

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

Criminal Application No. 5153 of 2014

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| <p>1. Mohammad Ashfaque Ansari
s/o. Abdul Aala Ansari,
Age : 45 years,
Occupation : Business,
R/o. Gadiwan Mohalla,
Parbhani,
Taluka & District : Parbhani.</p> <p>2. Mohammad Imran Ansari s/o.
Abdul Aala Ansari,
Age : 32 years,
Occupation : Teacher,
R/o. Palodi,
Taluka : Parbhani,
District : Parbhani.</p> <p>3. Turab Ansari s/o. Abdul Aala Ansari,
Age : 30 years,
Occupation : Nil,
R/o. Iqbal Nagar, Parbhani,
Taluka & District : Parbhani.</p> <p>4. Raees Fatema Ansari w/o. Syed Aurangzeb,
Age : 36 years,
Occupation : Teacher,
R/o. Iqbal Nagar, Parbhani,
Taluka & District : Parbhani.</p> <p>5. Ishrat Begum Ansari D/o. Abdul Aala Ansari,
Age : 32 years,
Occupation : Teacher,
R/o. Iqbal Nagar, Parbhani,
Taluka & District : Parbhani.</p> | <p>.. Application dismissed as
withdrawn as against
applicant no.1.</p> |
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6. Quamer Sultana Ansari Mohammed Abdulla,
Age : 50 years,
Occupation : Teacher,
R/o. Iqbal Nagar, Parbhani,
Taluka & District : Parbhani.

7. Syed Aurangzeb s/o. Syed Nawab Ali,
Age : 40 years,
Occupation : Lecturer,
R/o. Iqbal Nagar, Parbhani,
Taluka & District : Parbhani.

.. Applicant.

versus

1. The State of Maharashtra,
Through New Mondha Police Station,
Parbhani,
Taluka & District : Parbhani.

2. Naseema Begum Abdul Khalek
(As per FIR Naseema Begum Ashfaque
Ansari),
Age : 52 years,
Occupation : Teacher,
R/o. Raheem Nagar, Parbhani,
Taluka & District : Parbhani.

.. Respondents.

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*Application dismissed as withdrawn as against
applicant no.1, as per court's order dated
23-9-2014.*

Mr. G.R. Syed, Advocate, for the applicants.

*Mrs. S.G. Chincholkar, Additional Public Prosecutor,
for respondent no.1.*

*Mr. Pawan Pawar, Advocate, holding for
Mr. A.R. Sayyed, Advocate, for respondent no.2.*

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**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

DATE : 12TH FEBRUARY 2015

ORAL JUDGMENT (Per S.S. Shinde, J.) :

1. Heard Adv. Mr. G.R. Syed appearing for the applicants, learned APP Mrs. S.G. Chincholkar appearing for respondent no.1 - State, and Adv. Mr. Pawan Pawar h/f. Adv. Mr. A.R. Sayyed for respondent no.2.
2. Rule. Rule made returnable forthwith. By consent of the learned Counsel for the respective parties, heard finally.
3. This application takes exception to the First Information Report bearing Crime No. 185/2014, registered with New Mondha Police Station, Parbhani, under Sections 498A, 323, 504, 506, read with Section 34 of Indian Penal Code, and Sections 3 and 4 of the Dowry Prohibition Act, 1961.
4. The learned Counsel appearing for the applicants invited our attention to the allegations in the FIR and submits that even if allegations in the FIR are taken at its face value, no offence is disclosed against the applicants. Therefore, he prays that, in view of the judgment of Hon'ble Apex Court, in the case of ***State of Haryana and others Vs. Ch. Bhajan Lal and others***, reported in ***AIR 1992 Supreme Court 604***, the application deserves to be allowed. He also invited our attention to other documents placed on record and submits that the further proceedings based upon FIR

bearing Crime No. 185/2014 is nothing but abuse of process of law and, therefore, at the threshold, FIR be quashed.

5. On the other hand, the learned Additional Public Prosecutor appearing for the State and the learned Counsel appearing for the complainant invited our attention to the allegations in the FIR and in particular, para 3 thereof, and submitted that there are specific allegations in the FIR against the applicants and at this stage, allegations will have to be taken as it is and, therefore, the FIR cannot be quashed. It is submitted that upon reading allegations in the FIR, offence is disclosed and needs further investigation.

6. We have given careful consideration to the submissions advanced by the learned Counsel appearing for the applicants, the learned Counsel appearing for the complainant and learned Additional Public Prosecutor appearing for the State.

7. So far applicant no.1, by name, Mohammad Ashfaque Ansari s/o. Abdul Aala Ansari, is concerned, already the Application is dismissed as withdrawn.

8. So far other applicants - accused are concerned, specific allegations are made in para 3 of the FIR. Para 3 of the FIR reads as under:

“ That, accused no.1 was demanding certain money for giving job to complainant's younger brother in the ration shop belonging to him. Previously, by assaulting

and exercising pressure on the complainant, complainant's salary was being taken away and accused had taken complainant's full salary by cheque. Similarly, accused had performed marriage with the complainant due to enticement of money. One Harun Bagwan had managed their marriage. One Ashfak Ansari was taking money from the complainant every month and he was demanding to register the plot in the name of the accused which was in the name of complainant and he was also demanding Rs. 3,00,000/- for offering employment to complainant's younger brother. As the complainant could not fulfill the demands, accused no.1 had left complainant's house four months before and on 2-2-2014 accused had entered into the house of the complainant illegally, severally assaulted her and left away. Therefore, on 19-2-2014, accused persons entered into the house of the complainant, saying that they had come to give understanding to her and to relegate her husband to her as she had filed complaint on 2-2-2014 with New Mondha Police Station. Thereafter, complainant told all of them to sit in the house. At that juncture, accused nos.4 and 5 started abusing the complainant. Accused no.1 struck complainant's head on the wall. Accused nos.4 and 5 held up complainant's hands and accused no.5 slapped on complainant's cheek. Accused no.7 assaulted the complainant with fist and kick blows. When complainant was making hue and cry, accused no.1 pressed her mouth and tried to kill the complainant by pressing neck. At that time, accused no.1 said, whether she had become very much jolly, whether she had not understood though she was beaten yesterday and she was going to Police Station many times. Accused no.6 abused her in filthy language, saying, beat her, very much making noise, bring

kerosene, set her ablaze. At that time, the complainant raised hue and cry. Upon hearing hue and cry of the complainant, persons from the vicinity and neighbours gathered there and rescued the complainant from the clutches of the accused. "

9. Upon careful perusal of the allegations in para 3 of the FIR, there are specific allegations against applicant nos.4, 5 and 7; even overt act is attributed to them. So far applicant no.6 is concerned, though it is contended that she uttered abusing words, no specific overt act is attributed to applicant no.6. Upon careful perusal of the allegations in the FIR, so far applicant nos.2 and 3 are concerned, even if the allegations are taken as it is, no offence is disclosed and, therefore, in the light of parameters laid down in the judgment of the Hon'ble Apex Court, in the case of *State of Haryana and others Vs. Ch. Bhajan Lal and others (supra)*, we are inclined to allow the application of applicant nos.2 and 3. So far applicant no.6 is concerned, the allegations are that she uttered some abusive words. However, that itself is not sufficient so as to constitute the offence.

10. In that view of the matter, the application of applicant no.2 - Mohammad Imran Ansari s/o. Abdul Aala Ansari, applicant no.3 - Turab Ansari s/o. Abdul Aala Ansari, and applicant no.6 - Quamer Sultana Ansari Mohammed Abdulla deserves to be allowed. So far other applicants are concerned, their application deserves to be rejected.

11. In the result, the Application is partly allowed.

The application of applicant nos.2, 3 and 6 is allowed.

The First Information Report bearing Crime No. 185/2014, registered with New Mondha Police Station, Parbhani, under Section 498A, 323, 504, 506, read with Section 34 of Indian Penal Code, to the extent of applicant no.2 - Mohammad Imran Ansari s/o. Abdul Aala Ansari, applicant no.3 - Turab Ansari s/o. Abdul Aala Ansari, and applicant no.6 - Quamer Sultana Ansari Mohammed Abdulla, is quashed and set aside.

So far other applicants are concerned, their application stands rejected.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

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