

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.876 of 2016

Arising out of F.I.R No.RC.SI I 2009 S0003 dated 10.06.2009 pending
before the Additional Chief Metropolitan Magistrate, (OD), Court no.117,
District Court, Rohini, Delhi

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Rampati Mahto, son of Late Bhagan Mahto, resident of Village- Geyaspur, PO-
Gyaspur, P.S.- Siswan, District- Siwan and presently posted as Additional Director
of Income Tax under Additional Director General (Exam), Mayur Bhawan, New
Delhi- 110001.

.... Petitioner/s

Versus

1. The Union of India through its Principal Secretary, Department of Home , New Delhi.
2. The Director, Central Bureau of Investigation, CGO Complex, Lodhi Road, New Delhi-110003.
3. The Superintendent of Police, Central Bureau of Investigation, SC-I, C-I, Hutments, Dalhousie Road, New Delhi.
4. The Inspector, Central Bureau of Investigation, SC-I, C-I, Hutments, Dalhousie Road, New Delhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Binod Kumar Kanth, Sr. Adv.
Mr. Akashdeep, Adv. Mr. Shyameshwar Kumar Singh, Adv.
For the Respondent/s : Mr. Sanjay Kumar, SC, CBI
Mr.Bipin Kumar Sinha, SC, CBI

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 09-05-2018

This writ application has been preferred for issuance of a writ of Certiorari to quash and cancel the criminal proceeding against the petitioner arising out of F.I.R No.RC.SI I 2009 S0003 dated 10.06.2009 presently pending before the learned Additional Chief Metropolitan Magistrate (OD), Court No.117, District Court, Rohini, Delhi.

2. The case in question has been instituted on the basis of



a complaint dated 06.06.2009 under the signature of Mr. Govind Awasthi, Sub-Inspector of Police, CBI/SC/New Delhi. After lodging of the First Information Report the case was investigated and a charge-sheet was filed against the petitioner for the offences alleged under Sections 420, 465 and 475 of the Indian Penal Code. Thereafter, cognizance of the offences was taken vide order dated 29.03.2011, further vide order dated 18.07.2012 charges have been framed under Sections 420, 465 and 471 of the Indian Penal Code.

3. The petitioner is facing trial and admittedly out of 31 prosecution witnesses 22 witnesses have already been examined in course of trial. The Court has been informed that now the evidence of the prosecution has been closed. As per the instruction available to learned standing counsel for Central Bureau of Investigation (CBI) the case is now pending for statement of the accused-petitioner under Section 313 of the Cr.P.C.

SUBMISSIONS ON BEHALF OF THE PETITIONER

4. Mr. Binod Kanth, learned senior counsel assisted by Mr. Akashdeep, learned Advocate, has advanced the submissions in support of the case of the petitioner seeking quashing of the criminal proceeding as also the order taking cognizance and the order by which charges have been framed against him. The sheet-anchor of his argument is the judgment of the Hon'ble Apex Court in the case of



Kumari Madhuri Patil & Anr. vs. the Addl. Commissioner, Tribal Development & Ors. reported in (1994) 6 SCC 241. Learned Senior Counsel has taken this Court through the various paragraphs of the judgment of the Hon'ble Apex Court in the case of **Kumari Madhuri Patil** (supra) and has attempted to impress upon the Court that the petitioner who belongs to a Scheduled Tribe Category (ST) constitute a class and in respect of offences as alleged whereunder his caste certificate is being questioned and has been alleged to be forged and fabricated, no prosecution could have been levied against him without following the procedures laid down by the Hon'ble Supreme Court in the case of **Kumari Madhuri Patil** (supra). Learned senior counsel has in order to buttress his argument further referred the judgment of the Hon'ble Apex Court in the case of **Dayaram Vs. Sudhir Batham & Ors.** reported in (2012) 1 SCC 333 whereunder the judgment of Kumari Madhuri Patil's case had fallen for consideration and upon going through the judgment rendered in the case of **Kumari Madhuri Patil** (supra) the Hon'ble Apex Court in the case of **Dayaram** (supra) held that the directions 1 to 15 issued in the case of **Kumari Madhuri Patil** (supra) is in fact in exercise of power under Articles 142 and 32 of the Constitution, those directions were held to be valid and it was held that the directions have been issued to fill-up the vacuum in absence of any legislation to ensure that only the genuine Scheduled



Caste and Scheduled Tribe Candidates secured the benefits of reservation and the bogus candidates were kept out. The contention raised before the Hon'ble Apex Court in the case of **Dayaram** (supra) to the effect that the Court was taking over the function of the legislature by doing so was outrightly rejected.

5. It is submitted that the Hon'ble Apex Court judgment in the case of **Jeewan Kumar Raut & Anr. vs. Central Bureau of Investigation** reported in (2009) 7 SCC 526 would further show that where there is a special legislation, the same will prevail over the general legislation. The learned senior counsel has relied upon Paragraphs 22 to 24 of the said judgment to submit that in the said case the Hon'ble Supreme Court while taking note of the special statute clearly held that where there is a special statute, the procedures laid down thereunder would be required to be followed and the general procedures provided under the Code of Criminal Procedure would not be of any avail.

6. Further learned senior counsel has in order to meet the argument of the other side also referred and relied upon the judgment of the Hon'ble Apex Court in the case of **Navinchandra N. Majithia vs. State of Maharashtra & Ors.** reported in (2000) 7 SCC 640. Reference has been made to paragraphs 18, 22, 37, 38, 39 and 40 of the said judgment. A submission has been made that in the facts of



the present case where the caste certificate has been allegedly forged showing that it has been issued from the District of Siwan and all the witnesses are also from the State of Bihar, this Court would definitely have jurisdiction to deal with the matter in exercise of its power under Article 226 (2) of the Constitution of India. In this connection, learned senior counsel has also taken this Court through column 5 of the First Information Report, as contained in Annexure-1, to show that the First Information Report itself indicates the jurisdiction outside the limit of the police station is in the State of Bihar and, therefore, this Court will have territorial jurisdiction to entertain the present case. He has also relied upon the judgment of the Hon'ble Apex court in the case of **Union of India and Ors. versus Adani Exports Ltd. & Anr.** reported in **(2002)1 SCC 567** on the question of territorial jurisdiction. It is submitted that on the face of the materials available on record, this Court would have jurisdiction to deal with the matter and the same finds support from the aforesaid judgment of the Hon'ble Apex Court.

7. Further the learned senior counsel has referred and relied upon the judgment of the **Hon'ble Gauhati High Court rendered by a learned Single Judge in W.P.(C) No.300 of 2007 (Abhishek Chandra @ Sachin Besarya vs. State of Tripura and ors.)** and with reference to the said judgment particularly paragraph



no. 101, the learned senior counsel submits that there also the question of territorial jurisdiction was raised in similar kind of facts and the learned Single Judge of the Gauhati High Court having discussed the entire case laws on the subject was pleased to reject such contention. It was also held by the learned Single Judge that unless and until the Scrutiny Committee constituted in terms of the directions of the Hon'ble Supreme Court comes to a conclusion that the certificate is fake, no prosecution could have been launched against the accused.

8. While summing up the submissions, learned senior counsel representing the petitioner has developed the following propositions to strengthen his submissions:-

(i) According to learned senior counsel, law declared by the Hon'ble Supreme Court in the case of Kumari Madhuri Patil (supra) and confirmed in Dayaram's case is with respect to special class of citizen, i.e., Scheduled Castes and Scheduled Tribes who fall in Part XVI of the Constitution and since they owe their existence to the Constitution itself any tinkering with the rights given to them by way of caste certificate will tantamount to tinkering with their fundamental rights.

(ii) As a corollary to above learned senior counsel would submit that if any caste certificate has been granted to the



petitioner and the same is to be questioned saying that it is not genuine or it is false, forged or fabricated, the investigation in such matters will not be under the provisions of the general law i.e., Code of Criminal Procedure but under the procedures prescribed by the Hon'ble Apex Court in its two judgments namely Kumari Madhuri Patil (supra) and Dayaram (supra).

9. It is his submission that once the judgment of the Hon'ble Apex Court has been declared as law of land, in absence of any statute to the contrary, the law laid down by the Hon'ble Supreme Court will prevail over the general provisions of law in the nature of the present case.

10. It is his further submission that the procedures prescribed by the Hon'ble Supreme Court in the aforesaid two judgments have been accepted and acted upon by the State of Bihar by constituting a scrutiny committee whereunder Vigilance Cell has been constituted under the department of the Government of Bihar and on receipt of a complaint with regard to the issuance of a caste certificate to a member of Schedule Castes or Scheduled Tribes, the procedures prescribed under the guidelines provided by the Government of Bihar has to be necessarily followed.

11. Referring to the facts of the present case, learned



senior counsel has taken this Court through the contents of the First Information Report which is said to have been lodged after the verification work of the certificate of this petitioner was taken up in compliance of the order dated 17.03.2004 passed by the Hon'ble Delhi High Court in CWP No.5976 of 2003. Learned senior counsel submits that a bare perusal of the judgment of the Delhi High Court would show that the order dated 17.03.2004 was passed by a Division Bench of the Delhi High Court in public interest litigation and it was passed in the light of the statements made in Paragraph No.7 and 8 of the affidavit filed on behalf of the petitioner. It has also been pointed out that the order of the Hon'ble Delhi High Court is not in respect of the present petitioner, but the same relates to a different department of the Government about which complaints were being received that certain employments have been provided on the basis of fake caste certificate.

12. It is the submission of the learned senior counsel that in the garb of the order of the Delhi High Court the verification of the caste certificate of the petitioner and then lodging of the First Information Report on the basis of so-called verification by the Central Bureau of Investigation is not in accordance with the guidelines of the Hon'ble Supreme Court as provided in the case of **Kumari Madhuri Patil** (supra). In fact at one stage the submission of



learned senior counsel is that the Division Bench of the Hon'ble Delhi High Court while passing the order dated 17.03.2004 was not apprised of the judgment of the Hon'ble Apex Court in the case of **Kumari Madhuri Patil** (supra) and, therefore, the order dated 17.03.2004 is to be held *per in curium* because it does not refer or consider the judgment of the Hon'ble Supreme Court on the subject.

13. Pointing out the order dated 20.04.2010 passed by a learned Co-ordinate Bench of this Court in the case of **Akhil Bhartiya Kharia-Nonia Vikas Mahasangh and Ors. vs. The State of Bihar and Ors.** (Annexure-6), learned senior counsel submits that the Mahasangh which is a registered society had earlier moved this Court complaining about the coercive action which were being taken against the members of the society in view of the judgment of the Hon'ble Delhi High Court whereunder and by virtue of which the Delhi Administration had initiated action for verification of the caste certificates and the investigation was entrusted by the High Court of Delhi to the Central Bureau of Investigation.

14. The learned Co-ordinate Bench while taking note of the grievance of the Mahasangh, in its operative part of the order directed that "till it is found that the Scheduled Tribe certificates are forged and the same are not cancelled in due course after enquiry by competent authority, no coercive steps should be taken against the



petitioner or members of the petitioner's association claiming the status of Scheduled Tribe, as such, provided the investigation and/or departmental proceedings would continue in accordance with law."

15. The Court, however, restrained itself from giving any opinion on the merit of the claim of the Mahasangh to recommend "Kharia-Nonia" as a Scheduled Tribe by the State Government. It is submitted at the bar that despite their being an order that no coercive action be taken unless the certificate is found to be forged, the petitioner is being subjected to coercive action and is being compelled to face the trial in the present case. Learned senior counsel submits that in the facts and circumstances of the case considering the law laid down by the Hon'ble Apex Court in the case of **Kumari Madhuri Patil** (supra) the entire prosecution of the petitioner is fit to be quashed.

SUBMISSION OF THE CBI

16. On the other hand, Mr. Sanjay Kumar, learned Standing Counsel representing the Central Bureau of Investigation, has opposed the application submitting that a bare perusal of the First Information Report, as contained in Annexure-1, would show that it refers to an order dated 17.03.2004 passed by the Hon'ble Delhi High Court in CWP No.5976/03 and the verification work which was undertaken in respect of the certificate of the petitioner is nothing but



in furtherance to and in compliance of the order dated 17.03.2004 passed by the Hon'ble Delhi High Court. Learned counsel has also drawn the attention of this Court towards an order dated 14.09.2005 passed by the Hon'ble Division Bench of Delhi High Court which has been brought on record by way of Annexure-A to the counter affidavit. He has read out the order from which it has been shown to this Court that the Hon'ble Division Bench took note of the stand taken on behalf of the Central Bureau of Investigation, the progress made in course of investigation and the fact that 17 more cases were being processed which were being sent to the Court while investigation in other cases were reported to be continuing. Learned counsel submits that if at all the petitioner contends that verification of his caste certificate is beyond the purview of the orders passed by the Hon'ble Delhi High Court and the Central Bureau of Investigation has acceded its jurisdiction or authority which they were called upon to exercise by virtue of the order passed by the Hon'ble Delhi High Court, the petitioner could have approached the Hon'ble Delhi High Court for any clarification in this regard.

17. It is his submission that any attempt made by the petitioner to read down the judgment of the Hon'ble Delhi High Court would amount to seeking review or modification of the order passed by the Hon'ble Delhi High Court, such prayers would not be fit to be



entertained by this Court in exercise of its writ jurisdiction. Learned Standing Counsel has further drawn the attention of this Court towards Annexure-6 which is the order dated 20th April, 2010 passed by a learned Co-ordinate Bench of this Court in CWJC No.12334 of 2009. It is submitted that again from a reading of the order, as contained in Annexure-6, it would appear that the fact that a writ petition was filed in the Hon'ble Delhi High Court with a grievance that Delhi administration had employed large number of people on the basis of Scheduled Caste Certificates without verifying their genuineness was brought to the notice of the Hon'ble Delhi High Court and on such grievance having been raised, the Hon'ble Delhi High Court had entrusted the matter to the Central Bureau of Investigation to investigate, though were brought to the notice of the learned Co-ordinate Bench of this Court, the learned Co-ordinate Bench did not think it just and proper to interfere with the investigations which were going on by virtue of the entrustment of the cases to the Central Bureau of Investigation by the Hon'ble Delhi High Court.

18. Learned counsel submits that the later part of the order (Annexure-6) passed by the learned Co-ordinate Bench clearly points out that the learned Co-ordinate Bench did not stop the investigation and it was made clear that the investigation and/or the



departmental proceeding would continue in accordance with law. In this view of the matter, according to learned Standing Counsel for Central Bureau of Investigation, if the investigation has ultimately culminated in a charge-sheet and the Court dealing with the charge-sheet has found a prima-facie case, passed an order of cognizance and thereafter charges were framed against the petitioner and trial also begun long back, at this stage, after about seven years from the date of lodging of the First Information Report and five years after the order taking cognizance the petitioner cannot be allowed to challenge the same once again before this Court. It is his further submission that surprisingly the petitioner has not chosen to move before the Hon'ble Delhi High Court for the reliefs prayed before this Court even though the petitioner is fully aware of the fact that the criminal proceeding is going on in a court of law within the jurisdiction of the Hon'ble Delhi High Court and the case has itself been registered and investigated by virtue of the order passed by the Hon'ble Delhi High Court.

19. Learned counsel has also argued that this Court would have no territorial jurisdiction to entertain the present writ application, as according to him, in the present case, the cause of action cannot be decided on the basis of the defence plea as to the place of occurrence being State of Bihar. Learned counsel submits that in the present case out of 31 prosecution witnesses 22 were



already examined long back and as per his instruction now the prosecution evidence has already been closed and the case is pending for statement under Section 313 of the Code of Criminal Procedure. It is, thus, his submission that this Court may also look into the materials which have already come on record in course of evidence and one of such materials which has been placed before this Court is the Annexure-B to the counter affidavit which is the deposition of P.W 1 Sri. M.A. Ibrahim who was the District Magistrate of Siwan in the year 1985 and under whose signature the caste certificate of the petitioner is said to have been issued. Sri M.A. Ibrahim while deposing before the learned Trial Court has stated that he had seen the caste certificate in the name of this petitioner and the certificate Ext. PW1/A (D-21) is a fake certificate. He has categorically stated that it does not bear his signature and seal of his office. Learned Standing Counsel submits that once the prosecution case has progressed and is on the verge of disposal, no interference is required to be made at this stage. It is his submission that while exercising its power under Article 226 of the Constitution of India, this Court grants reliefs which are in the nature of discretionary reliefs and in an appropriate case the Court can refuse to exercise its discretion in favour of this petitioner.

20. Responding to the submissions of learned Standing Counsel of the Central Bureau of Investigation, Mr. Binod Kanth,



learned senior counsel has once again submitted that the judgment of the Hon'ble Delhi High Court is in the light of the statements made in Paragraph Nos.7 and 8 of the affidavit of the petitioner of the said case but it is in the teeth of the judgment of the Hon'ble Apex Court in the case of **Kumari Madhuri Patil** (supra). As regards the delay in moving this Court, learned senior counsel has a submission that in the facts of the present case where the entire prosecution of the petitioner is de hors to the guidelines laid down by the Hon'ble Apex Court and the prosecution itself is going on under the provisions of the Cr.P.C which would not be applicable, the plea taken on behalf of the respondents that there has been a delay in moving this Court is not fit to be accepted.

CONSIDERATION

21. Having heard learned senior counsel representing the petitioner and learned Standing Counsel representing the Central Bureau of Investigation, perusal of the pleadings and upon going through the judgments of the Hon'ble Apex Court which have been referred before this Court, I would first take up the submission of the learned senior counsel that no prosecution may be allowed to go against the petitioner because the Hon'ble Supreme Court in the case of **Kumari Madhuri Patil** (supra) has laid down the guidelines to be followed in the matters of issuance and cancellation of the caste



certificate of a member of the Scheduled Castes and Scheduled Tribes. Before going into the directions issued by the Hon'ble Apex Court in the case of **Kumari Madhuri Patil** (supra) it would be just and proper to refer to the facts of the said case in the context of which the Hon'ble Supreme Court rendered its judgment.

22. The facts of the case as revealed from Paragraph Nos. 2, 3, 4 and 5 of the judgment would show that in the said case the two appellants Suchita and Madhuri were claiming their caste certificates as 'Mahadeo Koli' a scheduled tribe. The Sub-Divisional officer, Bombay refused to issue caste certificate and informed Ms Suchita that she was not a Scheduled Tribe 'Mahadeo Koli.' She filed an appeal before the Additional Commissioner, Konkan Division, Bombay. Since she had applied for admission into the MBBS course and the time of her admission was running out, she filed writ petition to direct the Additional Commissioner to dispose of her appeal and to further direct to the dean of D.Y.C. Naik Medical College to permit her to appear for interview and admit her in the college if she was found fit. She filed a copy of the judgment of the Hon'ble Apex Court in the case of Subhash Ganapatrao Kabade V. State of Maharashtra rendered in WP No.438 of 1985 wherein 'Koli' was held to be 'Mahadeo Koli' before the Additional Commissioner and also in the High Court. Because of the directions of the High Court she was



admitted in the MBBS course and was continuing her studies. The Additional Commissioner directed the Tahsildar to issue the certificate in her favour as Scheduled Tribe which was accordingly issued in her favour as Scheduled Tribe. It was duly verified by the Verification Committee for confirmation of her status as Scheduled Tribe. Similarly Madhuri had applied for the issuance of Scheduled Tribe certificate before the Divisional Executive Magistrate, Greater Bombay, enclosing the order passed by the High Court in Writ Petition No.3516 of 1990 in favour of her sister Suchita which was issued on 23.08.1990 declaring her status to be 'Mahadeo Koli' and then she got her admission into BDS in the year 1992. Her certificate was also duly verified. The facts further reveal that 'Mahadeo Koli' was declared to be a Scheduled Tribe by Bombay province as early as 1933 and the President of India declared in 1950 under Article 342, in consultation with the Government of Bombay and as amended from time to time. Father of the two appellants submitted the particulars along with his school and college certificates of the appellants, the certificates of his sister and appellants' maternal aunt and maternal uncle and a statement by the Caste Association in this case. The Committee in their order dated 26.06.1992 considered the entire evidence placed before them, the particulars furnished by their father in the pro forma on their ancestry and other anthropological



particulars and after hearing their counsel, found that the appellants are 'Koli' by caste which is recognized as Other Backward Class and they are not 'Mahadeo Koli,' the Scheduled Tribe and their claim for that social status was accordingly declared untenable. The certificates issued by the respective Executive Magistrates were cancelled and confiscated. Their appeal provided under the Rules too was heard by the Additional Commissioner in Caste Appeal No.11 of 1992 who by an elaborate order dated 30.04.1993 found that the certificates issued in favour of Balakrishna Pandurang Naik, maternal uncle, was from the Magistrate, Greater Bombay, who had no jurisdiction and was issued social status certificate without proper scrutiny. The certificate issued to Jyotsana by the Judicial Magistrate was on the basis of the school leaving certificate, ration card etc. and that, therefore, it did not provide any probative value to their status as Scheduled Tribe. In the aforesaid background of facts when the matter went to the Hon'ble High Court the writ petition filed by the appellants was dismissed up to the Division Bench of the High Court with number of reasons. The appellants moved to the Hon'ble Apex Court and it is in this background of the fact the Hon'ble Apex Court proceeded to consider the entire issue and had found that there is no law governing the matters relating to issuance of social status certificate, with an intention to streamline the procedure for issuance of social status



certificate, their scrutiny and their approval through guidelines were issued under paragraph 13 of the judgment.

23. The argument of learned senior counsel that unless and until the certificate of the petitioner is found to be forged by Caste Scrutiny Committee, no prosecution may be launched against him, in the opinion of this Court, cannot be accepted. The judgment of the Hon'ble Apex Court in the case of **Kumari Madhuri Patil** (supra) has been rendered as noted above in a totally different facts situation. It is well settled that an issue which was not canvassed or addressed before the Court cannot be taken to have been decided by the said Court and for that reason when the judgment of the Hon'ble Apex Court in the case of **Kumari Madhuri Patil** (supra) is gone through, it may be easily found that the Hon'ble Supreme Court was not dealing with the case of the present nature rather in the said case issue which had fallen before the Hon'ble Supreme Court was as to whether the manner in which caste certificate issued to the appellants of the said case were cancelled may be held to be just and proper. This Court would at this stage also remind itself with the judgment of the Hon'ble Apex Court in the case of **Bharat Petroleum Corporation Ltd. and Anr. Vs. N.R. Vairamani & Others** reported in (2004) 8 SCC 579, the Hon'ble Apex Court has cautioned that the judgments/observations of the Court should not be cited like euclid's



theorems as the slightest of change in the facts of the case would make a sea difference in the judgment of the court.

24. The contention of the learned senior counsel that the judgment of the Hon'ble Supreme Court in the case of **Kumari Madhuri Patil** (supra) prescribes a special procedure to be followed in the matter of prosecution of the members of the Scheduled Castes and Scheduled Tribes where their Social Status Certificate is found to be forged or fabricated is also not acceptable to this Court. The judgment of the Hon'ble Apex Court cannot be read in the manner as has been suggested at the bar by the learned senior counsel lest it would create a blanket bar on the prosecution of the wrong doers against whom the preliminary enquiry has revealed that the Social Caste Certificate was forged and fabricated to gain employment. No doubt the Hon'ble Supreme Court has laid down the procedure for the issuance of Social Status Certificates, their scrutiny and their approval but it was neither canvassed nor decided by the Hon'ble Supreme Court in the case of **Kumari Madhuri Patil** (supra) that in a case of present nature where the preliminary enquiry has revealed that the caste certificate produced for the purpose of employment was a forged and fabricated document no prosecution could be launched against the persons like the present petitioner. I am afraid such plea if accepted would amount to giving a premium to the accused over his acts and



omissions which are apparently in the nature of a criminal offence.

25. This court finds that earlier the Mahasangh of the Kharia-Nonia had moved this Court in CWJC No.12334 of 2009 wherein virtually they had complained about the action being taken against the members of the Scheduled Castes and Scheduled Tribes after the orders were passed by the Hon'ble Delhi High Court entrusting the investigations into the genuineness of the caste certificate to the C.B.I, but the learned Co-ordinate Bench of this Court even after noticing the submissions of the Mahasangh did not think it fit and proper to interfere with the investigation and rightly so, in the opinion of this Court because such interference could have been in the nature of reviewing or modifying the order passed by the Hon'ble Delhi High Court. This Court agrees with the submission of the learned standing counsel representing the C.B.I that if it is the case of the petitioner that the orders passed by the Hon'ble Delhi High Court were per in curium being in the teeth of the judgment of the Hon'ble Apex Court in the case **Kumari Madhuri Patil** (supra), the petitioner would have very well approached the Hon'ble Delhi High Court or the Hon'ble Supreme Court for appropriate relief but moving this Court and making a complaint against the order of the Delhi High Court cannot be taken in a good taste.

26. As regards the submission of the learned senior



counsel that the prosecution of the petitioner in the present case would in fact be in the nature of the tinkering with his rights given to him by way of caste certificate seems to be highly misplaced because it is well settled in law that where there are prima facie materials to suggest that an offence has been made out in terms of the provisions of the Indian Penal Code, anybody can set the criminal law in motion. The concept of locus standi is foreign to criminal jurisprudence. The Hon'ble Supreme Court has not said that in the nature of the present case where preliminary investigation revealed commission of a criminal act/offence no F.I.R. may be lodged. In such circumstances, if a public interest litigation was filed in the Delhi High Court and thereupon the Delhi High Court in exercise of its power under Article 226 of the Constitution of India entrusted the investigation with regard to genuineness of the certificate and by virtue of such order in the preliminary investigation prima-facie materials were found to suggest that a criminal offence has been committed, lodging of the F.I.R. was the only way out for the C.B.I and if it has been done, no fault may be found with the same.

27. The submission of learned senior counsel that it would amount to taking away the Fundamental Rights of the petitioner is beyond comprehension because a person cannot complain of taking away or breach of his Fundamental Rights only because he



is facing a prosecution in accordance with law. The accused has definitely a right to complain if he is being prosecuted de-hors to the procedures established on its behalf. The Code of Criminal Procedure duly provides the procedures which are to be followed in the nature of the present case, the Hon'ble Apex Court in the case **Kumari Madhuri Patil** (supra) has not laid down any special procedures to be followed in the prosecution of the members of the Scheduled Castes and Scheduled Tribes after lodging of F.I.R. When confronted the learned senior counsel on behalf of the petitioner has rightly accepted at the bar that according to the Hon'ble Supreme Court judgment once the prosecution is levied, such prosecution will be in accordance with the provisions of the Cr.P.C.

28. On the question of territorial jurisdiction even though learned senior counsel for the petitioner has submitted that this Court has got territorial jurisdiction and on the other hand learned standing counsel representing the C.B.I has opposed his plea in this regard, this Court having gone through the nature of the disputes and the materials which are available on the record particularly the column 5 of the F.I.R showing that the place of occurrence comes within the limit of the police station of Delhi, Bihar and other places, would take a view that this Court will have territorial jurisdiction to entertain the present writ application and decide it on its own merit. This Court has



been doing so after taking this view that the Court in exercise of its power under Article 226 (2) of the Constitution may in appropriate cases entertain the writ application and issue directions even out side the territorial limit of this Court.

29. It is not in dispute that in the present case 22 prosecution witnesses have already been examined and in fact now the case is at the stage of Section 313 of the Cr.P.C. There are enough materials on the record one of which is Annexure 'B' to the counter affidavit which I have referred hereinabove, it would go to show that a prima facie case having been made out against the petitioner the cognizance taken of the offences alleged against him as back as on 29.03.2011 and thereafter the charges having been framed against him almost four years prior to filing of the present writ application, a large number of witnesses have been examined in this case, they were allowed to be cross-examined by this petitioner and material witness such as P.W.1 has deposed in his evidence that the caste certificate in question did not bear his signature.

30. In view of the materials available on the record no fault may be found either with the order taking cognizance or the order framing charge against the petitioner as according to this Court there were not only sufficient materials against the petitioner to proceed against him in terms of Section 204 of the Code of Criminal



Procedure but even later on the learned Trial Court has rightly having found that the materials available on the record are prima-facie showing that the ingredients of the offences alleged are available for trial, proceeded with the framing of charge. This Court would, therefore, decline from interfering with the order taking cognizance as well as the order framing charges against the petitioner.

31. The writ application, being devoid of merit, is hereby dismissed.

32. The interim order passed in this case on 24.10.2016 was operating only till the next date of listing, however, this Court has been informed that because of the interim order, the trial has not progressed in the Court below.

33. With the dismissal of the writ application the interim order stands vacated.

34. The Trial Court will proceed with the trial as expeditiously as possible.

35. Let a copy of this judgment be transmitted to the court concerned through Fax.

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	15.05.2018
Transmission Date	15.05.2018

