

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.12014 of 2010

ORDER:

The petitioner is the sole accused of Crime No.174 of 2010 of Station House Officer, Tadepalligudem Town Police Station, Tadepalligudem, which is registered for the offences punishable under Sections 199, 200, 198, 419, 420 and 511 IPC, on the private complaint of 2nd respondent—defacto complainant dated 10.02.2010 that was referred to police for investigation under Section 156 (3) Cr.P.C by the order of the learned Magistrate vide Dis.No.235, dated 11.02.2010 and the police having received, investigated and registered the crime. The petitioner is now seeking to quash the said criminal proceedings.

2) The contents of the said private complaint in registering the crime reads that it is with the fraudulent and dishonest intention, the accused herein gave a false declaration in writing and it is not only declaring herself as if she belongs to SC-C Hindu Mala caste and managed to obtain a caste certificate from Village Revenue Officer, Mandal Revenue Inspector and Tahsildar respectively of the relevant time of Jagannadhapuram Village Tadepalligudem Mandal by concealing that she is a Christian and she was earlier Baptized on 05.01.2006 and by intentionally personated herself as Scheduled Caste Woman and made attempts to obtain the relief as defined under Rule 12 (4) of the SCs and STs Rules, 1995 framed under the Act 33 of 1989 in filing the complaint with aforesaid false document against the defacto complainant herein as accused vide Crl.M.P. No.7 of 2010 in Sessions Case No.469 of 2009, dated 11.01.2010 and when she

filed the same as one of the material papers in W.P. No.18359 of 2009, the single Judge of this Court observed the same as false declaration obtained from the MRO.

3) It is further averred that the complainant has been working as a railway employee since 1973 and by June, 2007 he was working as Electrician Grade-I at Eluru and he has been victimized by the accused as if she was victim of rape in the hands of complainant and by joining hands with the rivals and opponents of the complainant and in collusion with them for variety of reasons created a false story of rape committed by the complainant as if on her in giving a statement on 17.06.2007 at 9.30 PM to LW.5—Sub-Inspector of Police, II Town Law and Order, Eluru for registering the crime and filing the final report, which is pending as Sessions Case No.469 of 2009 on the file of Principal Assistant Sessions Judge, West Godavari District, Eluru, where he is contesting to resist the false implication. Accused herein used the false certificate as true and genuine certificate to trouble the complainant with Sessions Case by making accusation to add Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 along with Section 379 IPC.

4) The contents in the quash petition of the said crime registered by police pending investigation is that the present private complaint was filed before the learned Magistrate and that was by the learned Magistrate, referred to police for investigation in registering the crime No.174 of 2010 by the Police, Tadepalligudem is nothing but counter blast to the Sessions Case No.469 of 2009 pending against the de facto complainant herein as accused for the offence punishable under Section 376 IPC and unable to get over

from that case and the offence therein, apart from the fact that the de facto complainant herein cannot dispute the caste certificate issued under the provisions of the Act and the Investigating Officer cannot decide the caste of the petitioner/ accused herein from the private complaint of the defacto complainant referred for investigation and thereby, the FIR is liable to be quashed for no accrual of cause of action to sustain the accusation.

5) Learned counsel for the petitioner reiterated the same. Whereas, learned Public Prosecutor representing the State submits that there is nothing to quash the proceedings. The 2nd respondent—defacto complainant even served, covered by acknowledgment, failed to attend, hence taken as heard and perused the material on record.

6) No doubt, this Court as pointed out by the learned Public Prosecutor, from the expression of **Chinni Appa Rao vs State of A.P¹** in dealing with Sections 3 (ix) and (x) of Scheduled Castes and Schedule Tribes (POA) Act, 1989, observed that once the Accused ceased to be a member of Scheduled Caste or Scheduled Tribe by conversion into Christianity, he was not entitled to benefit of Section 3 of Act. As to invoke Section 3 of the Act, the de facto complainant must continue as on the date of the occurrence as member of the Scheduled Caste or Scheduled Tribe and in the absence of such continuation as on the date of occurrence, taking of cognizance for the offence under Section 3 of the Act, by the learned Magistrate by allotting PRC as held unsustainable for that the Court referred the expressions of Madras High Court and of the Apex Court respectively in

¹ 2016 (1) A:D (CrI.) 545

G.Michael vs Mr.S.Venkateswaram² Chatturbhuj Vithaladas Jasani v. Moreshwar Parashram and others³, G.M. Arumugam v. S. Rajgopal⁴, Soosai v. Union of India⁵ and State of Kerala and another v. Chandra Mohanan⁶.

7) From this now coming to the case on hand, as per the defacto complainant's private complaint referred to the police for investigation by the learned Magistrate within his power under Section 156 (3) Cr.P.C, in registering the crime No.174 of 2010 for the offences supra concerned, shows that the accused herein was the defacto complainant in S.C. No.469 of 2001 against the defacto complainant herein as sole accused under Section 376 IPC, in fact as if she wanted to rely on a document mentioning as SC-C and filed Crl.M.P. No.7 of 2010 saying that the provisions of SC/ST would apply and against the order of the learned Assistant Sessions Judge, where the Sessions Case for the offence punishable under Section 376 IPC taken cognizance. From the Crl.M.P. No.7 of 2010, the matter went upto High Court in W.P. No.18359 of 2009 where the single judge of this Court observed by judgment dated 15.09.2009 that it is a false declaration and obtained the caste certificate in using as if genuine to invoke Section 3 (i) (x) of the Act to take a case from the Assistant Sessions Judge to the Special Court under SC/ST POA Act.

8) It is the sum and substance from the complaint of the present crime registered therefrom what the counsel for petitioner contends and referred to the expression in ***Andugula***

² AIR 1952 Mad 474

³ AIR 1954 SC 236

⁴ 1976 AIR 939

⁵ AIR 1986 SC 733

⁶ 2004 (3) SCC 429

Vijayalakshmi vs District Collector, Krishna⁷ in respect of the election dispute before the Election Tribunal under Section 233 of A.P Panchayat Raj Act, 1994 of the election of Sarpanch of the grampanchayat reserved for SC women candidate, wherein held that in an election dispute legality of the caste certificate issued by the competent authority under the provisions of the Act 1993 and 1994 cannot be decided. It is observed that Section 12 of the Act, 1993 provides sanctions including penalties for securing of an appointment to an elective post of any local authority or Co-operative Society on basis of a false Caste Certificate without dealing to such caste and those sanctions include conviction and Sections 13 to 15 provides the penalties for issuance of false Community Certificate, for abatement of offences with punishment and the offences should be tried summarily by Judicial First Class Magistrate.

9) It is observed that any caste certificate issued under the provisions of Section 3 of the Act, there is a remedy of appeal under Section 5 of the Act for the aggrieved by referring to the analysis of the provisions right from Section 2 (i) defines 'Scheduled Castes and Scheduled Tribe' as having the meanings respectively assigned to them in Clause (24) and (25) of Article 366 of Constitution of India and the community certificate to be issued by competent authority under Section 3 & 4 of the Act and if such certificate is invalid, investigation and cancellation of any such false certificate is provided under Section 5 of the Act.

10) That is entirely different to the case on hand. Here the investigation to determine is by enquiring with LWs.1 to 3—the

⁷ 2003 (1) ALT 738

Village Revenue Officer, Mandal Revenue Inspector, and the Tahsildar as to whether issued the said caste certificate or not, and if so, is there any SC-C community as such and once the person, originally SC, if at all taken Baptisam and converted to Christianity and still continuing as SC and if so how so to certify any such benefit of the SC community or as BC.C and whether there is any Baptisam conversion and that was disclosed or not. These aspects when require investigation for cancellation of certificate on the question of obtaining of certificate by non-disclosure of these facts, a decision in Adugule Vijayalakshmi (supra), in regard to election dispute no way apply to the case on hand.

11) Hence, it is premature to say the registration of the crime from the private complaint and conduct of the investigation is unsustainable but for to say there is nothing to interdict the investigation. However, as the petitioner obtained interim stay on 02.12.2010 from the time of filing the quash petition, the police are directed to complete the investigation and file final report within three months and in the meantime not to arrest the petitioner but for if at all required for investigation to call for the purpose of investigation. Further remedies of the accused, left open, after police final report, if at all aggrieved.

12) Accordingly, the Criminal Petition is dismissed.

13) Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.22.09.2017
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