

(2013) 06 BOM CK 0099

In the Bombay High Court

Case No : Criminal Writ Petition No. 1061 of 2010

Tanaji

APPELLANT

Vs

The State of Maharashtra and Ramdas

RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Penal Code, 1860 (IPC) — Section 34, 379

Citation : (2013) ALLMR(Cri) 3351 : (2013) 4 BomCR(Cri) 76

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : N.V. Gaware, for the Appellant; V.A. Shinde, Assistant Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

T.V. Nalawade, J.—Rule. Rule made returnable forthwith. By consent heard both sides for final disposal. Present proceeding is filed for relief of quashing of proceeding of criminal case bearing R.T.C. No. 51 of 2011, which is pending in the Court of J.M.F.C., Rahuri. The case is filed by police for offence punishable u/s 379 r/w. 34 of Indian Penal Code as against the petitioner and three other persons.

2. There are allegations made in the F.I.R. against the petitioner and other accused that they joined hands with each other and they committed theft of one file containing record of caste certificate issued on the basis of application given by one Prithviraj Vasant Kamble. The petitioner and Prithviraj are working in the same office. It is the case of petitioner that by creating false record and by making false representation, Prithviraj obtained caste certificate from Shrirampur authority and he got validity certificate from authority of Ahmednagar. It is contended that on the basis of this record, Prithviraj got promotion to higher post and the petitioner could not get promotion due to the promotion given to

Prithviraj. It is the case of petitioner that in the past, Prithviraj had shown that he was resident of Pune District and he had obtained caste certificate from Pune authority. It is contended that the caste certificate obtained from Pune authority was submitted for scrutiny before the Scrutiny Committee, Pune and the said Committee had invalidated the caste certificate. It is contended that this circumstance was concealed from authority of Ahmednagar and certificate was again obtained and it was validated by Ahmednagar (Nashik) authority.

3. The submissions made and the record show that that present petitioner collected copies of various documents from concerned office including Shrirampur Office of S.D.M. When he found that the competent authority was not taking appropriate action against Prithviraj, he filed proceeding at Principal Seat of this Court for getting directions against the respondents of the said proceedings, who include the State Government. In the said proceeding, Writ Petition No. 7740 of 2008, some directions came to be given for production of file in respect of caste certificate issued to Prithviraj. Order was made on 1.9.2009. As the relevant record was not produced in spite of the directions of subsequent date, further orders were made by the Court. As the intention was shown to take appropriate action in respect of the lapse committed by the authority, affidavit came to be filed that the concerned file was missing. Some inquiry was made and then Nashik Committee, which has jurisdiction over Ahmednagar district, gave direction to approach police and give report. Report, then came to be given to Sarkarwada Police Station, Nashik and suspicion was expressed against petitioner, Prithviraj and two employees of the office that theft of the file was committed due to these persons.

4. Record is produced to show that subsequent to giving of the report, when search was made for the record, the file came to be traced. Copy of the panchanama prepared by Tahsil Office, Rahuri shows that only the office copy of caste certificate was not available. Other record produced by Prithviraj for getting the caste certificate was present in the file. The submissions made and the record show that present petitioner had collected copy of caste certificate issued in Ahmednagar district in favour of Prithviraj and copy of the same is available. This certificate was submitted for scrutiny and the Scrutiny Committee has given validity certificate in respect of this caste certificate. It appears that the petition filed at the Principal Seat by present petitioner came to be allowed and directions were given to take appropriate action against the concern for issuance of false caste certificate, for missing of file etc. The judgment delivered at Principal Seat by Division Bench shows that the submissions were made for Caste Scrutiny Committee that fraud was played by Prithviraj and action would be taken against him. The certificate issued in favour of Prithviraj came to be cancelled and it came to be declared that he does not belong to "Mahadev Koli" a Scheduled Tribe. Direction of his prosecution is also given by the Principal Seat of this Court. All these circumstances show that nothing could have been achieved by present petitioner, who had initiated all the aforesaid proceedings to unearth the fraud played by Prithviraj. It is surprising that the report was given against the present

petitioner also and even the chargesheet is also filed against the petitioner in spite of aforesaid circumstances. Even if, the aforesaid circumstances are ignored, in the record produced with the chargesheet, there is only suspicion expressed against the petitioner. The suspicion is expressed on the basis of aforesaid record and the action taken by the present petitioner against Prithviraj. Thus, nothing can be achieved by allowing the proceeding to go on as against the petitioner. For petitioner, reliance was placed on the observations made by the Apex Court in the case reported as State of Haryana and others Vs. Ch. Bhajan Lal and others, . The Apex Court has given some illustrations in which the High Court can use extraordinary power under Article 226 of Constitution of India or inherent power u/s 482 of Criminal Procedure Code. The observations are as follows:-

The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers u/s 482 of Cr. P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- (1) Where the allegations made in the first information report of the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
- (5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or

where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

This Court holds that it will be abuse of process of law, if the proceeding is allowed to continue as against the petitioner. In the result, following order:-

ORDER

(i) Petition is allowed.

(ii) The proceeding of criminal case bearing R.T.C. No. 51 of 2011 pending in the Court of J.M.F.C., Rahuri to the extent of petitioner Tanaji Honaji Date and which is filed for offence punishable u/s 379 r/w. 34 of Indian Penal Code is hereby quashed and set aside.

Rule is made absolute in aforesaid terms.