



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No. 3954 / 2022

1. Shankar s/o Baba Pathwe
2. Laxman s/o Shankar Pathwe
3. Jagdish s/o Shankar Pathwe
4. Dwarka d/o Shankar Pathwe @
Dwarka w/o Ramesh Shinde
5. Vaibhav s/o Laxman Pathwe
6. Sumant s/o Jagdish Pathwe
7. Shrikant s/o Jagdish Pathwe

...Applicants

Versus

1. State of Maharashtra
Through P.I., Police Station, Akole
Tq. Akole Dist. Ahmednagar.
2. The Tahasildar,
Tahasil Office, Akole
Tq. Akole Dist. Ahmednagar.

..Respondents

Advocate for the Applicants : Mr. Sachin G. Joshi with
Mr. Sushant C. Yeramwar
A.P.P. for Respondents /State : Mr. G.A. Kulkarni

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 4 APRIL 2024
PRONOUNCED ON : 18 APRIL 2024**

FINAL ORDER [Per Shaillesh P. Brahme, J.] :

- . Heard Both the sides finally.

2. Applicants are seeking quashment of First Information Report bearing Crime No.0346/2022 registered with Akole Police Station for the offences punishable under Sections 191, 196, 197, 198, 199, 200 and 420 of the Indian Penal Code and under Section 7(1) of the Maharashtra 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 the 'Act' for the sake of brevity and convenience). Offence in question was registered against ten persons, out of them seven have approached this Court.

3. The respondent no.2 is the informant who lodged report as per written directions issued by the Tahasildar cum Taluka Magistrate, Akole, who was authorized to lodge report under Section 7(1) of the Act, 2000. It is alleged that applicants claim to be Scheduled Tribe. They were issued with tribe certificates by the competent authorities. During verification of tribe certificates, it was transpired by Vigilance Officer and the Scrutiny Committee that their certificates were obtained by submitting bogus documents. On an enquiry with Head-Master of Zilla Parishad School at Panjare and Devthan, Taluka Akole, it revealed that School Leaving Certificate of Shankar Baba Pathwe was dubious. The Caste certificates were obtained on the basis of bogus documents. The applicants and others were given opportunity of hearing but they did not respond except Laxman Shankar Pathwe. Considering false caste certificates, informant was directed to lodge a report under Section 7(1) of the Act 2000.

4. Learned Counsel for the applicants submits that in view of decision rendered in the matter of **Vilas Rambhau Majrikar Vs. State of Maharashtra**, 2015 ALL MR (Cri) 4025; **Rupesh Teksingh Shinde Vs. State of Maharashtra and Anr**, Criminal Application (APL) No.663/2015; **Ku. Walshall d/o Pandurang Nandanwar Vs. State of Maharashtra and Anr.**, Criminal Application (APL) No.449/2014, F.I.R. is liable to be quashed. He would submit that no cognizance can be taken on a complaint directly lodged with the Police Station under Section 154 of the Code of Criminal Procedure in view of Section 11(2) of the Act. It is further submitted that only recourse to the Scrutiny Committee or the authorized Officer would be to approach Court in accordance with Chapter XV of Cr.P.C.

5. Learned APP repels the submission of learned Counsel. He submits that applicants have committed offences under Sections 191, 196, 197, 198, 199, 200 and 420 of the Indian Penal Code, under Section 7(1) of the Act and under Section 11(1) (a) of the Act. Impugned F.I.R. is composite one, containing allegations of offence under I.P.C. as well as Act of 2000. Applicants are alleged to have obtained caste certificates on the basis of bogus school record. After due enquiry, respondent no.1 proceeded to lodge report. Learned APP vehemently submits that the judgment cited by the applicants are not applicable to the present case. He seeks to rely upon the judgment rendered by the Division Bench of this Court in the matter of **Shilpa w/o Sunil Khillare Vs. State of Maharashtra and Another**, 2016 DGLS (Bom.) 1691.

6. We have considered rival submission of the parties. We have carefully gone through F.I.R. It transpires that offence under Section

11(1)(a) of the Act, has been alleged against the applicants. Caste/Tribe Verification Scrutiny Committee, Nashik was scrutinizing caste certificate of Vaibhav Laxman Pathwe. It was transpired that caste certificates of the applicants were suspicious. An enquiry was conducted with the concerned school and it revealed that School Leaving Certificate of Shankar Baba Pathwe was suspicious. The applicants were issued with caste certificates on the basis of bogus documents of Shankar Baba Pathwe. Informant was authorized to lodge report under Section 7(1) of the Act 2000.

7. The applicants are alleged to have committed offences under Sections 191, 196, 197, 198, 199, 200 and 420 of the Indian Penal Code and under Section 7(1) of the Act. Offence under Section 11 is as follows :

11. Offences and penalties.

(1) Whoever,-

(a) obtain 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 up to two years or with fine which shall not be less than two thousand rupees, but which may extend up to 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 authorized by the Scrutiny Committee for this purpose."

8. Learned Counsel for the applicants relies on the judgment of Vilas Rambhau Majrikar (supra). In that matter only offence alleged against accused was under Section 11(2) of the Act and no other offence was alleged. In that matter, a report was lodged by the Deputy Superintendent of Police, Vigilance Cell, Scheduled Tribe Scrutiny Committee, Nagpur as per the directions issued by the Scrutiny Committee. In those facts and circumstances, it was held in paragraph nos.13, 15 and 16 as under :

“13. It is clear from Section 11(1)(a) that obtaining a false caste certificate by furnishing false information etc or by any other fraudulent means is an offence. Section 11(1)(b) relates to production of false certificate for obtaining benefits by a person not belonging to such reserved category which has been made an offence. The sentence provided is not less than six months which may extend to two years or with fine. Sub-section (2) of Section 11 provides a procedure for filing of criminal case. Sub-section (2) of Section 11 provides that no Court shall take cognizance of offences under this section. It provides that upon filing of a complaint in writing made by the Scrutiny Committee or its authorized officer the Court may take cognizance. This clearly means that what is contemplated is filing of a private case by a Scrutiny Committee or its authorized officer in accordance with Chapter XV of the Code of Criminal Procedure and it does not contemplate filing of police case in accordance with Chapter XII of the Code of Criminal Procedure.

15. By merely making the offence under this Section 11 cognizable and non-bailable, the position would not change and the operation and effect of Section 11(2) does not get obliterated or non operational. We are therefore of the opinion that even though offences have been made cognizable or non-bailable, Section 11(2) must be held to operate with full force. That means what is contemplated by Section 11(2) is filing of a private complaint by the Scrutiny Committee or its authorized officer before the Court who could then take cognizance. In other words, filing of a police case is not contemplated by the aforesaid provision.

16. In the light of the above discussion with reference to question no.1, therefore, we are of the considered opinion that filing of a police case by registration of F.I.R. before the criminal Court is not contemplated and what is contemplated is filing of a private complaint by a Scrutiny Committee or its authorized officer in accordance with Chapter XV of the Code of Criminal Procedure. We, therefore, answer question no.1 accordingly and hold that filing of final

report by the police under Section 173 of the Code of Criminal Procedure by way of chargesheet is illegal and contrary to the provisions of law as aforesaid."

9. Law laid down in the matter of Vilas Rambhau Majrikar (supra) was referred and followed by the Division Benches in the matters of Rupesh Teksingh Shinde and Ku. Waishali d/o Pandurang Nandanwar (supra). In the matter of Rupesh Teksingh Shinde (supra), offences under Sections 420, 468, 471 of IPC alongwith offence under Section 11(1)(a) were registered. However, Division Bench did not discuss the consequences of the offences registered under I.P.C. and proceeded to quash FIR and proceedings.

10. Learned APP refers to judgment rendered in the matter of Shilpa w/o Sunil Khillare (supra). That matter was also for quashment of F.I.R. for offences under Sections 468, 471, 420 read with 34 of I.P.C. Division Bench considered the judgment rendered in the matter of Vilas Rambhau Majrikar (supra) and recorded following findings :

"4. It was sought to be canvassed, relying on the judgment in the case of Vilas Rambhau Majrikar Vs. State of Maharashtra (2015(3) Bom.C.R. (Cri.) 758) that, in case of any allegation in regard to securing employment on the basis of a false caste certificate, criminal prosecution can only be at the instance of and upon a complaint in writing made by the Scrutiny Committee or any other officer duly authorized by the Scrutiny Committee for that purpose. Argument so made is liable to be rejected at the threshold. In the instant case, at the very initial stage, it was noticed that the caste certificate presented by the applicant was forged and fabricated. It was not mandatory for the concerned officer to send the said certificate to the Caste Scrutiny Committee for its verification and it was well within the competence of the said officer to lodge report to the concerned Police Station. 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 nowhere prescribes a bar for initiating such prosecution or it does not mandate that in such cases, the criminal prosecution has to be initiated only under the provisions of the said Act."

. Ultimately, it is held by the Division Bench that bar under Section 11(2) of the Act 2000, would not be attracted as offence alleged against applicants, was within frame work of Sections 468, 471 of I.P.C and the judgment rendered in Vilas Rambhau Majrikar (supra) was held to be not applicable to the facts and circumstances of the case. The application for quashment was rejected.

11. We are faced with the situation that the applicants are facing penal action for having committed offence under Sections 191, 196, 197, 198, 199, 200 and 420 of the Indian Penal Code and under Section 7(1) of the Act. Impugned F.I.R. does not quote Section 11(1)(a) of the Act. However the alleged activities are within realm of Section 11(1)(a) of the Act. The offence in question is under investigation. In the case of Vilas Rambhau Majrikar (supra), solitary offence pitted against the accused was under Section 11(1) unlike the present case. The Division Bench in that matter had no occasion to consider purport of section 17 of the Act. In those facts and circumstances, it was held that offence of Section 11(1)(a) is liable to be quashed due to the bar incorporated in Section 11(2) of the Act. The judgment rendered in the matters of Rupesh Teksingh Shinde and Ku. Waishali d/o Pandurang Nandanwar (supra), do not consider the fact situation obtaining in the present matter. Therefore, the judgments cited by the applicants are not applicable.

12. The judgment rendered by the Division Bench in the matter of Shilpa w/o Sunil Khillare (supra) pertains to offence under Sections 468, 471 of I.P.C. No offence under Section 11(1)(a) of the Act was alleged

against the accused in that case. Therefore, the judgment also cannot be made applicable to the present case. Pertinently, this judgment was not cited before the Division Bench while deciding matters in Rupesh Teksingh Shinde and Ku. Waishali d/o Pandurang Nandanwar (supra). We are of the considered view that the judgments cited by the litigating sides do not squarely cover fact situation in the case in hand.

13. It is relevant to refer to Section 17 of Act 2000 which is as follows:

“17. Provisions of this Act to be in addition to any other law for the time being in force: The provisions of this Act shall be in addition to the provisions of any law for the time being in force.”

14. Act of 2000 and Rules of 2003 are special and subsequent legislation. There is no provision in the Act or the Rules to have overriding effect over general penal law. By implication of Section 17, it is informed that the provisions of the Act would be in addition to the provision of I.P.C. The prosecution for composite offence punishable under I.P.C. as well as under Act of 2000, is possible.

15. A careful perusal of FIR in the present matter indicates that the applicants alongwith others procured bogus documents, possibly School Leaving Certificates and produced before the competent authority for getting caste certificates. In all probabilities, they have indulged in procuring bogus caste certificates, school leaving certificates and other documents. The activities of the applicants are covered by Sections 191, 196, 197, 198, 199, 200 and 420 of the

Indian Penal Code and under Section 7(1) of the Act. They are alleged to have committed offence prescribed under Chapter XI of I.P.C. which are in respect of giving false evidence or fabricated evidence. These offences are segregable from the offence under Section 11(1)(a) of the Act of 2000. Though the final object was to procure caste certificate, offence under I.P.C. and under Act of 2000 are distinct. An investigation in the offence in question would unravel further facts as to the commission of offence of cheating. We find that no case is made out to quash offences under I.P.C.

16. Simultaneously, implication of Section 11(2) cannot be overlooked. Procedure of filing private complaint by the Scrutiny Committee or its authorized officer in accordance with Chapter XV of Cr.P.C. is contemplated for offence under Section 11(1)(a). To that extent, we propose to follow law laid in the case of Vilas Rambhau Majrikar (supra). Therefore, complaint to that extent is liable to be quashed. However, for the offence under I.P.C., complaint would be sustainable. We, therefore, pass following order :

ORDER

- I. The Criminal Application is allowed partly.
- II. F.I.R. bearing Crime No.0346/2022 registered with Akole Police Station for the offences punishable under Section 7(1) or 11(1)(a) 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 only, is quashed and set aside.

III. Further investigation and the proceeding to the extent of offences under Sections 191, 196, 197, 198, 199, 200 and 420 of the Indian Penal Code, shall continue.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE

Najeeb..