

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL PETITION NO.6915/2016

BETWEEN:

SRI S. NEELAKANTAPPA
S/O LATE BASANNA,
AGED ABOUT 61 YEARS,
R/AT NO.250/1, 4TH MAIN,
6TH CROSS, MAHAGANAPATHI NAGAR,
RAJAJINAGAR, BANGALORE - 560 044.

...PETITIONER

(BY SRI PRABHUGOUDA B TUMBIGI, ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
HALASURGATE POLICE,
REP. STAET PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE - 560 001.
2. POLICE INSPECTOR, CRE CELL
KHB COMPLEX, KAVERI BHAVAN,
BANGALORE - 560 009.

...RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R-1/STATE;
SRI C. JAGADEESH, SPL PP, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO SET ASIDE THE ORDER DATED 19.08.2016 PASSED BY THE LXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE IN CRL.R.P.NO.298/2016 AND SET ASIDE THE ORDER DATED 01.04.2016 PASSED BY THE VI ACMM, BANGALORE IN C.C.NO.7062/2012 ON I.A. FILED UNDER SECTION 239 OF CODE OF CRIMINAL PROCEDURE BY THE PETITIONER HEREIN AND CONSEQUENTLY ALLOW THE DISCHARGE APPLICATION FILED UNDER SECTION 239 OF CODE OF CRIMINAL PROCEDURE BY THE PETITIONER BEFORE THE TRIAL COURT.

THIS CRIMINAL PETITION COMING ON FOR FURTHER DICTATION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner has been charge sheeted for the offence punishable under Section 420 of IPC alleging that, though the petitioner belongs to Weavers Community by furnishing false information with the Thasildar, Bellary Taluk, obtained Caste Certificate that, he belongs to Machala Community which is classified as Scheduled Caste and thereby managed to secure job in BEML.

2. Learned Magistrate took cognizance of the aforesaid offences. The petitioner filed an application for discharge of the offence under Section 239 of Cr.P.C. Learned Magistrate, dismissed the application for discharge stating that whether the

petitioner belongs to Weavers Community or Machala Community is the matter which requires to be considered after full fledged trial, against which Criminal Revision Petition was filed before the learned Sessions Judge. The learned Sessions Judge dismissed the Criminal Revision Petition confirming the order passed by the learned Magistrate against which, the present petition is filed.

3. Learned counsel appearing for the petitioner-accused submits that Caste Certificate having not been cancelled by the Competent Authority, the registration of the FIR culminating in filing of the charge sheet is impermissible. He further submits that in the absence of any enquiry conducted by the Caste Verification Committee as specified under Rule 6A and 7(4) of the Karnataka Schedule Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment etc.) Rules, 1992, the Police have no jurisdiction to register FIR for the offence punishable under Section 420 of IPC alleging that the petitioner-accused obtained caste certificate by furnishing false information.

In support, he places reliance on the decision of the Co-ordinate Bench of this Court in W.P. No.11704 of 2013 disposed of on 20th March 2019.

4. He further submits that the Co-ordinate Bench of this Court in CrI.P.No.2482/2005 disposed of on 8.2.2007 with reference to the Government Order dated 11.03.2002 bearing No.SWD 713 SAD 93 has quashed the impugned proceedings therein on the ground that the said Government Order specifies that the benefits of reservation obtained by the persons in educational and employment based on the wrong Caste Certificate issued by the Competent Authorities as ST and which have become final may also be not disturbed accordingly.

5. On the other hand, learned counsel appearing for the respondent-State submits that the charge sheet material discloses the commission of the offence alleged against the petitioner-accused and the learned Magistrate has rightly taken cognizance and sought for dismissal of the petition.

6. I have examined the submissions made by the learned counsel appearing for the parties.

7. It is undisputed that the Caste Certificate issued in favour of the petitioner certifying that he belongs to Machala Community has not been cancelled by the Competent Authority under the provisions of the Karnataka Schedule Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment etc.) Rules, 1992 (for short "Rules, 1992"). The Co-ordinate Bench of this Court in W.P.No.11704/2013 with reference of Rule 7(4) of Rules 1992, held that notice issued by the Directorate of Civil Rights Enforcement cell on its own in the absence of any enquiry or recommendations made by the District Caste Verification Committee is impermissible and accordingly, quashed the notice impugned therein.

8. Admittedly, the Caste Certificate issued in favour of the petitioner-accused that he belongs to Machala community is still in subsistence and is not cancelled by the Competent Authority under the Rules, 1992.

9. Rule 7(2) of Rules, 1992 deals with validation of the Caste Certificate by the Caste Verification Committee. Rule 7(4) of the Rules, 1992 specifies that if the Committee after enquiry

finds that the claim is doubtful, and it is not in a position to come to a conclusion, it shall refer the matter to the Directorate of Civil Rights Enforcement for detailed investigation and report.

10. Rule 7(4) of the Rules, 1992 specifies that the Caste Verification Committee after rejecting the claim of the applicant for grant of Validity Certificate shall send a copy thereof and there upon the Directorate of Civil Rights Enforcement shall take steps to prosecute such claimant who has obtained a false Caste Certificate.

11. A reading of the aforesaid provisions clearly indicates that the petitioner can be prosecuted for the offence punishable under Section 420 only upon an order passed by the Caste Verification Committee rejecting the claim of the petitioner for grant of Validity Certificate and there upon the Directorate of the Civil Rights Enforcement shall take steps to prosecute the petitioner.

12. The Caste Certificate issued in favour of the petitioner having not been cancelled under the provision of the Rules, 1992, cognizance taken by the learned Magistrate on the

basis of the final report is impermissible, since, the learned Magistrate cannot adjudicate the validity of the Caste Certificate and its only the Caste Verification Committee under Rules 1992, can adjudicate whether the petitioner has obtained the Caste Certificate fraudulently that he belongs to Machala Community though he belongs to Weavers Community which is not a Scheduled Caste Community.

13. The Co-ordinate Bench of this Court with reference to the Government Order dated 11.03.2002, wherein, it is specified that the benefits of reservation obtained by the persons in educational and employment based on the Caste Certificate issued by the Competent Authorities as ST and which has become final may also be not disturbed, accordingly, has quashed the proceedings impugned therein.

14. In view of the above, the continuation of the criminal proceedings against the petitioner-accused will an abuse of process of law. Accordingly, I pass the following:

ORDER

- i) The Criminal Petition is allowed.

ii) The impugned proceedings in C.C.No.7062/2012 pending on the file of VI Additional Chief Metropolitan Magistrate, Bengaluru is hereby quashed.

Sd/-
JUDGE

HR