

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 4606 OF 2013

Ravindra Muppayya Mathapati ... Petitioner

Vs

1. The State of Maharashtra & Ors. ... Respondents

Mr. S.C. Kudle for the Petitioner.

Mrs. M.H. Mhatre, APP, for the Respondent-State.

Mr. Pravin Sabban for the Respondent No.2.

***CORAM : S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.***

WEDNESDAY, 19TH APRIL, 2017

P.C. :

1 By this petition under Article 226 of the Constitution of India, as also invoking the powers of this Court under section 482 of the Criminal Procedure Code, the petitioner seeks the following relief :

"(b) This Hon'ble Court be pleased to issue the Writ of Certiorari, order directions or any other directions or any other order, direction or appropriate writ in the nature of certiorari calling for records and proceedings

in respect of the Registration of FIR vide C.R. No.4-7 of 2013 at Sadar Bazar Police Station, Solapur, under Section 409, 420, 467 and 468 r/w Section 11(1) (a)&(b) of the said Act, 2000 and after perusing the contents of the entire FIR dated 20.12.2013 in this Hon'ble Court arrives at the conclusion that the FIR does not disclosed any cognizable offence against the Petitioner then in that case this Hon'ble Court be pleased to quash and set aside the copy of the FIR thereby holding that continuation of the further proceedings in pursuance of the said FIR amounts to the abuse of process of law thereby depriving the Petitioner from his fundamental rights under Article 14, 16, 19 and 21 of the Constitution of India;"

2 Very few facts are required to be referred and to be set out to appreciate the sole contention of Mr. Kudle, learned counsel appearing in support of this petition.

3 The petitioner resides at the address mentioned in the cause title. The first respondent-State, through the competent Police Station, has registered an FIR (C.R. No.407 of 2013) against the petitioner. The second respondent is the Municipal Commissioner of the Solapur Municipal Corporation, Solapur. The third respondent is the Divisional Caste Certificate Scrutiny

Committee No.1, Solapur, which is a Committee functional under 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 (for short Maharashtra Act No.23 of 2001).

4 The petitioner states that the competent Scrutiny Committee invalidated the petitioner's caste certificate by an order dated 30th October, 2013. Though that order was challenged by way of a writ petition in this Court, namely, Writ Petition No.10795 of 2013, and that writ petition was disposed of / dismissed on 11th December, 2013 / 4th September, 2014, the said judgment and order was challenged before the Hon'ble Supreme Court of India. On 27th April, 2015, notices have been issued on these petitions which are yet to be disposed of. Thus, the Scrutiny Committee's order invalidating the caste certificate has not attained finality. In these circumstances, the registration of the FIR by invoking the powers under the Maharashtra Act No.23 of 2001 alleging offences punishable under section 11 of the Act of 23 of 2001 is *ex-facie* illegal. That could not have been

registered. Mr. Kudle's argument is that, in any event, such an FIR can be registered in terms of sub-section (2) of section 11 only upon a complaint in writing made by the Scrutiny Committee or by any other officer duly authorised by the Scrutiny Committee for this purpose.

5 Mr. Kudle would submit that the petitioner is also aggrieved by the fact that for this alleged offence and covered by the Maharashtra Act No.23 of 2001, the Solapur Municipal Corporation could not have set the criminal law in motion by alleging that the petitioner is *prima facie* guilty of offences committed under sections 409, 420, 467 and 468 of the Indian Penal Code. Thus, this FIR which is registered alleges offences punishable under both the Indian Penal Code and the Maharashtra Act No. 23 of 2001. That is impermissible. Apart therefrom, during the pendency of this writ petition, it has come on record by virtue of an additional affidavit filed on behalf of the petitioner that the law enforcing authorities have, relying upon the order of the Scrutiny Committee and registering an FIR No.407 of 2013, have usurped the jurisdiction of the competent official under the Maharashtra Act No.23 of 2001. That

Committee has already invoked section 11(1) of that Act by having an FIR registered being C.R. No.25 of 2014 dated 10th February, 2014. Therefore, the position as emerging from the statement of the learned APP made on instructions is that there are two charge-sheets filed. These two criminal cases and proceeding simultaneously on the same set of allegations and offences but without the order of the Scrutiny Committee gaining finality, therefore, ought to be quashed.

6 Mr. Kudle would submit that the petitioner laid a claim as belonging to Beda Jangam caste. His caste certificate was validated by an order passed on 8th June, 2006. However, the validity certificate was challenged by a private party who has a political rival and interested in ousting the petitioner. As per the directions of this Court issued in Writ Petition No. 5168 of 2010, on 15th February, 2013, the third respondent carried out the necessary Inquiry. That Enquiry resulted in an order of invalidation dated 30th October, 2013. That order of the Scrutiny Committee was the subject matter of challenge in the Writ Petition and the Writ Petition was dismissed. Even the Review Petition was dismissed.

7 Therefore, the Office Superintendent of Respondent No.2, Mr. Ravindranath Talwar could not have, relying upon the same allegations, set the criminal law in motion at the instance of the Solapur Municipal Corporation. The petitioner is, therefore, challenging the FIR, copy of which is at Exhibit-D to the petition.

8 It is contended that the petitioner cannot be subjected to criminal law twice. He should not have been directed to face charge-sheets and which are essentially founded on the same offence. Whether that offence is committed or not is yet to be decided for the order of the Scrutiny Committee is under challenge before the Hon'ble Supreme Court of India. Tomorrow, if that order is set aside or even if it is maintained, but the petitioner's tenure is protected by relying upon several protective orders and directions of the Hon'ble Supreme Court, then, the entire exercise would be in futility. The petition, therefore, deserves to succeed.

9 What we have before us is a statement made on instructions by Mrs. Mhatre, learned APP, that there are two

charge-sheets filed. They are filed in two distinct Crime Reports. One is a C.R. at the instance of the Solapur Municipal Corporation, whereas the other is at the instance of respondent No.3.

10 As far as that C.R. is concerned, it refers to Maharashtra Act No.23 of 2001. Section 11 of that Act enables the Scrutiny Committee to make a complaint in writing either by itself or by any official duly authorised by it for the purpose that a false caste certificate was obtained by furnishing false information or filing false statements or documents or by any other fraudulent means. Section 11 of the Act reads as under :

“11. (1) 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 any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or 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 exclusively 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.

(2) 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."

11 Therefore, whoever obtains a caste certificate by furnishing false information or by committing above acts or not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, Notified Tribe (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures any benefit and falling within the purview of clause (b) of sub-section (1) of section 11 of the Maharashtra Act No.23 of 2001, shall, on conviction, be punished with rigorous imprisonment for a term which may 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 to twenty thousand rupees or both. Therefore, obtaining of a false caste certificate or not being a person belonging to any of the above categories but obtaining or securing admission in any educational institution or contesting and being successful, from a

reserved seat and duly elected to any of the elective offices of any local authority or cooperative society which was reserved for such categories, by producing a false caste certificate, are the offences carved out by the Maharashtra Act No.23 of 2001. As far as the complaint from the Scrutiny Committee is concerned, it refers to this Act and attributes it to the petitioner. True it is that the Committee came to the finding as above after it had passed an order and which order though challenged in this Court, the challenge failed. It may be that the petitioner has approached the Hon'ble Supreme Court, but we have not been shown any order or direction from that Court which prohibits or restrains the officials from invoking and exercising the power in terms of the Maharashtra Act No.23 of 2001.

12 As far as the FIR registered at the instance of the Municipal Corporation, there, it is alleged that the petitioner produced the caste certificate and claimed to be belonging to Beda Jangam Scheduled Caste. That certificate was relied upon to obtain employment as a traffic superintendent. The petitioner was employed from 1st April, 1985. In 1996, he was promoted to the post of Assistant Chief Traffic Superintendent and from 25th

September, 2012, he was working as the Traffic Superintendent.

13 Thereafter, the Committee proceedings are relied upon and the statement of this official says that the petitioner has been accused by the Scrutiny Committee of falsifying the records. The petitioner has, by relying on these records, obtained the employment and has earned Rs.18,85,075/- as salary. This amount has been earned by cheating the Municipal Corporation. Therefore, this FIR alleges that the petitioner is guilty of an offence punishable under sections 409, 420, 467 and 468 of the Indian Penal Code. We have not been shown any provision in law which would enable us to hold that these two charge-sheets would fall foul of the same. In other words, there is no legal prohibition brought to our notice. Article 20 of the Constitution of India based on which a contention is raised by Mr. Kudle protects a person in respect of conviction for offences. That is a protection in respect of conviction of offences and no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the charge as an offence or be subjected to penalty greater than that which might have been inflicted under the law in force at the time of commission of the

offence. This is the mandate flowing from clause (1) of Article 20. By clause (2), no person shall be prosecuted and punished for the same offence more than once. By clause (3) no person accused of any offence shall be compelled to be a witness against himself. There is nothing before us which would attract any of these clauses and Article 20 of the Constitution of India as a whole. Thus, there is no double jeopardy.

14 The other provisions and which has been relied upon is contained in Chapter XXIV of the Code of Criminal Procedure, 1973. The Chapter is titled as General Provisions As To Inquiries and Trials. Section 300 falling under the same reads as follows :

"300. Person once convicted or acquitted not to be tried for same offence.-

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1)

of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation. - *The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section."*

Thus, a person once convicted or acquitted cannot be tried for the same offence.

15 The provision would come into play only after conviction or acquittal. We are today only at the stage of

registration of FIRs, investigation therein and filing of charge-sheets / report in the competent criminal court pursuant to such investigation. Beyond that, the matters have not proceeded. Therefore, we do not see how even this provision is attracted and when we find that there is no legal impediment or embargo and the two charge-sheets alleged offences punishable under the Maharashtra Act No.23 of 2001 and Indian Penal Code allegedly committed by the petitioner, not only relying upon the caste certificate which was later on found to be false and attracting a criminal prosecution, but also gaining advantages and benefits by securing employment against a reserved seat. That seat could have been filled in by another deserving candidate. The petitioner having *prima facie* been found to be not belonging to the caste which he claims as belonging to, gains employment and all benefits in the form of salary etc. He is accused of offences punishable under the Indian Penal Code. The reliance placed by Mr. Kudle on the judgment of the Hon'ble Supreme Court in the case of *T.T. Antony vs. State of Kerala* reported in *AIR 2001 SC 2637* is misplaced. Apart from the fact that in *R.N. Parikh vs. State of Gujarat and Anr.* reported in *AIR 2006 S.C. 915*, this decision and principles is amplified further, we do not think that

we should deal with this argument any further. If the foundational act for the two F.I.R's is the same, still, two distinct offences being alleged, in the event the petitioner succeeds in the Hon'ble Supreme Court of India, he can always seek fresh legal redressal, including applying for discharge from the criminal cases. We keep that recourse and contentions therein open. Once the matter is at the above stage and there being no legal impediment or embargo or restriction brought to our notice, then, we do not find any merit in the contention of Mr. Kudle.

16 As a result of the above discussion, this writ petition fails. It is dismissed.

17 We clarify that none of our observations shall be taken as an expression of any opinion, much less finally on the offences alleged against the petitioner and all defences permissible in law are open for him for being raised at an appropriate stage. Equally, our order does not prevent the petitioner from availing of the remedies provided by law, including seeking a discharge from the criminal case.

PRAKASH D. NAIK, J.

S.C. DHARMADHIKARI, J.