

(2015) 02 GAU CK 0039
In the Gauhati High Court
Case No : Criminal Pet. No. 216 of 2014

Sanjib Mazumdar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 468, 471

Citation : (2015) 1 GLT 597

Hon'ble Judges : Prasanta Kumar Saikia, J

Bench : Single Bench

Advocate : N. Das and R. Chakraborty, for the Appellant; B. Kalita, K. Munir, Addl. PP, A. Khanikar and P. Bora, Advocates for the Respondent

Final Decision : Allowed

Judgement

Prasanta Kumar Saikia, J.—This criminal proceeding u/s. 482 Cr.P.C. has been filed by one Sanjiv Mazumdar @ Sonti Mazumdar seeking quashment of First Information Report which gave rise to Dispur P.S. Case No. 1458 of 2013 u/s. 468/471 IPC. I have heard Mr. N. Das, learned counsel for the petitioner. Also heard Mr. K. Munir, learned Addl. Public Prosecutor appearing for the State respondent and Mr. B. Kalita, learned Senior counsel assisted by Mr. A. Kanikar and Mr. P. Bora for the private respondent No. 2.

2. The brief facts necessary for disposal of the present proceeding are that one Hari Das lodged an FIR with O/C Dispur Police Station alleging that the petitioner herein was not a member of Scheduled Caste Community. However, having forged some documents, he obtained a certificate to the effect that he is a member of Hira Community of Assam which is recognized as Scheduled Caste Community in the State of Assam.

3. On the basis of such forged certificate, he occupies the post of the Chairman of Sub-Divisional Scheduled Caste Development Board, Guwahati (in short, the

Board) and had committed serious illegality in discharging his function as Chairman of the Board aforesaid. For ready reference, the relevant part of the FIR is reproduced below--

"Sir,

With due respect, I would like to state that I am an ordinary resident of Narenga of Boko Constituency. I intend to make a complaint that the Chairman of Guwahati Sub Division Scheduled Caste Welfare Board is not a scheduled caste person. In his caste certificate, it is stated that he is a person of Hira community and named as Sri Sonti Mazumder, son of Dhruba Mazumder, resident of village - East Jyotinagar. He had obtained the certificate on 12.7.1990 from the Board in the name of Sri Dhruba Mazumder, Sri Dhiraj mazumdar and Sri Sonti Mazumdar; before that, neither of his family members had certificate. According to Sri Sonti Mazumdar, his father got appointment in Government job with the help of certificate of Scheduled Caste community. But, the certificate was obtained on 12.7.1990.

He was appointed as Chairman of Guwahati sub Division Scheduled caste Welfare Board on 12.7.1990. In the certificate, his name was Sri Sanjib Mazumdar and residence was stated as Boko, Pairanga. After about one month, it was seen that his caste certificate as member of scheduled caste community and residence were forged. As per Constitution, the Chairman and members of the Board should be members of Scheduled Caste community. The Chairman, who forged documents got to know that his certificate was forged. Therefore, on 10.1.2012, Tuesday, he published a news paper item in a news paper named "Janashadharan" stating that he had changed his name. He had stated in the news paper that he changed his name on 9.11.1999 before a Notary. We have come to know that on 9.11.1999; there was not Notary available, hence, that was also fraudulent. Thereafter, the residents of Boko had filed a complaint before the Circle Officer, Boko that Sanjib Mazumdar was not a resident of Boko Pairanga. As per complaint of public, the circle officer proved that he is not a resident of Boko Pairanga. The Circle Officer, Boko had also sent letter to the Deputy Commissioner, Kamrup that is not a resident of Boko. It is learnt that his office is located at Rukminigaon."

4. On the basis of such FIR, Dispur P.S. Case No. 1458 of 2013 u/s. 468/471 IPC was registered and investigation was going on.

5. Being aggrieved by the aforesaid FIR and subsequent registration of a case on the basis of such an FIR, the present petitioner had approached this Court seeking quashment of FIR dated 22.07.2013 alleging that such an FIR did not disclose any offence having been committed by the accused-petitioner, much less his committing offence u/s. 468/471 IPC.

6. His further case is that he is a genuine member of Hira Community which is recognized as Scheduled Caste in the State of Assam. In that connection, he has obtained a certificate from the competent authority and such certificate has

never been annulled or cancelled by the competent authority. Being such, so long the aforesaid certificate is in operation, same cannot be questioned by any authority whatsoever.

7. In support of such contention, my attention has been drawn to the decision of the Hon"ble Apex Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, AIR 1995 SC 94 : (1994) 5 JT 488 : (1994) 3 SCALE 935 : (1994) 6 SCC 241 : (1994) 3 SCR 50 Supp . The relevant part of the judgment is reproduced below: -

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Caste or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social certificates, their scrutiny and their approval, which may be the following :

(1) The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

(2) The parent, guardian or the candidate, as the case may be, shall file and affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub- castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

(3) Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

(4) All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer high-er in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification

and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

(5) Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such

Other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particular as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

(6). The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

(7). In case the report is in favour of the candidate and found to be genuine and true, no further action need to be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

(8). Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

(9). The inquiry should be completed as expeditiously as possible preferably by day- to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

(10). In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

(11). The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

(12). No suit or other proceedings before any other authority should lie.

(13). The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

(14). In case, the certificate obtained or social status claimed is found to be false, the parents/guardian/the candidate should be prosecuted for making false claims. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

(15). As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in officer in a post....."

8. It has been stated that the decision laid down in Kumari Madhuri Patel and Anr. (Supra) has also been followed by this Court in the case of Sri Abhishek

Chandra @ Sachin Besarya v. The State of Tripura and Ors. in W.P.(C) No. 300 of 2007.

9. Therefore, unless the certificate issued in favour of the petitioner by the competent authority on 12.07.1990 is cancelled/annulled, no criminal case can be lodged against the petitioner as has been laid down in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, AIR 1995 SC 94 : (1994) 5 JT 488 : (1994) 3 SCALE 935 : (1994) 6 SCC 241 : (1994) 3 SCR 50 Supp page 10 .

10. I have also heard Mr. K. Munir, learned Addl. Public Prosecutor who fairly conceded to the contention of the learned counsel for the petitioner that so long the caste certificate granted by the authority, assigned such work, is in operation, no criminal case could be launched against the person in whose favour such certificate was issued. He submits that since such a certificate in question issued by Competent Authority in favour of the petitioner has still been holding such field and since there is no proceeding under Article 226 of the Constitution of India, in terms of law laid down in Kumari Madhuri Patil and Another (supra), no criminal proceeding registered questioning the correctness, legality and validity of the caste certificate so issued by the competent authority.

11. I have considered the rival submissions advanced by the learned counsel for the parties.

12. It is no longer res-integra that so long a caste certificate issued by a competent authority occupying the space allotted to it, no proceeding including a criminal proceeding can be initiated questioning the validity of such certificate. The validity of such certificate can be questioned only in a proceeding under Article 226 of the Constitution of India as has been held in Kumari Madhuri Patil (Supra).

13. On perusal of the record, I have found that though a proceeding under Article 226 of the Constitution of India has been initiated against the petitioner herein, same being W.P.(C)No. 6095 of 2012, such a proceeding was not for cancellation of such certificate issued in favour of the petitioner by the competent authority. Such a proceeding was initiated seeking removal of the petitioner from the post as Chairman of Sub-Divisional Scheduled Caste Development Board, Guwahati. The relevant part of the prayer in W.P.(C) No. 6095 of 2012 which is said to be sub judiced at this moment, is reproduced below--

"In the premises aforesaid, it is therefore prayed that Your Lordships may be pleased to admit this petition, call for the records, and issue a Rule, calling upon the Respondents to show cause as to why a Writ in the nature of Certiorari/Mandamus and/or any other Writ, order or direction of like nature shall not be issued, directing/commanding the Respondent authorities particularly the Respondent No. 1 and 2 to take necessary action to remove the Respondent No. 5 from the post of Chairman of the Sub-Divisional Scheduled Caste Welfare Board, in terms of the letter dated 10.5.2012 and 8.6.2012 (vide Annexure No. 3

and 4 respectively) and also as to why direction shall not be made directing the Respondents not to allow the Respondent No. 5 to function as Chairman of the Board till disposal of the Writ Petition and upon causes or causes being shown if any and upon hearing the parties, Your Lordships may be pleased to make the Rule absolute and/or pass such appropriate order/orders or direction as Your Lordships may deem fit and proper.

-AND-

Further, it is also prayed that pending disposal of the Rule, Your Lordship may be pleased to direct the Respondents not to allow the Respondent No. 5 to discharge its function as Chairman of the Board till disposal of the Writ Petition."

14. In view of what have emerged from our forgoing discussion and what have emerged there-from, I am of the opinion that in terms of law laid down in Kumari Madhuri Patil (Supra), the lodging of a criminal case alleging that the petitioner obtained Scheduled Caste certificate in his favour by practicing fraud from the authority concerned is not permissible and as such, the criminal proceeding aforementioned needs to be quashed and set aside.

15. In the result, Dispur P.S. Case No. 1458 of 2013 u/s. 468/471 IPC and all steps taken there-under are quashed and set aside.

16. This petition is, accordingly, allowed. No cost.