

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

CRIMINAL APPLICATION [APL] No. 441/2022.

Rohan Raju Kharagaban,
Age 32 years, Occupation
Private Job, resident of Gora Bazar,
Kali Mata Mandir, Cantonment Area,
Kamptee, Tahsil Kamptee,
District Nagpur, Maharashtra 441 001. ... **APPLICANT.**

VERSUS

State of Maharashtra,
through its Special Executive Magistrate,
Kamptee Division, Nagpur City,
Nagpur.
Office Address In the premises of DCP
Zone-5, Near Haldiram Food Pvt. Ltd.,
Bhandara Road, Nagpur. ... **NON-APPLICANT.**

Mr. Y.Y. Humne, Advocate for the Applicant
Mr.H.D. Dubey, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : JULY 01, 2022.

ORAL JUDGMENT :

Heard. **Admit.** Considering the controversy involved in the matter and by consent of the learned Counsel for the parties, Criminal Application is taken up for final disposal at the stage of admission.

2. The applicant has been served with a show cause notice in terms of Section 111 of the Code of Criminal Procedure, issued by the Special Executive Magistrate, which is impugned in the present application.

3. It is contended that merely on the basis of domestic dispute in between husband and wife, the Executive Magistrate has initiated an action without subjective satisfaction. It is argued that the information on the basis of which the action has been initiated does not specify that there is likelihood of breach of public peace and tranquility.

4. On the other hand, the State has supported the impugned action.

3

5. Record and proceedings have been called. It reveals from the record that wife of the applicant has filed a report to the police alleging that the applicant had quarreled with her at her house on the issue of wearing footwear. The applicant allegedly abused and threaten her, for which the wife has lodged the report which was recorded as NC report. Record indicates that besides NC report of wife relating to the incident occurred in the house in between the couple, there is no material against the applicant.

6. In order to initiate the action in terms of Section 107 read with Section 116[3] of the Code, the basic requirement is about satisfaction of the Magistrate that there is likelihood of committing breach of peace or disturbance of public tranquility. Basically preventive action has to be initiated on satisfaction of well founded material. It reveals that besides domestic quarrel there is nothing and therefore, there does not exists sufficient ground to proceed with the prohibitory action.

7. In view of above, impugned action in the form of issuance

4

of show cause notice dated 03.01.2022 in terms of Section 111 of the Code issued by the respondent and consequential proceedings arising therefrom, are hereby quashed and set aside.

8. Criminal Application is accordingly allowed and disposed of in aforesaid terms.

JUDGE