

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1489 OF 2022

Rajaram Nago Chavan

...Petitioner

Versus

1. The State of Maharashtra
2. Leena Dinkar Badgujar
3. Khushal Dinkar Badgujar
4. Dinkar Narayan Badgujar
5. Alka Dinkar Badgujar

...Respondents

Mr. B. R. Kedar, Advocate for the Petitioner.

Mr. S. N. Morampalle, APP for Respondent No. 1 - State.

Mr. S. S. Jadhav, Advocate for Respondent Nos. 2 to 5.

CORAM : R.M. JOSHI, J.

RESERVED ON : AUGUST 07, 2023

PRONOUNCED ON : AUGUST 29, 2023

ORDER

1. This Petition, filed under Articles 226 and 227 of the Constitution of India, takes exception to order dated 14.10.2021 passed in Criminal M. A. No. 459/2019 on the basis of order passed below Exh. 40 in 'B' Summary Case No. 16/2014 passed by CJM, Jalgaon thereby disposing of Criminal M.A. No. 459/2019 as does not survive and judgment and order, which has ultimately resulted in non issuance of process against Respondent Nos. 2 to 5 and order passed by learned

Additional Sessions Judge, Jalgaon in Criminal Revision Application No. 107/2021 dated 22.09.2022 thereby confirming the said order closing criminal proceedings against Respondent Nos. 2 to 5 herein.

2. The facts which have led to filing of the present Petition can be narrated, in brief, as under:

Petitioner claims that he filed private complaint bearing Criminal Misc. Application No. 237/2013 before learned JMFC, Jalgaon against Respondent Nos. 2 to 4 alleging creation of forged document of caste and getting benefits of the same. It is alleged that thereby these Respondents have cheated the people and Government and hence, committed offence punishable under Sections 420, 465, 468, 471 and 120-B of the Indian Penal Code. It is alleged by the Petitioner that after being satisfied with *prima facie* case made out by the Petitioner, learned CJM, Jalgaon directed police to conduct investigation and submit report. Consequently, first information report bearing no. 456/2013 came to be registered against Respondent Nos. 2 to 5 for these offences. It is alleged by the Petitioner that police authorities joined hand with

Respondents and instead of conducting detailed investigation, filed 'B' Summary report on 18.02.2014 contending that the allegations made against these Respondents are false. It is further claimed that there is embargo as contemplated by Section 7 and 11 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short '**Act of 2000**') for taking cognizance of offences under the said Act. It is further contention of the Petitioner that the complaint made by him was not in respect of the offences under the Act of 2000 but the offences under the IPC were alleged against them. The Petitioner, therefore, filed protest petition bearing Criminal M.A. No. 259/2019. Petitioner was given opportunity to lead evidence and accordingly, Petitioner including himself examined seven witnesses. However, learned CJM, Jalgaon passed impugned order closing criminal proceedings on the ground that there is embargo under the Act of 2000 to entertain complaint and to take further action. 'B' Summary report was accepted. Being aggrieved by the

said order, Criminal Revision Application No. 107/2021 came to be filed under Section 397 of Code of Criminal Procedure before the Sessions Court, Jalgaon. By passing impugned order, learned Additional Sessions Judge rejected revision application filed by the Petitioner. Hence, this Petition.

3. The Petitioner has raised objection to the impugned orders on the grounds specifically recorded in the Petition. Apart from the allegation that the Respondents herein have prepared bogus document, in order to substantiate caste claim and since offences are punishable under Indian Penal Code (for short 'IPC') and not under the Act of 2000, the orders impugned cannot sustain. One more ground is raised about the Respondents being heard by CJM without any right to the accused of hearing before issuance of process. On these amongst other grounds, the impugned orders are challenged.

4. Respondent No. 2 opposed the Petition.

5. Learned Counsel for the Petitioner submitted that learned CJM has committed serious error by giving

hearing to the Respondents i.e., proposed accused before issuance of process. According to him, on this ground itself the impugned order deserves to be set aside. On merits of the case, by drawing attention of the Court to the various documents filed along with Petition, it is submitted that offences alleged against these Respondents are of creating/fabricating documents in order to justify the claim of the accused and hence, independently these offences have been committed by these Respondents under the IPC. By drawing attention of the Court to the averments in the complaint it is submitted that no offence has been alleged under the Act of 2000 and hence, question of application of bar as contemplated by Section 11 of the Act of 2000 to the present case does not arise. In support of his submissions, he placed reliance in case of Smt. Nagawwa Vs. Veeranna Shivlingappa Konjalgi and others, AIR 1976 SC 1947. It is submitted that at the stage of issuance of process the Court was not required to consider as to whether the allegations in the complaint would be sufficient to warrant conviction or not. It is contended that the scope of the enquiry under Section 202 of Cr.P.C is extremely limited only to ascertain

truth or falsehood of the allegations made in the complaint on the basis of material placed by the complainant before the Court. It is further held therein that the accused has got no *locus standi* and is not entitled to be heard on the question whether the process should be issued or not.

6. Learned Counsel for the contesting Respondents submitted that the present Petitioner is ex father-in-law of the Respondent No. 2 and that the proceeding initiated by him against these Respondents is not genuine but out of vengeance. It is further submitted that since year 2013 the Petitioner is causing harassment to the Respondent by initiating proceedings. It is submitted by learned Counsel for the Respondent that the allegations made in the complaint though referred to the offences under the IPC, however, the said offences cannot be independently considered from the provisions of the Act of 2000. He drew attention of the Court to Section 7, 11 and 12 of the Act of 2000. It is submitted that obtainment of the false caste certificate by furnishing false information or false document or by any other fraudulent means is an offence

under Section 11(i)(a) of the Act of 2000. It is submitted that sub-section 2 of the said section provides that no Court shall take cognizance of an offence punishable under this Section except upon complaint in writing made by the Scrutiny Committee or any other Officer duly authorized by the Scrutiny Committee for this purpose. Section 12 provides for the offences to be cognizable and non-bailable. Thus, it is the submission of learned Counsel for the Respondents that the order passed by learned CJM and confirmed by learned Additional Sessions Judge holding that in view of these provisions the complaint/proceedings filed by the Petitioner against Respondents is not maintainable and does not deserve interference.

7. For the purpose of appreciating submissions made across the bar, at the outset, it would be relevant to take note of the allegations made in the complaint by the Petitioner/original complainant against Respondents herein. Perusal of the averments of the complainant/Petitioner clearly indicates that the basic allegation against them is of preparation of bogus certificate of caste Rajput Bhamta and Badgujar

and thereby obtaining caste validation from the Committed under the Act of 2000. It is alleged in the complaint that by using the said caste validity certificate the Respondent Nos. 2 and 3 have obtained admission in educational institute and secured Government Service and that the said act is done by them to cheat Government and hence, it is an offence under the provisions of IPC.

8. Though complaint has been drafted in such a manner to indicate that the offences alleged against Respondents are under IPC only, however, close scrutiny of the complaint clearly demonstrates that core allegation is essentially of obtaining caste validity certificate from committee on the basis of false and bogus documents and affidavits. Consequential use of the said caste certificate for obtaining the admissions in the educational institutes and securing government service has bearing on the allegation that the caste validity certificate has been obtained by furnishing false information or false statement or document.

9. In this regard, it would be necessary to take note of relevant provisions of the Act of 2000. Section

6 provides for verification of the caste certificate by the Scrutiny Committee. Section 7 makes provision about confiscation and cancellation of false certificate. The said provision clearly indicates that a person who has obtained false caste certificate either for himself or his children, the Scrutiny Committee may *suo moto* or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that certificate was obtained fraudulently, it shall by an order cancel and confiscate the certificate by following such procedure as prescribed. The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or Court except High Court under Article 226 of the Constitution of India as provided by Sub-section 2 of Section 7.

10. At this stage, it would be relevant to take note of Section 11 of the Act of 2000, which reads thus:

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.

11. This provisions clearly indicates that who ever obtains a false certificate by furnishing false information or filing false statement or document or even by any other fraudulent means is said to have

committed offence under the Act of 2000 and is liable for conviction by punishment of rigorous imprisonment which shall not be less than six months which may extend to two years with fine not less than Rs. 2000 extendable upto Rs. 20,000 or both. Sub-section (2) of Section 11 further indicates that taking of cognizance of the offence punishable under this section is barred except on a complaint in writing by Scrutiny Committee or any other officer duly authorized by the Scrutiny Committee for this purpose.

12. As observed herein above, in the instant case, the allegation of the Petitioner is that the Respondents have obtained caste validity certificate from the Scrutiny Committee under the Act of 2000 by furnishing false information and filing false documents and affidavit. Thus, *prima facie* the said offence alleged against the Respondents herein is squarely covered by Section 11(1)(a) of the Act of 2000. Perusal of the said provision clearly demonstrates that the said provision is wide enough to constitute any act of obtainment of false caste certificate not only on furnishing of false information or filing of false

document or false statement as offence but obtainment of caste validity by any other fraudulent means also becomes an offence under Act. The complaint made by the Petitioner against the Respondents, therefore, is clearly covered by this provision and that the said Act alleged to have been committed by Respondents would amount of an offence punishable under the said provision of Act of 2000. It is inconsequential as to the use of the said certificate of the Respondents for education or securing of the Government job or for any other purpose and offence in any case would remain to have been committed under the provision of Act of 2000. There is clear embargo for any Court to take cognizance of offence punishable under this section except upon complaint in writing by the Scrutiny Committee or any officer duly authorized by it for this purpose.

13. Admittedly the complaint in question has neither been filed by the Scrutiny Committee nor Petitioner is not authorized by it to file the same. Petitioner, therefore, has no *locus standi* to file any complaint in respect of the act touching to the offence under provisions of Section 11(1)(a) of the Act of

2000. Learned CJM, thefore, has rightly considered the said embargo and has observed that the Caste Scrutiny Committee is the only authority which can launch prosecution against beneficiary of false caste certificate, if any. It is further held that in the wake of legal embargo no other person can launch prosecution in this regard. Thus, the order passed by learned CJM of refusing to take cognizance of the complaint and accepting 'B' Summary report cannot be faulted with.

14. The issue raised by the learned Counsel for the Petitioner about the accused having no right to be heard before issuance of process is concerned, there cannot be any dispute about the proposition that the accused has no right of audience before issuance of process. The factual question arises herein this case is as to whether the accused is heard on merits of issuance of process or the defence of the accused has been taken into consideration by learned CJM for dismissal of complaint. Though technically the Respondent No. 2 ought not to have been joined as party even as third party to the application, however,

certain material facts appearing in this case cannot be ignored by this Court. Pertinently, Petitioner is not an independent person, who wishes to espouse genuine cause in the public interest. Nor he is victim of the crime. Petitioner is ex father-in-law of Respondent No. 2 against whom she had filed prosecution. This Court, therefore, finds substance in the contention of Counsel for the Respondents that the proceedings launched by Petitioner is not bona fide and it is instituted out of vengeance against her.

15. Had it been a case the Respondents were heard on merits of application and on the basis of that defence sought to be made out by them process was not issued or prosecution was rejected, there would have been reason to accept the contention of Petitioner. As observed herein above, there is nothing to indicate that the order in question was passed by learned CJM on the basis of defence of Respondent but since the said order is purely passed on point of law and taking into consideration the embargo created by Section 11(1)(a) of the Act of 2000 no cognizance of the complaint is taken. This Court in peculiar facts and circumstances

of the case does not find any substance in the objection raised by the Petitioner in respect of the Respondent being heard before issuance of process to cause interference in the impugned order.

16. Considering the limited jurisdiction of the Revisional Court under Section 397 of Cr.P.C. and having regard to the facts and circumstances of the case, the rejection of application filed before learned Additional Sessions Judge is justified. For want of perversity in impugned orders, this Court find no case being made out to exercise jurisdiction under Articles 226 and 227 of the Constitution of India to annul these orders.

17. In the result, Petition stands dismissed.

(R.M. JOSHI, J.)

Malani