

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.104 OF 2017

Ms. Safa Khwaja Shaikh	]
Aged 21 years, Occup : Student	]
R/o. 126/1, Bhushan Nagar,	]..... Petitioner.
Wangni Road, Solapur	] (Orig. Accused)

versus

The State of Maharashtra	]
Through Public Prosecutor,	]
High Court, Appellate Side,	]..... Respondent.
Mumbai	](Orig.Complainant)

Mr. J G Reddy (Aradwad) for the Petitioner.
Mr. Vinod Chate, APP, for the Respondent/State.

CORAM : S. S. SHINDE J.
Reserved on : 29th July 2019
Pronounced on : 05th August 2019

JUDGMENT

1 Rule. With the consent of the learned counsel for the parties, Rule is made returnable forthwith and heard.

2 By this Writ Petition the Petitioner challenges the judgment and order dated 05/11/2016 passed by the learned Sessions Judge, Solapur by which order Criminal Revision Application No.73 of 2016 filed by the Petitioner came to be dismissed. By the impugned order, the learned Sessions Judge confirmed the order dated 09/03/2016 passed by the learned Chief

Judicial Magistrate, Solapur, below Exhibit 12 in RCC No.22 of 2014 rejecting the discharge application of the Petitioner.

3 The facts giving rise to filing of the present Writ Petition, in brief, can be stated thus:-

The Petitioner took admission for Diploma in Information Technology in A G Patil Polytechnic Institute at Solapur under reserved category of OBC. The Petitioner claims to belonging to Julaha Caste which is recognized as OBC in the State of Maharashtra. The caste certificate of the Petitioner referred to the Caste Certificate Scrutiny Committee for verification. It is the case of the Petitioner that the Vigilance Cell came to a conclusion that the Petitioner belongs to Julaha caste. However, the Caste Certificate Scrutiny Committee invalidated the caste claim of the Petitioner on the ground that the documents in respect of grand father of the Petitioner are bogus and fabricated documents. The Caste Certificate Scrutiny Committee directed the Police Inspector attached to the Vigilance Cell to lodge FIR under Section 11(1)(a) & (b) of the Maharashtra Schedule Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and Verification of) Caste Certificate Act, 2000 (For short "the Caste Certificate Act, 2000) and accordingly FIR under Section 11(1)(a) & (b) of the said Caste Certificate Act, 2000 a/w Sections 420, 468 and 471 of the Indian Penal case was lodged

against the Petitioner with the Sadar Bazar Police Station, Solapur. The Sadar Bazar Police Station, Solapur after investigation in the matter filed a Chargesheet. Statements of the witnesses were recorded. The Petitioner herein who is the original accused has filed an application under Section 239 of the Criminal procedure Code before the learned Chief Judicial Magistrate, Solapur for discharge. It is the case of the Petitioner that the charge against her is groundless. She has not committed offence of forgery and she is not known about the authors of the alleged forged document. There is no sufficient evidence against her for framing charge. It is her case that she has been falsely implicated in this case.

4 The learned Chief Judicial Magistrate, Solapur came to a conclusion that the genuineness of the alleged forged document needs to be determined. It was also held that there is sufficient material to sustain the charge against the accused. The learned Chief Judicial Magistrate, after considering the material on record rejected the discharge application filed by the Petitioner.

5 Aggrieved by the order passed by the learned Chief Metropolitan Magistrate, the Petitioner preferred Revision Application No.73 of 2016 before the Sessions Court, Solapur. On perusal of the material placed on record, the learned Additional Sessions Judge, Solapur came to a conclusion that it is

necessary to ascertain whether the documents submitted by the Petitioner herein before the Caste Scrutiny Committee are genuine or whether she has committed any offence as alleged in the complaint and for that purpose it is necessary that the Petitioner/Applicant shall receive a fair trial. The learned Additional Sessions Judge therefore confirmed the order passed by the learned Chief Judicial Magistrate and dismissed the said Revision Application by order dated 05/11/2016. It is the said order dated 05/11/2016 passed by the learned Additional Sessions Judge, Solapur, which is taken exception to by way of the above Writ Petition.

6 The learned counsel appearing for the Petitioner submits that no prima facie case is made out against the Petitioner for the said alleged offences under Sections 420, 468, 471 of the Indian Penal Code. He also submits that considering the statements of witnesses as well as the documents filed along with the charge sheet, the offences alleged under Sections 420, 468, 471 of the Indian Penal Code and under Sections 11(1)(a)(b) of the said Caste Certificate Act, 2000 are not at all made out against the Petitioner. It is submitted that the alleged forged and bogus documents are not prepared or signed by the Petitioner, and therefore, the Petitioner has not committed any offence of forgery, inasmuch as the Petitioner is not aware of the author of the said alleged forged documents. It is submitted that the statements recorded by the Investigating Officer during investigation clearly show that the documents are

not forged documents but the genuine documents as per the record. The learned counsel for the Petitioner further submitted that even the Caste Scrutiny Committee by its order dated 11/07/2013 specifically directs the Police Inspector attached to the Vigilance Cell to lodge a complaint under Section 11(1)(a)&(b) of the Caste Certificate Act 2000, but the concerned police inspector by exceeding his jurisdiction and powers lodged the FIR for the alleged offences under Sections 420, 468, 471 of the Indian Penal Code and under Sections 11(1)(a)(b) of the said Caste Certificate Act, 2000. It is submitted that both the Courts below have failed to take into consideration the provisions of Section 11(2) of the said Act. He further submitted that Section 11(2) does not contemplate filing of case by the police officer in accordance with the Chapter XII of Criminal Procedure Code but contemplates filing of complaint in accordance with Chapter XV of Criminal Procedure Code. In support of his aforesaid contention, the learned counsel for the Petitioner relied upon the judgment of the Division Bench of the Bombay High Court, Bench at Nagpur in the case of *Vilas Rambhau Majrikar v/s. State of Maharashtra (Criminal Application No.1173 of 2010)* decided on 22/06/2015. It is submitted that the Petitioner has challenged the said order dated 11/07/2013 passed by the Committee before this Court by filing Writ Petition No.8318 of 2016. He lastly submitted that there is no prima facie material on record which would show that the Petitioner has committed the alleged offences and therefore the orders passed by both the Courts below are

perverse, contrary to well settled principles of law and contrary to the documentary evidence produced. He submitted that though the ratio laid down in the said judgment in *Vilas Rambhau Majrekar* (supra) would squarely apply to the facts of the present case, trial court has erroneously refused to apply the same. He therefore submits that the Petition deserves consideration. It is further submitted that the Petitioner is entitled to get protection in securing the admission as well as in service looking to the view taken by the Full Bench Judgment of the this Court in *Arun S/o Vishwanath Sonone v/s. State of Maharashtra and ors.* reported in *2015(1) Mh. L.J. 457.*

7 On the other hand, the learned APP submitted that prima facie there is sufficient evidence which would indicate involvement of the Petitioner in the alleged offences. He submits that the orders passed by both the Courts below are well reasoned order and, do not require interference at the hands of this Court in its writ jurisdiction. He therefore submits that the Petition deserves no consideration.

8 I have heard the learned counsel for the parties. Perused the pleadings and grounds taken in the Petition, the annexures thereto, and the reasons assigned in the impugned orders.

9 The Caste Certificate Scrutiny Committee in its order dated

11/07/2013 has directed the Police Inspector, Vigilance Cell to lodge FIR against the Petitioner in the Police and accordingly submit a report. The Committee in its order dated 11/07/2013 has made a reference to Section 11(1)(a) (b) and Section 10(1)(3) of the said Caste Certificate Act, 2000.

10 A similar question, which was raised before the Division Bench of the Bombay High Court, Bench at Nagpur in the case of **Vilas Rambhau Majrikar** (supra), has been raised before this Court for consideration, which is as under :-

- (1) In the wake of Section 11(2) read with Section 12 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and verification of) Caste Certificate Act, 2000, whether the Police Station Officer acting under Section 154 of the Code of Criminal Procedure can register an offence under Section 12 of the Act when Section 11(2) contemplates filing of a private complaint by Scrutiny Committee or its authorized officer?

11 In the context of the submission of the learned counsel for the Petitioner that the both the Courts failed to consider the provisions of Section 11(2) of the said Act, and that Section 11(2) does not contemplate filing of the case by the police officer in accordance with the Chapter XII of Criminal Procedure Code but contemplates filing of complaint in accordance with Chapter XV of Criminal Procedure Code, it would be apposite to deal with the said provisions of the Sections 11 and 12, which are reproduced herein under

for the purpose of ready reference :-

11. Offences and penalties. -

(1) Whoever,-

- (a) obtains a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means; or
- (b) not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes or Special Backward Category secures any benefits or appointments exclusively reserved for such Castes, Tribes, or Classes in the Government, local authority or any other company or corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or co-operative society against the office, reserved for such Castes, Tribes or Classes by producing a false Caste Certificate; shall, on conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees, but which may extend upto twenty thousand rupees or both.

(2) No court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorised by the Scrutiny Committee for this purpose.

12. Offences under Act to be cognisable and non-bailable. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 -

- (a) offences punishable under section 11 shall be cognizable and non-bailable;

(b) every offence punishable under this Act, shall be tried by any Magistrate of First Class in a summary way and provisions of sections 262 except subsection (2) to 265 both inclusive of this Code, shall as far as possible may be applied to such trial.

12 From reading of Section 11(1)(a), it is clear that obtaining a false caste certificate by furnishing false information or filing false statement or documents or by any other fraudulent means, is an offence. Section 11(1)(b) provides punishment of not less than six months which may extend up to two years with fine, if a false certificate for obtaining benefits by a person not belonging to the reserved category. Subsection (2) of Section 11 provides taking cognizance of an offence by Court and procedure for filing of criminal case. It provides that no Court shall take cognizance of offences under this Section, and upon filing of a complaint in writing made by Caste Certificate Scrutiny Committee or its authorized officer, the Court may take cognizance. Perusal of the aforesaid provision clearly indicates that the Caste Certificate Scrutiny Committee or its authorized officer has to file a private case in writing to the competent Court in accordance with Chapter XV of the Criminal Procedure Code and it does not contemplate filing of a police case in accordance with Chapter XII of the Criminal Procedure Code.

In so far as Section 12 of the Caste Certificate Act 2000 is concerned, it relates to offences under Act to be cognizable and non-bailable. Section 12(b) provide that every offence punishable under this Act, shall be

tried by any Magistrate of First Class in a summary way.

13 Now coming to the judgment of the Division Bench of this Court in *Vilas Rambhau Majrikar's* case (Supra), the Division Bench, in facts situation of the said case, has formulated similar question for consideration which reads thus :-

- (1) In the wake of Section 11(2) read with Section 12 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and verification of) Caste Certificate Act, 2000, whether the Police Station Officer acting under Section 154 of the Code of Criminal Procedure can register an offence under Section 12 of the Act when Section 11(2) contemplates filing of a private complaint by Scrutiny Committee or its authorized officer?

While answering the aforesaid question, the Division Bench in paragraphs 15 and 16 of the said judgment has observed as under :-

15] By merely making the offence under this Section 11, cognizable and non-bailable, the position would not change and the operation and effect of Section 11(2) does not get obliterated or non operational. We are therefore of the opinion that even though offences have been made cognizable or non-bailable, Section 11(2) must be held to operate with full force. That means what is contemplated by Section 11(2) is filing of a private complaint by the Scrutiny Committee or its authorized officer before the Court who could then take cognizance. In other words, filing of a police case is not contemplated by the aforesaid provision.

16] In the light of the above discussion with reference

to question no.1, therefore, we are of the considered opinion that filing of a police case by registration of F.I.R. before the criminal Court is not contemplated and what is contemplated is filing of a private complaint by a Scrutiny Committee or its authorized officer in accordance with Chapter XV of the Code of Criminal Procedure. We, therefore, answer question no.1 accordingly and hold that filing of final report by the police under Section 173 of the Code of Criminal Procedure by way of chargesheet is illegal and contrary to the provisions of law as aforesaid.”

Considering the view taken by the Division Bench in the aforesaid judgment, the question which is raised in this Petition is squarely answered by the authoritative pronouncement of the Division Bench in the case of ***Vilas Rambhau Majrikar*** (supra)

14 Now coming to the judgment of the Full Bench of this Court in ***Arun Sonone's*** case (supra), the said judgment has been overruled by the Full Bench of the Apex Court in the case of ***Chairman and Managing Director, Food corporation of India and others v/s. Jagdish Balaram Bahira and others*** reported in ***(2017) 8 SCC 670***. In paragraph 59 of the said judgment in ***Food Corporation of India's*** case the Apex Court held as under :-

59 The Full Bench judgment of the Bombay High Court in Arun has essentially construed the judgments in Kavita Solunke and in Shalini as having impliedly overruled the earlier Full Bench judgments in Ganesh Rambhau Khalale and Ramesh Kamble. In view of the conclusion which we have arrived at in regard to the earlier decisions rendered by the two Judge Benches in Kavita Solunke and Shalini, we are unable to subscribe to the view expressed by the Full Bench in

Arun holds that

(i) mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or discharge from employment or cancellation of appointments that have become final prior to the decision in Milind on 28 November 2000;

(ii) the benefit of protection in service upon invalidation of the caste claim is available not only to persons belonging to Koshti and Halba Koshti but is also available to persons belonging to the special backward category on the same terms.

The High Court has even gone to the extent of holding that the decision in Milind was in the nature of prospective overruling of the law which was laid down by the Bombay High Court. The above view of the Bombay High Court is clearly unsustainable. Neither the judgment in Milind nor any of the judgments of this Court which have construed it have held that Milind was an exercise in prospective overruling. The High Court was in error in holding so. The decision of the Full Bench in Arun is unsustainable. The Full Bench had evidently failed to notice that cases where the protection was granted by this Court following the invalidation of a caste claim was in exercise of the power conferred by Article 142 of the Constitution, depending upon the facts and circumstances of each case. The jurisdiction under Article 142 is clearly not available to the High Court in the exercise of its jurisdiction under Article 226. The High Court erred in arrogating that jurisdiction to itself.”

In view of the judgment of the Full Bench of Apex Court in *India Food Corporation's* case (supra), the judgment of the Full Bench of this Court in *Arun Sonone's* case (supra) holds no field. Hence the reliance placed by the learned counsel for the Petitioner on the judgment in *Arun Sonone's* case is misconceived.

15 It is pertinent to mention at this stage that the judgment of the Division Bench in ***Vilas Rambhau Majrikar's*** case (supra) cited on behalf of the Petitioner has binding effect and therefore this Court has no option but to follow the ratio laid down in the said judgment. It seems that both the Courts below have not considered the Petitioner's case in proper perspective. Both the Courts below did not proceed to adjudicate upon the case of the Petitioner strictly in accordance with law. In that view of the matter, the impugned orders passed by the learned Chief Judicial Magistrate, Solapur and the learned Sessions Judge, Solapur are required to be quashed and set aside and are accordingly quashed and set aside. The above Writ Petition is accordingly allowed. Rule is accordingly made absolute in terms of prayer clause (b).

16 This Writ Petition is allowed only on the ground of non-adherence of the provisions of Section 11(2) of the the Maharashtra Schedule Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and Verification of) Caste Certificate Act, 2000. It is made clear that this Court has not entered upon the contentions raised on merits and also, whether the allegations in the FIR are true or otherwise.

17 In that view of the matter the Caste Certificate Scrutiny Committee

is free to adhere to the provisions of Section 11(2) of the Caste Certificate Act, 2000 and the Caste Certificate Scrutiny Committee is not precluded from filing the appropriate complaint/proceedings before the appropriate Court. Needless to state that if any such proceedings are filed by the Caste Certificate Scrutiny Committee, the same would be decided on its own merits and in accordance with law.

[S.S. SHINDE, J.]