

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Amk

CRIMINAL APPLICATION NO. 1498 OF 2016

Naresh Pyarelal Pardeshi & Anr. .. Applicants
Vs.
State of Maharashtra & Anr. .. Respondents

Mr. Dhairyasheel Sutar for the Applicants.
Mr. Ajay Patil, APP for the Respondent No.1 -State.
Mr. Nitin P. Deshpande for Respondent No.2.

CORAM : SMT. BHARATI DANGRE, J.
DATE : 24th SEPTEMBER, 2019.

P. C. :

1. The present application is filed by the Applicants being aggrieved by the order of issuance of process by the Judicial Magistrate First Class, Pune in Regular Criminal Case No. 4490 of 2014. A complaint came to be lodged by one Mr. Dashrath Pardeshi before the claim to JMFC alleging that the present Applicants who belong to caste Hindu-Kori do not belong to the said caste but is a Hindu-Pardeshi. The Applicant had obtained a caste certificate from the competent authority and also procured a validity certificate from the Divisional Caste Scrutiny Committee on 22.02.2005. The allegation of the Complainant is that the Applicants submitted false document reflecting the caste to be

Hindu-Kori and it was also alleged that some of the documents have been fabricated.

2. Based on the said complaint, the Judicial Magistrate First Class directed verification of the complaint by an order dated 02.02.2015. The said request was made in light of the complaint that was filed by the Complainant under Sections 193(2), 199, 200, 419, 420 read with 34 of the Indian Penal Code. The Magistrate after noting that there was no satisfactory ground to direct investigation in terms of Section 156(3) of the Code of Criminal Procedure, proceeded with verification of the Complainant. On 30.04.2015, pursuant to the amendment in Section 202 of the Code of Criminal Procedure, an order came to be passed by the Magistrate directing PSO, Police Station, Yervada to conduct investigation in terms of Section 202(1) of the Cr.P.C. and submit a report. On 08.02.2016 a report came to be submitted. Based on the said report, on 28.04.2016, by recording a finding that there is sufficient ground to proceed against the accused persons for the offence punishable under Section 420 read with 34 of the IPC and since the accused have dishonestly induced the Tahasildar as well as Member of the Caste Scrutiny Committee and obtained caste certificate and validity

certificate, process came to be issued against the accused persons for the offence punishable under Section 420 read with 34 of the IPC. As far as the other allegations under Sections 193, 199, 200 and 419 vide Section 203 Cr. P.C. came to be rejected, the Applicant is aggrieved by the issuance of said process.

3. Heard the learned Counsel for the parties. Perused the facts placed on record and also the relevant provisions contained in 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. Perusal of the scheme of the enactment would reveal that a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category secures admission in any educational institution and certificate for securing admission, on invalidation of the certificate by Scrutiny Committee under Section 6 of the said enactment, the certificate is liable to be confiscated and benefits secured on the basis of false caste certificate are liable to be withdrawn. Section 11 of the Act of 2000 provides for

offences and penalties. Whoever obtains a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means is liable for conviction and punished with rigorous imprisonment for a term of which shall not be less than six months but which may extent up to two years. Sub-section 2 of Section 11 prescribes that 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 authorized by the Scrutiny Committee for this purpose. By virtue of Section 12, offences punishable under the said Act are cognizable and non bailable and the offences are directed to be tried by the Judicial Magistrate First Class by adopting summary procedure.

4. The Maharashtra Act No.23 of 2001 set out the modalities of issuance of Caste Certificate and its verification by the Competent Authority prescribed under the enactment and it also provides for confiscation of the Caste Certificate which is invalidated by the Committee and the consequential withdrawal of the benefit flowing caste certificate, if any, obtained by the claimant. On verification, if the Committee invalidates the claim and subsequently if the caste certificate

is directed to be confiscated, a complaint can be lodged by the Scrutiny Committee or any of its officer and it is only on such a complaint, the Judicial Magistrate First Class is empowered to take cognizance of the offence. It is not permissible and open for the complainant or any private person to approach the Court alleging any fraud or assert that the certificate has been obtained by producing false documents.

5. The Division Bench of this Court in the case of **Shamim Bano d/o Janu Mohd. Pathan & Anr. Vs. The State of Maharashtra, 2014 ALL MR (Cri) 1192** had an opportunity to deal with Section 11(2) of the Act of 2000 and has taken a similar view relying on Sub-section 2 of Section 11 and it has been categorically held that the lodgment of the prosecution against the Applicants in accordance with the provisions of Act of 2000 can be only through the Caste Scrutiny Committee or its officers. The said view is also fortified in another case of **Vilas s/o. Rambhau Majrikar Vs. State of Maharashtra, 2015 ALL MR (Cri) 4025**.

In view of the said pronouncement and the clear wording contained in sub-section 2 of Section 11, I do not think that any other view is possible and issuance of process by the learned Magistrate based on a complaint by Respondent No.2 cannot be sustained. The

prosecution of the Applicant being not sustainable under the Act of 2000, he should not be made to undergo the rigors of the trial to seek an acquittal and continuation of proceedings against him would be abuse of process of law which should be avoided.

In light of the aforesaid position of law, the impugned order is quashed and set aside. Criminal Application stands allowed. No order as to costs.

[SMT. BHARATI DANGRE, J.]