

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

Criminal Application No. 5779 of 2014

1. Saleha w/o. Sadik Sayed,
Age : 29 years,
Occupation : Household,
R/o. Galli No. 21/A, Sayed Nagar,
Mohammadwadi Road,
Near Bismilla Manzil,
Hadapsar, Pune.
 2. Sadik s/o. Nazir Sayed,
Age : 37 years,
Occupation : Business,
R/o. As above.
 3. Nafisa w/o. Tayyab Shaikh,
Age : 43 years,
Occupation : Household,
R/o. 163, Post Colony (East),
Bank Colony, Gandhi Nagar,
Osmanabad,
Taluka & District : Osmanabad.
 4. Tayyabali s/o. Osmanali Shaikh,
Age : 46 years,
Occupation : Business,
R/o. As above.
- .. Applicants.

versus

1. The State of Maharashtra,
Through Wadvani Police Station,
District : Beed.
2. Nafisabi w/o. Irfan Pathan,
Age : 28 years,
Occupation : Household,
R/o. Shivshahi Building,
Room No. 201, Mumbai,
Presently residing at :

At Post Upadi,
Taluka : Wadvani,
District : Beed.

.. Respondents.

.....

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

*Mr. S.D. Kaldate, Additional Public Prosecutor, for
respondent no.1.*

Mr. S.J. Salunke, Advocate, for respondent no.2.

.....

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

DATE : 24TH FEBRUARY 2015

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

1. Heard Adv. Mr. G.R. Syed appearing for the applicants, learned APP Mr. S.D. Kaldate appearing for respondent no.1 - State, and Adv. Mr. S.J. Salunke appearing for respondent no.2.
2. Rule. Rule made returnable forthwith. By consent of the learned Counsel for the parties, heard finally.
3. By the present Application, the applicants have prayed to quash and set aside the First Information Report bearing Crime No. 60/2014 registered with Wadvani Police Station [District : Beed], under Section 498A, 323, 504, read with Section 34 of Indian Penal Code, and to exonerate them from the charges levelled against them.

4. The learned Counsel appearing for the applicants submits that the applicant nos.1 and 2 are residing at Pune, and applicant nos.3 and 4 are residing at Osmanabad. The matrimonial house of respondent no.2 - original complainant is at Mumbai. It is submitted that even if the allegations in the complaint are taken at its face value and read in its entirety, no offence is disclosed. The allegations in the FIR are inherently improbable that no prudent person would believe that the applicants, who are married sisters of the husband, along with their husband, would go to the place of respondent no.2 and participate in the alleged commission of the offence. Therefore, the learned Counsel for the applicants, relying on 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***, submits that the application may be allowed.

5. On the other hand, the learned Counsel appearing for respondent no.2 - original complainant invited our attention to the allegations in the FIR and submits that unless those allegations are investigated, no truth will come on record. Therefore, he submits that the FIR needs investigation and this Court may not consider prayer of the applicants.

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. With their able assistance, perused the grounds taken in the application, annexures thereto, and the annexures in the FIR.

7. The allegations for the just decision of this application are as under :-

" Thereafter, on 17-7-2014 at about 5.00 p.m., persons mentioned in the complaint arrived at Upali. They assaulted and abused the complainant as the complainant could not come at her matrimonial home by bringing money from her father. The said persons left the parental home of the complainant after the quarrel was rescued by her father, brother and mother. "

8. Upon reading the allegations in the FIR in its entirety, in the light of the fact that applicant nos.1 and 2 are resident of Pune and applicant nos.3 and 4 are resident of Osmanabad, and the fact that applicant nos.1 and 3 got married long back, the allegations in the FIR are improbable and absurd. No prudent person would believe that the married sisters of husband of the complainant, along with their husband, would go to the place of respondent no.2 i.e. Mumbai and participate in the alleged commission of offence, as stated in the FIR.

9. The Hon'ble Apex Court in the case of ***State of Haryana and others Vs. Ch. Bhajan Lal and others (supra)***, in para 108 of the judgment, has laid down the categories of cases wherein High Court may in exercise of powers under Article 226 or under Section 482 of the Code of Criminal Procedure, 1973, may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any court or otherwise to

secure the ends of justice. The case in hand falls in Category No.5 which reads thus :

“ Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused ”

10. In that view of the matter, in the peculiar facts and circumstances of this case, the Application deserves to be allowed and the FIR deserves to be quashed so far as present applicants are concerned.

11. In the result, the Application is allowed.

The First Information Report bearing Crime No. 60/2014, registered with Wadvani Police Station [District : Beed], under Section 498A, 323, 504, read with Section 34 of Indian Penal Code, so far it relates to the present applicants, is quashed and set aside.

12. Rule made absolute in the above terms.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

.....