

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 05-07-2021****Pronounced on 30-07-2021****Cr.M.P. No. 473 of 2015**

- Surinder Singh Chawla S/o Shri Gyan Singh Chawla Aged About 43 Years R/o Station Para Mahasamund, District Mahasamund Chhattisgarh

---- Petitioner**Versus**

1. Kamal Kumar Tamboli S/o Dhaniram Aged About 63 Years R/o Ward No. Old 14, Behind Ram Mandir, Mahasamund, District Mahasamund Chhattisgarh
2. State of Chhattisgarh, Through the Secretary, Tribal Welfare Department Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur (C.G.)
3. Collector, Mahasamund, District – Mahasamund (C.G.)
4. District Level Caste Scrutiny Committee, Mahasammund Through the President, Mahasamund, District Mahasamund (C.G.)

---- Respondents

For Petitioner	:	Shri Harshmander Rastogi, Advocate
For Respondent No. 1	:	Shri A.K. Prasad, Advocate
For State	:	Shri Sudeep Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Narendra Kumar Vyas**C.A.V. ORDER**

1. The petitioner has filed the present Cr.M.P. under Section 482 Cr.P.C. challenging the order dated 04.04.2014 passed by the learned Judicial Magistrate First Class, Mahasamund in Complaint Case No. J-377/2014 and order dated 08.04.2015 passed by the learned Additional Sessions Judge, Mahasamund in Criminal Revision No. H-90/2014.
2. The facts as projected by the petitioner are that petitioner is a resident of Mahasamund belonging to Bhanumati Caste which falls within the category of Scheduled Caste within the State of Chhattisgarh. He has purchased lands bearing Khasra No. 489/4 and 489/2 total area 14000 Square Feet by registered sale deed from the complainant on payment of Rs. 7,00,000/-. The complainant/respondent No.1 pressurized the petitioner to purchase

adjacent lands also from him which was accepted by the petitioner and in this regard an agreement was entered upon by the petitioner with the complainant. However, a dispute occurred between them out of such agreement. As such, petitioner filed a complaint on 16.05.2004 bearing Crime No. 196/2004 registered at police station, Mahasamund under Sections 294, 506 IPC read with Section 3(1)(x) of the Scheduled Caste, Scheduled Tribes (Prevention of Atrocities) Act, 1989. A challan was filed by the police against respondent No.1, but the prosecution could not prove the aforesaid offence and respondent No. 1 was acquitted from the charges vide order dated 28.03.2007 passed by the learned Special Judge, SC/ST Act, Mahasamund.

3. Thereafter, the complainant/respondent No.1 filed complaint before learned Judicial Magistrate First Class, Mahasamud on 28.04.2011 under Sections 193, 198 and 420 IPC against the petitioner. Learned Judicial Magistrate First Class recorded statement of the complainant on 09.03.2014 and has taken cognizance in the matter for the offence under Sections 193, 198 and 420 IPC against petitioner vide its order dated 04.04.2014. The petitioner challenged the said cognizance of the complaint by filing criminal revision before the learned Additional Sessions Judge, Mahasamund and same was dismissed by order dated 08.04.2015.
4. Learned counsel for the petitioner would submit that taking cognizance of the offence is illegal and hit by Sections 195 and 340 of the Cr.P.C. It is further contended that the State of Chhattisgarh has framed the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013 (hereinafter referred to as 'The Act, 2013'), published in Government Gazette on 27.06.2013 made effective from 29.04.2013. According to that Act, High Power Caste Scrutiny Committee has been authorised to take action for the offence committed and also to impose penalties. He would refer to Sections 10, 11 and 12 of the Act, 2013 which are extracted below :-

“10. Offences and Penalties. - (1) Where a Social Certificate has been cancelled under Section 8, the person obtaining such Certificate shall be punished with rigorous imprisonment for a term, which shall not be less than three months but which may

extend to two years and with fine, which shall not be less than two thousand rupees and which may extend to twenty thousand rupees.

(2) No court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the High Power Certification Scrutiny Committee or on its behalf by any person so authorized by the High Power Certification Scrutiny Committee for this purpose.

11. Offences under the Act to be cognizable and non-bailable. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences punishable under Section 10 of this Act shall be cognizable, non-bailable and may be tried summarily.

12. Penalty for issuing false social status certificate -

(1) Any person or authority, performing the functions of Competent Authority under this Act, who intentionally issues a false Social Status Certificate, shall be punished with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine which shall not be less than two thousand rupees and which may extend to twenty thousand rupees;

Provided that where a Social Status Certificate has been issued by a Competent Authority, on the basis of an affidavit testifying the social status of an applicant for such certificate and after enquiring in the manner prescribed under Section 4, after observing due diligence, the competent Authority shall not be deemed to have intentionally issued a false Social Status Certificate.

(2) No court shall take cognizance of an offence punishable under this Section, except with the previous sanction of the Government.

5. Learned counsel for the petitioner would further submit that filing of complaint by respondent No.1 is also hit by doctrine of res-judicata as earlier also complainant has made complaint against the petitioner. Aggrieved with that petitioner had filed Writ Petition (Civil) No. 1105/2009 before this Court and vide order dated 26.02.2009 this Court has disposed off the matter with a direction to the High Power Caste Scrutiny Committee to consider the case of the petitioner for verification of the caste certificates. In compliance of the order

passed by this Court, the District Level Caste Scrutiny Committee, Mahasamund vide order No. 122/SC/2013 dated 05.03.2013, verified the caste status of the petitioner. He would further submit that respondent No. 1 is a habitual complainer, as such, the Magistrate should not have taken cognizance of the complaint made by him. Learned Magistrate ought to have considered that respondent No. 4 has not made any complaint. Though there is not a single allegation reflected from the complaint with regard to offence under Section 198 IPC as well as Section 420 IPC, still, the Magistrate has taken cognizance of the offence. He would rely upon the judgment of Hon'ble Supreme Court in case of **Abdul Rehman v. K.M. Anees UI Haq**¹ and **M.S. Ahlawat v. State of Haryana and Others**² and would submit that cognizance against the petitioner under Section 193 IPC is illegal due to operation of Section 195 Cr.P.C. In support of his submission the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Hiralal Harilal Bhagwant v. CBI**³ as well as **Satish Mehra v. N.C.T. Delhi**⁴. He would further submit that cognizance of the offence by the learned Judicial Magistrate First Class and order of the learned Revisional Court confirming the order of the learned Judicial Magistrate First Class are nothing, but abuse of process of law, therefore, the proceedings initiated on the basis of the complaint is liable to be quashed and the Cr.M.P. be allowed.

6. On the other hand, learned counsel for respondent No. 1 would submit that respondent No. 1 has filed a complaint before the learned Judicial Magistrate First Class on the count that the petitioner purchased his agricultural land, which is situated near Raipur road by committing fraud and registered a sale deed in favour of his wife namely Mona Kour. It was further contended that petitioner is a Sikh, he has obtained forged caste certificate and on the basis of false affidavit has lodged criminal case under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act against respondent No. 1 for which he had to remain in jail for a week and he faced trial.

¹ (2011) 10 SCC 696

² 199 Supp (4) SCR 160

³ (2003) 5 SCC 257

⁴ (2012) 10 SCC 614

Subsequently, the Caste Certificate produced by the petitioner was cancelled by the competent authority, since, his caste certificates were found forged. As such, learned Magistrate registered the complaint under Sections 193, 198 and 420 IPC against the petitioner. Accordingly, notice was issued to the petitioner.

7. It is further submitted by the learned counsel for respondent No. 1 that the petitioner has obtained his caste certificates by cheating and playing frauds. Earlier on 30.09.1994, he has filed an affidavit before the District Education Officer, Mahasamund stating that he belongs to Sikh Harijan and therefore his caste be marked as Sikh Harijan. Subsequently, in the year 2001, he again made an application indicating him as of Bhanumati Caste of the State of Punjab, therefore, his caste may be mentioned in school certificate as Bhanumati Caste. The Tahsildar made a complaint to the Sub-Divisional Officer (Revenue) regarding the caste certificates of the petitioner as he has obtained certificates of different castes about four times. Enquiry was conducted, thereafter, High Level Caste Scrutiny Committee clarified that petitioner is the original resident of Punjab as on 1950, as such, he can take benefit of Scheduled Caste in the State of Punjab, he is not entitled to obtain caste certificate in the State of Chhattisgarh. On the basis of guidelines issued by the High Level Caste Scrutiny Committee, the Sub-Divisional Officer (Revenue) on 01.05.2006 cancelled all the Caste Certificates; issued on 31.07.2000, 16.01.2001, 17.07.2001 and 04.03.2004 in favour of the petitioner. The learned counsel for the respondent No. 1 would further submit that since the caste certificates of the petitioner were cancelled, considering the evidence, the learned Special Judge, SC/ST Act, Mahasamund has acquitted respondent No.1 on 28.03.2007 by recording a finding that petitioner does not belong to Scheduled caste.
8. Learned counsel for respondent No.1 would submit that respondent No. 1 has filed a complaint against petitioner on 28.04.2011 under Sections 193, 195 and 420 IPC which has rightly been taken cognizance by learned Judicial Magistrate First Class, Mahasamund. The Act, 2013 came into force on 29.04.2013, as such, the provisions of the Act would be applicable on and after 29.04.2013, therefore, the

Act is not applicable with regard to the complaint filed by respondent No. 1. Learned Judicial Magistrate after considering the evidence and materials on record, prima facie, satisfied that offence is made out against the petitioner and issued notice to the petitioner which is justified and does not warrant interference at this juncture. Learned Revisional Court has also not committed any material irregularity or illegality in rejecting the revision filed by the petitioner. The petition, therefore, is liable to be dismissed by this Court.

9. The State has filed their return contending that no material irregularity or illegality has been committed by the learned Judicial Magistrate First Class. There is no abuse of process of law, therefore, complaint has rightly been registered against the petitioner, as such, the petition is liable to be dismissed.
10. Learned counsel for the petitioner has submitted written synopsis on 12.07.2021, reiterating the stand taken by him in the petition. As per the Section 10(2) of the Act, 2013 no Court shall take cognizance of offence relating to false social status unless complaint is made by the High Power Certification Scrutiny Committee or any person authorised on its behalf. Therefore, the complaint made by respondent No. 1 itself is not maintainable. In support of his contention he placed reliance on judgments of the Hon'ble Supreme Court in case of **Kumari Madhuri Patil and Another vs. Additional Commissioner, Tribal Development and Others⁵**, **Sudhakar Vithal Kumbhare v. State of Maharashtra and Others⁶** and **GM Indian Bank v. R. Rani and Others⁷** and would submit that complaint in the case is without any authorisation from the High Power Certification Scrutiny Committee. Therefore, the complaint is not maintainable and liable to be quashed.
11. The point requires to be determined by this Court is whether the Act, 2013 which has been made effective from 29.04.2013 can have retrospective effect on the complaint already filed before the competent Court under Section 193, 198 and 420 of IPC?
12. Learned counsel for the petitioner would try to impress upon this Court on the basis of complaint case No. J-377/14 and would submit

⁵ (1994) 6 SCC 241

⁶ (2004) 9 SCC 481

⁷ Manu SC 8175 2007

that complaint has been filed after enactment of the Act, 2013, therefore, it is not maintainable.

13. For ready reference Sections 193, 198 and 420 IPC are extracted below:-

“193. Punishment for false evidence.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

198. Using as true a certificate known to be false.—Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

14. For determination of point involved in this case, the objects and provisions of the Act, 2013 have to be examined. This Act has been enacted by the State Legislature with aims and objects of protecting the interest of persons belonging to the Scheduled Castes, Scheduled Tribes and other socially and Educationally backward citizens in the State from those who fraudulently obtained false social certification and to provide punishment for issuing and obtaining false social status certification. Section 18 of the Act provides that the provisions of this Act shall be in addition to the provisions already made to secure the interest of the persons from persons who have obtained false social certification. Section 18 of the Act, 2013 is extracted below:-

“18. The provisions of this Act shall be in addition to, and not in derogation of any other law for the time being in force.”

15. The complaint has been filed on 28.04.2011 and as reflected from Para-11 of the return filed by respondent No.1 the petitioner has also

not contradicted the same by filing rejoinder in this case. This clearly establishes that complaint was filed much prior to enactment of Act, 2013.

16. It is not disputed by the petitioner as well as respondent No.1 that the Act, 2013 has been made effective from 29.04.2013. Section 18 of the Act also provides that the provisions of this Act shall be in addition to, and not in derogation of any other law for the time being in force. When this Act was not enacted as on 28.04.2013, criminal law was already in force and respondent No. 1 already filed complaint on 28.04.2011, as such, the complaint has been rightly filed on 28.04.2011 i.e. prior to the enforcement of the present Act of 2013. The Act, 2013 cannot be given any retrospective effect, as the date of effectiveness has already been notified i.e. on 29.04.2013. It has been well settled legal preposition of law that unless the Act is made retrospective effect, it is only prospective. Even otherwise, from perusal of complaint, it is quite clear that respondent No. 1 has filed complaint under Sections 193, 198 and 420 IPC contending that the petitioner without paying the consideration wants to purchase land of the respondent No.1 and since then he is keeping malice against him. He has further contended in the complaint that because of his forged evidence though he does not belong to Scheduled Caste category, he has filed criminal case against respondent No. 1 in which he has given false evidence, as such, the complaint has been filed against the petitioner. The complaint would reflect that offence under Section 420 IPC is also alleged. Therefore, the cognizance of the offence by the Judicial Magistrate First Class, prima facie, is justified. The Hon'ble Supreme Court in the case of **State of Punjab Vs. Bhajan Kaur** reported in 2008(12) SCC 111 has held as under :-

“9. A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of rule of law.

10. Section 92-A of the 1939 Act created a right and a liability on the owner of the vehicle. It is a statutory liability. Per se it is not a tortious liability. Where a right is created by an enact-

ment, in absence of a clear provision in the statute, it is not to be applied retrospectively.

13. No reason has been assigned as to why the 1988 Act should be held to be retrospective in character. The rights and liabilities of the parties are determined when cause of action for filing the claim petition arises. As indicated hereinbefore, the liability under the Act is a statutory liability. The liability could, thus, be made retrospective only by reason of a statute or statutory rules. It was required to be so stated expressly by the Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more particularly, when it came into force on or about 1.07.1989.

14. Reference to Section 6 of the General Clauses Act, in our opinion, is misplaced. Section 217 of the 1988 Act contains the repeal and saving clause. Section 140 of the 1988 Act does not find place in various clauses contained in Sub-section (2) of Section 217 of the 1988 Act. Sub-section (4) of Section 217 of the 1988 Act reads, thus:

217(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.

What is, therefore, otherwise saved in Section 6 of the General Clauses Act inter alia is the right. It reads as under:

6 Effect of repeal.--Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) -(b) *

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;....

Section 6 of the General Clauses Act, therefore, inter alia saves a right accrued and/ or a liability incurred. It does not create a right. When Section 6 applies only an existing right is saved thereby. The existing right of a party has to be determined on the basis of the statute which was applicable and not under the new one. If a new Act confers a right, it does so with prospective effect when it comes into force, unless expressly stated otherwise.

15. Section 140 of the 1988 Act does not contain any procedural provision so as to construe it to have retrospective effect. It cannot enlarge any right. Rights of the parties are to be determined on the basis of the law as it then stood, viz., before the new Act come into force.

16. It is now well-settled that a change in the substantive law, as opposed to adjective law, would not affect the pending litigation unless the legislature has enacted otherwise, either expressly or by necessary implication.

17. In *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, the law is stated, thus:

“25.” The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed....”

17. Section 18 of the Act, 2013 clearly provides that this Act is in addition and not in derogation of any other law in time being in force, it means that the Act, 2013 is in addition to the other law which are in force and not in contradiction to the law already in existence as such by virtue of the Act, 2013, the provisions of Indian Penal Code have not repealed. Therefore, the complaint has been correctly filed before learned Judicial Magistrate First Class. The Hon’ble Supreme Court has examined the word “in derogation” in case of **Ragunanth Vs. State of Karnataka and others**⁸ wherein the Hon’ble Supreme Court has held as under :-

“ 7. But it has to be noted at this stage that we are concerned with the enforceability of special law on the subject inspite of the general law. In *Maxwell on the Interpretation of Statutes*, Eleventh Edition at page 168, this principle of law is stated as under:

A general later law does not abrogate an earlier special one by mere implication. *Generalia specialibus non derogant*, or, in other words," where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act.

In *Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Deo and Others*, applying this principle it is held that general law does not abrogate earlier special law by mere implication. In *Eileen Louise Nicool v. John Winter*

⁸ 1992(1) SCC 335

Nicolle [1992] 1 AC 284, Lord Phillimore observed as under:

It is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one. This, as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute, or be the underlying common or customary law of the country. Where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, that earlier and special legislation is not to be held indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.

13. In Justiniano Augusto De Piedade Barreto Vs. Antonio Vicente Da Fonseca and Others, this Court observed that A law which is essentially general in nature may contain special provisions on certain matters and in respect of these matters it would be classified as a special law. Therefore unless the special law is abrogated by express repeal or by making provisions which are wholly inconsistent with it, the special law cannot be held to have been abrogated by mere implication”

18. Accordingly, the impugned order dated 04.04.2014 passed by the learned Judicial Magistrate First Class, Mahasamund and order dated 08.04.2015 passed by the learned Additional Sessions Judge, Mahasamund are affirmed.

19. It is made clear that this Court has not expressed anything on the merits of the case. The facts have been considered for adjudication of the present Criminal Miscellaneous Petition. The trial Court is directed to proceed further, in accordance with law, without being influenced by any of the observations made by this Court while deciding this Criminal Miscellaneous Petition.

20. With the above observations and directions, the present Cr.M.P. is dismissed.

21. No order as to costs.

Sd/-
(Narendra Kumar Vyas)
Judge