

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2037 OF 2016

Dattaray Harishchandra Patil	.. Petitioner
Versus	
The State of Maharashtra & Anr	.. Respondents

...

Ms.Tripti R. Shetty for the petitioner.
Mr. Datta Mane for respondent no.2.
Mr.F.R. Shaikh, APP for the State.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 17th SEPTEMBER 2018

JUDGMENT:- (Per SMT.BHARATI H. DANGRE, J)

1 Rule. Rule returnable forthwith. Heard by consent
of the parties.

The present writ petition is filed by the petitioner, claiming to be belonging to Vimukta Jati for quashing the proceedings in C.R.No.117 of 2016 pending for investigation before the Azad Maidan Police Station. On such a petition filed by the petitioner, this Court by an interim order dated 30th

November 2016, was pleased to issue directions to the respondent not to file a charge-sheet.

2 The present petition instituted by the petitioner proceeds to narrate the chronology of events to demonstrate the attempt to harass him on the specious ground that the caste certificate produced by him claiming to be belonging to *Vimukta Jati* is a fraudulent one, inspite of the fact that the said certificate has been held to be valid by the Hon'ble High Court as well as the Hon'ble Apex Court and the petitioner has placed on record the judicial pronouncements in his favour to that effect.

3 The petitioner was appointed as a Junior Audit and Accounts Assistant in the Chief Accountant Department of Municipal Corporation of Greater Mumbai with effect from 3rd August 1982. The said appointment was effected upon a seat reserved for *Vimukt Jati (V.J.)* category and the petitioner occupied the said seat since he claimed to be belonging to Hindu Banjara which was recognized as *Vimukt Jati*. The

petitioner had produced the caste certificate issued by the Addl. Chief Metropolitan Magistrate Court at Borivali, who was then the competent authority, dated 6th March 1981, at the time of his initial appointment. A request was made by the Chief Accountant of the Municipal Corporation of Greater Mumbai on 23rd November 1986 to the Addl. Chief Metropolitan Magistrate, 24th Court at Borivali to cancel the said certificate. However, the Magistrate informed the office of the Chief Accountant to challenge the said order before the Appellate Authority as the issuance of the caste certificate was a judicial order. However, the office of the Chief Accountant did not prefer any Appeal, but it issued a memo to the petitioner on 2nd December 1986, alleging that the petitioner had produced a false caste certificate as '*Banjara Vimukt Jati*' when he factually belonged to *Wanzari*, which is a backward class. He was directed to produce original fresh caste certificate from the Tahsildar of his native place, failing which he was threatened with an action of termination of his services as well as initiation of criminal proceedings.

4 Being aggrieved by the issuance of the said memo, the petitioner invoked the jurisdiction of this Court by filing Writ Petition No. 134 of 1987, in which he sought a writ in the nature of Mandamus against the Municipal Corporation of Greater Mumbai for quashing of the said memo and also sought consequential reliefs. The said Writ Petition which was numbered as Writ Petition No.134 of 1987 was decided by this Court on 25th July 1991. The Division Bench of this Court recorded a finding that the petitioner's claim of belonging to Banjara community have been duly and properly verified by concerned authorities and consequently, the impugned order was found to be unjustified. Against the said order of the Division Bench, the State of Maharashtra had approached the Hon'ble Apex Court and the Hon'ble Apex court by an order dated 9th March 1992 was pleased to dismiss the Special Leave Petition, thereby confirming the order passed by the Division Bench of this Court.

In the mean time, the petitioner was promoted to the post of Divisional Security Officer with effect from 1st February 2001 and he claimed the said seat from reserved

category. One Mr.Chandrakiran Baburao Sakpal also came to be promoted to the post of Divisional Security Officer on seniority basis. In the year 2009 and to be precise on 1st April 2009, the petitioner was again promoted to the post of Dy. Chief Officer being the senior most candidate from reserved category. Shri Chandrakiran Sakpal came to be promoted to the post of 24th February 2010.

5 The petition then proceeds to state that attempts were made by one Mr.Ashish Yellapa Kunchikurve requesting the office of the Chief Security Officer to seek validity certificate from the petitioner in respect of the caste certificate produced by him. In order to resolve the said conundrum the opinion was sought from the legal department of Municipal Corporation of Greater Mumbai and it was opined that since the appointment of the petitioner was on the basis of certificate and it was held to be valid by the High Court, there was no reason for insisting it for verification. The petitioner has placed on record the legal opinion of the legal department of Corporation as well as the opinion of the learned senior counsel who had

opined that since the Special Leave Petition filed by the State against the order of the High Court was dismissed and his caste certificate was held to be valid, the validity certificate could not be again sought. However, the petitioner continued to be indicted by individuals and the authorities, and Shri Chandrakiran Baburao Sakpal filed complaint against the petitioner at Worli Police Station which came to be dismissed on account of the fact that there was a rivalry between Shri Sakpal and the petitioner on account of the designation and promotion. Shri Chandkiran Baburao Sakpal approached this Court by filing Writ Petition No.1343 of 2015 and in the said petition, he sought an inquiry against the present petitioner and also sought to verify the caste certificate submitted by him while seeking employment in question. The Division Bench of this Court by an order dated 28th August 2015 took note of the earlier Division Bench order passed in favour of the petitioner as well as the fact of dismissal of the Special Leave Petition by the Hon'ble Apex Court and made the following observations :-

5 *“Therefore, we see no case is made out by the Petitioner for the reliefs so prayed, including to re-open the caste issue of Respondent no.3. There is no justification and/or case is made out to exercise writ jurisdiction under Article 226 of the Constitution of India, in view of above admitted position.*

6 *The submission revolving around the documents which are part of this Writ Petition, which were also part of earlier orders passed by the Court. There is no change of circumstances revolving around the same caste certificates, no case is made out to direct Respondent no.2 – BMC to pass order on the representations/complaints so filed by the Petitioner as prayed.*

However, the High Court in paragraph no.7 also observed as follows :

“7 *However, we are inclined to observe that, if it is a case of fraud and/or misrepresentation of any sort, the Petitioner is at liberty to invoke appropriate remedy, in accordance with law”.*

6 Relying upon the said order passed by this Court Shri Sakpal preferred a complaint on 17th June 2014 before the Metropolitan Magistrate, 62nd Court at Dadar against the petitioner and his other colleagues under Sections 166, 167,

177, 182, 211, 201, 294, 465, 467, 468, 471, 477A, 120B r/w Section 34 and 114 read with Section 3(1)(viii)(ix)(x) and Section 4 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 and Section 7 (c) and (d) of Prevention of Civil Rights Act, 1985.

The learned Magistrate, by an order dated 19th January 2016, was pleased to record that the complainant had failed to tender any evidence in respect of the other allegations, but the Magistrate issued process against the present petitioner only for offence punishable under Section 3(1)(x) and Section 4 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 294 and 506 of the IPC.

7 On 8th March 2016, another complaint was lodged by Shri Chandrakiran Sakpal against the present petitioner, alleging that he had produced a fraudulent caste certificate at the time of his initial recruitment. It was alleged that the petitioner had obtained a certificate on 10th October 1981 from Palm Kumbhorli Division, High School, Palghar and though the original entry of the caste in the said document was *Hindu*

Vanjari, he fabricated it to *Hindu Banjara* and obtained a caste certificate and secured an entry into the service on the basis of such a fraudulent claim and he did not stop at that, but also secured promotions on the basis of the said certificate.

The petitioner has approached this Court for quashing of the C.R.No.117 of 2016 which was registered at Azad Maidan Police Station on 8th March 2016 for the offence punishable under Section 465, 467, 468, 471, 420 of the IPC.

8 We have heard learned counsel for the petitioner Ms.Tripti Shetty and Shri Datta Mane appearing for respondent no.2 i.e. the complainant Shri Chandrakiran Sakpal. We have perused the petition along with its annexures and also affidavit in reply tendered by the respondent no.2.

According to the learned counsel for the petitioner, the controversy about his caste certificate dated 6th March 1981 has been put to rest in view of the pronouncements of this Court in Writ Petition No.134 of 1986, which according to the learned counsel for the petitioner, has been upheld by the Hon'ble Apex Court. She would submit that at the time when

the caste certificate was issued, there was no process for verification and when this Court had recorded a clear finding that the claim of the petitioner as belonging to *Banjara* community has been duly and properly verified by the concerned authorities, it is not open for the police authorities to register an FIR based on the same set of allegations levelled by the complainant. Per contra, the learned counsel for the respondent no.2 Shri Datta Mane would vehemently oppose the petition and he would invite our attention to the school leaving certificates which he had annexed along with the reply where the caste of the petitioner is recorded as '*Hindu Vanjari*'. His specific submission is that this Caste falls within the category of 'Other Backward Classes' and the petitioner has intentionally forged the school records and fabricated the entries of caste to 'Banjara' to seek the benefit of Vimukta Jati (V.J). He would also place reliance on the report submitted by the Senior Inspector of Police while opposing the application for Anticipatory Bail and would submit that on the basis of a fraudulent document he had obtained a caste certificate and has misled the appointing agency i.e. the Corporation as well as

this Court and the learned counsel would thus submit that the fraud is being perpetuated by the present petitioner for securing benefits of promotion on the seats meant for the reserved category candidate. He would also submit that this Court while disposing of Writ Petition No.1343 of 2015 on 28th August 2015, has granted him liberty to approach the competent authority on a fraud/misrepresentation being noticed and the learned counsel would submit that this has prompted him to approach the police authority alleging a case of fraud against the petitioner.

9 We have carefully perused the record and heard the learned counsel for the parties. The petitioner had secured an entry in the office of the Municipal Corporation in the year 1982 as Junior Audit and Accounts Assistant. His appointment is made on reserved seat and since petitioner belonged to Hindu Banjara community which is recognized Vimukt Jati (V.S), he was allowed to fill up the said seat. The petitioner produced a caste certificate issued by the Addl. Chief Metropolitan Magistrate at Borivali dated 6th March 1981

declaring him to be belonging to Vimukt Jati. It is not in dispute that the Addl. Chief Metropolitan Magistrate was the competent authority to issue the caste certificate and there was no process of verification of the said caste certificate for securing appointment/availing education and benefits could be secured on the basis of the very caste certificate. The petitioner who was sought to be removed from service on the ground of producing a false certificate, had approached this Court by filing Writ Petition No.134 of 1987 and this Court made the following observation.

“We do not see any justification nor is there any valid defence that has been demonstrated for the passing of the impugned order. On the basis of the material that is on record we are satisfied that the petitioner’s claim that he belongs to the Banjara community had been duly and properly verified by the concerned authorities and consequently the reversion order passed against him was, in the circumstances of the case, unjustified. In this view of the matter, the petition deserves to be allowed”.

This Court, therefore recorded a clear finding that the claim of the petitioner as belonging to Banjara community

has been properly verified by the concerned authorities. This Court, therefore, put a seal on the caste certificate and when it observed that it was properly scrutinized, it also took into account the other documents on the basis of which the caste certificate was issued which included the documentary evidence in form of the school leaving certificate on the basis of which Addl. Chief Metropolitan Magistrate had issued the caste certificate long back in the year 1981. This order was upheld by the Hon'ble Apex Court when the Special Leave Petition filed by the State of Maharashtra came to be dismissed on 9th March 1992. From the perusal of the judgment of the Hon'ble High Court in Writ Petition No.134 of 1987 along with Writ Petition No.3357 of 1986 and the order of the Hon'ble Apex Court dismissing the Appeals filed by the State, it is clear that the relief claimed by the petitioner in prayer clauses (a) and (b) of the petition came to be granted. By virtue of prayer clause (b), the petitioner has sought the following relief :-

(b) That this Hon'ble Court may be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order and/or direction under Article 226 of the Constitution of India, and direct the

respondent nos.1 and 2 to forthwith revoke, cancel and remand the impugned order dated 2.12.1986 Exhibit "H" to the petition and permit the petitioner to avail of the permissible opportunities and further continue him in service as before and declare that the caste certificate issued to him is valid and subsisting.

10 When the declaration is issued in favour of the petitioner by this Court and he has been permitted to avail the permissible benefits as belonging to *Banjara* community and a declaration is given that the caste certificate issued to him is valid and subsisting, there is no question of any other authority interfering with the said declaration or making an attempt to tinkle with such a declaration issued by this Court in exercise of its writ jurisdiction. In a writ petition which was filed by respondent no.3 before this Court with an allegation that the municipal authorities are not entertaining the claim of the respondent to verify the caste certificate submitted by the present petitioner at the time of his employment, the Division Bench of this Court in its order dated 28th August 2015, clearly referred to the earlier orders passed by this Court and recorded a finding that it is not permissible to re-open the caste issue of

the present petitioner and it further observed that the submission revolving around the documents which are part of the petition were also part of earlier orders passed by the Court and there is no change of circumstances revolving around the same certificate and therefore, this Court refused to entertain the petition filed by the respondent no.3.

11 In the backdrop of the dismissal of the said writ petition, the respondent no.3 had again approached the police authorities by filing a complaint reiterating his earlier stand in respect of the documents which form the basis of issuance of the caste certificate by the Metropolitan Magistrate in favour of petitioners. The complaint filed by the respondent no.3 with the Azad Maidan police station on the basis of which the police authorities have registered an offence against the petitioner, proceeds on a footing that the petitioner has fabricated the documents and this referred to a document dated 10th October 1981 and the respondent no.3 obtained the said document under the Right to Information Act and submitted that the caste in the said document was recorded as Hindu Vanjara, whereas

the document which he had produced while obtaining the caste certificate, the same document recorded the caste as “Hindu Banjara”. With this allegation, he approached the police authorities and offence came to be registered.

12 In the light of the findings recorded by this Court in the first order passed by the Division Bench on 25th July 1991 as well as the order passed by this Court on 28th August 2015 on a petition filed by the respondent no.3 refusing to entertain his grievance in light of the earlier order passed by this Court and in light of the dismissal of the Special Leave Petition when the Court refused to re-open the issue of caste, we are of the clear opinion that it is not permissible for any authority and in any case, surely not for the police authorities to re-open the issue or sit in Appeal over the veracity of the findings recorded by this Court. It is not at all within the purview of the police authorities to re-open the issue of the caste of the petitioner which has been put to rest by the two judgments of this Court as well as by the Hon'ble Apex Court when it dismissed the SLP filed by the State. This Court while dismissing the petition filed

by the respondent no.3 on 28th August 2015 had clearly observed that the submission revolving around the documents which are part of the petition and which was also part of the earlier order passed by the Court and since there is no change in circumstance revolving around the same caste certificate, the direction cannot be issued to the Corporation to take cognizance of the complaint made by the petitioner/complainant. When it was not open at that time to again look into the issue, we are of the definite conclusion that this could not have been and cannot be done by the police authorities under the guise of registration of an FIR, thereby initiating an inquiry into the very same caste certificate declaring him to belonging to Banjara caste recognized as Vimukta Jati, produced by the petitioner at the time of securing an entry into the service of Corporation on which curtains have been drawn by this Court not once, but on two occasions.

13 We are therefore, of a clear opinion that the police authorities have exceeded in its jurisdiction in re-opening the issue of the caste certificate of the petitioner and in registering

an offence against him under the provisions of Section 465, 467, 468, 471 and 420 of the IPC on a complaint of the respondent no.3. The act of the respondent no.3 in approaching the police authorities and asking the authorities to interfere in the findings recorded by this Court which is confirmed by the Apex Court, is nothing but an abuse of process of law and in such circumstances, this Court is not powerless to interfere in exercise of its inherent powers and exercise the same to prevent the abuse of process of Court.

14 For the aforesaid reasons, we hold that the action of the respondents in registering an FIR against the petitioner is beyond the scope and power of the respondent no.1 and in order to secure the ends of justice, it would be appropriate to quash and set aside the proceedings in C.R.No.117 of 2016.

Writ Petition is allowed.

Rule is made absolute in the aforesaid terms.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)

Manali
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Tilak

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