

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2956/2011 & CRL.M.C. 2957/2011**

% *Judgment reserved on: 9th May, 2012*
Judgment delivered on: 3rd July, 2012

CRL.M.C. 2956/2011

MITHLESH VERMA Petitioner
Through : Mr. Sudarshan Rajan, Adv.

versus

CBI Respondent
Through : Mr. Narender Mann, Spl. PP with
Mr. Manoj Pant, Adv.

CRL.M.C. 2957/2011

TARESEM LAL VERMA Petitioner
Through : Mr. Sudarshan Rajan, Adv.

versus

CBI Respondent
Through : Mr. Narender Mann, Spl. PP with
Mr. Manoj Pant, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide these petitions; the petitioners seek quashing of FIR /RC No. DST/2007/S/004 registered by P.S. CBI/STF/New Delhi under Section 120-B r/w. Sections 420/468/471 IPC and the proceedings

emanating therefrom.

2. Vide Order on Charge dated 13.07.2011, the learned Special Judge (PC Act), CBI-8, Central District, after considering the submission of the parties, held as under:-

“7. On perusal of the report U/s 173 Cr.P.C. statements of the witnesses recorded U/s 161 Cr.P.C., contents of the record seized by the CBI during investigation and after considering the detailed submissions made by the counsels, I am of the considered view that prima facie that there is enough material on record to frame charges for commission of offences punishable U/s 120-B Indian Penal Code, 1860 r/w Sec 420, 468 and 471 Indian Penal Code, 1860 and Section 13(1)(d) r/w Sec 13(2) PC Act, 1988 against all the accused. Accused Tarsem Lal Verma and Mithlesh Verma are also liable to be charged for offences u/s 420, 468 and 471 IPC. Accused Mitlesh Verma be further charged u/s 177 Indian Penal Code, 1860 and accused Om Prakash Godara be also charged for offence u/s 13 (2) r/w 13(1)(d) of PC Act, 1988.”

3. Thereafter, vide order dated 16.07.2011, the learned trial judge framed charges on the petitioners as under:-

“Firstly- That you Mithlesh Verma and Tarsem Lal Verma in year 1979 entered into criminal conspiracy with Om Prakash Godara (posted as SDM, District Jhunjhunu, Rajasthan, public servant) with unlawful object to procure a false and forged Scheduled Tribe certificate giving false information to the effect that you belong to ‘Sonkarkari’ caste and resided at Ward no. 1, Pilani, Tehsil Chirawa, District Jhunjhunu,

Rajasthan and belong to Scheduled Tribe despite the knowledge that you do not belong to Scheduled Tribe. In furtherance of same you Mithlesh Verma also procured a false certificate of Scheduled Tribe dated 16.12.1979 through your husband Tarsem Lal Verma, purportedly under the signatures of Om Prakash Godara, SDM, Jhunjhunu, Rajasthan which was used for seeking employment in the Govt. of NCT of Delhi, Directorate of Education to the post of PGT and thereby you all committed offence punishable u/s 120 (b) r/w Sec 420,468,471 IPC and 13 (2) r/w/ 13(1)(d) of the PC Act, 1988 within my cognizance.

Secondly, you Mithlesh Verma and Tarsem Lal Verma in conspiracy with Om Prakash Godara and despite the knowledge that Mithlesh Verma does not belong to Scheduled Tribe, dishonestly used domicile certificate dated 26.09.1979 under signature of Sh. RPS Chauhan to procure false ST certificate dated 06.12.1979 purportedly issued from the office of SDM, District Jhunjhunu, Rajasthan under signature of Om Prakash Godara and the aforesaid Scheduled Tribe Certificate was used as genuine by you Mithlesh Verma for procuring employment with Directorate of Education, Govt. of NCT Delhi for selection to post of PGT and thereby committed offences punishable u/s 420/468 of Indian Penal Code, 1860 r/w Sec 120 (B) IPC within my cognizance.

Thirdly, that you Mithlesh Verma in conspiracy with Tarsem Lal Verma fraudulently and dishonestly used false Scheduled Tribe certificate as genuine for claiming privileges of ST category for procuring employment with Directorate of Education, Govt. of NCT Delhi for selection to the

post of PGT and thereby you both committed offences punishable u/s 471 r/w Sec 120B of IPC within my cognizance.

Fourthly, you Mithlesh Verma furnished false information with the concerned authorities to fraudulently obtain the Scheduled Tribe certificate and further job in Directorate of Education, Govt. of NCT of Delhi, for the post of PGT and thereby committed offence punishable u/s 177 IPC within my cognizance.

Further, you Om Prakash Godara while posted as SDM, District Jhunjhunu, Rajasthan in the year 1979 abusing your official position as Public Servant and in conspiracy with Mithlesh Verma and Tarsem Lal Verma intentionally issued a false certificate of Scheduled Tribe in the name of Mithlesh Verma which was also filled in the handwriting of Mithlesh Verma , thereby showing undue favour without any public interest and committed offence punishable u/s 13(2) r/w Sec 13 (1) (d) of Prevention of Corruption Act, 1988.”

4. The petitioners pleaded not guilty and claimed trial for the same.

5. The case of the prosecution is that Scheduled Tribe (ST) Certificate dated 06.12.1979 in the name of the petitioner Smt. Mithlesh Verma w/o Sh. Tarsem Lal Verma declaring her to be a resident of Pilani, District-Jhunjhunu, Rajasthan and belonging to the community of ‘Sonkatkari’, notified as a Scheduled Tribe community in the State of Rajasthan was submitted by her for appointment to the Post of Post Graduate Teacher (Hindi) in the Directorate of Education,

Govt. of NCT, Delhi which was reserved for SC/ST category candidates only. It is further alleged that the petitioner, Sh. Tarsem Lal verma (husband of the petitioner, Smt. Mithlesh Verma) fraudulently obtained a Scheduled Tribe Certificate purportedly issued by the SDM, Jhunjhunu for which a separate case has been registered against him. The certificate procured by Sh. Tarsem Lal Verma, was also stated to have been issued by him for procuring recruitment in 1984 as Photographic Officer in Armed Forces Films and Photography Division, Ministry of Defence, New Delhi as Scheduled Tribe candidate. It is also alleged that the petitioner Sh. Tarsem Lal Verma also fraudulently arranged a domicile certificate dated 26.09.2009 in favour of his wife Smt. Mithlesh Verma purportedly issued by Sh. RPS Chauhan, the then Officer, Jhunjhunu (Rajasthan).

6. The case of the prosecution is that the said Scheduled Tribe Certificate was issued in favour of the petitioner Smt. Mithlesh Verma by Sh. Om Prakash Godara, the then SDM, Jhunjhunu (public servant) and he misused his official position by falsely mentioning the accused Mithlesh Verma as person belonging to Sonkatkari Scheduled Tribe and a resident of Pilani, Distt. Jhunjhunu, Rajasthan.

7. The contentions of the petitioners before the trial judge were that the present proceedings have been fabricated against them since petitioner Sh. Tarsem Lal Verma was involved in active litigation in his office and prosecution was actuated with malafides. He had been a resident of Pilani even in 1972 and had the proof of residence by way of rent agreement available with him and even name of the said petitioner was also mentioned in the voter's list for the period 1978-

1979. The caste certificate of the petitioner Sh. Tarsem Lal Verma had also been verified by his office as reflected vide letter dated 18/12/1988 issued by office of District Magistrate, Jhunjhunu and found to be correct.

8. Learned counsel for the petitioners further submitted that petitioner Sh. Tarsem Lal Verma had got issued a caste certificate of his wife viz., Smt. Mithlesh Verma from the then SDM, Jhunjhunu. The purported certificate dated 06.12.1979 showing her status as Sonkarkari, a Scheduled Tribe. After an expiry of more than over 28 years, case R.C. No. DST/2007/S/0004 dated 29.06.2007 was registered against the petitioners for the offences punishable under Sections 420/468/471 IPC.

9. After the investigation, the prosecution filed charge sheet on 18/08/2009 for the offences publishable under Section 120 B r/w. Sections 177/420/468/471 IPC and Sections 13(1)(d) of the Prevention of Corruption Act.

10. Learned counsel submitted that the petitioner Sh. Tarsem Lal Verma was the Government Servant even on the date on which the alleged offence was committed, therefore, when the petitioner was in service in 1978-79, as per the mandate of Section 13(1)(d) of the Prevention of Corruption Act, the RC of the petitioner is liable to be quashed.

11. He has relied upon *T.N. Vs. M.M. Rajendran reported in (1998) 9 SCC 268* wherein it was held that where sanction had not been accorded for which the criminal case could not have been initiated against the respondent, there was no occasion for the trial

court or the court of appeal to consider the prosecution case on merits.

12. He has also relied upon the case of ***Ram Krishan Prajapati Vs. State of UP reported in (2000) 10 SCC 43*** wherein it was held that the sanction would totally exclude the jurisdiction of the special Judge from taking cognizance of the offence.

13. Further, he has relied upon the case of ***Y.P. Vij Vs. State (CBI) reported in 64 (1996) DLT 611*** wherein it was held that sanction was *sine qua non* for prosecution of a public servant.

14. Ld. Counsel has pointed out that the Special Judge has recorded in the order on charge that even when RC was registered i.e. on 20.06.2007, the petitioner was in Government Service as he was employed with the Ministry of Defence and continued till 2009 in said Ministry.

15. He submitted that the case allegedly occurred on 06.12.1979 and the case was registered against the petitioner only on 29.06.2007, thus, the case was registered after more than 28 years of alleged incident. He relied upon the case of ***State of Maharashtra Vs. Milind & Ors. reported in 2000(7) Scale 628*** wherein the Constitution Bench of Hon'ble Supreme Court of India has held on the ground of delay as under:-

“39. Respondent No. 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practicing as doctor. In this view and at this length of time it is for nobody's benefit to annul his admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one scheduled Tribe

candidate was deprived of joining medical course by the admission given to respondent no. 1. If any action is taken against respondent no. 1 it may lead depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practicing as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes order any further or for other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed in SLP (c) no. 16372/85 and other related affairs, we make it clear that the admissions and appointments that have become final shall remain unaffected by this judgment.”

16. Learned counsel further submits that the caste certificate of the petitioner Sh. Tarsem Lal Verma has already been verified by the Superintendent of police, Jhunjhunu as well as the SDM who verified that the caste certificate was genuine. The said certificate was also verified by the erstwhile employer of the petitioner i.e. Ministry of Defence after thorough investigations. Thus, once it is verified that the said certificate of the petitioner was true and correct, there was no reason to further lodge the FIR. Again, prior to the working of the petitioner in the Ministry of Defence, he had worked with other Government Departments, who has verified the caste certificate of the petitioner and found that genuine.

17. It is submitted by Id. Counsel that the said certificate is a genuine document and the presumption is also that the said document

is a genuine document as per Section 9 of the Indian Evidence Act.

18. The petitioner would not be able to prove his case as the charge sheet itself has recorded that the documents pertaining to the issuance of the caste certificate had been weeded out. Thus, there is grave prejudice to the petitioner who would not be in a position to prove his case.

19. Learned counsel has asserted that for proving the guilt under Section 13 (1)(d) of the Prevention of Corruption Act, the following ingredients are required:-

- “a. Accused must have been a public servant*
- b. He should have used corrupt or illegal means or otherwise abused his position as such public servant.*
- c. He should have obtained a valuable thing or pecuniary advantage for himself or for any other person.”*

20. On the other hand, Mr. Narender Mann, Special Public Prosecutor of the CBI has submitted that the petitioner on the date of procurement of his Scheduled Tribe Certificate was not in service; therefore, he committed offence way back in 1979. Therefore, there was no necessity to take sanction for prosecuting the petitioners. He submitted that the charges have already been framed against the petitioners and at the stage of charge, the truth, the veracity and facts of the prosecution offences has not to be meticulously judged, nor any weight to be attached to the probable defence of the accused and it is not obligatory on the court to consider the evidence relied upon by both sides in detail or to weigh it in a sensitive balance.

21. In order to establish the case against the petitioners, the prosecution has relied upon the following pieces of evidence during investigation:-

“(i). As per the statement of the witnesses recorded during investigation Sh. Pyare Lal Verma R/o Village Jawal, Prakahnd-Arnia, Tehsil-Khurja, Distt-Buland Shahar, Uttar Pradesh was the grandfather of accused Smt. Mithlesh Verma. In the year 1950, Pyare Lal Verma alongwith his family members shifted from Jawal to khurja. Sh. Pyare Lal Verma had four sons and two daughters namely Brij Lal Verma, Mahavir Prasad Sharma, Late Sh. Pritam Singh Verma, Raghuvar Dayal Verma happens to be daughter of Late. Pritam Singh Verma and was brought up at khurja under the guardianship of Mahavir Prasad Verma (elder brother of Pritam Singh Verma) who had no issue of his own. The witnesses categorically stated that accused did not belong to the Scheduled Tribe category as claimed.

“ii. The investigation also revealed that accused Mithlesh Verma got her primary education at Khurja, Uttar Pradesh and as per school records, the caste was reflected as “Sunar”.

iii. It is also in evidence against the accused that accused Mithlesh Verma was married to Tarsem Lal Verma (S/o Sh. Madan Lal Verma) in the year 1977-78 who also happened to be “Sunar” by caste and the marriage was solemnized at Chandigarh. At the aforesaid time in 1978 accused Tarsem Lal was service as photographer of General category in Punjabi University, Patiala, Punjab. The couple thereafter shifted to Pilani, istt, Jhunjhunu, Rajasthan wherein Tarsem Lal Verma was selected as Photographer Artist (General category candidate) in CEERI, Pilani on 05.05.1978. Sh. Tarsem Lal

Verma is further alleged to have procured a Scheduled Tribe Certificate issued by SDM, Jhunjhunu on 24.01.1979 for which a separate case has been registered and was asked to resign from the institute. Sh. Tarsem Lal Verma finally resigned on 04.09.79.

iv. Evidence has been further collected by the prosecution to the effect that both the accused Mithlesh Verma and Tarsem Lal Verma did not belong to Sonkatkari Scheduled Tribe and were rather "Sunar" by caste. It is also alleged that Tarsem Lal Verma also fraudulently arranged a domicile certificate dated 26.09.1979 in favour of his wife Mithlesh Verma purportedly issued by Sh. R.P.S. Chauhan, SDM, Jhunjhunu (Rajasthan) wherein accused Mithlesh Verma has been shown as R/o Ward no. 1, Pilani, Tehsil Chirawa, Distt. Jhunjhunu, Rajasthan though she was not resident of aforesaid address."

22. Therefore, the statement of the witnesses reflecting the family background of the petitioner which clearly show that the petitioner prima facie fraudulently procured the Scheduled Tribe Certificate which was further used for recruitment.

23. The mere correspondence exchanged for purpose of verification of ST certificate produced by petitioner Tarsem Lal Verma for his employment, as reflected in letter dated 18.12.1988 issued by Office of District Magistrate, Jhunjhunu (produced by petitioner Tarsem Lal Verma) does not lead to the conclusion that he belongs to Scheduled Tribes category as the detailed investigation by the investigating agency has prima facie revealed that the Scheduled Tribes status had been fraudulently claimed by the petitioners.

24. The defence was taken by the petitioner Tarsem Lal Verma that he was residence in Pilani even in 1972 and his name was also mentioned in the voter list of 1978-79. This type of defence can actually be assessed after the documents are proved on record in the evidence to be led by the accused persons. Merely on the basis of the aforesaid contention, it cannot be concluded that the petitioners belong to Scheduled Tribe Category contrary to the investigation.

25. I heard learned counsel for the parties. It emerges from the contentions advanced by Id. Counsel for the parties that the petitioners committed offence even before entering into present service. Therefore, the sanction to prosecute them is not relevant in the present case. The petitioners are rightly charged for the offences publishable under Section 13 (2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988, along with other penal offences.

26. Law on this point has been discussed and decided by the Apex Court in the case of ***Prakash Singh Badal and Another v. State of Punjab and Ors. (2007) 1 SCC*** as under:-

“The main contention advanced by Shri Venugopal Learned senior counsel appearing for the appellant is that a public servant who continues to remain so (on transfer) has got to be protected as long as he continues to hold his office. According to the learned counsel, even if the offending act is committed by a public servant in his former capacity and even if such a public servant has not abused his subsequent office still such a public servant needs protection of Section 19(1) of the Act. According to the learned counsel, the judgment of this Court in R.S. Nayak's case (supra) holding that the subsequent position of the public

servant to be unprotected was erroneous. According to the learned counsel, the public servant needs protection all throughout as long as he continues to be in the employment.

The plea is clearly untenable as Section 19(1) of the Act is time and offence related.

The underlying principle of Sections 7, 10, 11, 13 and 15 have been noted above. Each of the above Sections indicate that the public servant taking gratification (S.7), obtaining valuable thing without consideration (S.11), committing acts of criminal misconduct (S.13) are acts performed under the colour of authority but which in reality are for the public servant's own pleasure or benefit. Sections 7, 10, 11, 13 and 15 apply to aforesaid acts. Therefore, if a public servant in his subsequent position is not accused of any such criminal acts then there is no question of invoking the mischief rule. Protection to public servants under Section 19(1)(a) has to be confined to the time related criminal acts performed under the colour or authority for public servant's own pleasure or benefit as categorized under Sections 7, 10, 11, 13 and 15. This is the principle behind the test propounded by this court, namely, the test of abuse of office.”

27. In case of **Balakrishnan Ravi Menon v. Union of India, 2007**

(1) SCC 45 held as under:-

“Hence, it is difficult to accept the contention raised by U.R. Lalit, the learned senior counsel for the petitioner that the aforesaid finding given by this Court in Antulay's case is obiter.

Further, under Section 19 of the PC Act, sanction is to be given by the Government or the authority which would have been competent to remove the public servant from his office at the time when offence was alleged to have been committed. The

question of obtaining sanction would arise in a case where the offence has been committed by a public servant who is holding the office and by misusing or abusing the powers of the office, he has committed the offence. The word 'office' repeatedly used in Section 19 would mean the 'office' which the public servant misuses or abuses by corrupt motive for which he is to be prosecuted. Clauses (a) and (b) of sub-section (1) specifically provide that in case of a person who is employed and is not removable from his office by the Central Government or the State Government, as the case may be, sanction to prosecute is required to be obtained either from the Central Government or the State Government. The emphasis is on the words "who is employed" in connected with the affairs of the Union or the State Government. If he is not employed then Section 19 nowhere provides for obtaining such sanction. Further, under sub-section (2) the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed. In case where the person is not holding the said office as he might have retired, superannuated, discharged or dismissed then the question of removing would not arise."

28. Since the charges have been framed against the petitioners, therefore, at this stage, the instant petition cannot be allowed and they will face all their offences during trial.

29. Moreover, the offences were committed way back in 1979 by the petitioners i.e. even before entering the service, therefore, they cannot be considered as Government servants as contemplated under Section 19 of the Prevention of Corruption Act.

30. I found no merit in the instant petitions.

31. Accordingly, the instant petitions are dismissed with no order as to costs.

32. Crl. M.A. Nos. 10443/2011 and 10440/2011 are dismissed as infructuous.

SURESH KAIT,J

JULY 03, 2012

Ss/jg