



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.O.P. (MD)No.7904 of 2019

P.Ramamoorthi

... Petitioner/Accused No.1

Vs.

1.The Inspector of Police,
Vigilance & Anti-Corruption,
Dindigul.

... Respondent No.1/Complainant

2.A.John Lopez

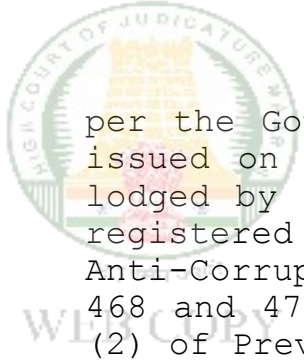
... Respondents No.2/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records of the First Information Report in Crime No.3 of 2018, dated 11.05.2018 on the file of the 1st respondent police station and quash the same as against the petitioner concerned.

For Petitioner	: Mr.Henri Tiphagne
For Respondents	: Mr.M.Chandrasekaran
	Addl. Public Prosecutor for R1
	: Mr.A.John Lopez
	Party-in-person

O R D E R

The petitioner is presently working as Assistant Librarian in the Society for Applied Microwave Electronics Engineering and Research (SAMEER), Ministry of Electronics and Information Technology, Government of India at CIT Campus, Taramani, Chennai. He entered service as Library Assistant on 13.08.1998. The petitioner was appointed only in the general quota and on merits. However, his service particulars indicate that the petitioner claims to belong to Malaivedan community. It is a notified Scheduled Tribe community. The petitioner while applying for this job had enclosed a certificate issued by one Asokan/Tahsildar, Nilakottai, certifying that the earlier certificate dated 27.10.1986 issued in favour of the petitioner is genuine. While so, a routine verification exercise was undertaken in respect of the petitioner's community status. It was then realized that the certificate issued by Tahsildars prior to 1989 in respect of four communities including Malaivedan community cannot be acted upon. In other words, Scheduled Tribe community certificate issued by the Tahsildar prior to 11.11.1989 cannot be straightaway acted upon. They require a validation. Any doubtful case can be subjected to verification as



per the Government orders in force. This clarification letter was issued on 16.09.1991 by the Government. Based on the information lodged by the second respondent/John Lopez, Crime No.3 of 2018 was registered on the file of the Inspector of Police, Vigilance and Anti-Corruption, Dindigul, for the offences under Sections 420, 465, 468 and 471 of I.P.C. and Sections 7, 12, 13 (1) (d) (ii) r/w. 13 (2) of Prevention of Corruption Act. The petitioner was shown as A1 while Asokan/Tahsildar, who issued the validation certificate was shown as A2. The petitioner as well as Asokan filed independent quash petitions, challenging the registration of the FIR. Both the criminal original petitions suffered dismissal on separate dates. Asokan moved the Honourable Supreme Court in Criminal Appeal No.779 of 2019. The Honourable Supreme Court by order dated 29.04.2019 observed that it was factually correct that the caste certificate dated 27.10.1986 was issued by the then Tahsildar in favour of the petitioner herein and that therefore, no criminality can be remotely attached to the said Asokan. In this view of the matter, the Honourable Supreme Court thought it fit to quash the FIR in Crime No.3 of 2018 as against Asokan. Criminal Appeal No.779 of 2018 was thus allowed.

2.Encouraged by this development, Ramamoorthi/A1 filed this second criminal original petition for quashing the impugned FIR.

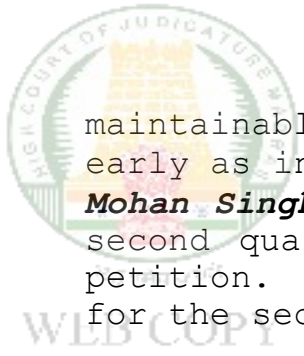
3.This Court heard the learned Additional Public Prosecutor as well as the informant in this case.

4.The informant in this case submitted that the petitioner has been describing himself only as "Naicker" in all the family functions. He also submitted that in the place from where he claimed to hail from, there are no persons from Maliavedan community. That is the stand of the informant.

5.The learned Additional Public Prosecutor submitted that the status of the petitioner is to be finalized by the State Level Scrutiny Committee and that the petitioner can as well wait till the Scrutiny Committee gives its decision. He also submitted that the petitioner had already filed CrI.O.P.(MD)No.2403 of 2019, seeking the very same relief now sought for in this criminal original petition and that the said criminal original petition was dismissed on 15.02.2019 with a specific finding that the FIR discloses commission of offence and that therefore, it cannot be quashed. A further direction was given for expeditious investigation and complete the same within a period of two months from the date of receipt of a copy of that order. The learned Additional Public Prosecutor further pointed out that quashing of the FIR in favour of A2 will not enure to the benefit of this petitioner.

6.Having heard the learned counsel on either side including the informant, this Court must hold that the impugned FIR is liable to be quashed. This is for more reason than one. Even if the first quash petition is dismissed, a second quash petition is very much

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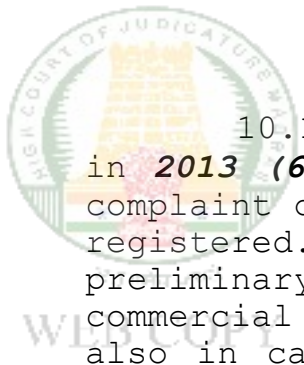


maintainable. This was laid down by the Honourable Supreme Court as early as in the year 1974 (***Superintendent and Remembrancer Vs. Mohan Singh and Ors*** reported in (1975) 3 SCC 706). Of course, the second quash petition cannot be a carbon copy of the first quash petition. The petitioner, who has knocked the doors of the Court for the second time, will have to show change in circumstances.

7. In this case, the petitioner's earlier quash petition was dismissed on 15.02.2019. This Court had observed that the FIR cannot be interfered with as it discloses commission of offences. This Court did not say that commission of offence was made out against A1 alone. That was not restrictive finding or observation of this Court. This Court made an overall and general observation that offences have been made out in the FIR. A further direction for filing the final report within a period two months was also given. But then, A2 moved the Honourable Supreme Court. The Honourable Supreme Court was satisfied that nothing remotely criminal was done by A2. The Honourable Supreme Court held that the FIR ought not to have been registered against A2 at all. Therefore, this Court is of the view that nothing precludes this Court from entertaining this quash petition. The direction that was given on 15.02.2019 was that the final report should be filed within a period two months from the date of receipt of a copy of the order. This criminal original petition was filed only on 03.06.2019. In other words, the petitioner did not rush to the Court immediately. He waited for the time limit to expire and only thereafter noticing that the final report has not been filed, he moved this Court.

8. Even when the matter was taken up for hearing, the submission made by the learned Additional Public Prosecutor was that the petitioner can as well wait till the Scrutiny Committee gives its decision. This is a clear give away. The Police have impliedly admitted before this Court that they cannot file final report in this case unless the Scrutiny Committee gives a clear decision that the petitioner does not belong to Malaivedan community. Till date the Scrutiny Committee has not even taken up the petitioner's case. It has not even issued any summon. No enquiry has been conducted so far. Therefore, by no stretch of imagination, the direction given by this Court on 15.02.2019 to conclude the investigation within a period of two months is possible of compliance. When the Police cannot file a final report unless and until the Scrutiny Committee gives its decision, I fail to understand as to how the FIR could have been registered without inviting the Scrutiny Committee to give its decision in the matter.

9. As and when the second respondent/John Lopez preferred a complaint against Ramamoorthi, in all fairness the Police must have referred the matter to the Scrutiny Committee. If the Scrutiny Committee had given an adverse decision, the Police would have probably been justified in registering the FIR.



10. In **Lalitha Kumari Vs. Government of Uttar Pradesh** reported in **2013 (6) CTC 353**, the Honourable Supreme Court holds that if a complaint discloses commission of cognizable offences, FIR should be registered. There is however a caveat. In certain circumstances, preliminary enquiry must be conducted. If the complaint discloses a commercial dispute then straightaway FIR cannot be registered. So also in case of matrimonial disputes. If the cause of action is three months old, preliminary enquiry should be conducted. Applying the very same reasoning and logic, if a complaint alleges that someone misrepresented with regard to his community status, then again there must be holding of an enquiry. But then, the enquiry is not something to be conducted by the police. The enquiry should be conducted by the Scrutiny Committee. In this case till date the Scrutiny Committee is yet to hold its enquiry. Therefore, I am of the view that registration of the FIR based on the complaint of the second respondent is highly premature.

11. I can visualize a hypothetical situation. Assume that this Court declines to quash the FIR; the Police file the final report; the case ends in conviction and the petitioner undergoes the sentence and if thereafter, the Scrutiny committee holds that the petitioner belongs to Malaivedan community, no one can put the clock back.

12. This Court also takes note of the undisputed fact that the petitioner was a minor when the certificate dated 27.10.1986, was applied for and obtained by his father. It has again been categorically stated by the Honourable Supreme Court that issuance of this certificate is genuine. It can be nobody's case that the certificate dated 27.10.1986 is forged. It is further noted that the petitioner has not obtained any benefit out of this certificate. The petitioner's community status has been irrelevant for his entry into the service. He appointed on merit in the general quota. These facts cannot be lost sight, while granting relief to the petitioner herein. Therefore, taking note of these circumstances, the FIR impugned in this criminal original petition is quashed. It is however open to the respondents herein to decide their further course of action based on the outcome of the verification process before State Level Scrutiny Committee.

13. With this liberty to the respondents, this criminal original petition is allowed.

Sd/-

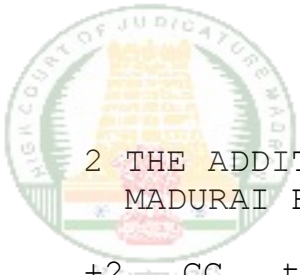
Assistant Registrar (CO)

/TRUE COPY/

Sub Assistant Registrar

To:

1 THE INSPECTOR OF POLICE,
<https://hcservices.ecourts.gov.in/hcservices/>
 VIGILANCE & ANTI-CORRUPTION,
 DINDIGUL.



2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2 CC to M/s.R.KARUNANIDHI, Advocate (SR-74348[F] dated
10/07/2019)

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