
(2011) 05 AHC CK 0156
In the Allahabad High Court
Case No : Criminal Misc. Case No. 859 of 2011

Dr. Suman Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Citation : (2011) 05 AHC CK 0156

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Judgement

Narayan Shukla, J.—Heard Dr. L.P. Mishra, learned Counsel for the Petitioner and Mr. Rajendra Kumar Dwivedi, learned Additional Government Advocate for the State.

2. The Petitioner has challenged the charge sheet No. 3 of 2010 as well as the proceedings of Case No. 1318 of 2010, arising out of the said charge sheet pending before the Court of Judicial Magistrate-I, Lucknow on the ground that the Petitioner being an adopted daughter of one Shri Shri Krishna, who belongs to the Scheduled Caste category (Kori) was provided the certificate of Scheduled Caste category. She submitted the said certificate for the purpose of admission in M.B.B.S. Course and was also admitted in K.G.M.C., Lucknow. She passed out. Then took admission in M.S. (Obs and Gynecology) in Moti Lal Nehru Medical College, Allahabad on the basis of said certificate. There is also one decree of the Civil Court declaring her as adopted daughter of Shri Shri Krishan, passed by the Civil Judge (Jr. Div.), Shahjahanpur of 1st of September, 2006.

3. During her studying in M.S. course her husband was also studying in MS (General Surgery) in King George Medical College, Lucknow (now Chhatrapati Sahuji Maharaj Medical University). During that period authorities of the Medical University, Lucknow submitted a letter to the State Government to enquire the financial status of her husband. The State Government entrusted the enquiry to the Economic Offences Wing. The case was investigated by Respondent No. 2. After completion of investigation the final report was submitted as no case of

economic offences was made out. Then regarding her caste status again the Economic Offences Wing was requested. That was investigated by Respondent No. 2. On the basis of investigation report, he filed First Information Report on 3rd of August, 2006 at Police Station Wazir Ganj, Lucknow. A recommendation was also sent to the Officer of issuing the Caste Certificate/Tehsildar to cancel the certificate. The Petitioner challenged the First Information Report through writ petition, being writ petition No. 5044 (MB) of 2006. The Division Bench of this Court by means of order dated 19th of August, 2006 stayed the Petitioner's arrest. In the meantime the Tehsildar, Sadar, Lucknow cancelled her certificate by means of order dated 17th of August, 2006. Simultaneously the Petitioner's husband's caste certificate was also questioned in writ petition No. 3121 writ C of 2007, which was ultimately dismissed permitting the Economic Offences Wing to proceed with the investigation. The Petitioner moved an application to review the order being review application No. 244 of 2010, which was rejected with the observation to consider the bail application. The Petitioner surrendered before the Court below and was granted an interim bail, but finally the bail application was heard and rejected on 6th of August, 2010. On 7th of August, 2010 the learned Court below took cognizance of offence and issued summons to the Petitioner for trial. However, the Petitioner succeeded to get an order of bail by this Court in Criminal Misc. Case No. 6426 of 2010 by means of order dated 20th of August, 2010. The Petitioner raised the question on the jurisdiction of Economic Offences Wing to investigate the matter as the Petitioner was not an employee, therefore, the Economic Offences Wing has no jurisdiction to investigate the matter. However, this Court in writ petition No. 5044 (MB) of 2006 provided that the Economic Offences Wing was competent enough to investigate the offence of fraud and fabrication, whereas the Government Order dated 30th of October, 2006 categorically provides that only the matters of economic offences and irregularities of the Government Department could be referred to Economic Offences Wing for investigation and not otherwise.

4. It is stated that since the judgment of the Hon'ble Supreme Court rendered in the case of *Km. Madhury Patil v. Additional Commissioner* reported in 1994 SCC (6) 241 could not be placed before this Court, this Court proceeded to pass the aforesaid order. Now the Petitioner has placed the aforesaid decision before this Court and pleaded that the Hon'ble Supreme Court has framed certain guidelines in such cases, the cases like present one should be dealt with accordingly.

5. In this manner now the Petitioner has made an effort to examine the correctness of the order passed by the Division Bench of this Court, by the Judge sitting singly, whereas I am of the view that the same is not permissible under the law.

6. Upon perusal of the judgment of the Division Bench of this Court, rendered in the writ petition No. 5044(MB) of 2006 in the Petitioner's case, I find that the Division Bench has touched all the questions raised before him, therefore, those are not open for a fresh adjudication by me. Therefore, I am of the view that the

matter does not warrant interference by this Court. Let it be tried by the trial Court expeditiously.

The petition is dismissed.