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

CRIMINAL APPLICATION NO.3129 OF 2016

Naaz Firdose d/o Akbar Khan,
Age: 38 years, Occ: Service,
R/o. Near Huda Masjid, Roshan Gate,
Tq & Dist. Aurangabad. ..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Inspector,
Osmanpura Police Station,
Tq & Dist. Aurangabad & anr ..RESPONDENTS

WITH

CRIMINAL APPLICATION NO.2095 OF 2016

Arjumanbano d/o Akbar Khan,
Age: 39 years, Occ: Service
as Head Master,
In Noor Urdu Primary School
at Osmanapura,
Tq & Dist. Aurangabad. ..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Inspector,
Osmanpura Police Station,
Tq & Dist. Aurangabad & anr ..RESPONDENTS

Mr S.R. Kolhare, Advocate for applicants;
Mr N.T. Bhagat & Ms. R.P. Gour, A.P.Ps.for
respondent/State
Mr Khizer Patel, Advocate for respondent No. 2

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CORAM : N.W. SAMBRE, J.**DATE : 26th August, 2016****ORDER :**

In Criminal Misc. Application No. 1643 of 2014, it is claimed by complainant - respondent No.2 that present applicants had drawn salary for the period 1st July, 1998 to 2nd August, 1999, to which they were not entitled and as such, committed an offence punishable under Sections 420, 467, 468, 471, 409 read with Section 34 of the Indian Penal Code. Learned Magistrate issued process on 20th January, 2016 for the aforesaid offences, after perusal of the report filed by the police under Section 200 of the Code of Criminal Procedure and documents.

2. *Prima facie*, it could be noticed that the order of issuance of process in exercise of powers under Section 204 of the Code of Criminal Procedure appears to be without satisfying the ingredients of Section. Apart from above, the very locus of the complainant is also required to be tested. The

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alleged incident is of 1999, whereas the complaint is preferred in 2014 by the person, who has no connection whatsoever to the incident in question.

3. It is brought to my notice that the legality of the complainant – respondent No. 2 qua membership in the trust in question is already under cloud.

4. One can read between the lines as to cause for initiation of the present criminal proceedings by the complainant, whose wife is already served as teacher in the trust.

5. *Prima facie* perusal of the order of issuance of process as observed herein above speaks of non application of mind. Apart from above, it is to be noted that if provisions of Sections 467 and 468 of Code Criminal Procedure are taken into account, the issue whether the claim of prosecution was time barred or not is also required to be assessed.

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6. If the same is looked into qua allegations in the complaint, *prima facie* inference could be gathered that the claim is barred by limitation.

7. As such, the orders of issuance of process, in my opinion, are not sustainable and the same are quashed and set aside. As a consequence, the complaints fail and stand dismissed.

8. Both the criminal application stand allowed in above terms.

(N.W. SAMBRE, J.)

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