

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

CRIMINAL APPLICATION (APL) NO. 1045/2022

1. Bajrang S/o. Bansilal Agrawal,
aged about 73 yrs., Occ. Business,
2. Neeraj S/o. Deepchand Agrawal,
aged about 40 yrs., Occ. Business,

Both R/o. New Plot, Amalner,
Tah. Amalner, Dist. Jalgaon.

APPLICANTS

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station, Rajapeth, Amravati,
Tq. & Dist. Amravati.
2. Vidhi w/o. Gaurav Agrawal,
aged about 34 yrs., Occ. Household,
R/o. Near Bansal Medical,
Pannalal Nagar, Amravati,
Tq. & Dist. Amravati.

NON-APPLICANTS.

Mr. P.R. Agrawal, Advocate for applicants.
Mr. V. A. Thakare, APP for non-applicant No.1/State.
Mrs. Payal S. Kawase, Advocate h/f Mr. G.N. Shinde, Advocate for
non-applicant No.2.

CORAM

: VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.

DATE OF JUDGMENT

: 24.03.2023

JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**

3. The challenge in this application is to the tenability of prosecution vide Crime No. 170/2019 for the offence punishable under Sections 498-A, 406 read with Section 34 of the Indian Penal Code registered with the Police Station Rajapeth, Amravati, Tq. And Dist. Amravati. The applicants are nearer relatives of the husband of informant-lady, who seeks to quash First Information Report on account of false implication. Moreover, it is submitted that the applicants never resided in the shared household, nor had concern with the matrimonial dispute. On the basis of general and vague allegations, they cannot be forced to face full-fledged trial.

4. The State as well as learned counsel appearing for the informant-lady made submission about the role of applicants. Though applicants were residing separately, however intermittently they used to visit the informant's house and were instigating her husband to harass in order to meet unlawful demand. It is submitted that the allegations made in the Police Report are prima facie sufficient to constitute the offence, therefore, the application is liable to be rejected.

5. Informant lady got married with one Gaurav Agrawal on 23.02.2017. Soon after the marriage, she was subjected to matrimonial harassment. Initially, she has applied to the learned Magistrate seeking investigation in terms of Section 156(3) of the Code of Criminal Procedure ('Code'). In pursuance of the direction issued by the learned Magistrate, Crime No. 170/2019 was registered. Applicant No.1 Bajrang is maternal uncle of the husband, whilst applicant No. 2 Neeraj is cousin brother of the husband. Though the crime was also registered against husband, in-laws and sister-in-law, they are not before us. It is informant's case that after marriage, she resumed to cohabit along with husband and in-laws. They started to harass on account of monetary demand. She has narrated the details as to how her husband used to physically assault and harass her to meet the unlawful demand. So far as the applicants are concerned, she stated that though they are resident of Amalner, Dist. Jalgaon, they used to visit her matrimonial house and were instigating her husband.

6. The learned counsel for the informant took us through supplementary statement of informant dated 16.03.2019. In addition to the contents of First Information Report ('FIR'), she stated one another incident dated 02.09.2018. It is her contention that after matrimonial discord, she started to reside at her parental house from the Month of April 2018. On 02.09.2018, her husband, in-laws and present applicants came to her parent's house. At that time, applicant No.1

Bajrang quarreled and said that unless the monetary demand has been complied, she will not be taken back. Applicant No. 2 Neeraj was present at the relevant time.

7. Contextually, we have taken through the application under Section 156(3) of the Code. In said application, it has been stated that accused Nos. 1 to 6 (including Bajrang) have quarreled on 02.09.2018 by raising monetary demand. Pertinent to note that there is no reference of applicant No. 2 Neeraj at the relevant time. On careful examination, we find that a role has been assigned to applicant No.1 Bajrang with reference to the incident dated 02.09.2018. However, as regards to the applicant No. 2 Neeraj, besides mere presence on that day, there is nothing against him.

8. The learned counsel for the informant relied on the decision of this Court in case of ***Shri Rajesh S/o. Himmat Pundkar & ors. Vs. State of Maharashtra & anr.*** (Criminal Application [APL] No. 233/2022 decided on 08.06.2022) to contend that if the Police paper makes out a prima facie case, the accused does not deserve for discharge. The said pronouncement in-fact, laid down no proposition of law as it depends upon the facts and circumstances of the case.

9. Careful examination of above material, we find that the allegations against applicant No.1 Bajrang are specific, however they are general in nature against applicant No. 2, Neeraj. The tendency of involving all relatives of husband are at rise. Besides, mere presence of applicant No. 2, there is nothing against him. However, as regards to applicant No.1 Bajrang is concerned, there is specific allegation about his active participation. In view of that, application deserves to be partly allowed to the extent of applicant No.2, Neeraj S/o. Deepchand Agrawal only.

10. FIR in Crime No. 170/2019 for the offence punishable under Sections 498-A, 406 read with Section 34 of the Indian Penal Code registered with the Police Station Rajapeth, Amravati, Tq. and Dist. Amravati is hereby quashed and set aside to the extent of applicant No. 2, Neeraj S/o. Deepchand Agrawal only.

11. Application stands partly allowed and disposed of in above terms.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

Gohane