

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.09.2015

DATE OF DECISION: 08.09.2015

CORAM

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.O.P. No.21497 of 2015
and M.P. Nos.1 & 2 of 2015

T. Rajendran

...Petitioner/Accused
No.3

vs.

1 The Inspector of Police
CBCID, Salem
Cr. No.2/96

...Respondent/Complainant

2 A.V. Seshadri
Under Secretary
Tamil Nadu Public Service Commission
Chennai

...Respondents/
Defeto Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the final report in C.C. No.108 of 2015 on the file of the Judicial Magistrate No.4, Salem and to quash the same.

For Petitioner : Mr. S. Doraisamy
For R1 : Mr.C.Emalias, A.P.P.

ORDER

This case has a chequered history to its credit. On a complaint lodged by the Under Secretary, Tamil Nadu Public Service Commission, the respondent police registered a case in Cr.No.2 of 1996 under Section 420 IPC and after completing the

investigation, has filed Final Report against four accused in C.C.No.108 of 2015 before the learned Judicial Magistrate-IV, Salem for offences under Sections 466, 468, 471 and 420 r/w 34 IPC, challenging which T.Rajendran [A3] has preferred this quash petition.

<https://hcservices.ecourts.gov.in/hcservices/>

2. Heard Mr.S. Doraisamy, learned counsel for the accused and learned Additional Public Prosecutor appearing for the first

respondent-State.

3. It is the case of the prosecution that A2 to A5, in connivance with one Nachimuthu [deceased accused] fabricated community certificate, as if they belonged to Konda Reddy community, which is classified as a Schedule Tribe community for the purpose of getting admission in professional courses.

4. The contention of Mr. S. Doraisamy, learned counsel for the accused is that, police investigation in respect of a community certificate dispute is precluded and the validity of such certificates can be decided only by the State Level Scrutiny Committee constituted by the Government, pursuant to the judgment of the Hon'ble Supreme Court in Kumari Mathuri Patil vs. Additional Commissioner [AIR 1994 SC 94]. In support of this plea, Mr. S. Doraisamy, learned counsel for the accused relied upon the following judgments:

(1) Kumari Madhuri Patil and another v. Additional Commissioner [AIR 1995 SC 94(1)]

(2) T.Rajendiran v. State, The Inspector of Police, CBCID, Salem [Order dated 05.09.2001 in CrI.OP.No.20655 of 1999]

(3) N.Chandra v. The Collector of Salem and others [Order dated 28.11.2001 in W.P.No.13805 of 1994]

(4) M.Latha v. The Collector, Salem District [Order dated 18.07.2003 in W.P.No.7581 of 1996]

(5) P.Vinoth v. The Sub Collector, Ranipettai [2012 Writ L.R.474]

(6) P.Kumar and others v. State Level Scrutiny Committee, rep by its Chairman and Secretary to Government, Adi Dravidar and Tribal Welfare Department, Fort St.George, Chennai and others [Order dated 12.11.2011 in W.P.No.26214 of 2011]

5. Reservations in professional colleges and public employments earmarked for Scheduled Castes and Scheduled Tribes were being robbed away by pseudo Dalits in connivance with revenue officials. The facts in Kumari Madhuri Patil's case will demonstrate the nature and magnitude of the problem.

"10. It is seen that admittedly the appellants reside in Muland area. In the first instance Suchita rightly approached the Tahsildar having jurisdiction over the area concerned who refused to give her social status certificate as Mahadeo Koli, she filed an appeal and the High Court directed the Deputy Commissioner to dispose of the appeal who in turn without deciding the facts, directed the Tahsildar to issue the certificate. In the meanwhile she had, by orders of the court, got admission into the college and pursued her study. The Caste Certificate Scrutiny

Committee, consists of the Secretary as Chairman and two members, and a Research Officer-cum-Director who have intimate knowledge in the identification of the specified tribes, considered the entire material. The Committee has stated and as is seen that the appellant's father clearly accepted that his caste is recorded in the college as well as

secondary school and college records as Hindu Koli only. This fact is strengthened by the candidate's father's school record (document at Serial No. 1). In the new English School locality at Thane, the name of the candidate's father appeared in the admission register at Serial No. 3733, and the caste clearly shown there was as H. Koli. This school record, comparatively, is not only oldest but it being the record pertaining to candidate's father's admission to school prior to independence, it carries greatest probative evidentiary value. The caste of the person, as stated earlier, is determined on the basis of the caste of their parents, basically for the reasons that the caste is acquired by birth. When the school record of the candidate's father shows his caste as Koli, the documents which the candidates have produced (documents quoted at Serial Nos. 3, 5 to 8, 11, 13 to 16) showing their caste as Mahadeo Koli cannot be relied upon. All these documents furnished by the candidates are those manipulated and fabricated with to knock of the seats in educational institutions defrauding the true Scheduled Tribes to their detriment and deprivation. As the school record of the candidate's father shows his caste as 'Koli', the caste certificates which have been issued to the appellants and their relatives by the Executive Magistrate, Greater Bombay (documents at Serial Nos. 9, 10, 12, 17 to 19) are without proper enquiry and investigation, besides being without jurisdiction. Its reiteration in service record would not carry any credibility or a ground to accept the caste as Scheduled Tribe. The caste certificate issued by Samaj being self-serving and subject to scrutiny, they cannot be held to be conclusive proof to determine the caste claim. The finding recorded by the Committee is based on consideration

of the entire material together with sociological, anthropological and ethnological perspectives which Mahadeo Kolis enjoy and of the castes and sub-caste of the Kolis. The Additional Commissioner as well, has minutely gone into all the material details and found that

when a section of the society have started asserting themselves as tribes and try to earn the concession and facilities reserved for the Scheduled Tribes, the tricks are common and that, therefore, must be judged on legal and ethnological basis. Spurious tribes have become a threat to the genuine tribals and the present case is a typical example of reservation of benefits given to the genuine claimants being snatched away by spurious tribes. On consideration of the evidence, as stated earlier, both the Committee and the appellate authority found as a fact that the appellants are not tribe 'Mahadeo Koli' entitled to the constitutional benefits. In Subhash Ganpatrao Kabade case', the approach of the Division Bench of the High Court appears to be legalistic in the traditional mould totally oblivious of the anthropological and ethnological perspectives and recorded their findings with unwarranted strictures on the approach rightly adopted by the Scrutiny Committee and the Additional Commissioner to be '(funny)' "obviously incorrect" and "queer reasoning". Admittedly the petitioner therein, in days preceding the Constitution, described himself in the service book as well as school leaving certificate as a Hindu Koli. The High Court also found that they were backward class but proceeded on the erroneous footing that Mahadeo Koli was introduced for the first time through 1976 Amendment Act and that, therefore, they were the genuine Scheduled Tribes entitled to the benefits. In view of the above, we cannot help holding

that the reasoning of the High Court is wholly perverse and untenable.

6. In that context, the Hon'ble Supreme Court issued a direction to the authorities to constitute State Level Scrutiny Committee for examining the genuineness of the claim of a person seeking reservation under Scheduled Caste and Scheduled Tribe categories. In the case in hand, the FIR was registered by the police in the year 1996 and when Final Report was filed, this petitioner filed Crl.O.P.No.20655 of 1999 to quash the Final Report on the ground that, the dispute with regard to his community certificate is pending adjudication in writ proceedings in W.P.No.8809 of 1996. On that ground, this Court directed the Magistrate to return the Final Report to the Inspector of Police, CB CID and await the orders of this Court in W.P.No.8809 of 1996. W.P.No.8809 of 1996 was disposed by this Court on 25.03.2003 with a direction to the police to complete the prosecution. The writ application filed by this petitioner in W.A.No.1819 of 2003 was also disposed of by a Division Bench of this Court on 30.04.2003.

7.The summum bonum of Mr.Doraisamy's contention is that, the validity of the community certificate of the petitioner can be adjudged only in terms of G.O.(2D) No.108, Adi Dravidar and Tribal Welfare (CV-I) Department dated 12.09.2007 and G.O.Ms.No.106, Adi Dravidar and Tribal Welfare (CV-I) Department dated 15.10.2012 and not by way of a criminal prosecution.

8. At the outset, this argument did sound appealing, but on a close scrutiny of the facts obtaining in the case, this Court observed a fundamental fallacy in the plea of the accused. All the aforesaid cases relate to persons belonging to other communities obtaining community certificates from the competent authorities by misrepresentation. But, in this case, the allegations against the petitioner are that, he has fabricated and forged a false certificate that was not issued by the revenue authorities at all and that is the reason why offences under Sections 466, 468 , 471 IPC have been slapped on the petitioner. This is not a case of obtaining a false certificate by misrepresentation, but a case of manufacturing a bogus certificate by acts of forgery. This will never come in the scope of enquiry by the Committees constituted under the aforesaid Government Orders. This has already been observed in no uncertain terms in the order dated 25.03.2003 passed by this Court in W.P.No.8809 of 1996 filed by the same petitioner in the following words:

"10. As against this, learned counsel for TNPSC and the learned Special Government Pleader support both the orders. As regards the order passed by the TNPSC, the learned counsel appearing for TNPSC specifically pointed out that TNPSC has given a proper opportunity to the petitioner before taking any action against him. Learned counsel is at pains to point out that two certificates came to be produced by the petitioner one dated 7-6-1974 issued by the Tahsildar, Mettur and the other dated 27-10-1988, issued by the Revenue Divisional Officer, Mettur. It was pointed out that the certificate dated 7-6-1974 issued by the Tahsildar was not correct as the Director of Medical Education had got that certificate enquired into through the Collector, Salem and on enquiry conducted by the Sub-Collector, it was found that the claim of the petitioner that he belonged to Konda Reddy community was false and that an action was already pending for cancelling the community certificate dated 7-6-1974. Learned counsel pointed out further that the second certificate dated 27-10-1988, regarding which the petitioner has chosen to remain silent in his petition, was actually a forged certificate as firstly, it was not signed by the officer whose signature was purported to be on the certificate.

11. Learned counsel also points out that the certificate was issued under the Permanent Caste Card System (Green Card) but bore a date of 27-10-1988. Learned counsel pointed out that in his report, the

Collector had specifically mentioned that the system of Permanent Caste Card was introduced in Mettur Division only from the year 1990 and as such, there could not have been any permanent caste card issued on 27-10-1988. Learned counsel also pointed out that it was obvious that the certificate was a manufactured one. Learned counsel, therefore, urged that no fault could be found on the part of TNPSC in acting upon the report of the Collector and consequently, taking the disciplinary action of debarring him permanently from appearing any of the examinations conducted by the Commission and cancelling his selection also.

21. There can be no dispute and it was indeed not challenged and could not be challenged by the petitioner that the system of Permanent Community Certificate (Green Card) was introduced in the Mettur Division for the first time in the year 1990 and, therefore, there could not be a certificate on Green Card bearing the date of 27-10-1988. Under the circumstances, the claim of the petitioner that he should have been given an opportunity to cross-examine Thiru T.Kaliaperumal appears to be baseless. The Collector was not under any such duty while reporting the matter to TNPSC. The action has already been initiated in the criminal court vide the charge sheet in C.C.No.688 of 1999 and the petitioner has been resourceful enough to get that prosecution stayed. It is hoped that the authorities would take proper steps now in that behalf to complete the prosecution. Under such circumstances, there will be no question of entertaining both the writ petitions."

9. Mr.S. Doraisamy, learned counsel, placed heavy reliance upon the following passage in Kumari Madhuri Patil's case:

"12(14) In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or the Parliament."

10. Kumari Madhuri Patil's case did not concern with forged and fabricated documents. She had misrepresented that she belongs to Mahadeo Koli caste when she actually belongs to Koli caste. In <https://hcservices.courtts.gov.in/hcservices/> the Supreme Court has stated so in paragraph 12(14) above. This petitioner has somehow managed, as observed by the learned single Judge, with his resourcefulness, to pull the

prosecution from 1996 to today by advancing species and ingenious arguments.

In the result, this petition is devoid of merits and the same is dismissed.

-Sd/-

Assistant Registrar(cs-II)

//True copy//

Sub Assistant Registrar

gms

To

- 1 The Inspector of Police
CBCID, Salem
- 2 The Judicial Magistrate No.4,
Salem
- 3 The Public Prosecutor,
High Court,
Madras.

+1cc to S.Doraisamy, Advocate(sr.48679)

Pre-delivery order in
Cr1.O.P.No.21497 of 2015

AD(co)
cp28/09/2015

WEB COPY