

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

CRIMINAL APPLICATION (APL) NO. 893 OF 2015

APPLICANT :- Sk. Hamid Sk. Hanif, Aged about 45 years, Occupation : Councillor, Amravati Municipal Council, Resident of Chandni Chowk, Gawalipura, Taluka and District Amravati.

...VERSUS...

RESPONDENTS :-

1. The State of Maharashtra, Through Police Station Officer, Police Station City Kotwali, Akola, Tahsil and District Akola.
2. The Collector, Akola, Tahsil and District Akola.

Mr.S. P Bhandarkar, Advocate for the applicant.
Mr.T.A.Mirza, A.P P for the respondent No.1.
Mr. Neeraj S. Khandewale, Advocate for the respondent No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.

DATED : 09.03.2021.

CRI. APPLN. (APPP) NO. 70 OF 2018

For the reasons stated in the application, the intervention application is allowed.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.

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2. This application under section 482 of the Code of Criminal Procedure lays a challenge to registration of the First Information Report No.140 of 2015, dated 03/12/2015, registered by the respondent No.1-Police Station for the offences punishable under sections 420, 468 and 471 read with section 34 of the Indian Penal Code. The applicant being aggrieved by initiation and continuation of above proceedings prays for quashing thereof.

3. The First Information Report came to be registered against the applicant, Sunanda Mankar (Record Keeper working in the Collector Office at Akola) and Abdulla Rauf Pande (working as Peon in Record Room of Collector Office at Akola). It is alleged that the applicant in connivance with the other 2 accused manipulated/fabricated record of record room of collector in respect of birth and related record of the applicant in connivance with the remaining accused. The applicant, therefore, challenged registration of the First Information Report by way of filing present application.

4. This Court on 15/12/2015 issued notice and granted *ad interim* relief in terms of prayer clause (b). On 14/03/2016, this Court issued Rule and confirmed ad interim protection granted earlier. The non-applicant No.1 in pursuance of notice of this Court filed its reply stating that the applicant in connivance with remaining 2 accused had manipulated record in respect of birth and related record. It is

further stated that the Investigating Officer has recorded statements of various witnesses. It is also stated that in an enquiry conducted by the Collector, Akola through the Sub-Divisional Officer, Akola, it is revealed that the applicant had manipulated record of the office of the Collector with a view to obtain false caste certificate.

5. Pending present application, one Salim Baig Yusuf Sheikh filed an application for intervention on the ground that the applicant had obtained fraudulent caste certificate on the basis of forged documents and the intervenor being a person, who had filed nomination in the ward from which the applicant is elected, has requisite locus to appear in the present proceedings. The Advocate for intervenor is allowed to make oral submissions.

6. We have heard Mr. S. P. Bhandarkar, the learned Advocate for the applicant, Mr. T. A. Mirza, learned A. P. P. for the respondent No.1 and Mr. Neeraj S. Khandewale, the learned Advocate for the respondent No.2.

7. Mr. Bhandarkar, the learned Advocate for the applicant placing reliance on the judgment of this Court in the case of ***Vilas Rambhau Majrikar & Ors. v. State of Maharashtra***, reported in ***(2015) SCC On-line 3469***, submitted that in view of bar contained in sub-section (2) of 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 (hereinafter referred to as "Act of 2000" for the sake of brevity), the Police Station Officer acting under section 154 of the Code of Criminal Procedure cannot register an offence alleged against the applicant under the provisions of the Indian Penal Code. He submitted that in view of section 11(2) of the Act of 2000 prosecution can be initiated only on the basis of private complaint filed by Scrutiny Committee through its authorized officer.

8. We have carefully considered the allegations in the First Information Report. The report is lodged by Police Station Officer of City Kotwali Police Station on the basis of the written complaint filed on behalf of the office of Collector, Akola. It is stated in the First Information Report that the office of the Collector, Akola has lodged complaint with the concerned Police Station on the basis of enquiry held by the Sub-Divisional Officer which reveals that there is tampering of record of Collector Office, Akola. The report gives detail account of fabrication allegedly committed by the applicant in connivance with the officers of Collector Office, Akola. At this stage, it is necessary to consider section 11 of the Act of 2000, which reads as under:

"11. Offences and penalties. - (1) Whoever;-
(a) obtains a false Caste Certificate by furnishing false

information or filing false statement or documents or by any other fraudulent means; or

- (b) *not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures any benefits or appointments exclusively reserved for such Castes, Tribes, or Classes in the Government, local authority or any other Company or Corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or Co-operative Society against the office, reserved for such Castes, Tribes or Classes by producing a false Caste Certificate;*

shall, on conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees, but which may extend upto twenty thousand rupees or both.

(2) 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 authorised by the Scrutiny Committee for this purpose.”

9. Sub-section (1)(a) of section 11 of the Act of 2000 creates offence against a person, who obtains false certificate by furnishing false information or by filing false statement of documents or by any fraudulent means. Sub-section (2) of section 11 of the Act of 2000 bars Court from taking cognizance of the offence under sub-section (1) of section 11, except upon complaint made by Scrutiny Committee or by

any other officer authorized by the Scrutiny Committee. It needs to be noted at this stage that the allegations in the First Information Report are essentially in respect of fabrication and manipulation made in the record of office of collector by the applicant in connivance with the officials of the Collector Office, Akola. The ingredients of the offences alleged against the applicant under sections 420, 468, 471 of the Indian Penal Code are totally different than the ingredients of offence under sub-section (1) of section 11 of the Act of 2000. On a reading of the First Information Report, it appears that the office of the Collector has alleged offence against the applicant only to the extent of fabrication of record of its office in connivance with the officials of the Collector Office. The offence under sub-section (1) of section 11 of the Act of 2000 is triggered when there is allegation of obtaining caste certificate by furnishing false information or false statement or document or by any other fraudulent means. On scrutiny of First Information Report it appears that the allegations made against the applicant are in relation to acts done before issuance of false caste certificate to the applicant. We are therefore satisfied that the bar under sub-section (2) of section 11 of the Act of 2000 is not attracted. On overall perusal of the material placed before us makes out a *prima facie* case against the applicant, which is required to be decided by conducting a proper trial. At this stage, we cannot meticulously consider the evidence and anticipate whether it will end up in conviction or acquittal. This is not a stage to

decide whether there is any truth in the allegations made but, to form an opinion whether based on the allegations of cognizable offence as alleged has been *prima facie* made out the guilt or otherwise of the applicant can be proved only after conducting full-fledged trial. In the circumstances, it is not proper for us to interfere with the proceedings and quash the First Information Report. We, therefore, cannot proceed to hold that continuance of proceedings would result in abusing process of Court. Therefore, we find no merit in the application and the same is dismissed.

10. Rule stands discharged.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

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