
(2019) 11 MP CK 0264

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 16776 Of 2017

Tulsidas Jojhotiya

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 28-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 23, 24, 25, 44, 420, 463, 464, 465, 467, 468, 471

Citation : (2019) 11 MP CK 0264

Hon'ble Judges : Rajeev Kumar Dubey, J

Bench : Single Bench

Advocate : Rajesh Kumar Patel, Satyendra Jyotishi, Sankalp Kochar

Final Decision : Dismissed

Judgement

1. This petition has been filed under Section 482 of Cr.P.C. for quashment of the FIR of Crime No.690/16 registered at P.S. Govindpura, Bhopal for the offence punishable under Sections 420, 467, 468 and 471 of the IPC and consequential proceedings arising out from the charge sheet filed by the police after investigation of that crime.

2. Brief facts of the case which are relevant to the disposal of this case are that respondent no.2/complainant Nadeem Miya lodged a written complaint at Superintendent of Police, Bhopal averring that in the year 2015 applicant/accused Tulsidas Jojhotiya fought the election from Ward no.59 of Municipal Corporation Bhopal in the Municipal Corporation election which is reserved for the candidates belonging to the Scheduled Caste Community and the caste certificate filed by the applicant along with his nomination form was forged. It is alleged that the said certificate was issued by Sub Divisional Officer, Tahsil Hujur, Distt. Bhopal in case no.552/B-121/2003 dated 28/7/2003 but according to information obtained by the complainant under RTI Act, 2005, it was found that the said certificate was not issued by the Sub Divisional Officer, Tahsil Hujur, Distt. Bhopal and the applicant did not belong to schedule caste community and

applicant fought the election of Municipal Corporation Bhopal from Ward No.59 in the year 2015 by producing forged caste certificate. So action be taken against him. On that, police registered Crime no. 690/16 for the offence punishable under Sections 420, 467, 468 and 471 of the IPC at Police Station Govindpura and investigated the matter. During the investigation, it was found that in the Caste certificate filed by the applicant along with his nomination papers, it is mentioned that it was issued by the Sub Divisional Officer, Tahsil Hujur, Distt. Bhopal in case no.552/B-121/2003 dated 28/7/2003. While Sub Divisional Officer, Tahsil Hujur, Distt. Bhopal did not issue that certificate in Case No.552/B-121/2003 dated 28/7/2003 and said Certificate was forged. On that, police arrested the applicant and filed a charge sheet against him before JMFC Bhopal. Being aggrieved with that applicant filed this petition.

3. Learned counsel of the applicant submitted that the applicant did not file any forged caste certificate. The jurisdiction to decide the fact that whether a person belongs to scheduled caste community or not is solely vested in the caste scrutiny committee without finding of caste scrutiny committee. In this regard, police has no right to register crime against the applicant. The applicant belonged to scheduled caste community and he has already possessed caste certificate issued on 28/11/1987. So, there is no need to the applicant to get another caste certificate from the Sub Divisional Office Tahsil Hujur, Distt. Bhopal. Complainant by manipulating the documents filed by the applicant along with his nomination papers falsely implicated the applicant in the crime. Applicant did not file the said caste certificate along with his nomination papers. So, no offence under Sections 420, 467, 468 and 471 of the IPC is made out against the applicant. In this regard, he also placed reliance upon the judgement of this Court passed in the case of Vikas Jagdish Shipuriya and another vs. State of MP reported in 2002(3) MPLJ 417 and apex Court judgment passed in Kumar Madhuri Patil and another vs. Addl. Commissioner, Tribal Development and others reported in (1994) 6 SCC 241 and Sheila Sebastian vs. R. Jawaharaj & another reported in (2018) 7 SCC 581.

4. He further submitted that complainant compromised the case with the applicant voluntarily and Registrar (Judicial) has also certified that compromise. So, charge sheet be quashed on the basis of compromise also. In this regard also learned counsel of the applicant placed reliance upon the judgement of apex court passed in Narinder Singh and others vs. State of Punjab & another reported in (2014) 6 SCC 466.

5. Learned counsel for the respondent no2./complainant submitted that the complainant has already compromised with the applicant. So if this Court quashed the FIR of Crime No.690/2016 registered at PS Govindpura, Bhopal, the complainant has no objection.

6. Learned counsel for the State opposed the prayer and submitted that issue before this court is not whether applicant belongs to the Scheduled Caste community or not but the issue is whether the caste certificate filed by the

applicant along with his nomination form was forged or not. Applicant may be the member-of scheduled Caste community but from the charge-sheet, it is clear that the caste certificate filed by the applicant along with his nomination form is forged and is not issued by the Sub Divisional Officer, Tahsil Hujur, Distt. Bhopal in Case No.552/B-121/2003 as mentioned in that Certificate. So offences punishable under Sections 420, 467, 468 and 471 of the IPC are clearly made out against the applicant. Hence, FIR of the Crime No.690/2016 registered at PS Govindpura, Bhopal cannot be quashed. He further submitted that on the basis of compromise FIR/charge-sheet can only be quashed when compromise was done by the person aggrieved/victim of the crime. In this case, the complainant is not the only person aggrieved /victim of the case. Applicant had filed forged caste certificate along with his nomination paper before Election Officer. So, the main person aggrieved in the case is the government and government did not compromise with the applicant. So only on the basis that the complainant of the case compromised with applicant, FIR of Crime No.690/2016 registered at PS Govindpura, Bhopal cannot be quashed. So petition be dismissed.

8. This court has gone through the record and arguments put forth by the learned counsel of both the parties. It is undisputed that the jurisdiction to decide whether a person belongs to scheduled caste community or not is solely vested in the caste scrutiny committee as held by the apex court in the case of Kumar Madhuri Patil (supra). But the issue before this court is not whether applicant belongs to the Scheduled Caste community or not but the question is whether the caste certificate filed by the applicant along with his nomination form is forged or not. It appears from the record that in the caste certificate filed by the applicant along with his nomination form, it is mentioned that said certificate is issued by the Sub Divisional Officer, Tahsil Hujur, Distt. Bhopal in Case No.552/B-121/2003. While from the statement of prosecution witnesses and documents filed by the prosecution along with the charge-sheet, it appears that the said certificate has not been issued by the Sub Divisional Officer, Tahsil Hujur, Distt. Bhopal. So, it is apparent that the certificate filed by the applicant along with his nomination papers is forged and the applicant used that forged certificate in filing nomination papers in the election of councillor of municipal corporation Bhopal. So prima facie offence under Section 471 of the IPC is clearly made out against the applicant. The facts of the case Vikas Jagdish Shipuriya (Supra) relied upon by the learned counsel of the applicant do not match with the present case. In that case, it was alleged that accused obtained caste certificate from the authority by producing false affidavit that he belongs to Scheduled Tribe community. In this case, it is alleged that the applicant filed forged caste certificate along with his nomination papers which is not issued by the authority. So that judgments also do not assist the applicant.

8. Apex court in the case of Sheila Sebastian v. R. Jawaharaj, (2018) 7 SCC 581 relayed upon by the learned counsel of the applicant held "A close scrutiny of the provisions Sections 463 and 464 of IPC makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an

answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463 IPC. Therefore, we can safely deduce that Section 464 of the IPC defines one of the ingredients of forgery i.e. making of a false document. Further, Section 465 of the IPC provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete".

9. Apex court in the case of Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 also observed as under:-

"13. The condition precedent for an offence under Sections 467 and 471 is a forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses."

10. From the above pronouncement of the apex court it is apparent that in order to attract the offence under Section 465, 467, 468 and 471 of the IPC it must be established that a document has been forged. A person is said to make a false document or false electronic record who dishonestly or fraudulently, inter alia,

makes, signs, seals or executes a document or part of a document with the intention of causing it to be believed that such document was made, signed, sealed, executed, transmitted or affixed by or by authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed. According to Section 471 of the IPC, where a person fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged 1[document or electronic record] shall be punished in the same manner as if he had forged such document.

11. In this case, also it is alleged that the applicant filed forged caste certificate along with his nomination papers which was not issued by the authority. Which clearly shows that applicant used forged caste certificate to support his candidature otherwise the applicant's nomination form would have been rejected.

12. Learned counsel of the applicant further submitted that only the fact that applicant filed forged caste certificate along with his nomination form does not suffice to prove the offence punishable under Section 471 of the IPC. It is only if the charge sheet discloses that the applicant had "fraudulently" or "dishonesty" used the said certificate. But there is no evidence on record to show that the applicant had "fraudulently" or "dishonesty" used the said certificate. But that arguments also has no force. The words 'dishonestly' and 'fraudulently' have been defined respectively in Sections 24 and 25 of the Indian Penal Code. 'Dishonestly' has been defined to mean that, whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another, is said to do that thing 'dishonestly'. The word 'fraudulently' has been defined to mean that a person is said to do a thing "fraudulently" if he does that thing with the intent to defraud, but not otherwise. The expression "wrongful gain" and "wrongful loss" are defined in Section 23 IPC; "wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled to; wrongful loss is loss by unlawful means of property to which the person losing it is legally entitled to; and a person is said to gain wrongfully, when such person retains wrongfully, as well as when the other person is wrongfully deprived of property. The word "injury" is defined in Section 44 as any harm illegally caused to any person in body, mind, reputation or property. in order to satisfy the definition of "dishonestly" it is enough if there is a non-economic advantage to the deceiver or a non- economic loss to the deceived.

13. The allegations in the charge sheet are that the applicant is the deceiver, and he had deceived the Election officer, into believing that the caste certificate filed by him along with the nomination form was issued by the Sub Divisional Officer, Tahsil Hujur, Distt. Bhopal. So the ingredients of the definition "dishonestly" are satisfied and it cannot be said that accepting the allegations in the charge sheet and the documents annexed thereto as true, the ingredients of Section 471 IPC are not attracted.

14. The said caste certificate was not prepared by the applicant and the applicant did not file the said certificate alongwith his nomination papers. Complainant by

manipulating the documents filed by the applicant along with his nomination papers wrongly implicated the applicant in the crime is the defence of the applicant which can not be considered at this stage because it requires evidence to decided.

15. Although, the applicant also filed this petition for quashing of the proceeding on the basis of compromise that took place between applicant and complainant and in this regard, he also filed the apex Court judgment passed in Narinder Singh (Supra) but that judgments also do not help the applicant because in that case apex court quashed the proceedings of criminal case because parties to the case (offender and Victim) compromised the case. While in this case complainant alone is not the Victim. Main Aggrieved (Victim) is the election officer before whom the applicant filed a forged caste certificate along with nomination paper. So, these judgements also do not help the applicant much. From the evidence collected by the prosecution, it is apparent that the applicant filed caste certificate in which it is mentioned that the certificate was issued by the SDO Tahsil Hujur in certificate no.552/B121/2003 while from the evidence collected by the prosecution, it is clear that the said certificate was not issued by the SDO Tahsil Hujur which clearly shows that the said certificate is false. When the applicant filed false caste certificate before the authority offence under Section 471 of the IPC clearly made out against the applicant. So the FIR of the Crime No.690/2016 registered at PS Govindpura, Bhopal and proceedings of the case arising out from the charge sheet filed by the police after investigation of the said crime can not be quashed. Hence, the petition is dismissed with the liberty to the applicant to raise all the objections before the trial Court at appropriate stage.