



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 584 OF 2004

The State of Maharashtra

... Appellant

Versus

Madhav Meghaji Nivage

Age : 48 years, Occupation Service,

R/o : Balepeer, Nagar Road,

Beed, Taluka and District Beed.

... Respondent

**WITH
CRIMINAL REVISION APPLICATION NO. 183 OF 2004**

Madhav s/o Meghaji Nivage

Aged : 45 Years, Occ. Service as

Police Head Constable,

Police Station Shirsala,

Taluka Parali-Vaijnath, District Beed,

R/o Balepeer, Beed.

... Applicant

Versus

The State of Maharashtra,
through the Police Station Officer,
Police Station Beed [City],
Beed.

... Respondent

.....

Mr. S. M. Ganachari, APP for the Appellant-State in Criminal Appeal No. 584 of 2004 and the Respondent in Criminal Revision Application No. 183 of 2004.

Ms. Rekha Choudhari and Mr. G. R. Syed, Advocates for the Respondent in Criminal Appeal No. 584 of 2004 and the Applicant in Criminal Revision Application No. 183 of 2004.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 18.06.2025

Pronounced on : 02.07.2025

JUDGMENT :

1. This is a State Appeal, challenging the judgment and order dated 17.04.2004 passed by learned 2nd Adhoc Additional Sessions Judge, Beed in Criminal Appeal No. 20 of 2003, arising out of the judgment and order dated 21.02.2003 passed by learned 5th J.M.F.C., Beed in R.C.C. No. 418 of 1997.

On the other hand, the accused also preferred Criminal Revision Application against the same judgment and order challenging his conviction under Section 471 of the IPC.

Hence, both the proceedings are taken up for hearing and decided together by this common judgment.

2. Learned APP pointed out that charge was framed against present respondent-convict for commission of offence under Sections 199, 200, 420, 468 and 471 of IPC on the premise that respondent-convict submitted forged and fabricated caste certificate for gaining employment as a Constable in Police Department. Subsequently, on

complaint and inquiry it was revealed that, the very caste certificate tendered by the respondent-convict was forged. However, same was deliberately and dishonestly tendered to procure employment. Therefore, on report of the Superintendent working in the S.P. Office, Beed, complaint was lodged. Investigation was carried out and finally, the respondent-convict was chargesheeted vide R.C.C. No. 418 of 1997. That, after appreciating the oral and documentary evidence, learned J.M.F.C. was pleased to convict the respondent for offence under Sections 468 and 471 of IPC and acquitted him from other charges.

3. Learned APP further pointed out that against said judgment and order of conviction, respondent-convict preferred appeal before learned 2nd Adhoc Additional Sessions Judge, Beed vide Criminal Appeal No. 20 of 2003. That, in the same, learned 2nd Adhoc Additional Sessions Judge was pleased to set aside the conviction under Section 468 IPC and only held respondent-accused guilty of offence under Section 471 IPC.

4. Learned APP further submitted that respondent had played fraud on the Government. He had intentionally, dishonestly and knowingly tendered forged, fabricated and manufactured caste

certificate claiming himself to be belonging to the Scheduled Tribe [ST]. That, in fact he was from Maratha community. A detail inquiry with Collector Officer revealed that fabricated and forged document was procured only to gain employment. Learned APP submits that in fact, such act of the respondent amounts to depriving the real and worthy, suitable candidate from ST category from gaining employment. Therefore, along with commission of offence under Section 471, learned First Appellate Court ought to have held respondent guilty under Section 468 IPC also. Even acquittal of respondent by learned J.M.F.C. from charge under Section 420 IPC was unwarranted, more particularly as there was use of caste certificate with dishonest intention of cheating the Government. Therefore, learned APP questions the judgment passed by learned J.M.F.C. as well as learned 2nd Adhoc Additional Sessions Judge, and urges to allow the appeal for the grounds spelt out in appeal memo.

5. Learned counsel for the respondent-original accused, who has also preferred Criminal Revision Application, supports the acquittal at the hands of learned J.M.F.C. from charge under Sections 420, 199 and 200 of IPC, as well as acquittal by learned Adhoc Additional Sessions Judge from offence under Sections 468 IPC. Learned counsel questions the conviction awarded under Section 471 IPC on the

ground that, the essential ingredients for the same are not met. That, there was no legally acceptable evidence in support of charge under Section 471 IPC. Therefore, he finds fault in the manner of appreciation of evidence by both, the learned trial Judge as well as the learned first appellate court. In the alternative, learned counsel for respondent-revisionist would submit that, if at all the Court is upholding the judgment of the first appellate court, then, the respondent-revisionist be extended benefit of the Probation of Offenders Act. In support of such contention, learned counsel seeks reliance on the judgments of the Hon'ble Apex Court in ***State of U.P. v. Ranjit Singh*** 1999 AIR SC 1201, ***Vilas Gunda Shirolkar v. State of Maharashtra*** 2024(1) BomCR (Cri) 435 : 2023 ALL MR(Cri) 2505 and ***Rajaram Nago Chavan v. The State of Maharashtra and Ors.*** [Cri.WP 1489 of 2022 decided by this Court at Aurangabad on 29.08.2023].

EVIDENCE BEFORE THE TRIAL COURT

6. In support of its case, prosecution has examined in all 10 witnesses. Their role and status and their evidence can be summarized as under :

PW1 Informant Sayyed Rahematullah was the Superintendent at S.P. Office Beed. His evidence at Exhibit 17/C is as under :

1. Since 1.1.1994 I am office Supdt. in S.P. office Beed. On 2.3.1994 S.P. Beed ordered me to lodge report against Madhav Meghaji Nivage. I know Madhav Meghaji Nivage. Accused before the Court is the same. He was appointed on 17.10.1978 as Police Constable. On the basis of his caste certificate. His caste is considered to be Scheduled Tribe as Mahadeo Koli.

2. On 27.12.1998 one unnamed application received at S.P. office Beed. It was alleged in that application that accused is by caste Maratha. However, he obtained caste certificate as Mahadeo Koli and got service. On the basis of that application, report of Nanded S.P. was called. Now, unnamed application shown to me same. It is at Exh.18/C. The S.P. Nanded made enquiry and on 4.1.1990 submitted the report to S.P. Beed. Its xerox copy is on record. The S. P. Nanded have mentioned in the report that the relatives of the accused are of Maratha caste. His real brother also from Maratha Caste and accused also from Maratha State.

3. The collector Nanded has also submitted his report on 7.3.1991 that the caste certificate obtained by accused is illegal. Now, report shown to me is the same. It bears signature of Collector, Nanded. The contents therein are true and correct. It is at Exh. 19/C. As per the order of S.P. Beed on

10.3.1994 I lodged the report. Now, report shown to me is the same. It bears my signature. The contents therein are true and correct. It is at Exh. 20/C.

PW2 Madhav Mariba Jadhav, at Exhibit at 24/C, deposed as under :

I was on duty as a Talathi of Sajja Biloli since 1.8.1990. I know the father of accused and his sons Shriram, Laxman and Madhav (accused). The accused has agriculture land at Biloli. The accused belong to Maratha Caste. The certificate which I have issued on 5/6/1997 is true. The certificate now shown to me is the same. It's contents are true and correct. It bears my signature. It is at Ex. 24.

PW3 Pandurang Pawade, Police Patil gave evidence at Exhibit 25/C as under :

I am working as a Police Patil at Biloli since 1988. I know Meghaji Nivage and his sons. Shriram, Madhav, Laxman etc. all r/o Biloli. I knew the accused before Court. The accused belong to Maratha caste. It is true to say that I have issued a certificate on 5.6.1997. Certificate now shown to me is the same. Its contents are true and correct. It bears my signature. It is at Exh. 25/1. There are no people in my village which is of from Mahadeo Koli caste and as a surname Nivage.

PW4 Md. Abdul Javed, resident of same village, deposed as under :

I know the accused. He belongs to my city. It is true to say that I was the council of Ward No. 14 in the year 1997. The accused is resident of my ward. I know the accused, his brother and his parents. The accused is serving as police. Accused belongs to Maratha caste. Now the certificate dated 5.6.1997 shown to me is the same. It bears my signature. Its contents are true and correct. It is at Exh.26/1.

PW5 Gangaram Shinde deposed at Exhibit 27/C as under :

I am belonging to Maratha caste. Meghaji Nivage, Sonba Nivage and accused Madhav are my relations. I know to them. Accused belong to Maratha caste. The accused is my brother-in-law. I have no knowledge whether the people belong to Mahadeo Koli here a surname as a Nivage or not.

This witness was declared hostile and was subjected to cross-examination by learned APP

PW6 Ankush Bhosle, Police Head Constable posted at Beed City Police Station, gave evidence at Exhibit 28/C as under :

On 10.3.1994 I was working at Beed City Police Station as P.S.O. Complainant Sayyed Rahematullah had filed a

complaint and registered the same at crime No.87/94. On the order of P.I. & handed over investigation to P.S.I. Dhedkar. The complaint filed by Rahematullah is now shown to me is same. It is at Exh. 20.

PW7 Ravindra Dhedkar, who was the Investigation Officer, gave following evidence at Exhibit 29/C :

On 10.3.1994 I was at Beed City Police Station. Station in-charge registered the crime no. 87/94 & handed over investigation to me. The crime was registered against Head Constable Madhav Nivage. The complaint was annexed with all documents. The crime was registered after departmental enquiry. Shri Sayyed Rahematullah had filed the case against the accused. Thereafter P. J. Wadje took over investigation from me to him. In this crime, accused obtained anticipatory bail. I can identify the accused if seen. Accused is present in the court today.

PW8 Tatyasaheb Bhojne, P.I. at Ambajogai Police Station, is another Investigating Officer, who in his evidence at Exhibit 30/C deposed about recording statements of relatives of accused, Sarpancha of village and Head Master of Zilla Parishad High School, about collecting caste certificate from school and after completion of investigation, submitting charge sheet against the accused.

PW9 Eknath Landge, who was Assistant Teacher at Zilla Parishad Lahan High School at Ardhpur, District Nanded, deposed at Exhibit 37 as under :

I was at Biloli from 1984 to 2001 as Asstt. Teacher. So also I was in-charge Head Master for some period. Police recorded my statement. As per that, I saw the record of the school in respect of admission certificate of one Madhav Meghaji Nivage. I observed in that certificate the caste as Maratha. At that time S. R. Gangamwar was Head Master. The certificate in respect of admission issued by the said Head Master is report. The extract now shown to me is the same, which was issued by Head Master Gangamwar. I know his signature, as I was Assistant teacher under him and worked under him.

PW10 Nagnath Shinde, Head Master at Biloli, deposed at Exh. 41 as under :

I have brought register in respect of transfer and admission register pertaining no. 147/529. This entry is in the name of Bilolika Madhav Meghaji. This certificate is similar with the copy in the present case- There is "Maratha" caste mentioned in the register. The entries in the said register and the certificate issued by school authority bears same contents. Now the certificate is shown to me is the same. It is at Exh. 42.

7. After analyzing the evidence of 10 witnesses and studying the documentary evidence, learned J.M.F.C. was pleased to accept the case of prosecution, but only as regards the offence under Sections 468 and 471 of IPC, and acquitted the respondent from other charges i.e. under Sections 199, 200 and 420 of IPC. The matter was taken up to the next level by none other than present respondent/revisionist, by questioning the judgment passed by learned J.M.F.C. by filing Criminal Appeal No. 20 of 2002 and the first appellate court was pleased to acquit the respondent from charge under Section 468 IPC, but upheld the conviction for charge under Section 471 IPC vide judgment dated 17.04.2004, which is now impugned herein by both, the State in appeal as well as the respondent-accused by filing Criminal Revision Application No. 183 of 2004.

8. Undertook the exercise of re-appreciation and re-analysis of the entire evidence, and it is thereupon emerging that accused does not have distinct caste certificate issued by competent authority certifying him to be belonging to Mahadeo Koli caste, and inquiry conducted with Revenue authorities as well as police department demonstrated that, he rather belongs to Maratha caste. However, the very act of committing forgery or manufacturing certificate has not been proved

by the prosecution and therefore both, learned trial court as well as learned first appellate court, in the considered opinion of this Court, have not committed any patent error or perversity in acquitting the accused from rest of the charges. Guilt of the accused is concurrently held established for offence under Section 471 of IPC.

9. It is settled law that, to bring home the charge under Section 471 IPC, prosecution is expected to fulfill availability of key ingredients like, document or electronic record to be forged; secondly, it must be shown that accused had used the said document posing itself to be genuine; and thirdly, accused himself knows or he must have reasons to believe that the document which he is tendering or he is possessing and put to use, is in fact manufactured and forged one. He must have deliberately used it to show that it is genuine. His knowledge and reason to believe are co-related and prosecution must prove that, at the time of putting the document to use, he carried culpability in doing so and must have fraudulently and dishonestly used the same.

10. Here, at the time of securing employment, accused had put to use and tendered document Exhibit 21. On receipt of anonymous complaint, document was sent for verification with the authorities

who were authorized to issued caste certificate. On receipt of report from such authority about not issuing any caste certificate in favour of present respondent/revisionist, police authorities have undertaken the step of lodging report. Learned counsel for respondent would submit that there is no *mens rea* in doing the above act and secondly, authorities with whom inquiry was conducted, are not examined and as such, the very basis or foundational facts are not proved here, and so he questions the implication as well as guilt recorded under Section 471 IPC.

11. This Court is not convinced with the above submissions for the simple reason that, here, there is no denial that the document has been tendered by the respondent/revisionist while seeking employment. He has not disowned and denied its use. By use of certificate of caste to which he never belonged, a seat of a deserving candidate has been usurped and forged, false document is tendered. He has thereby deprived a meritorious deserving candidate from a particular category and therefore, here, in the light of above material, this Court also agrees with the findings of both, learned trial court as well as the first appellate court, that the ingredients for attracting Section 471 IPC are indeed available in the prosecution evidence. Accused has not denied production of the forged document and had

put it to use. Resultantly, required ingredients for attracting Section 471 IPC being available, even this Court does not hesitate in agreeing with the findings reached at by both, learned trial court as well as first appellate court.

12. Learned counsel for respondent-accused would submit that considering the offence, the judgment of conviction to be dated 21.02.2003 i.e. more than two decades back, and that appellant having now attained the age of 65 years, he seeks benefit of Probation of Offenders Act. However, this Court is not impressed with above request for the same reason that, there is use of forged document, depriving a deserving suitable candidate from a particular caste, to gain employment and therefore such case does not deserve extension of benefit of Probation of Offenders Act. However, considering the long tenure undergone with a sword of conviction hanging over the head, sentence awarded by learned first appellate court for the period of two years is reduced to three months. Hence, the following order is passed :

ORDER

- I. Criminal Appeal No. 584 of 2004 is hereby **dismissed**.
- II. Criminal Revision Application No. 183 of 2004 is **partly allowed**.

III. The conviction awarded to the revision applicant Madhav s/o Meghaji Nivage by learned 5th J.M.F.C. Beed in R.C.C. No. 418 of 1997 **under Section 471 of IPC** on 21.02.2003 and confirmed by learned 2nd Adhoc Additional Sessions Judge, Beed in Criminal Appeal No. 20 of 2003 by judgment and order dated 17.04.2004 is hereby maintained.

HOWEVER

- IV. The sentence is reduced and instead of two years, the appellant is hereby sentenced to suffer rigorous imprisonment for **3 (three) months** for the offence punishable under Section 471 of IPC.
- V. There shall be no change in the fine amount as well as the default sentence.
- VI. Rest of the impugned judgment and order dated 17.04.2004 passed by learned 2nd Adhoc Additional Sessions Judge, Beed in Criminal Appeal No. 20 of 2003 is kept intact.

[ABHAY S. WAGHWASE, J.]