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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2018

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.16336 of 2014
and
M.P.(MD)No.1 of 2014

A.Laser ... Petitioner / Accused

Vs.

M.Ganapathy ...Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.201 of 2012 on the file of the learned Judicial Magistrate, Periyakulam and quash the same.

For Petitioner : Mr.L.Shaji Chellan

For Respondent : No appearance

* * *

O R D E R

This quash petition has been filed under Section 482 Cr.P.C to quash the private complaint in C.C.No.201 of 2012 on the file of the Judicial Magistrate, Periyakulam and have taken cognizance as against the petitioner for the offences punishable under Sections 465, 420 and 468 I.P.C.

2.The case of the respondent/complainant is that the petitioner filed his nomination to contest in the election of member of Legislative Assembly for Periyakulam Reserved Constituency in his CPI(M) party and for that he fabricated the community certificate as if he belongs to SC Hindu Saambaan Community and contested in the reserved constituency, it means for scheduled caste and scheduled tribes member. Further, alleged that the petitioner's community mentioned in his School as Kudumban religion by Christian. Therefore, he suppressed all those facts and created a fabricated and forged false caste certificate as if he belongs to SC Hindu Saambaan Community and contested in the election. It attracts the offences under Sections 465, 420 and 468 I.P.C. With these allegations, the respondent lodged a complaint before the Inspector of Police, Thenkarai Police Station, Theni District and the same was registered in Crime No.161 of 2011. After thorough investigation, the respondent police referred the case as mistake of fact on 05.07.2012.

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Thereafter, the respondent filed a private complaint and the said complaint is under challenge.

3.The learned counsel appearing for the petitioner would submit that the petitioner is a full time party worker of Communist Party and he studied upto XI standard. His entire family were provided job, food and shelter by gratitude of the Englishman during their extreme poverty and as such due to their remembrance, the petitioner was as Laser. They belong to Hindu Religion and he was brought up under tradition of Hindu and caste cultures. Therefore, he was rightly issued community certificate as he belongs to SC Hindu Saambaan Community and he contested in the Periyakulam Reserved Constituency in his CPI(M) Party in the Legislative Assembly Election.

4.He further submitted that for the same constituency under the reserved category, the respondent also filed a nomination. The respondent initially filed an objection and challenging the petitioner's community. Thereafter, the Election Returning Officer conducted an elaborate enquiry with all concerned and passed a written order stating that the petitioner belongs to SC Hindu Saambaan Community and his nomination was accepted. Thereafter, he also won the election and served as member of the Legislative Assembly for the Periyakulam Reserved Constituency. Thereafter, even after the order passed by the Election Returning Officer, the respondent lodged a complaint before the Inspector of Police, Thenkarai Police Station, Theni District and the same was registered in crime No.161 of 2011 for the offences under Section 465, 420 and 468 I.P.C. After thorough investigation, the Inspector of Police also closed the case as Mistake of Fact on 05.07.2012. Even then, without satisfying the same, the respondent again filed the present complaint that too without any evidence to rope the petitioner into the allegation. Therefore, he sought for quashing the Criminal Proceedings in C.C.No.201 of 2012 on the file of the Judicial Magistrate, Periyakulam.

5.Per contra, the learned counsel for the respondent in his complaint stating that the petitioner never belongs to SC Hindu Saambaan Community and his nomination ought not to have been accepted by the Election Returning Officer. The Inspector of Polcie, Thenkarai Police Station, Theni District has not conducted any proper enquiry and closed the complaint as mistake of fact. Therefore, he has no other option, except to approach the learned Judicial Magistrate by way of this private complaint. The learned Magistrate concerned has rightly taken cognizance for the offences under Sections 465, 420 and 468 I.P.C as against the petitioner and as such he prays for dismissal of the quash petition.

6.Heard the learned counsel appearing for the petitioner.

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7.Based on the oral and documentary evidence, it is seen that the petitioner herein contested in the member of the legislative assembly election for Periyakulam reserved Constituency on his CPI (M) party. The respondent also filed his objection with regard to community of the petitioner. After receipt of objection, the Election Returning Officer conducted a detailed enquiry and passed detailed order dated 29.03.2011 and concluded that the community certificate issued to the petitioner by the Tahsildar, Madurai North Taluk, Madurai is a true and genuine one Further, he concluded that the caste certificate issued by the empowered public authority under seal continues to be a valid document till it is cancelled by the said authority or by his superior authority. The Election Returning Officer also satisfied with the *bonafide* of the community certificate issued by the competent authority to the petitioner herein that he belongs to Hindu Saambaan, Scheduled Caste Community.

8.After the receipt of the complaint from the respondent, the Inspector of Police, Thenkarai Police Station, Theni District also conducted a detailed enquiry in respect of the community of the petitioner and submitted a detailed final report stating that after the receipt of the report from the concerned Tahsildar, it revealed that the petitioner is belonging to the SC Hindu Saambaan Community as per certificate issued by the concerned Tahsildar in C.No.5952194 is true and genuine one. Further, he also conducted a detailed enquiry with the Church situated in Income Tax Colony, therein Father Anthoniarrajan has categorically stated that the petitioner is not a member of their church and he has no way connected with the Christian Community. Therefore, the said report also in favour of the petitioner.

9.The learned counsel appearing for the petitioner has also replied upon the Division Bench of this Court in the case reported in 1984 WLR 535 has categorically held that ***" ... A caste/ community certificate issued by an empowered public authority under seal continues to be a valid document till it is cancelled by the said authority or by his superior authority. The contents are to be treated as correct and every public authority are bound to act upon them, so long as they are cancelled ...." (Sakthi Devi S.P .Vs. The Collector of Salem) .***

10.The above Judgment is squarely applicable to the case on hand. When the community certificate issued by the empowered public authority under seal continues to be a valid document, till it is cancelled by the said authority or by his superior authority. In the present case, the community certificate issued by the concerned Tahsildar in favour of the petitioner is still in force and it is not at all challenged before any other superior authority by the respondent and also it is not cancelled by any other authority. Therefore, the allegations alleged in the

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complaint is nothing but sheer abuse of process of law. Therefore, this Court is of the view that the complaint filed by the respondent is liable to be quashed.

11.Accordingly, this criminal original petition is allowed and the case in C.C.No.201 of 2012 on the file of the Judicial Magistrate, Periyakulam is quashed as against the petitioner. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (ADI)

// True Copy //

Sub Assistant Registrar(CS-IV)

To
The Judicial Magistrate,
Periyakulam

+1 CC To MR.L.SHAJI CHELLAN, Advocate SR. NO. 87324

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