

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

CRIMINAL APPLICATION NO. 1225 of 2007

Rajesh S/o Narayan Jakapure,
aged 34 years occupation Councillor
R/o Deoli road, Dharmabad Dist. Nanded.

...APPLICANT

VERSUS

1. The State of Maharashtra
Through: Police Station, Dharmabad Dist. Nanded
2. Sahebrao Sainath Narsimlu Panchal,
age 35 years occupation labour
R/o Devi gully, Dharmabad Dist. Nanded. **...RESPONDENTS**

Mr Ajinkya Kale, Adv. h/f. For Mr S,.B. Talekar, Adv. for applicant.
Mr S.W. Munde, Additional Public Prosecutor for Respt./State
Mr R.P. Mandlik, Adv. h/f for Mr Amol Gandhi, Adv. for Respt. No.2

CORAM : PRASANNA B. VARALE, AND

SMT. VIBHA V. KANKANWADI, JJ.

DATE : 04th January 2018

ORAL JUDGMENT (PER PRASANNA B. VARALE, J.):

Applicant is before this Court challenging order passed by the learned Judicial Magistrate First Class, Dharmabad, dated 3rd February 2007, thereby issuing process against applicant as well as

challenging the first information report in crime No. 7 of 2007 registered at Police Station, Dharmabad.

2. Respondent No.2 approached the learned Magistrate against applicant submitting that the applicant contested election for Nagar Parishad. It is submitted that the applicant though was belonging to “ Lingayat Koshti ”, submitted a Cast Validity Certificate to show that he is “ Koshti ”. Thus, by playing mischief and by fabrication of the documents, namely, by filing an affidavit, the applicant approached the Caste Scrutiny Committee for seeking validation of his caste claim. Learned Counsel for the petitioner made an attempt to submit before us that in view of the provisions of the Maharashtra Act No. XXIII of 2001, and more particularly, Section 11(2) of the Act, respondent No.2 ought to have challenged the Validity Certificate granted in favour of the applicant. He then submitted that the criminal action alleging the false Validity Certificate can be initiated only on receiving a complaint from the Scrutiny Committee. Learned Counsel submitted that learned Magistrate ought not to have entertained the complaint initiated by a private person. Thus, order of issuance of process is unsustainable as well as the lodgment of the report is unsustainable.

3. Learned Counsel Mr Mandlik, appearing with Mr Gandhi for respondent No.2, vehemently opposed the application. Mr Mandlik submitted that the Caste Validity Certificate granted to the petitioner was subject matter of Writ Petition No. 367 of 2007. Mr Mandlik then submitted that the report lodged against the applicant for submission of a false affidavit. He submitted that the applicant though was a literate person, only to obtain benefits of Caste Certificate, approached to the Scrutiny Committee by filing an affidavit submitting that the applicant is an illiterate person. Thus, the report was for commission of the offences under section 120-B, 465, 468, 471, 195, 417, 427, 419, 420, 34 of the Indian Penal Code and also for committing breach of provisions of the Representation of People Act. Learned counsel Mr Mandlik invited our attention to the copy of the order dated 23rd September 2008 passed by the Division Bench of this Court in Writ Petition No. 367 of 2007. The same is taken on record and marked "X" for identification.

4. Perusal of the order of the Division Bench shows that the Validity Certificate dated 14th October 2006, which is placed on record in this application at "Annexure B" itself was a subject matter in Writ Petition No. 367 of 2007. The Division Bench of this Court for the

reasons in the order dated 23rd September 2008, was pleased to quash and set aside the Validity Certificate dated 14th October 2006. The applicant was permitted to appear before the Caste Scrutiny Committee and the Caste Scrutiny Committee is directed to decide the caste claim of the applicant afresh, within stipulated period. The caste claim of the applicant is now pending before the Caste Scrutiny Committee. The fact remains that the Validity Certificate dated 14th October 2006 issued in favour of the applicant itself is now quashed and set aside.

5. In view of this fact, the challenge raised in the application clearly fails. The application, thus, is dismissed. Rule stands discharged.

(SMT. VIBHA KANKANWADI)
JUDGE.

(PRASANNA B. VARALE)
JUDGE.

Madkar