



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

CRIMINAL WRIT PETITION NO.1215 OF 2023

Nahid Bano W/o Firoz Pathan

Age: 38 years, Occupation: Social Worker

R/o: Satara (Khandoba), Dist. Aurangabad ... **PETITIONER**

VERSUS

1] The State of Maharashtra

2] The Caste Scrutiny Committee-1,

Aurangabad,

Through it's Authorised Officer,

Mr. Subhash s/o Nanasaheb Bhujang, P.I.,

Vigilance Committee,

Divisional Officer, Aurangabad

... **RESPONDENTS**

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Mr. Ambar S. Barlota, Advocate for the Petitioner

Mr. K. K. Naik, APP for the Respondents – State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 14.01.2025

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel appearing for the respective parties.

2. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the Petition paper-book. In

the case in hand, only question arises that, whether the Police Station Officer acting under Section 154 of Cr.P.C., can register an offence under Section 12 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? (in short, hereinafter it would be referred as *Act of 2000*).

3. The learned Counsel for the Petitioner canvassed that, earlier round of litigation, the Petitioner had approached before this Court and instituted the Writ Petition No. 5955 of 2013 (*Nahidabano w/o Ferozkhan Pathan Vs. Divisional Commissioner, Aurangabad Division and others*), Challenging the order dated 19.07.2013 passed by the Divisional Caste Certificate Scrutiny Committee, Aurangabad, thereby invalidated caste claim of the Petitioner. On 04.10.2013, the Division Bench of this Court dismissed said Writ Petition and directed the Caste Scrutiny Committee to initiate action in terms of Sections 10 and 11 of the Act of 2000, against the Petitioner. In pursuance of directions issued by this Court, Shri Subhash Nanasaheb Bhujang, the Police Inspector attached with Vigilance Cell of the Caste Scrutiny Committee, Aurangabad lodged a Report with Police Station, Satara,

District Aurangabad, on 17.10.2013. Therefore, a Crime No.3068 of 2013 registered against the petitioner for the offence punishable under Sections 10, 11 and 14 of the Act of 2000.

4. After due investigation, the charge-sheet came to be filed against the Petitioner. During pendency of the trial, the present Petitioner/accused filed application Exh.71 and prayed for acquittal in Crime No.3068 of 2023. On 10.03.2023, the learned Chief Judicial Magistrate, Aurangabad passed an order and rejected the application Exh.71.

5. Being aggrieved by the said order, the Petitioner/accused approached before the Revisional Court under Section 397 Cr.P.C., by filing Criminal Revision Application No.135 of 2023. On 12.07.2023, the learned Revisional Court passed the impugned order and dismissed said Criminal Revision holding that, after framing of charge, the Magistrate has power to discharge the accused. However, the Petitioner/accused sought acquittal on the ground of fundamental defect in launching the prosecution which was the issue before the Hon'ble Apex Court in the case of *Ratilal Bhanjit Mithani Vs. State of Maharashtra*, AIR 1979 SC 94.

6. Needless to say that, on 22.06.2015, the Division Bench of this Court at Nagpur Bench, passed the judgment in ***Criminal Application No.1173 of 2010 (Vilas Rambhau Majrikar Vs. State of Maharashtra and other connected matters)*** considering the scope of Section 11(1)(a), Section 11(1)(b) and Section 11(2) of the Act of 2000 and framed the following questions, which read as under:-

“1] In the wake of Section 11(2) read with Section 12 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, whether the Police Station Officer acting under Section 154 of the Code of Criminal Procedure can register an offence under Section 12 of the Act when Section 11(2) contemplates filing of a private complaint by Scrutiny Committee or its authorised officer ?

2] Whether a caste certificate obtained before 23rd May, 2001 i.e. prior to coming into force of 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, if found to be false or obtained by any other fraudulent means could attract the offence under Section 11, or under Section 13 of the Act which makes issuance of false caste certificate punishable?”

7. To answer to the questions, the Hon'ble Division Bench held in para Nos. 15 and 16, as under:-

“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.”

8. In the case in hand it is not in dispute that, while passing the Judgment order dated 04.10.2013 in Writ Petition No. 5955 of 2013 (*Nahidabano w/o Ferozkhan Pathan Vs. Divisional Commissioner, Aurangabad Division and others*), the Division Bench of this Court directed the Caste Scrutiny Committee to initiate action against the Petitioner in terms of Sections 10 and 11 of the Act of 2000. Therefore, Shri Subhash Nanasaheb Bhujang, the Police Inspector

attached with Vigilance Cell of the Caste Scrutiny Committee, Aurangabad lodged a Report with Police Station, Satara, District Aurangabad, on 17.10.2013 alleging that, the petitioner produced false and fabricated Cast Certificate alongwith false documents and claimed for validity of the cast claim. In pursuance of said report, on 17.10.2013 a Crime No.3068 of 2013 registered against the petitioner for the offence punishable under Sections 10, 11 and 14 of the Act of 2000 by taking recourse of Section 154 of Cr.P.C.

9. In case of ***Vilas Rambhau Majrikar*** cited (supra), the Division Bench of this Court held that, filing of police case by registration of F.I.R. before the criminal Court is not contemplated and filing of a private complaint by the Scrutiny Committee or its authorized officer in accordance with Chapter 15 of the Code of Criminal Procedure, is provided. Therefore, considering the law laid down in the cited case, filing of Final Report by the Police under Section 173 of Cr.P.C., by way of charge-sheet itself illegal and it is the fundamental procedural lapses on the part of the authorities. Therefore, the prosecution of the Petitioner will not be futile and it will amount to abuse of process of law. Therefore, to my view, the criminal prosecution / RCC No. 801 of 2014 pending on the file of the

learned Chief Judicial Magistrate, Aurangabad is hereby quashed and set aside as against the present Petitioner.

10. Accordingly, Rule is made absolute. No order as to costs.

[Y. G. KHOBRAGADE, J.]

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