office and visit any place out of his jurisdiction, then Talathi is bound to record entry of his visit to the place outside his jurisdiction to the concern register at his office while leaving his office. If Mr. Yadav (P.W.2) who was Talathi of village Saitawade and informant Mr. Kadam (P.W.3) who was Talathi of village Watad on the day of incident would have left their office on the day of incident on the call of Circle Officer Mr. Jadhav and visited Village Chaferi, they would have recorded entry to that effect in the concern register of their office. Such entry is very important piece of evidence in this case to show that both of them visited village Chaferi on the day of incident for doing their public duty on the call of Circle Officer Mr. Jadhav. But such extract of register of Talathi office at Village Saitawade and Village Watad of the day of incident showing the entry recorded by both these witnesses in their respective Talathi office about leaving their office on that day on the call

of Circle Officer Mr. Jadhav for doing duty at Village Chaferi is not produced by the prosecution in this case.

45. Considering the evidence of both eye witnesses of prosecution, it reveals that Mr. Sudhir Yadav (P.W.2) and Mr. Sitaram Kadam (P.W.3) were serving as public servant in the capacity of Talathi on the day of incident at Village Saitawade and Village Watad respectively on the day of incident and they were not specifically authorised by their superior officer by order in writing to perform any duty as employee of Revenue Department on the day of incident at Village Chaferi at spot of incident. The prosecution has also failed due to want of examination of Tahasildar, Ratnagiri as a witness in this case that Tahasildar, Ratnagiri orally directed all Talathi in Ratnagiri Taluka to help Circle Officer in inspecting vehicles transporting minor mineral and sand illegally and recover fine.

46. Due to non- examination of Circle Officer Mr. Kamlakar Jadhav as witness in this case and want of documentary evidence showing that Mr. Yadav (P.W.2) and Mr. Kadam (P.W.3) have visited at Village Chaferi on the day of incident on the call of Circle Officer Mr. Jadhav for doing their duty of inspection of vehicles transporting minor minerals, prosecution has failed to prove that Mr. Yadav (P.W.2) and Mr. Kadam (P.W.3) have visited spot of incident at Chaferi Ringiwadi within the jurisdiction of village Chaferi for doing their public duty as per call of Circle Officer Mr. Jadhav. Mere oral evidence of informant (PW3) and Mr. Yadav (PW2) is not sufficient to prove that informant was doing his public duty at spot of incident on the day of incident as public servant. Resultantly, prosecution has failed to prove that Mr. Yadav

(P.W.2) and informant Mr. Kadam (P.W.3) were doing their public duty as public servant as per oral direction of Tahasildar, Ratnagiri and on the call of Circle Officer Mr. Jadhav at Chaferi Ringi Ghat section at spot of incident on the day of incident.

Use of criminal force or assault upon informant at spot of incident by accused in order to prevent or deter him from doing his public duty

47. Ld. APP Mr. Phansekar has argued for the prosecution that it is admitted fact that Mr. Sudhir Yadav (P.W.2) and Mr. Sitaram Kadam (P.W.3) were serving as Talathi on the day of incident and so they were public servant doing their duty at spot of incident. It is proved by the prosecution in the evidence of 2 eye witnesses that the accused formed unlawful assembly at spot of incident and used criminal force against the informant by disobeying his direction to pay the fine for illegal transport of black sand in truck. No use of force against body of the public servant is necessary to prove the charge against accused for the offence punishable under S. 353 of IPC and taking away the truck transporting sand illegally from the custody of informant who is public servant by using force is sufficient to attract the charge against accused for that offence. In support of his argument, he relied upon following citations:

a) Judgment of the **Hon'ble Tripura High Court in case of Sundar Ali Vs. The State of Tripura 2021 CrLJ 2177.**

48. Ld. Adv. Mr. Nalawade has argued for the accused that to prove the charge against accused for the offence punishable under S. 353 of IPC, prosecution shall prove

beyond reasonable doubt that accused assaulted or used criminal force against body of public servant and taking away any truck stopped by the public servant for inspection do not amount to using criminal force against public servant by the accused. The citation relied upon by the prosecution is not applicable to the facts of this case. Both eye witnesses have not deposed that at the time of incident, accused ever used criminal force to them or assaulted them at the time of incident. So prosecution has failed to prove that accused used criminal force against informant or assaulted him at the time of incident while acting as public servant.

49. The informant Mr. Siatarm Kadam (P.W.3) has deposed that when he, Circle Officer Mr. Jadhav, Mr. Yadav (P.W.2) and Talathi of Village Chaferi were standing at Chaferi Titha for inspection of vehicles transporting minerals and sand, he saw one truck coming from the direction of Niwali to Jaigad and even after giving signal to it by him, truck was not stopped and driver of truck drove it towards Jaigad. So suspicion arose in his mind that said truck would have transporting the minor mineral and so he and his colleagues followed the truck on their motorcycles and stopped it at Chaferi Ringi Ghat. During inspection, he found 5 brass black sand in it transported without permit by driver of truck i.e. accused No. 1. The accused no.1 made phone call to his employer and accused no.2 Vivek Surve who is owner of that truck inquired about him, then he talked with accused no.2 on phone. After some time, one Mahindra Xylo vehicle came there and accused no.2 and 4 alighted from it. Then one Innova car came there and accused no.3 and 5 alighted from it. Accused no.2 came near him and inquired as to why he intercepted his truck. He and his colleagues told accused no.2

that as there was no valid permit with driver of truck, they stopped the truck. The accused no.2 told his name as Vivek Vilas Surve to him and claim himself as representative of people of that region. He told accused no.2 to deposit fine for illegal transport of sand in his truck and accused no.2 declined to it. Then the accused no.2 instructed driver to start the truck and then truck went away. At the same time, accused left the spot in their respective vehicles.

50. It has come on record in the evidence of Mr. Sudhir Yadav (P.W.2) that when he, Circle Officer Mr. Jadhav, Mr. Kadam (P.W.3) and Talathi of Village Chaferi were standing at Chaferi Titha for inspection of vehicles transporting minerals and sand, he saw one truck coming from the direction of Niwali to Jaigad and even after giving signal to it by informant, truck was not stopped and driver of truck drove it towards Jaigad. So suspicion arose that said truck would have transporting the minor mineral and so he and his colleagues followed the truck on their motorcycles and stopped it at Chaferi Ringi Ghat. During inspection, they found 5 brass black sand in it transported without permit by driver of truck i.e. accused No. 1. The accused no.1 made phone call to his employer and accused no.2 Vivek Surve who is owner of that truck inquired about Talathi Mr. Kadam, then informant talked with accused no.2 on phone. After some time, one Mahindra Xylo vehicle came there and accused no.2 and 4 alighted from it. Then one Innova car came there and accused no.3 and 5 alighted from it. Accused no.2 came near informant and inquired as to why he intercepted his truck. The informant told accused no.2 that as there was no valid permit with driver of truck, he stopped the truck. The accused no.2 told his name as Vivek Vilas Surve to informant

and claim himself as representative of people of that region. The informant told accused no.2 to deposit fine for illegal transport of sand in his truck and accused no.2 declined to it. Then the accused no.2 instructed driver to start the truck and then truck went away. At the same time, accused left the spot in their respective vehicles.

51. The prosecution has examined only 2 eye witnesses of the incident namely Mr. Yadav (P.W.2) and Mr. Kadam (P.W.3). In the evidence of both these witnesses, there is nothing came on record about use of criminal force by the accused against informant and his colleagues at the time of incident at spot of incident or assault by the accused upon informant and his colleagues. In absence of such evidence, there is nothing on record to show that accused used criminal force to informant and his colleagues while performing their public duty as public servant.

52. It is contended by the prosecution that there is no necessity to prove actual use of criminal force or assault upon the body of informant and his colleagues by the accused at the time of incident. But the fact of mere taking away the truck transporting the sand illegally from possession of informant by the accused forcefully proves that accused used criminal force against informant and his colleagues while performing their duty as public servant in order to prevent or deter them from performing their duty.

53. The offence punishable under S. 353 of IPC falls in the chapter XVI of the Indian Penal Code which deals with offences affecting human body. So to prove the charge against accused for the offence punishable under S. 353 of IPC,

prosecution shall prove beyond reasonable doubt that the accused used criminal force against human body of public servant at the time of incident or assault done upon body of public servant. The evidence of Mr. Sudhir Yadav (P.W.2) and informant Mr. Sitaram Kadam (P.W.3) do not show that accused used criminal force against their body or assaulted upon their body at the time of incident. In such case, taking away of the truck filled with sand stopped by informant and his colleagues from spot of incident, at the maximum, amount to an offence against property and can not by any stretch of imagination can be said to be offence committed against human body of informant and his colleagues at the time of incident. So I do not find substance in the contention raised by Ld. APP Mr. Phansekar that taking away the truck stopped by informant and his colleagues from their custody forcefully by the accused at the time of incident amount to use of criminal force against public servant as contemplated under S. 353 of IPC.

54. I have gone through the Judgment of **Hon'ble Tripura High Court in case of Sundar Ali Vs. The State of Tripura 2021 CrLJ 2177**. In that case, the accused actually slapped by his hand a branch manager of Gramin Bank at his office while doing his public duty. So there was criminal force used against body of public servant at the time of commission of offence and so the Hon'ble High Court convicted the accused. But in this case, neither informant nor any other eye witness of prosecution has deposed that accused ever used criminal force against them or assaulted them at the time of incident. So the facts of this case and facts of Judgment of the Hon'ble Tripura High Court in case of

Sundar Ali Vs. The State of Tripura 2021 CrLJ 2177 are totally different. So the Judgment of Hon'ble Tripura High Court in case of Sundar Ali Vs. The State of Tripura 2021 CrLJ 2177 is not helpful to the case of prosecution.

55. As neither Mr. Yadav (P.W.2) nor Mr. Kadam (P.W.3) who are examined as eye witnesses of incident by the prosecution have deposed that accused used criminal force or assaulted them upon their body at the time of incident while serving as public servant on the day of incident, prosecution has failed to prove beyond reasonable doubt that accused used criminal force or assaulted informant and his colleagues while doing their duty as public servant at spot of incident in order to prevent or deter them from performing their public duty. Hence I answer Point No.1 in the negative.

56. Mr. Deepak Salvi (P.W.5) he is investigating officer of this crime. He has deposed that on 15/3/2016 he was attached Jaigad police station as Police Head Constable and SHO directed him to make investigation of this crime. He seized Xylo vehicle, Innova vehicle and truck filled with sand before pachas at Jaigad police station and prepared seizure panchanama of it vide Exh No.52. Mr. Sadashiv Nade (PW.1) is panch witness of seizure panchanama. He has deposed that on 15/3/2016, police called him at Jaigad police station for preparation of panchnama of vehicles including truck, innova, Xylo and four members with black sand in truck. He has registered number truck and Xylo vehicle. He has further deposed that police prepared seizure panchnama before him and contents of it are true and correct and it is at Exh No.52.

57. In cross-examination of Mr. Sadashiv Nade (P.W.1)

has stated that stated that he was not issued written order by his superior to act as a punch in this case. He do not know as to whether police had given letter to his superior or not. He has admitted that panchnama in this case are prepared at police station. He has denied that police obtained his signature only on the panchnama kept in writing there. He has admitted that the locality of Jaigad Khadala and Chaferi phata is having thick residential locality and it is area of traffic. His remaining cross examination is mere denial.

58. Mr. Deepak Salvi (PW 5) has also prepared spot panchnama at the day of incident at spot of incident ie. on 16/3/2016 before two panchas. He has deposed that he prepared spot panchnama vide Exh.No.53. On 16/3/2016 at spot of incident in his cross-examination he has stated that there is no residential locality near spot of incident. He or any other police personnel of Jaigad Police Station was do not member of squad personnel have taking action against illegal transport of sand. He has not done any correspondence with miner officer and District Collector about this case. He has not conducted identification parade of accused. He has denied that spot panchnama was prepared at Jaigad police station and false seizure pachnama was prepared.

59. Mr. Sadashiv Nade (PW.1) is also panch witness of spot panchanama. He has deposed that on 16/3/2016 he went on Jaigad Nivali road on the call of police and another panch Arvind Todankar was there. Mr. Sitaram Kadam shown spot of incident which is situated at the distance of 500 feet from ringiwadi . Police prepared panchnama of spot at that place and contents of it are correct. It is at Exh No.53. Nothing came on record except denial during his cross-examination.

60. Panch witness Mr. Sadashiv Nade (PW 1) and IO Mr. Deepak Salvi(P.W.5) have prepared seizure panchnama of vehicles as well as spot panchnama.

61. Considering the evidence of two eye witnesses including informant (PW3) and Mr. Sudhir Yadav (PW 2) it is clear that when they stopped the truck filled with sand at spot of incident and inquired with accused no.1 about permit of transporting sand, accused no.1 failed to show any papers and his inability to pay fine for it. Thereafter, on the call of accused no.1, accused no.2 to 5 came there in two vehicles and only accused no.2 talked with informant and his colleagues at spot of incident. The accused no.1 introduced himself as representative of people in vicinity and when informant and his colleagues told accused no.2 to pay the fine for illegal transport of sand, accused no.2 has declined to pay fine and went away in his vehicle and directed truck driver to take away the truck. The evidence of both eye witnesses clearly shows that no criminal force or assault was done by accused against informant, Mr. Sudhir Yadav (P.W.2) and their colleagues of informant.

AS TO POINTS NO. 2

62. It is the case of prosecution that accused nos.1 to 5 form unlawful assembly and illegal transport sand which is Government property without any permit in truck driven by accused no.1 bearing registration no.MH 08 H 2904 and accused committed offence punishable under S. 379 r./w. 149 of IPC.

63. To prove the said fact, prosecution has examined two eye witnesses including Mr. Sudhir Yadav(P.W.2) and informant (P.W.3) who are both revenue officials. Both of them have deposed that on 15/3/2016 when they were gathered along with other Talathi and Circle Officer Mr. Kamlakar Jadhav at Chaferi Titha for inspection of vehicles transporting minerals illegally, they found a truck bearing registration no. MH 08 H 2904 coming from Nivali to Jaigad and even after giving signal, it has not stopped. They therefore followed it on their motor cycle and caught it in Chaferi ringi ghat section. They found accused no.1 driving truck and when they inspected said truck, they found five brass sand ie. minor mineral transported in it. When they inquired with driver of truck ie. accused no.1 about permit of transporting sand, accused no.1 told them that he do not possess any permit and do not have money to pay fine. Accused No. 1 made phone call to accused No. 2 , then accused no.2 and 4 came in xylo vehicle there and accused no.3 and 5 in Innova vehicle thereafter. When informant and his colleagues told accused no.2 who is owner of truck to pay the fine for illegal transport of sand, accused no.2 denied to pay the same and told accused to take away the truck and thereafter all accused went away along with their vehicles on spot and the accused committed theft of sand which is Government property.

64. Though the informant (P.W.3) and Mr. Yadav (PW 2) have deposed that accused no.2 is owner of truck seized in this crime which was transporting sand at the time of incident, prosecution has not produced any document like RC book, Insurance policy of the said truck to show that accused

no.2 is owner of said truck at the time of incident. Accused no.2 has also not claimed in his statement as per Section 313 of Code of Criminal Procedure, 1973 that he is owner of truck seized in this crime. In absence of such documentary evidence mere oral evidence of prosecution witness is not sufficient to contact accused no.2 with said truck is owner of it.

65. Prosecution has further examined witness of Collector Office ie. Mr. Bhau Galande (PW4) in this case. He has deposed that he serves as Upper District Collector since 23/4/2025 at District Collector Office Ratnagiri. On 8/12/2015, accused no.2 Vivek Surve has deposited amount of Rs. 8,89,000/- in State Bank of India Branch Ratnagiri by Challan for receiving permit of extraction of sand. Accordingly, Upper District Collector Ratnagiri gave permit to Vivek Vilas Surve for extraction of 1000 brass sand as per order dtd. 17/12/2015 and the said permit was granted for the period expiring on 29/2/2016.

66. The evidence of Mr. Galande (PW4) is only useful to prove that accused no.2 was doing business of extraction of sand for commercial purpose on permit of Government. But his evidence does not prove any incriminating fact against accused in this case. So, evidence of Mr. Galande (PW 4) is not much useful for prosecution in this case.

67. It is the case of prosecution that the incident was happened on 15/3/2016 at 4.55 p.m. and accused took away the truck transporting sand in it illegally from spot though it was apprehended by informant and his colleagues there.

Investigating Officer Mr. Deepak Salvi (PW.5) has deposed that he seized Xylo vehicle, Innova vehicle and truck used by accused in crime at Jaigad Police Station before two panchas. On 15/3/2016, he prepared seizure panchanama vide Exh No.52. Mr. Sadashiv Nade (P.W.1) has corroborated the evidence of Mr. Salvi (P.W.5) in respect of seized vehicles at Jaigad police station by the police. Seizure panchnama at Exh. No.52 dated 15/3/2016 shows that it was prepared during the period from 10.00 p.m. to 11.15 p.m. at Jaigad police station. But there is absolutely no evidence by prosecution in this case as to how the truck filled with sand taken away by accused at evening on 15/3/2016 and vehicles used by accused no.2 to 5 for travel came at Jaigad police station on same day at night. Moreover, prosecution has not any evidence that if the truck as well as other vehicles and sand was caught by police due to the information given by informant and his colleagues on 15/3/2016 at night, where and when police apprehended these vehicles along with sand and in whose possession vehicles found when police took custody to it. In absence of such evidence the whole seizure of these vehicles at Jaigad police station creates serious doubt about the seized of vehicles from the possession of accused.

68. Prosecution has examined Panch Mr. Sadashiv Nade (P.W.1) and IO Mr. Deepak Salvi (P.W.5) to prove spot panchanama as well as seizure panchanama of truck, Xylo and Innova vehicles and Sand of 4.5 Brass. Both these witnesses have deposed that all vehicles along with sand is seized on 15-03-2016 at Jaigad police station . Nothing came on record during cross examination of these witnesses to discredit their testimony as far as seizure of these articles at Jaigad Police

Station on 15/3/2016.

69. The prosecution in order to prove spot panchanama, have examined Mr. Sadashiv Nade (PW.1) and IO Mr. Deepak Salvi (PW5) in this case. Both these witnesses have deposed that on 16/3/2016, spot panchanama was prepared at spot of incident and informant had shown spot of incident at that time. The spot panchanama is at Exh No.53. Though, the Ld. Adv. Mr. Nalawade of accused has taken cross examination of both these witnesses on the fact of spot panchanama, nothing came on record to disbelieve them. So, spot panchanama is proved by the prosecution beyond reasonable doubt.

70. Ld. Adv. Mr. Nalawade has argued for accused that as per GR of State Government dated 17/10/2005 issued by revenue and Forest Department of State of Maharashtra a committee of Tahasildar, Officer of RTO and police inspector of Taluka is to be considered in every taluka for taking action illegal excavation or transport of minor minerals and that committee has to formed squad including officer of police and officer of RTO for taking action against such illegal act. The informant and other revenue officials accompanying him at the time of incident which not members of any such squad and so informant has no authority to take action against accused for illegal transport of sand.

71. He has further argued that if any person found transporting any minor minerals then as per notification of Central Government bearing GR No.10 read with Section 22 of the minor minerals (R & O Act 1957) officer of minor and minerals department has given authority to initiate criminal

prosecution against any person found illegal transporting minor minerals and court can not be take cognizance of any such offence under General Law live IPC on the FIR lodged by any other officials expect competent officer. As per Section 22 (Miner and Minerals Act). So, the FIR lodged by informant who is a Talathi against accused for the offence punishable under Section 379 r.w 149 of IPC is not maintainable in the eye of law. So, accused may be acquitted for the offence punishable under Section 379 r.w 149 of IPC is not maintainable in the eye of law.

72. Ld. APP Mr. Phansekar has argued for the prosecution that accused has not produced copy of GR issued by State of Maharashtra and not shown it specifically to the prosecution witness during their cross-examination. So said GR is not proved by the accused as per provision of law. The judgment of Hon'ble Bombay High Court in this case of **Shaik Yunus Vs. State of Maharashtra 2013 latest case law 338 Bom.** relied upon by accused is not applicable to the facts and considers all this case ratio laid down in it is limited only to the Section pertains to the miners and minerals act only. It is not applicable to IPC so the prosecution on the basis of FIR lodged by informant against accused is illegal on the eye of law. The prosecution has proved in evidence of informant (PW 3) and Mr. Yadav (PW2) who are eye witness of incident as well as Mr. Sadashiv Nade (PW1) who is panch witness of seizure panchanama that accused have illegally transported and took away immovable property of sand owned by government without any permit. Prosecution has proved that accused have committed offence punishable under Section 379 r.w 149 of IPC. So he has apply to convict the

accused for the said offence.

73. Accused has produced copy of GR issued by revenue and Forest Department of State Maharashtra on 17/10/2005 bearing GR No. MM 10/2005/PK/245 dated 17/10/2005 it shows that it is directed to formed committee at District level under the Chairmanship of District collector which consists of SP/Deputy police commissioner and officer of RTO. Also District Collector is directed to constitute a committee at Taluka level under Chairmanship of Taluka and police inspector. All that Talathi and Inspector of RTO Shall be a members of said committee. These committee have to formed five spots consists of employees of Revenue, Police and Transport Department and authorized them to take action against illegal excavation and transport of sand which was minor and minerals. The informant (P.W.3) as well as Mr. Yadav (P.W.2) who are revenue officials raided at the spot of incident have admitted in their cross examination that there are not flying squad appointed at Taluka level taking action against illegal transport of sand and they and their colleagues present at the spot of incident. They are not members of any such squad. The prosecution has also not examined Tahasildar Ratnagiri as witness in this case to show that he orally directed Circle Officer and Talathi of Ratnagiri Taluka to take action against illegal transport of sand at the time of incident. So it is clear that informant being Talathi of Saitawade has lodged FIR against accused at Jaigad police station in respect of the offence punishable under Section 379 of IPC.

74. I have read the judgment of Hon'ble Bombay High Court in case of **Shaik Yunus Vs. State of Maharashtra 2013 latest case law 338 Bom.** In that case, petitioner were

accused for the offence punishable under Section 379 r.w. Section 34 of IPC as well as punishable under Section 21 of mines and minerals (Development and Resolution Act) 1957 on the facts the truck owned by petitioner bearing registration no. MH 20 80 2167 was found transporting three brass sand in it without transport permit on 26/7/2009 at village Bidkin and as per direction of Tahasildar Bidkin, truck was detained at police station and Circle officer lodged FIR against petitioner as per direction of SDO Auragabad. Hon'ble High Court has held in this case " **Here the allegation against the applicant is that they has illegally excavated the sand and were transporting the same. These acts are squarely covered by the offences made punishable under the said Act. A special machinery under the said Act. A special machinery for detection, investigation and prosecution of the offenders committing the said offences and a special procedure for prosecuting them has been created by the said Act. A special machinery for detection, investigation and prosecution of the offenders committing the said offences and a special procedure for prosecuting them has been created by the said Act. Following the said special procedure cannot be avoided by applying the general law to the same acts. When a special Act dealing with certain types of the offences has been made, it would not be permissible to invoke the provisions of the general law just to circumvent the provisions of the Special Statute. Thus the prosecution of the applicants under the provisions of Section 379 of IPC read with Section 34 of IPC is also bad in law.** " After observing the same, the Hon'ble Bombay High Court has held that FIR lodged against petitioner for the

offence punishable under Section 379 r.w.34 of IPC.

75. In this case also, it is case of prosecution that accused has stolen the sand owned by Government which is minor mineral by transporting it illegally in truck No.MH 08 H 2904 on the day of incident and they have committed offence of theft. So, the facts of the judgment of Hon'ble Bombay High Court in case of **Shaik Yunus Vs. State of Maharashtra 2013 latest case law 338 Bom.** and facts of this case are identical. So, the ratio laid down by the Hon'ble Bombay High Court in that case ie. "**Here the allegation against the applicant is that they have illegally excavated the sand and were transporting the same. These acts are squarely covered by the offences made punishable under the said Act. A special machinery under the said Act. A special machinery for detection, investigation and prosecution of the offenders committing the said offences and a special procedure for prosecuting them has been created by the said Act. A special machinery for detection, investigation and prosecution of the offenders committing the said offences and a special procedure for prosecuting them has been created by the said Act. Following the said special procedure cannot be avoided by applying the general law to the same acts. When a special Act dealing with certain types of the offences has been made, it would not be permissible to invoke the provisions of the general law just to circumvent the provisions of the Special Statute. Thus the prosecution of the applicants under the provisions of Section 379 of IPC read with Section 34 of IPC is also bad in law.**" is applicable to the facts of this case.

76. In this case, FIR is lodged by informant Mr. Sitram Kadam who was serving as Talathi on the day of incident in respect of theft of minor mineral ie. black sand. As per Section 22 of Mines and Minerals (Regulation and Development) Act, 1957, there are specific officers authorized to file the FIR about the offence of extraction and transport of minor minerals illegally. The Talathi is not authorized to lodge FIR in respect of such offence and the Court is precluded from taking cognizance of offence in respect of illegal extraction and transport of minor mineral if the FIR is not lodged by the officer as authorized by the Government as per Section 22 of Mines and Minerals (Regulation and Development) Act, 1957, Talathi is not competent officer to lodge FIR in respect of any act which amounts to offence punishable under the provisions of Mines and Minerals (Regulation and Development) Act, 1957. So, in view of special provisions provided to deal with offences of illegal extraction and transport of minor minerals under Mines and Minerals (Regulation and Development) Act, 1957, the prosecution launched against accused for the offence punishable under Section 379 r.w Section 149 of IPC on the basis of FIR lodged by informant who is Talathi is not maintainable. The ratio laid down by Hon'ble Bombay High Court in case of **Shaik Yunus Vs. State of Maharashtra 2013 latest case law 338 Bom.** is applicable to this case. Hence, prosecution has failed to prove the charge against accused for the offence punishable under Section 379 r.w. 34 of IPC. Hence, I answer Point No.2 in the negative.

AS TO POINT NO. 5 and 6 :

77. Ld. APP has argued for the prosecution that at the time of incident, accsued have formed unlawful assembly and

in prosecution of common object committed an offence of wrongfully restraining the informant and his colleagues at the time of incident and threatening them. So he has prayed to convict for the offence punishable under Section 341 r.w.149 of IPC and Section 506 r.w 149 of IPC.

78. Ld. Adv.Mr. Nalawade has argued for accused that the eye witness of prosecution including Mr. Kadam(PW.3) and Mr. Yadav (PW 2) have never deposed that accused have obstructed them wrongfully at the time of incident and threatened them and so prosecution has failed to prove beyond reasonable doubt that accused have committed offence punishable under Section 341 r.w.149 of IPC and Section 506 r.w 149 of IPC.

79. The prosecution has examined Mr. Sudhir Yadav (PW 2) and Mr. Sitaram Kadam (PW 3) as eye witnesses of the incident. But both of them have not deposed that accused ever wrongfully restrained them at the time of incident. Moreover, both of them have not deposed exact words used allegedly by accused for threatening them at the time of incident.

Delay in lodging FIR

80. The informant Mr. Kadam has deposed that incident was happened on 15/3/2016 at about 2.45 p.m. The informant has lodged FIR of said incident at Jaigad police station at 9.32 p.m. on 15/3/2016. The informant has admitted in his cross examination that the distance between Chaferi Titha and Jaigad is of about 5 minutes. He has admitted that it was possible for him to lodge FIR of incident happened at 2.45

p.m. immediately thereafter.

81. So it is clear that there is delay of about 6.45 hrs. in lodging FIR of incident after happening of incident. The informant has not given any explanation about the delay happened in lodging his FIR on the day of incident in his FIR. In his deposition, informant has stated that as police were searching the vehicles and accused after giving information of incident to them, there is delay happened in lodging FIR. But searching of vehicles involved in offence and searching of accused is part of investigation of crime and it starts only after lodging of FIR. So, I do not find substance in the explanation given by informant in his deposition for the delay happened in lodging FIR of incident. The delay happened in lodging FIR in this case on the part of informant is fatal to the prosecution case.

82. So, considering the evidence of eye witnesses of prosecution as well as delay happened in lodging FIR, prosecution has failed to prove beyond reasonable doubt that accused wrongfully restrained the informant and his colleagues at the time of incident and threatened the informant and thereby accused have committed offence punishable under Section 341 r.w 149 of IPC and Section 506 r.w 149 of IPC. Hence, I answer Point No.5 and 6 in the negative.

AS TO POINT NO. 7 :

83. As prosecution has failed to prove the guilt of accused beyond reasonable doubt, accused deserves to be acquitted of

the offences punishable under Section 143, 147, 353, 341, 379, 506 r.w. Section 149 of IPC. So in answer to point No. 7, I pass following order :

ORDER

1. The Accused No.1 Somu Shankar Rathod, Accused No. 2 Vivek Vilas Surve, Accused No. 3 Vaibhav Vilas Surve, Accused No. 4 Mahesh Mansing Patil, Accused No.5 Mukesh Vaman Gadade are acquitted of the offences punishable under S. 143, 147, 353, 341, 379, 506 r.w. Section 149 of IPC vide S.235 (1) of Code of Criminal Procedure, 1973.
2. Muddemal Truck No.MH 08 H 2904, Mahindra Xylo No.MH 08 R 5253 and Toyota Innova No.MH 08 Z 6575 shall be returned to their registered owners after appeal period is over. If the seized vehicles are already returned to its registered owners on execution of indemnity bonds by its owners previously, then such indemnity bonds shall stands cancelled after appeal period is over.
3. Muddemal black sand be sold in public auction under the supervision of Tahasildar Ratnagiri and sale proceeds of it be credited to State after appeal period is over.
4. Bail Bonds of all accused stands cancelled.
5. Accused No. 1 to 5 are directed to furnish fresh bail on furnishing their P. R. Bond of Rs. 20,000/- each and S. B. of like amount as per S. 437A of Code of Criminal Procedure,

1973 and it shall remain in force for the period of next six months.

(Dictated and pronounced in open Court.)

Ratnagiri

(S. G. Baokar)

Date:- 30 /07 /2026

Addl. Sessions Judge, Ratnagiri.

I affirm that the contents of this Pdf file Judg./order are same words as per original order.

Sessions Case No.	:-	102/2019
Name of Stenographer	:-	Sou. A.A.Shivalkar
Court Name	:-	Adhoc DJ - 1 Ratnagiri.
Date of Decision	:-	30.07.2026
Judg. signed by P.O. on	:-	30.07.2026
Judg. uploaded on	:-	30.07.2026