

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

CRIMINAL APPLICATION NO. 3998 OF 2015

Shilpa w/o Sunil Khillare

.. APPLICANT

VERSUS

The State of Maharashtra
& another

.. RESPONDENTS

Mr. A.A. Mukhedkar, advocate for applicant.
Mr. M.M. Nerlikar, APP for the State.
Mr. B.A. Shinde, advocate for respondent no. 2.

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CORAM : R.M. BORDE &

P. R. BORA, JJ.

DATE : 28th APRIL, 2016.

PER COURT :

1. Applicant is praying for quashment of the First Information Report registered by Hingoli police being crime no. 57/2015 on 29.05.2015. The crime is registered at the instance of Child Development Project Officer, Akhada-Balapur for commission of offences punishable under sections 468, 471, 420 r/w section 34 of the Indian Penal Code.

2. It is alleged that applicant is instrumental in preparing false caste certificate with a view to claim employment from amongst the Scheduled Caste category. Caste certificate certifying that applicant belongs to Bhuddha caste is prepared by applicant and the same has been utilised for claiming employment from amongst the reserved category. Sub-Divisional Officer, Hingoli, by communication dated 28.08.2013 informed the office of Zilla Parishad that the caste certificate in question has not been issued by

the said office. Writ petition bearing no. 3988/2014 was presented by the objector which was disposed of with direction to the Zilla Parishad authorities to take decision in the matter after extending an opportunity of hearing to the parties concerned. Since it was disclosed that the certificate which has been presented by petitioner is fabricated one, decision was taken to move the police machinery. Allegations against applicant are that she herself is instrumental in preparing and fabricating caste certificate. There is no office copy in existence with the issuing authority nor the same has been issued by the competent authority. The offences that have been alleged against applicant are forgery for the purpose of cheating, using as genuine a forged document, cheating and dishonestly inducing delivery of property.

3. We are not sure as to whether provisions of section 420 of the Indian Penal Code are attracted in this matter. However, decision in that regard can be taken at an appropriate stage. Prima facie, we are of the opinion that on the basis of material that has been brought before the Court and, on perusal of the contents of the First Information Report, offence under sections 468 and 471 of the Indian Penal Code are prima facie made out. Applicant places reliance on the judgment delivered by Division Bench in the matter of Vilas Rambhau majrikar Vs. State of Maharashtra reported in **2015(3) Bom.C.R. (Cri.) 758**. It was argued on behalf of applicant in the aforesaid matter that though the offences have been made nonbailable and cognizable, but looking to the language of section 11(2), what is contemplated is a private complaint case and not the police case. The

contention of petitioner has been controverted on behalf of the State contending that the question whether police case could be filed or not will have to be examined in the light of section 11(b) of the Act, it being a special act. The questions those were taken up for consideration by the Division Bench are recorded in paragraph no. 6 of the judgment which read thus :

(1) In the wake of Section 11(2) read with Section 12 the Maharashtra Scheduled Castes, 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, whether the Police Station Officer acting under Section 154 of the Code of Criminal Procedure can register an offence under Section 12 of the Act when Section 11(2) contemplates filing of a private complaint by Scrutiny Committee or its authorised officer ?

(2) Whether a caste certificate obtained before 23rd May, 2001 i.e. prior to coming into force of Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, if found to be false or obtained by any other fraudulent means could attract the offence under Section 11, or under Section 13 of the Act which makes issuance of false caste certificate punishable ?”

The relevant discussion relating to the questions posed find place in paragraphs 13 and 16 of the judgment which reads thus :

13. It is clear from Section 11(1)(a) that obtaining a false caste certificate by furnishing false information etc or by any other fraudulent means is an offence. Section 11(1)(b) relates to production of false certificate for obtaining benefits by a person not belonging to such reserved category which has been made an offence. The sentence provided is not less than six months which may extend to two years or

with fine. Sub-section (2) of Section 11 provides a procedure for filing of criminal case. Sub-section (2) of Section 11 provides that no Court shall take cognizance of offences under this section. It provides that upon filing of a complaint in writing made by the Scrutiny Committee or its authorized officer the Court may take cognizance. This clearly means that what is contemplated is filing of a private case by a Scrutiny Committee or its authorized officer in accordance with Chapter XV of the Code of Criminal Procedure and it does not contemplate filing of police case in accordance with Chapter XII of the Code of Criminal Procedure.

16. In the light of the above discussion with reference to question no. 1, therefore, we are of the considered opinion that filing of a police case by registration of F.I.R. Before the criminal Court is not contemplated and what is contemplated is filing of a private complaint by a Scrutiny Committee or its authorized officer in accordance with Chapter XV of the code of Criminal Procedure. We, therefore, answer question no. 1 accordingly and hold that filing of final report by the police under Section 173 of the Code of Criminal Procedure by way of chargesheet is illegal and contrary to the provisions of law as aforesaid.

4. It was sought to be canvassed, relying on the judgment in the case of Vilas Rambhau Majrikar Vs. State of Maharashtra (2015(3) Bom.C.R. (Cri.) 758) that, in case of any allegation in regard to securing employment on the basis of a false caste certificate, criminal prosecution can only be at the instance of and upon a complaint in writing made by the Scrutiny Committee or any other officer duly authorized by the Scrutiny Committee for that purpose. Argument so made is liable to be rejected at the threshold. In the instant case, at the very initial stage, it was noticed that the caste certificate presented by the applicant was forged and fabricated. It

was not mandatory for the concerned officer to send the said certificate to the Caste Scrutiny Committee for its verification and it was well within the competence of the said officer to lodge report to the concerned Police Station. The Maharashtra Scheduled Castes, 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 nowhere prescribes a bar for initiating such prosecution or it does not mandate that in such cases, the criminal prosecution has to be initiated only under the provisions of the said Act. On the contrary, Section 17 of the said Act provides that the provisions of the said Act shall be in addition to the provisions of any other law for the time being in force.

5. Section 11 of the Maharashtra Scheduled Castes, 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 deals with fine and penalties. Relevant provision provides whoever (a) obtains a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means; or (b) not being a person belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category secures any benefits or appointments exclusively reserved for such Castes, Tribes or Classes in the Government, local authority or any other Company or Corporation owned or controlled by the Government or in any Government

aided institution, or secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or is elected to any of the elective offices of any local authority or Co-operative Society against the office, reserved for such Castes, Tribes or Classes by producing a false Caste Certificate, shall on conviction be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees, but which may extend upto twenty thousand rupees or both. Sub-section 2 refers that no Court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorised by the Scrutiny Committee for this purpose. Thus, the provision under section 11(2) is in respect of taking cognizance of the offence punishable under section 11 of the Act of 2000. In the instant matter, applicant has not been charged for committing offence under section 11 of the Act of 2000. However, it is alleged that applicant has fabricated certificate and has produced same for securing employment. The certificate presented by applicant itself is alleged to be forged and fabricated and that the same was not issued by the competent authority. Thus, offence alleged against petitioner is within the framework of sections 468 and 471 of the Indian Penal Code and, for prosecuting applicant under the aforesaid sections, bar under section 11(2) of the Act of 2000 cannot be invoked. Facts giving rise to the controversy in the reported judgment were quite different since said applicant was charged for commission of offence under section 11 of the Act of 2000 in respect of which bar as specified under section 11(2) of the Act of

2000 applies. In view of the distinguishable feature as discussed above, the judgment cited, according to us, is inapplicable to the instant case. We, therefore, do not find any infirmity in the prosecution initiated against the application by the Child Development Project Officer, Akhada Balapur, for commission of the offences punishable under Sections 468, 477 etc. of the Indian Penal Code. Application being devoid of substance stands rejected.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE

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