
(2013) 09 MP CK 0225
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 13391 of 2011

Smt. Kamlesh Nut

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203, 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)(v)

Citation : (2013) 09 MP CK 0225

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Anil Dwivedi, for the Appellant; Ajay Tamrakar, Panel Lawyer for Respondent No. 1-State and Shri R.L. Ariha, Advocate, for the Respondent

Judgement

N.K. Gupta, J.—Heard the learned counsel for the parties. The applicant by this petition u/s 482 of Cr.P.C. has challenged the order dated 28.7.2011 passed by the learned JMFC Jaisingh Nagar District Shahdol in complaint case No. 350/2011.

2. The brief facts of the case are that the applicant has filed her nomination for the post of President, Jila Panchayat with the pretext that she was of Scheduled Caste since she was the caste of "Nut" (Kanghikar). However, she could not file the caste certificate, but her nomination was accepted. The applicant contested the election and she won the election. The respondent No. 2 has moved an election petition against the applicant and also filed a complaint against the applicant. The learned JMFC Jaisingh Nagar after considering the prosecution evidence registered the complaint case for the offence u/s 420 of IPC, but dismissed the complaint for the offence under Sections 467, 468 and 120-B of IPC and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act.

3. After considering the submissions made by the learned counsel for the applicant and looking to the facts and circumstances of the case, the contention

of the learned counsel for the respondent No. 2 can be accepted that various castes were shown as Scheduled Caste etc. in the list of Constitution and the State Government could not make any modification in that list. It is further submitted that the circulars issued by the State Government that "Kanghikar" is basically "Nut" are not applicable in the present case, and therefore the applicant was not of Scheduled Caste. The learned counsel for the respondent No. 2 has relied upon the judgment of Hon"ble the Apex Court in the case of Anil Saran Vs. State of Bihar and another, in which it is laid that the if allegations in complaint case make out the prima facie case, then no interference is to be done in the matter, and therefore it is prayed that since the complaint is registered on the facts that the applicant committed cheating in making her nomination, and therefore prima facie the case is made out.

4. In the light of the aforesaid judgment, if the facts of the present case are considered, then it would be apparent that the State Government cannot make any modification in the list of Scheduled Caste given in the Constitution, but if there is some explanation given by the State Government by the various circulars, then the applicant could presume that she was in the Scheduled Caste "Nut", and therefore if she had filed her nomination on the basis of such circular, then it cannot be said that she filed the nomination by way of cheating. If she was bonafidely filed her nomination as per the circulars issued by the State Government, then it cannot be said that the applicant tried to get any wrongful gain or caused any wrongful lose to the respondent No. 2. Under such circumstances, the ingredient of "cheating" is missing in the present case. No offence u/s 420 of IPC is made out against the applicant by way of evidence adduced by the respondent No. 2 in the complaint case. The learned JMFC has committed an error in registering the complaint for the offence u/s 420 of IPC.

5. On the basis of the aforesaid discussion, it is a fit case where the present petition filed u/s 482 of Cr.P.C. by the applicant viz. Smt. Kamesh Nut can be accepted. Consequently, it hereby accepted. The order dated 28.7.2011 passed by the learned JMFC Jaisingh Nagar is hereby set aside. Consequently, the complaint made by the respondent No. 2 is also hereby dismissed u/s 203 of Cr.P.C. A copy of this order be sent to the trial Court for information and compliance.