

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2367 OF 2015

Smt. Laxmi R. Karhadkar .. Petitioner

Versus

The State of Maharashtra and anr. ... Respondents

Mr. A.V. Anturkar, Sr. Advocate i/by Mr. A.A. Anturkar for the petitioner.

Mr. N.S. Mundergi i/by Mr. S.R. Karpe for respondent no. 2.

Ms. S.D. Shinde, APP for the State.

CORAM : RANJIT MORE &
V. L. ACHLIYA, JJ.
DATE : 24th FEBRUARY, 2016.

P. C. :

1. Heard Mr. Anturkar, learned senior counsel for the petitioner, Mr. Mundergi learned counsel for respondent no.2 and the learned APP for the State.

2. By this petition, the petitioner is challenging the order dated 8th January, 2015 passed by the learned Judicial Magistrate, First Class, Mahabaleshwar below Misc. Application No. 99 of 2014. By the said order, the learned Magistrate has issued a direction under section 156(3) of Code of Criminal Procedure (Cr.P.C. for short).

3. Mr. Anturkar, learned senior counsel submits that though

the allegations in the complaint made by respondent no.2 are in respect of the forgery in the school leaving certificate, still in the impugned order, the learned Magistrate has directed the investigation of offences under section 367, 368, 417, 420, 465, 466, 467, 468 and 478. He submits that in the cause title of the application/complaint, the respondent no. 2 has referred the said sections.

4. We have gone through the complaint filed by respondent no. 2. The complaint discloses the allegations of the forgery by the petitioner in her school leaving certificate made by respondent no. 2. There are no allegations about the kidnapping or abduction as contemplated under sections 367 and 368 of I.P.C. Despite this, the learned Magistrate has directed investigation for the offences under sections 367 and 368 of Indian Penal Code. We find complete non application of mind on the part of the learned Magistrate.

5. Mr. Anturkar, learned counsel also submits that respondent no. 2 could not have approached directly to the Magistrate under section 156(3) Cr.P.C. Firstly in the light of the provisions of section 11(2) of Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jati), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short "Maharashtra Caste Certificate

Act, 2000") cognizance of such offence cannot be taken by any Court except upon a complaint in writing made by Scrutiny Committee or by any other officer duly authorized by the Scrutiny Committee and secondly the respondent no.2 was obliged to approach the concerned police station.

6. Mr. Mundergi, the learned counsel for respondent no.2 submitted that the offences alleged are not exclusively under the Maharashtra Caste Certificate Act, 2000. He submits that respondent no.2 alleged offences against the petitioner also under Indian Penal Code and therefore, section 11(2) of the Maharashtra Caste Certificate Act, 2000 has no application. He also submits that earlier respondent no.2 approached the Superintendent of Police. However, the complaint was not accepted.

7. It is by now settled position that the complainant must exhaust the remedy available under section 154(1) and 154(3) before approaching the Magistrate under section 156(3). Reference can be made to the Full Bench Judgment of this Court in **Panchabhai Popotbhai Butani Vs. State of Maharashtra**¹ and the decision of the Apex Court in the case of **Priyanka Srivasatava and anr. Vs. State of UP & Ors.**²

1 2010 All MR (Cri) 244

2 2015 AIR (SC) 1758

8. Mr. Mudnergi learned counsel for respondent no. 2 faced with this situation, having taken instruction from his client who is present in Court, fairly concedes for setting aside this order. He however, submit that a liberty may be given to respondent no.2 to follow the procedure under section 154 of CrP.C. In the light of the above discussion, we quash and set aside the impugned order dated 8th January, 2015.

9. Respondent no.2 however, is at liberty to approach the In-charge officer of the concerned police station under section 154(1) of Cr.P.C.. All points and contentions of the parties are expressly kept open.

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]