

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.495 OF 2015

Vilas Gunda Shirolkar .. **Applicant**

v/s.

State of Maharashtra .. **Respondent**

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Mr. Ramchandra Mendadkar a/w Miss. Komal Gaikwad,
for the Applicant.

Ms. Anamika Malhotra, APP for the respondent – State

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CORAM: R.G. AVACHAT, J.

Date of reserving judgment : 21st February, 2023

Date of pronouncing judgment : 20th March, 2023

J U D G M E N T :-

This Criminal Revision Application is directed against the order of conviction and consequential sentence passed by the Court of Judicial Magistrate, First Class, Khadki (trial Court) on 2/9/2014 in R.C.C. No.179/2008 and the judgment and order passed by Additional Sessions Judge, Pune on 28/9/2015, in Criminal Appeal No.493/2014, confirming the order of conviction and sentence by the trial Court. As such, it is

a case of concurrent findings of facts.

2. The facts giving rise to the present revision application are as follows :

The applicant is alleged to have forged his caste certificate and used the same knowing it to be false and fabricated, to secure a job in Police Department way back in 1979.

The caste certificate was submitted to the Scheduled Tribe Certificate Scrutiny Committee, Pune in 2001. The Committee, vide its order dated 11/1/2007, concluded that the applicant did not belong to Koli Mahadeo, Scheduled Tribe, his caste claim towards the same is held invalid. The unsigned caste certificate issued to the applicant by the Tahsildar, Walva, Islampur, District Sangli on 2/2/1979 was cancelled and confiscated.

3. The Deputy Director-cum-Member Secretary of the Scheduled Caste Certificate Scrutiny Committee, vide its order dated 8/10/2007, directed the Special Inspector General of

Police, C.I.D. to register crime against the applicant for offence punishable under Section 11 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and under Sections 420, 467, 468, 471 of the Indian Penal Code. Shri Ramchandra Chandvilkar (P.W.1), Superintendent of Police, C.I.D., Pune, therefore, lodged the F.I.R. at the concerned Police Station. It has been alleged in the F.I.R. that, the applicant forged and fabricated the caste certificate and making use thereof, secured a job and thereby cheated the Government. On due investigation of the crime, the charge sheet came to be filed against the applicant herein. He pleaded not guilty. His defence is of false implication.

4. The prosecution examined 6 witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial Court convicted the applicant and consequently sentenced him to suffer varying terms of imprisonment. The details thereof are as under :

Sr. No.	Sections	Sentence of imprisonment
1.	420 IPC	R.I. for one year and fine of Rs.1000/-, i.d. R.I. for 15 days.
2.	467 IPC	R.I. for three years and fine of Rs.1000/-, i.d. R.I. for 15 days.
3.	468 IPC	R.I. for one year and fine of Rs.1000/-, i.d. R.I. for 15 days.
4.	471 IPC	R.I. for one year and fine of Rs.1000/-, i.d. R.I. for 15 days.
5.	11 of the Maharashtra S.C., S.T., De-Notified Tribes (Vimukta Jatis), N.T., O.B.C. & S.B.C. (Regulation of Issuance and Verification of) Caste Certificate Act, 2000	R.I. for six months and fine of Rs.2000/-, i.d. R.I. for 15 days.
		All the substantive sentences have been directed to run concurrently.

5. Heard. Learned counsel for the applicant would submit that, the crime came to be registered 28 years after the alleged offence. It was a caste certificate issued by the competent authority, namely Tahsildar. Inadvertently, the unsigned certificate was issued. Had the applicant guilty mind, he would not have submitted such a certificate way back in 1979 when he applied for the job in Constabulary. According to learned counsel, the fact that an unsigned certificate was issued, ipso facto does not lead to conclude the same to have been forged and fabricated by the applicant. The certificate was not

examined by a handwriting expert nor the seal appearing thereon was compared with the seal of office of the issuing authority. None of the officials from the office of Tahsildar, Walva was examined. The Tahsil Office, Walva informed that the register of caste certificate issued in particular year i.e. in 1979 was not available with their office. According to the learned counsel, both the Courts below have, therefore, erred in convicting the applicant. According to him, the applicant has attained the age of superannuation. The Maharashtra Administrative Tribunal (MAT) came to his rescue, directing his office to reinstate the applicant in service subject to the outcome of the criminal prosecution. Since the applicant came to be convicted, he has been discharged from service. His service benefits have been withheld. He is in the evening of his life. The learned counsel ultimately urged for allowing the revision application.

6. The learned A.P.P. would, on the other hand, submit that, in exercise of revisional jurisdiction, this Court could not interfere with the concurrent findings of fact recorded by both

the Courts below. According to her, the Scheduled Tribe Certificate Scrutiny Committee confiscated the certificate declaring it to be invalid. The burden of proof that the applicant belonged to Scheduled Tribe did rest on him. He accepted the vigilance cell report. The same speaks in volumes about the guilt of the applicant. The learned A.P.P. ultimately urged for dismissal of the revision application. She relied on the following authorities :

- (1) State of Uttar Pradesh Vs. Ranjit Singh
[1999 AIR (SC) 1201]
- (2) State of Maharashtra Vs. Jagmohan Singh Kuldeep Singh Anand & ors. & Satish Kaur Sahani Vs. Jagmohan Singh Kuldeep Singh Anand & ors. [AIR 2004 SC 4412]
- (3) Lillykutty Vs. Scrutiny Committee, S.C. and S.T.
[2005 AIR (SC) 4313]

7. Considered the submissions advanced. Perused the evidence relied on. The Court is conscious of its limitations regarding scope of revisional jurisdiction to interference with the findings of facts. There can be no two views over what has been observed by Apex Court in Satish Kaur's case (supra) that High Court cannot exercise revisional power as second appellate

power.

The judgment in Lillykutty's case (supra) is arising from a civil proceedings. The Scrutiny Committee, while holding the tribe certificate of the applicant to be invalid, did not observe it to have been obtained fraudulently or it was a forged one. No enquiry in terms of section 7 of the Act was held by the Scrutiny Committee.

In case of Ranjit Singh's case (supra), the respondent – accused had forged a bail order. The said judgment is distinguishable on facts.

The alleged offence dates back to December 1979. The applicant, based on his Tribe Certificate (Exh.34), secured a job as a Searcher in the office of C.I.D., Railway, Maharashtra State, Pune under reserved category of Scheduled Tribe. The question is whether the said Tribe Certificate was forged by the applicant and/or used the same knowing it to be forged. Before adverting to the factual matrix, certain provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and

Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short the Act) need to be adverted to. Section 2 of the Act defines certain terms :

(a) "Caste Certificate" means the certificate issued by the Competent Authority to an applicant indicating therein the Scheduled Caste, Scheduled Tribe, De-notified Tribe (Vimukta Jatis), Nomadic Tribe, Other Backward Class or Special Backward Category, as the case may be, to which such applicant belongs.

(b) "Competent Authority" means a officer or authority authorised by the Government, by notification in the Official Gazette, to issue a Caste Certificate, for such area or for such purposes as may be specified in the said notification and shall include all the Competent Authorities already designated by the Government before the coming into force of this Act, having jurisdiction over the area or place to which the applicant originally belongs, unless specified otherwise.

(k) "Scrutiny Committee" means the Committee or committees constituted under subsection (1) of section 6 for the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for verification of the Caste Certificate and to perform the function of Scrutiny Committee under this Act.

Section 6 of the Act provides for constitution of a Scrutiny Committee for verification of Caste Certificates.

Section 7 speaks about confiscation and cancellation of false caste certificate. The Section reads :-

7. (1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.

(2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or court except the High Court under Article 226 of the Constitution of India.

Section 8 speaks about burden of proof. The Section reads thus :

8. Where an application is made to the Competent Authority under section 3 for the issue of a Caste Certificate in respect of Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category and in any enquiry conducted by the Competent Authority and Scrutiny Committee or

the Appellate Authority under this Act or any trial of offence under this Act, the burden of proving that the person belonged to such Caste, Tribe or Class shall be on such claimant applicant.

Section 11 speaks of offences and penalties. The Section reads thus :

11. (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.

8. In the case in hand, the F.I.R. (Exh.62) has been lodged by Shri Ramchandra Chandvilkar (PW.1), Superintendent of Police, C.I.D., Pune on the directions of Deputy Director-cum-Member Secretary of the Tribe Certificate Scrutiny Committee, Pune. Admittedly, the caste certificate (Exh.34) came into being long before the Act came into force, meaning thereby the alleged offence, if any, did take place before the Act came into force. It needs no mention that there can never be ex post facto criminal legislation. Article 20(1) of the Constitution of India reads :-

“No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”

9. The applicant, therefore, should not have been tried and convicted for the offence punishable under Section 11 of the Act. Moreover, by virtue of sub-section (2) of Section 11 of the Act, cognizance of the offence punishable under Section 11 of the Act could only be taken upon a complaint, in writing, made

by the Scrutiny Committee or by any other officer duly authorised by it. Here the cognizance has been taken on police report submitted under Section 173 of the Code of Criminal Procedure. The applicant's conviction and consequential sentence for offence punishable under Section 11 of the Act, therefore, needs to be set aside.

10. So far as regards the applicant's conviction for the offences punishable under the Indian Penal Code are concerned, it is to be stated that the tribe certificate (Exh.34) is shown to have been issued on an application made by the applicant's father on 1/2/1979. The certificate bears a seal of the office of Tahsildar, Islampur. It also bears initials of a Clerk who scribed the certificate. The certificate also records that the school leaving certificate of the applicant besides the certificate given by the Village Talathi were relied on in addition to the affidavit given by the applicant's father. The certificate bears its outward number.

11. True, the certificate is unsigned. The applicant did not dispute the same before the Scrutiny Committee and in the

pleadings of the present application as well. It is very surprising as to how the authorities concerned at the relevant time way back in 1979 acted upon unsigned tribe certificate. It is only in the year 2001 the applicant was called upon to submit the said certificate for verification by the Scrutiny Committee. He accordingly submitted the same. Had really the applicant forged the certificate, he would not have dared to submit the unsigned certificate at the time of his recruitment in service or for its verification. The same rules out the mens rea.

12. It is true that the Scrutiny Committee, vide its order dated 15/1/2007, held that the applicant did not belong to Koli Mahadeo, Scheduled tribe and his claim towards the same was held invalid. The unsigned certificate issued by Tahsildar was thereby cancelled and confiscated. In paragraph No.1 of its order, the Committee observed that the applicant had submitted the documentary evidence pertaining to himself and his blood relatives, wherein their caste was recorded as Mahadeo Koli and Koli etc. The Vigilance Cell conducted the school, home and other enquiry and submitted its report. The report was adverse

to the claim of the applicant. It also appears that the applicant laid evidence in support of his claim and ultimately accepted the Vigilance Cell report. The applicant requested the Committee to give him the benefit of Government Resolution dated 15/6/1995. The applicant apologized for the fact that the certificate did not bear signature of the issuing authority.

13. It appears that, one Shri Sonawane, serving with the very Department had made a complaint about the applicant's tribe certificate. Shri Sonawane was junior to the applicant in service. The record further indicates that the applicant was promoted to various posts during his service tenure. Post decision of the Scrutiny Committee, he was reverted back and even discharged from service. The applicant had approached this Court by filing Writ Petition No.1494/2007 seeking directions to his Department to grant him benefit of the Government Resolution dated 15/6/1995. The Division Bench of this Court, vide order dated 2/4/2007, disposed of the said Writ Petition No.1494/2007, by observing that it would be open to the petitioner to apply to the employer, and the employer to

consider the claim for grant of benefit of the Government Resolution dated 15/6/1995. The applicant's employer refused to grant him the benefit, the applicant approached the Maharashtra Administrative Tribunal (MAT). A copy of the order dated 6/9/2010, passed by the MAT is on record. In paragraph Nos.13, 14 and 15 of the said order, it has been observed thus :

“13. Thus, there are two possibilities, either that the Tahsildar forgot to sign the certificate and it was handed over to the applicant like that, or that the applicant produced a false certificate. The Respondents are proceeding on the second assumption. The only way to confirm that presumption is to verify the record of Tahsildar's office, Valva.

14. In this context, letter by Tahsildar, Valva dated 17.7.2001, (Exh. R-1, page 62), is important. A perusal of the said letter shows that Tahsildar's office could not locate the original Register of 1979. Thus the Tahsildar has only stated the obvious that the certificate is without signature and bears number MAG/SR 80 Islampur/ 2.2.1979. Nowhere has it been stated that the certificate was false and the applicant never applied for the same, since the original record is unfortunately not traceable. Thus, the Respondents have chosen the second option without there being any supporting evidence in their favour.

15. It cannot be denied that the applicant

should have taken care to see that the certificate was signed by the Tahsildar when he produced it initially. However, it is equally true that it was the responsibility of the Respondents to verify whether the certificate was signed and if not to check with the Tahsildar immediately, and not after more than 20 years, as has been done in this case. Unless, Respondents have any evidence to show that the original certificate is fake, besides the fact that it is unsigned, it is not fair to accuse the applicant of forgery. In fact, because of inaction on the part of Respondents for 20 years, we feel that at this stage it is a deserving case for benefit of doubt to be given to the applicant.”

14. Chapter XVIII of the Indian Penal Code speaks of offences relating to documents and to property marks. Sections 463 and 464 read as under :

“463. Forgery :- Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464. Making a false document:- A person is said to make a false document or false electronic record -

First:- Who dishonestly or fraudulently -

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part

of any electronic record;

- (c) affixes any electronic signature on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly,- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly,- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.”

Section 471 of the Indian Penal Code reads thus :

471. Using as genuine a forged document or electronic record :- Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in

the same manner as if he had forged such document or electronic record.

15. It was for the prosecution to establish the applicant to have forged his tribe certificate (Exh.34) and/or used the same knowing it to be forged. The informant (PW.1) simply gave his evidence consistent with the averments in the F.I.R. The certificate has allegedly been issued by Tahsildar, Walva. None of the official from the office of Tahsildar was examined as a witness in the case. The seal and stamp appearing on the certificate was not examined or verified as to whether the same really was of the Tahsildar Office, Walva or fabricated one. No efforts were made to find out in whose handwriting the certificate was. To top it, the office of the Tahsildar, Islampur informed in writing that the record pertaining to issue of caste certificates in the year 1979 and therebefore was not available. This gives a fatal blow to the case of the prosecution. It is reiterated that there is quite distinction between unsigned genuine certificate and certificate being forged one. The applicant appears to have not contested the proceedings before the Tribe Certificates Scrutiny Committee since he felt to have

been entitled to the benefit of Government Resolution dated 15/6/1995. Be that as it may. Merely because the applicant failed to prove to have belonged to Scheduled Tribe – Mahadeo Koli, no conclusion should have been drawn that the tribe certificate (Exh.34) was false, fabricated and forged one. The prosecution did not produce any evidence to establish the charge. The trial Court ought not to have observed that since the certificate was unsigned and the applicant's claim to have belonged to Scheduled Tribe, being negated, the certificate (Exh.34) was necessarily forged one. For the very reason, the appellate Court confirmed the findings recorded by the trial Court. Since the order of conviction passed by the trial Court is not legal, proper and correct one, interference therewith is warranted.

16. In the result, the revision application succeeds.
Hence the order :

ORDER

(i) The Criminal Revision Application is allowed.

(ii) The judgment and order of conviction dated 2/9/2014, passed by learned Judicial Magistrate, First Class, Khadki in R.C.C. No.179/2008 and the judgment and order passed by Additional Sessions Judge, Pune on 28/9/2015, in Criminal Appeal No.493/2014 are hereby set aside.

(iii) The applicant is acquitted of the offences punishable under Sections 420, 467, 468, 471 of the Indian Penal Code and Section 11 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

(iv) Bail bonds of the applicant are cancelled.

(v) Fine amount, if paid, be refunded to the applicant.

(R.G. AVACHAT, J.)