

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, AT NAGPUR.**

**CRIMINAL APPLICATION (APL) NO.660 OF 2015**

(Shri Vijayrao s/o Sheshrao Warjurkar ..vs..State of Maharashtra, through PSO, PS Lakhni, District  
Bhandara)

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

**CORAM : Z.A. HAQ, J.**  
**DATED : 23-02-2016**

Heard Shri Abhijeet Sambaray, learned Advocate for the applicant and Shri N.B. Jawade, learned Additional Public Prosecutor for the non-applicant.

No one appears for the other non-applicants though served.

2. The non-applicant Nos.2 and 3 have filed application under the provisions of the Protection of Women from Domestic Violence Act, 2005 against the applicant and non-applicant No.4. The non-applicant Nos.2 and 3 have pleaded that after the death of husband of non-applicant No.2, the non-applicant No.4 (father of her deceased husband) and the applicant (brother of her deceased husband) are liable to maintain the non-applicant Nos.2 and 3. The claim of the non-applicant Nos.2 and 3 is that they are entitled for enjoyment of the ancestral properties which are in

possession of the non-applicant No.4 and the applicant.

3. The learned Magistrate has directed issuance of notice. The applicant has challenged the order passed by the learned Magistrate directing issuance of notice. The contention on behalf of the applicant is that, he is not liable in law to maintain the non-applicant Nos.2 and 3. In support of the submission, the learned Advocate for the applicant has relied on the judgment of Delhi High Court in the case of *Neeta Mittal vs. Kanta Mittal and Ors.* reported in **2009(6) ALL MR (Journal) 1**. It is further submitted that the non-applicant No.4 (father of deceased husband of non-applicant No.2) is alive and whatever ancestral properties are there, they are under the control of the non-applicant No.4 as *Karta* of the family. It is submitted that in these circumstances, there cannot be any claim against the applicant.

4. On query, the learned Advocate for the applicant has submitted that the applicant has filed reply before the learned Magistrate.

5. In my view, the rival claims will have to be considered by the learned Magistrate and decided by considering the factual aspects. The prayer as made by the applicant cannot be granted.

6. In view of the above, I am not inclined to show indulgence at this stage. The criminal application is dismissed. In the circumstances, the parties to bear their own costs.

**JUDGE**

*pma*