

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2019

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.944 of 2019 and
Crl.M.P.Nos.626 & 627 of 2019

T.Rajendran

... Petitioner

Vs.

1.State by:- The Inspector of Police,
CBCID, Salem,
Cr.No.2/96

2.The Under Secretary,
Tamil Nadu Public Service Commission,
Chennai

... Respondents

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the final report in C.C.No.108 of 2015 pending on the file of the learned Judicial Magistrate No.IV, Salem, quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.N.Naganathan

For Respondents

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For R2 : Mr.Dr.M.Devendran,
Standing Counsel (TNPSC)

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O R D E R

This petition has been filed to quash the proceedings in C.C.No.108 of 2015 on the file of the learned Judicial Magistrate-IV, Salem, having been taken cognizance for the offences under Sections 466, 468, 471 and 420 r/w 34 I.P.C, as against the petitioner.

2. The learned counsel for the petitioner submits that the petitioner is arrayed as A2. He belongs to Kondareddys

Community. The charge as against the petitioner is that the petitioner produced community certificate as if he belongs to Kondareddys community and classified as scheduled tribe community so as to enable him to get a seat in medical college for studying MBBS. Further the charge is that A1, pursuant to their inducement, deceased accused Nachimuthu with the assistance of A1, Chandrasekaran, the then Revenue Inspector of Mettur Revenue Divisional Office created forged community certificates as if A2 to A5 belonged to 'Konda Reddi' community affixing the fascimile seal of the then Revenue Divisional Officer, Thiru.Kaliaperumal, purporting the same to be made by a public servant, namely the Revenue Divisional Officer, Mettur and thereby they committed offence for the offence punishable under Sections 466, 468, 471 and 420 r/w 34 I.P.C.

2.1.He further submitted that there is absolutely no material either documentary or oral in final report to speak about the fact that the petitioner had participated in any activity of fabricating or forging the community certificate. Further he submitted that even the case of the prosecution is that the first accused Revenue Inspector has put his initial in the alleged fabricated document. Therefore there is absolutely no evidence to show that the petitioner only applied for the community certificate and he fabricated the said document. Further he submitted that even in his father's statement it was stated that he only applied in the year 1988 for the community certificate of the petitioner as such he is nothing to do with the crime as alleged by the prosecution. Further he submitted that except the counter filed by the respondent there is no other document or evidence to attract charge as against the petitioners.

3. Per contra, the learned Additional Public Prosecutor filed counter and averred that there are totally five accused and the petitioner is the second accused. The petitioner with the common intention with the other accused fabricated the community certificate with the help of the first accused who was working as Revenue Inspector, Mettur as if it was issued by the Revenue Divisional Officer, Mettur. Further he submitted that there are materials and evidences to attract the offences under Sections 466, 468, 471 and 420 r/w 34 I.P.C. as against the petitioner and others. He further pointed out that the permanent caste card was introduced in Mettur Division only from the year 1990 onwards. Before 1990 there was no such facility to issue permanent caste card in Mettur Division. Therefore, he prayed for dismissal of this quash petition.

4. Heard the learned counsel for the petitioner, the learned Additional Public Prosecutor for the first respondent and the learned Standing Counsel for the second respondent.

5. There are totally five accused in which the petitioner is the second accused. The petitioner has been charged for the offence under Sections 466, 468, 471 and 420 r/w 34 I.P.C. by the first respondent. It is seen that the charge as against the petitioner is that the petitioner produced community certificate as if he belongs to Kondareddys community and classified as scheduled tribe community so as to enable him to get a seat in medical college for studying MBBS. Further the charge is that A1, pursuant to their inducement, deceased accused Nachimuthu with the assistance of A1, Chandrasekaran, the then Revenue Inspector of Mettur Revenue Divisional Office created forged community certificates as if A2 to A5 belonged to 'Konda Reddi' community affixing the facsimile seal of the then Revenue Divisional Officer, Thiru.Kaliaperumal, purporting the same to be made by a public servant, namely the Revenue Divisional Officer, Mettur and thereby they committed offence for the offence punishable under Sections 466, 468, 471 and 420 r/w 34 I.P.C.

6. It is seen from the statements from the officials and it is clear that the issuance of community certificate in the form of permanent caste card introduced in the Mettur Division only from the year 1990. There is no such facility before 1990 in the Mettur Division. Further it is also seen from the charge that with the help of the first accused, A2 to A5 fabricated the community certificate to produce before the Officers concerned. It presumes that the petitioner only approached the first accused for issuance of fabricated and bogus community certificate to produce before the concerned officer. Further the points raised by the petitioner have to be considered only during the trial and not at the stage of quash petition.

7. It is also seen from the statement of the Under Secretary, Tamil Nadu Public Service Commission categorically stated that the serial number of community certificate differs from others and he also corroborated the fact that the issuance of permanent community certificate introduced in the Mettur Division only after 1990 and there was no facility for issuance of permanent caste certificate before 1990. Therefore it is very clear that there are materials as against the petitioners to attract the charges framed as against the petitioner.

8. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.255 of 2019 dated 12.02.2019 - Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors., as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is

settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the

allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

9. The above judgment is squarely applicable to this case and the points raised by the learned counsel for the petitioner cannot be considered now and this Court is not conducting any enquiry on the quash petition. The points raised by the petitioner have to be established only during the trial.

10. In view of the above discussions, this petition is devoid of merits and this Criminal Original Petition is dismissed. It is made clear that the trial court is directed to conduct the trial in C.C.No.108 of 2015 and dispose of the same uninfluenced by any of the observations made in this order. Consequently, connected miscellaneous petitions are closed.
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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
CBCID, Salem,
Cr.No.2/96
2. The Under Secretary,
Tamil Nadu Public Service Commission,
Chennai
3. The Judicial Magistrate No.IV,
Salem
4. The Additional Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Naganathan, Advocate, SR.No.28231
+1cc to Dr.M.Devendran, Advocate, SR.No.28229

Cr1.O.P.No.944 of 2019

Kak(20/06/2019)