

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

CRIMINAL APPLICATION NO. 1866 OF 2016

Sk. Jamir Ahmed Sk. Rahim Ahmed .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondents

Mr. Pradeep Deshmukh h/f. Mr. Y.P. Deshmukh, Advocate for the applicant.

Mr. R.B. Bagul, A.P.P. for respondent/State.

Mr. M.A. Jahagirdar, Advocate for respondent No.2.

**CORAM : A.V.NIRGUDE &
A.I.S.CHEEMA, JJ.**

DATED : 14.06.2016

P.C. :-

1. Heard learned Counsel for the parties. The applicant is accused in Crime No.117 of 2016 registered with Jinsi Police Station, Aurangabad. Respondent No.2 is the complainant. The facts leading to this complaint in short can be stated as under :-

2. In 2015 the applicant filed nomination for election for the post of Municipal Councilor. Respondent No.2 also filed his nomination and contest took place between them in which the applicant succeeded. At the time of filing nomination, the applicant claimed that he belonged to a Nomadic Tribes. He submitted Caste

Certificate and Tribe Verification Certificate in support of the nomination. After the election was over and results were declared, respondent No.2 started investigation into the applicant's tribe claim. He obtained relevant documents from the Tribe Scrutiny Committee and suspected that some of the documents submitted by the applicant before the Caste Scrutiny Committee could be forgery. In order to get the Tribe Scrutiny Committee's certificate issued in favour of the applicant set aside, respondent No.2 filed Writ Petition No. 1185 of 2016, which is pending before this Court. Inter alia, in this petition, respondent No.2 asserted that some of the documents submitted by the applicant before the Tribe Scrutiny Committee at the relevant time were forged. During the pendency of the petition as referred to above, the Tahsildar filed an affidavit and stated that the Tribe Certificate on which the applicant placed reliance was not issued by his office at all. Respondent No.2 on the basis of this information lodged the present complaint. The applicant, therefore, came before us for getting the complaint quashed.

3. It is case of the applicant that such complaint is not maintainable at this stage. As per Section 11 of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other

Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short "said Act"), it is only Caste Scrutiny Committee, who can lodge such complaint. We are of the view that on facts, the complaint is not maintainable. Police ought not to have registered offence. On facts, we are also convinced that it is only Caste Scrutiny Committee or this Court in Writ Petition No.1185 of 2016, who can direct prosecution of the applicant. We are also of the view that present complaint is rather premature exercise. Admittedly, as on today, there is no finding recorded either by this Court in Writ Petition No.1185 of 2016 or by the Scrutiny Committee that the certificate on which applicant placed reliance is a forged document. Unless such finding is recorded in the facts and circumstances, the complaint is not maintainable.

4. Learned Counsel for the respondent No.2 placed reliance on the judgment of this Court in the case of Shilpa w/o. Sunil Khillare Vs. State of Maharashtra (Criminal Application No. 3998 of 2015). This judgment was delivered by Division Bench of this Court headed by Shri Justice R.M. Borde, on 20th April, 2016. In this judgment, the Division Bench held that the bar under section 11 of the said Act would not be invoked if

complaint regarding fabricated certificate is made before the same was submitted to the Committee. The Division Bench distinguished judgment of this Court in the case of **Vilas Rambhau Majrikar Vs. State of Maharashtra reported in 2015 (3) Bom.C.R. (Cri.)758.** The facts of Shilpa's case were different. The accused submitted a forged document for securing employment. In the said set of facts, the Court held that the bar under section 11 of the Act would not operate. The facts of the present case are discussed above and in our view bar under section 11 is attracted to them.

5. The Criminal Application thus succeeds. The F.I.R. lodged against the applicant stands quashed.

6. The Criminal Application is accordingly allowed and disposed of.

[A.I.S.CHEEMA,J.]

[A.V.NIRGUDE,J.]