

(2015) 06 BOM CK 0122

In the Bombay High Court

Case No : Criminal Application Nos. 1173, 1249, 1944 of 2010 and Criminal Application (APL) Nos. 4, 42 of 2014

Vilas and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-06-2015

Acts Referred:

Constitution of India, 1950 — Article 20, 20(1)
Criminal Procedure Code, 1973 (CrPC) — Section 154, 173, 262
Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 — Section 10(1), 11, 11(1)(a), 11(1)(b), 11(2)

Citation : (2015) ALLMR(Cri) 4025 : (2015) 3 BomCR(Cri) 758

Hon'ble Judges : A.B. Chaudhari, J;P.N. Deshmukh, J

Bench : Division Bench

Advocate : A.S. Mardikar, Senior Advocate (Amicus Curiae) assisted by R.S. Parsodkar, for the Appellant; S.V. Manohar, Advocate General and B.H. Dangre, Public Prosecutor, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.B. Chaudhari, J.

1. Rule in Criminal Application (APL) No. 42 of 2014.
2. All these applications were heard together since common questions of law are involved and are disposed of by the common judgment.
3. By order dated 09-01-2015, prima facie, we found that sub-section (2) of Section 11 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 [for short, "the Act of 2000"], does not contemplate filing of case by the Police Officer in accordance with Chapter XII of the Code of Criminal

Procedure but contemplates the filing of a complaint case in accordance with Chapter XV of the Code of Criminal Procedure. Thereafter, these applications were heard from time to time and looking to the important issues involved and the filing of number of F.I.Rs in the Police Station and the chargesheets in the Court i.e. the police cases, this Court had heard the learned Advocate General for the State of Maharashtra.

4. The facts in all these cases are almost identical and in nutshell are stated as under:-

All these applicants claimed to be belonging to Scheduled Tribe on the basis of certificates in their favour which were issued to them admittedly before 23-05-2001 i.e. the date when the Act of 2000 came into force. The Scheduled Tribes Caste Scrutiny Committee had verified the caste claim of all these applicants and came to the conclusion that in all these cases the applicants or the candidates before the Committee had failed to establish the affinity and the ethnic linkage with "Halba Scheduled Tribe". By making an order after adjudication the Committee then in its order itself made a reference to Section 10(1) of the Act of 2000, by which the benefits enjoyed or taken by virtue of the appointment in the Scheduled Tribes category can be withdrawn. The Committee then referred to Sections 11(1)(a), 11(1)(b) and Section 11(2) of the Act of 2000 in its final order. Para No. 36 of this order reads as under:-

"36) Therefore the Scrutiny Committee vide the powers vested in it under section 11(2) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act No. XXIII of 2001), hereby authorises Shri N.Z. Kumre, the Deputy Superintendent of Police of the Police Vigilance Cell, Scheduled Tribe Certification Scrutiny Committee, Nagpur to lodge a complaint in the form of F.I.R. with the concern Police Station against Shri Vilas Rambhauji Majrikar."

5. The Committee thereafter went ahead and referred to Section 13(1) of the said Act and found that the competent authority issuing caste certificate dated 28-05-1984 in case of applicant Vilas Rambhauji Majrikar was also required to be prosecuted after obtaining sanction from the State Government. We quote para No. 37 of the said order in that context, which reads thus:-

"37) According to Section 13(1) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act No. XXIII of 2001), any person or authority performing the function of Competent Authority under this Act, who intentionally issues a false Caste Certificate, shall on conviction, be punished. According to Rule 4(9) of the Maharashtra Scheduled Tribes (Regulation of Issuance of Verification of) Certificate Rules, 2003, the competent authority should have conducted the enquiry in respect of elderly blood relation and

forefathers pertaining to school, land record. But in the present case the Competent Authority did not do so, and therefore the Scrutiny Committee decides to grant hearing to the Caste Certificate issuing Executive Magistrate, Umred, Distt. Nagpur and then obtain the sanction of the State Government in the Revenue Department to file a complaint against the said Executive Magistrate, Umred, Distt. Nagpur."

6. As earlier stated similar are the facts in other cases. After hearing the learned Counsel for the rival parties and the learned Advocate General, we framed the following two questions on 09-01-2015 in the light of the above facts and in view of submissions made before us in order to concentrate on the legal issues involved.

Two questions:-

"1] In the wake of Section 11(2) read with Section 12 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, whether the Police Station Officer acting under Section 154 of the Code of Criminal Procedure can register an offence under Section 12 of the Act when Section 11(2) contemplates filing of a private complaint by Scrutiny Committee or its authorised officer?

2] Whether a caste certificate obtained before 23rd May, 2001 i.e. prior to coming into force of Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, if found to be false or obtained by any other fraudulent means could attract the offence under Section 11, or under Section 13 of the Act which makes issuance of false caste certificate punishable?"

Arguments

7. In support of the applications Shri R.S. Parsodkar, the learned Counsel for the applicants submitted that the caste certificates in favour of the applicants in all these cases were issued by the competent authority admittedly before 23-05-2001 i.e. when the Act of 2000 came into force. When the caste certificates were issued the provisions regarding law as to the criminal offences under Sections 10(1), 11, 12 or 13 did not exist because the Act of 2000 itself came into force with effect from 23-05-2001 and therefore no criminal offences could be alleged either against the applicants or the competent authority issuing the caste certificates. Shri R.S. Parsodkar, the learned Counsel then argued that the practice adopted by the Scrutiny Committee after invalidating the claim of the candidates for Scheduled Tribes is to direct its officer to file F.I.R. with the Police Station under the above provisions of the Act of 2000 merely because the caste claim is not proved by the candidates. According to him, failure to prove the caste claim for want of evidence or for any other reason would not automatically constitute offence under the Act of 2000 and in these cases the

Committee has not recorded any finding about obtaining any false certificate or by fraudulent means nor that the competent authority issuing certificate did so fraudulently or with criminal intention. Shri R.S. Parsodkar, the learned Counsel then argued that at any rate the caste certificate issued by the competent authority before coming into force of the Act of 2000 even if it is found to be wrong, Section 13 is not attracted as the said section cannot have retrospective operation. The learned Counsel for the applicants then argued that though the offences have been made non-bailable and cognizable, but looking to the language of Section 11(2), what is contemplated is a private complaint case and not the police case. The Counsel for the applicants therefore prayed for quashing of F.I.R. and the criminal cases filed against them.

8. Per contra, Shri Sunil V. Manohar, the learned Advocate General with Smt. B.H. Dangre, the learned Public Prosecutor addressed this Court. In fairness the learned Advocate General referred to Article 20(1) of the Constitution of India so also a English decision in the case of Noss Farm Products, Limited vs. Lilico, decided on June 7, 1945, reported at K.B.D. Vol. 2 609. Shri S.V. Manohar, the learned Advocate General thus stated the legal position that Act providing for the offences punishable do not have retrospective operation. He also pointed out that the offences under Section 11 of the said Act have been made cognizable and non-bailable by putting an non-obstante clause. The question whether the police case could be filed or not will have to be examined in the light of Section 11(b) of the said Act, this being a special Act.

Consideration

9. We have heard the learned Counsel for the rival sides at length in the light of the facts quoted by us above and the questions framed by us above. We proceed to deal with the same here as under:-

10. Article 20(1) of the Constitution of India reads thus:-

"Art. 20. Protection in respect of conviction for offence (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

The above constitutional guarantee shows prohibition to make the provisions for offences in any law retrospectively.

11. Section 10(1) of the Act of 2000 reads thus:-

"10(1) However not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution or Cooperative Society against a post

reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith."

12. The above provision, thus, clearly provides enabling the power to withdraw the benefits secured on the basis of false certificate. The next provision is Section 11 of the Act of 2000 which is reproduced below in its entirety as under:-

"11. Offences and penalties.

(1) Whoever,-

(a) obtain a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means; or

(b) not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures any benefits or appointments exclusively reserved for such Castes, Tribes or Classes in the Government, local authority or any other company or corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or Co-operative Society against the office, reserved for such Castes, Tribes or Classes by producing a false Caste Certificate;

shall, on conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years or with fine which shall not be less than two thousand rupees, but which may extend up to twenty thousand rupees or both.

(2) No court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorized by the Scrutiny Committee for this purpose."

13. It is clear from Section 11(1)(a) that obtaining a false caste certificate by furnishing false information etc or by any other fraudulent means is an offence. Section 11(1)(b) relates to production of false certificate for obtaining benefits by a person not belonging to such reserved category which has been made an offence. The sentence provided is not less than six months which may extend to two years or with fine. Sub-section (2) of Section 11 provides a procedure for filing of criminal case. Sub-section (2) of Section 11 provides that no Court shall take cognizance of offences under this section. It provides that upon filing of a complaint in writing made by the Scrutiny Committee or its authorized officer the Court may take cognizance. This clearly means that what is contemplated is filing of a private case by a Scrutiny Committee or its authorized officer in accordance

with Chapter XV of the Code of Criminal Procedure and it does not contemplate filing of police case in accordance with Chapter XII of the Code of Criminal Procedure.

14. Section 12 of the Act of 2000, reads thus:-

"12. Offences under Act to be cognizable and non-bailable.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973-

(a) offences punishable under section 11 shall be cognizable and non-bailable;

(b) every offence punishable under this Act, shall be tried by any Magistrate of First Class in a summary way and provisions of sections 262 except subsection (2) to 265 both inclusive of this Code, shall as far as possible may be applied to such trial."

15. By merely making the offence under this Section 11 cognizable and non-bailable, the position would not change and the operation and effect of Section 11(2) does not get obliterated or non operational. We are therefore of the opinion that even though offences have been made cognizable or non-bailable, Section 11(2) must be held to operate with full force. That means what is contemplated by Section 11(2) is filing of a private complaint by the Scrutiny Committee or its authorized officer before the Court who could then take cognizance. In other words, filing of a police case is not contemplated by the aforesaid provision.

16. In the light of the above discussion with reference to question No. 1, therefore, we are of the considered opinion that filing of a police case by registration of F.I.R. before the criminal Court is not contemplated and what is contemplated is filing of a private complaint by a Scrutiny Committee or its authorized officer in accordance with Chapter XV of the Code of Criminal Procedure. We, therefore, answer question No. 1 accordingly and hold that filing of final report by the police under Section 173 of the Code of Criminal Procedure by way of chargesheet is illegal and contrary to the provisions of law as aforesaid.

17. The next question with reference to para No. 37 of the order passed by the Committee proposing action for prosecution of the competent authority issuing caste certificate falls for our consideration. The Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 came into force with effect from 23-05-2001 including the provisions of Section 13 of the said Act. Section 13 of the Act of 2000, reads thus:-

"13. Penalty for issuing false Caste Certificate.

(1) Any person or authority performing the functions of Competent Authority under this Act, who intentionally issues a false Caste Certificate, shall on conviction, be punished with rigorous imprisonment for a term which shall not be

less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees, but which may extend upto twenty thousand rupees or both.

(2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government."

18. Section 13 has been engrafted with a view to punish those who issue false caste certificates intentionally while performing their function as competent authority with a rider that such a prosecution could be launched with the sanction under Section 13 of the Act of 2000. The question No. 2 framed above a competent authority issuing caste certificate before coming into force the Act of 2000 i.e. 23-05-2001, could be prosecuted under Section 13 of the Act or not? In all these cases the caste certificates admittedly were issued by the competent authority before 23-05-2001 and at that time Section 13 did not exist.

Following are the dates of issuance of caste certificate competent authority in these case:-

19. Section 13 provides for imprisonment and fine. We think the observations made in the judgment cited supra by the learned Advocate General are apt. We quote them as under:-

"We are asked to say here that the meaning of that provision is, that if a man sells what is perfectly legal and proper according to law, nevertheless a year afterwards - and, it may be law having in the meantime been altered - he is to be brought before a police court and, being a reputable one, is to be charged with a criminal offence. To my mind that is a monstrous proposition. I cannot conceive of any Act of Parliament being passed having such an effect, and, in my view, the Food and Drugs Act, 1938, certainly does not have that effect because the act or default mentioned in sec. 83(3) plainly has the meaning of wrongful act or default."

20. It is, thus, clear that on the date when the caste certificate was issued there was no law making for constitution of such offence. The Scrutiny Committee however by making observations made in para No. 37 of the order, which are reproduced above, did not advert to this matter and straightway proposed to prosecute the com authority under Section 13 of the Act of 2000. To sum up the provisions of Section 13 must be held to be prospective in nature and cannot be held to be retrospective in operation. We, therefore, answer question No. 2 accordingly and hold that no offence under Sections 11 or 13 of the Act of 2000 could be constituted by obtaining a certificate if the certificate was issued before 23-05-2001, the date Act, 2000 came into force.

21. The upshot of the must succeed. In the result discussion is that all these applications we make the following order:-

Order

A] Criminal Application No. 1173 of 2010, Criminal action No. 1249 of 2010, Criminal Application No. 1944-2010, Criminal Application (APL) No. 4 of 2014 and Criminal Application (APL) No. 42 of 2014 are allowed.

B] Rule is made absolute in terms of prayer clause (1) of Criminal Application No. 1173 of 2010, Criminal Application No. 1249 of 2010, Criminal Application No. 1944 of 2010, Criminal Application (APL) No. 4 of 2014 and Criminal Application (APL) No. 42 of 2014.

No costs.