

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 747 OF 2015

Shri Manoharlal s/o Govindram Soni (Kateja),
Aged about 66 years, Occupation – Business,
R/o Rampuri Camp, Amravati, Tq. and
District Amravati.

.... **PETITIONER**

VERSUS

1) State of Maharashtra,
through Police Station Officer,
City Kotwali Police Station, Amravati.

2) Purushottam s/o Girdhrilal Bajaj,
Aged about 36 years,
Occupation – Business,
R/o Camp, Near Amravati Police
Station Gadge Nagar, Amravati.

.... **RESPONDENTS**

Mr. R.D. Wakode, Counsel for the petitioner,
Mr. N.R. Rode, Addl.PP for respondent 1,
Mr. P.V. Navlani, Counsel for respondent 2.

CORAM : ROHIT B. DEO, J.
DATED : 7th JANUARY, 2021

ORAL JUDGMENT :

The petitioner is assailing the order dated 21-8-2015 rendered by the Chief Judicial Magistrate, Amravati below Exhibit 22 and Exhibit 1 in Regular Criminal Case 374/2013, the effect of which is that the

evidence of the prosecution is closed and the complaint is fixed for recording the statement of the accused under Section 313 of the Criminal Procedure Code, 1973 (Code).

2. I have heard the learned Counsel Mr. R.D. Wakode for the petitioner, the learned Additional Public Prosecutor Mr. N.R. Rode for respondent 1 and the learned Counsel Mr. P.V. Navlani for respondent 2.

3. In my considered view, the controversy lies in an extremely narrow compass and, therefore, only those facts, which are absolutely essential, need be stated.

4. The petitioner contested and lost the election to the Municipal Corporation, Amravati from electoral constituency reserved for Other Backward Class (OBC).

5. The petitioner preferred an application under Section 156(3) of the Code seeking investigation qua the caste certificate furnished by respondent 2-the winning candidate. In essence, the contention of the petitioner was, and is, that the caste certificate is forged and/or obtained on the basis of forged documents.

6. The Chief Judicial Magistrate, Amravati directed investigation. City Kotwali Police Station registered first information report and Crime 117/2012 under Sections 463, 468 and 474 of the Indian Penal Code and Section 11 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 (2000 Act).

7. The investigation culminated in the submission of the final report under Section 173 of the Code (Charge-sheet). The Chief Judicial Magistrate, Amravati vide order dated 16-3-2015 framed charge under Sections 463, 468 and 474 of the Indian Penal Code.

8. Respondent 2-accused preferred application dated 01-7-2015 which is styled as “application for the closure of case and acquittal of accused”. The application proceeds on the premise that in view of the provisions of Section 11(2) of the 2000 Act, the Chief Judicial Magistrate could not have taken cognizance of the offence at the instance of the complainant. The application refers to the decision of the Division Bench of this Court in Criminal Application 1173 of 2010, Vilas s/o Rambhau Majrikar ..vs. State of Maharashtra, and other connected matters.

9. It would not be appropriate to make any definite observation on the merits of the application Exhibit 22 lest the parties are prejudiced. I am more than satisfied that the course adopted by the Chief Judicial Magistrate is patently erroneous and indeed illegal. The Chief Judicial Magistrate observes in paragraph 4 that there is no provision for closure of the case. The Chief Judicial Magistrate further observes that the charge is restricted to Sections 463, 468 and 466 of the Indian Penal Code and no charge under Section 11 of the 2000 Act is framed. The Chief Judicial Magistrate then notes that two witnesses are examined and for reasons which are inexplicable, observes that it is desirable to close the evidence. The Chief Judicial Magistrate then passes an order below Exhibit 1, which reads thus :

“In view of the order below application Exhibit 22 evidence of the prosecution is closed and case is fixed for the statement of the accused u/s. 313 of the Criminal Procedure Code.”

10. The course adopted by the Chief Judicial Magistrate is unknown to law. There is no intelligible reason disclosed in the order for closing the evidence of the prosecution. Exhibit 22 was an application seeking closure of the case. The Chief Judicial Magistrate chose not to record any decisive finding on the merits of the application. Indeed, the Chief Judicial Magistrate proceeded on the premise that closure would be impermissible. Yet, the Chief Judicial Magistrate chose to direct closure

of the evidence, which was neither a prayer made nor was a course permissible in law.

11. The orders impugned are quashed and set aside.

12. Every contention touching the merits of Exhibit 22 is kept expressly open for the learned trial Court to adjudicate.

13. The learned trial Court is directed to complete the trial as expeditiously as possible and in any event, within six months from the date of appearance of the parties.

14. The parties shall appear before the Chief Judicial Magistrate on 17-2-2021. Formal notice shall not be necessary.

15. Rule is made absolute in the afore-stated terms.

JUDGE

adgokar