

(2023) 03 OHC CK 0033

In the Orissa High Court

Case No : Writ Petition (C) No. 32236 Of 2022

Subarnamala Nayak

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 03-03-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Code of Criminal Procedure, 1973 — Section 300

Citation : (2023) 03 OHC CK 0033

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : T. Barik, S. Pattanayak

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Barik, learned advocate appears on behalf of petitioner and submits, inspite of conclusion of Fake Caste Certificate case against his client, again there has been initiation of another. He submits, this is not permissible in law. He draws attention to final order dated 28th March, 2009 in Fake Caste Certificate Case no.50 of 2008 against his client, whereby it was unanimously held that the allegation is not a fact and reasons given. He relies on judgment of the Supreme Court in Madhuri Patil v. Addl. Commissioner, Tribal Development reported in AIR 1995 SC 94. Direction-11 in paragraph 12, is reproduced below.

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

(emphasis supplied)

2. Interference is necessary to quash letters dated 24th May, 2022 and 19th November, 2022 since, by final order dated 28th March, 2009, allegation that his client's caste certificate was fake, was said to be not a fact and false. He draws

attention to previous order dated 2nd December, 2022.

3. Ms. Pattanayak, learned advocate, Additional Government Advocate appears on behalf of State. She draws attention to annexure A/3 in the counter. It is letter dated 17th May, 2012 written by the Collector and District Magistrate to the Revenue Divisional Commissioner and Chairman, State Level Scrutiny Committee, on subject of reopening of the fake caste certificate case decided in favour of petitioner. The letter refers to findings of inquiry extracted therein. We reproduce the same.

"That Smt. Subarnamala Nayak is the natural daughter of Late Raghunath Nayak of village, Rudangia. From the local enquiry, it is ascertained that the Copy of voter list (copy enclosed) submitted by the petitioner is true and she is not the natural daughter of Ladukishore Nayak. But from the Service Book of Smt. Nayak, it is found that her father's name is recorded as Ladukishore Nayak. Smt. Nayak did not disclose the reason behind it. As per the Legal Heir Certificate issued by the Tahasildar, G. Udayagiri vide Misc. Case no. 2441/2001 (copy enclosed) in favour of Ladukishore Nayak, from which it is revealed that Smt. Subarnamala Nayak is not the daughter of Ladukishore Nayak. Further, it is a fact that, Smt. Nayak has drawn the RCM Bill purchased for treatment of her mother Kumudini Nayak, W/O Late Raghunath Nayak in the Office of the ICDS, Daringibadi. But in her reply to the show cause notice issued by the Joint Secretary, S.T. & S.C. Dev. Deptt, Smt. Nayak has stated that, her father is Ladukishore Nayak and mother is Kumudini Nayak"

She submits, in pursuance of request made by the Collector, the case was reopened and impugned notices issued.

4. Mr. Barik in reply draws attention to Judgment dated 6th July, 2012 made by the First Division Bench of this Court in WP(C) no.526 of 2012 (Jyotirmayee Pradhan vs. State of Orissa and others). He submits, petitioner therein was complainant, at whose instance the Collector and District Magistrate acted, to request reopening of the fake caste certificate case. He submits, there was finding by the judgment and conclusion that his client is Scheduled Caste Pana and Hindu by religion. His client, therefore, is armed with said final order as well as the judgment. He submits further, Code of Criminal Procedure, 1973 by section 300 provides that a person once acquitted is not to be tried for the same offence. Here the allegation of obtaining fake caste certificate was gone into in the fake caste certificate case and petitioner acquitted. There cannot be trial once again of petitioner by saying a finally decided case can be reopened.

5. In Madhuri Patil (supra) direction 11 in paragraph 12 stands recorded above, whereby the Supreme Court declared that order passed by the committee shall be final and conclusive, only subject to the proceedings under article 226 of the Constitution. The position does not admit reopening of the fake caste certificate case concluded on passing final order.

6. It appears, in Jyotirmayee Pradhan (supra) allegation of petitioner therein was

also that petitioner herein is not daughter of Ladukishore Nayak. There was no finding on that allegation but there was finding, petitioner is Scheduled Caste Pana and Hindu by religion. Thus, findings in final order dated 28th March, 2009 and in Jyotirmayee Pradhan (supra) by judgment dated 6th July, 2012 are concurrent. In the circumstances, petitioner's challenge to impugned notices succeeds.

7. Impugned notices are set aside and quashed.

8. The writ petition is allowed and disposed of.

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