IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JANUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL REVISION PETITION NO.989 OF 2012
C/W
CRIMINAL REVISION PETITION NO.988 OF 2012

In Crl.RP.No.989/2012

BETWEEN:

Smt. Yamuna
Aged about 54 years,
W/o Sri Tharanathjee,
Residing at "Madhavtara",
Vidyanagar, Kulai, Mangaluru
Pin-574001.

…Petitioner

(By Sri Suyog Herele, Advocate for
Sri Aruna Shyam, Advocate)

AND:

The State
Through Police Inspector,
Civil Rights and Enforcement Cell,
Mangaluru-574001.

…Respondent

(By Sri Vishwa Murthy, HCGP)

This Criminal Revision Petition is filed under Section 397 of Cr.P.C., praying to set aside the order dated 22.08.2012 passed by the II Additional District & Sessions (Special) Judge, D.K., Mangaluru in Spl.Case No.19/2008 and allow the application filed

under Section 227 of Cr.P.C. filed by the petitioner in S.C.No.19/2008.

In Crl.RP.No.988/2012

BETWEEN:

Sri Vijaya
Aged about 47 years,
S/o Krishna Naik,
Residing at 'Vignesh',
Opp.Crystal Plywood,
Chilimbi, Mangaluru-574001.

…Petitioner

(By Sri Nataraja Ballal, Advocate)

AND:

The State
Through Police Inspector,
Civil Rights and Enforcement Cell,
Mangaluru-574001.

…Respondent

(By Sri Vishwa Murthy, HCGP)

This Criminal Revision Petition is filed under Section 397 of Cr.P.C. praying to set aside the order dated 22.08.2012 passed by the II Additional District & Sessions (Special) Judge, D.K., Mangaluru in Spl.Case No.23/2008 and allow the application filed under Section 227 of Cr.P.C., filed by the petitioner in S.C.No.23/2008.

These Criminal Revision Petitions coming on for ***hearing*** through video conferencing this day, the Court made the following:

ORDER

These two petitions have been disposed of by a common order. The facts of these two petitions are as below: -

2. The petitioner in Criminal Revision Petition 989/2012 is the accused in Special Case No. 19/2008 on the file of II Additional District and Sessions (Special) Judge, D.K, Mangalore, facing trial for the offence under section 3(1)(ix) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short hereinafter referred to as 'the Act'). The petitioner in Criminal Revision Petition 988/2012 is the accused in Special Case No. 23/2008 on the file of the same court for the same offence. They were prosecuted for the said offence on the allegation that they produced false caste certificates to show that they belonged to Marathi caste which comes under Scheduled Tribe category. Charge sheet

was filed for the offence under section 3(1)(x) of the Act. The petitioners filed applications under section 227 Cr.P.C seeking their discharge. The court below by its order dated 22.8.2012 dismissed their applications and hence these revision petitions.

3. I have heard Sri Nataraja Ballal, learned counsel for the petitioner in Criminal Revision Petition No. 988/2012 and Sri Suyog Herele, learned counsel for the petitioner in Criminal Revision Petition No. 989/2012. I have also heard the learned Government Pleader.

4. Sri Nataraj Ballal and Sri Suyog Herele submit that the caste certificates were issued in the years 1977 and 1983. When these caste certificates were issued, the Act was not in existence, it enacted in the year 1989. It was not an offence at the time when the caste certificates were issued. The petitioners cannot be prosecuted

for the offence under section 3(1)(x) of the Act. The second point of argument is that even assuming that the certificates are falsely obtained by the petitioners, the provisions of section 3(1)(ix) of the Act are not attracted. Their submission is that giving false information to obtain a caste certificate to the effect that the petitioners belonged to Scheduled Tribe does not amount to an offence within the meaning of section 3(1)(x) of the Act (as it stood before amendment) because there is nothing to show that by giving false information to a public servant, the petitioners intended to induce that public servant to cause annoyance to a member of Scheduled Caste or Scheduled Tribe. Moreover they submit that the matter is still pending before the District Caste Verification Committee and it has not taken any decision. In this view, charge sheet could not have been filed against the petitioners. The learned Judge of the trial court ought to have

applied his mind that no offence is made out against the petitioners and therefore he should have allowed their applications under section 227 Cr.P.C for discharging them. In support of their arguments, they have placed reliance on some of the judgments to which I will refer to later.

5. The learned High Court Government Pleader submits that the trial court is justified in dismissing the applications for discharge. It is clearly observed by the trial court that at the time of framing charge, only materials available on record should be considered to find out whether there is a case for framing of charge or not. It is not necessary for the court to consider whether the accused is going to be convicted or not and such a conclusion can be drawn only after holding trial. The trial court has referred to some of the authorities that the petitioners have now relied upon for dismissing their applications under

section 227 of Cr.P.C. There are no infirmities in the order and therefore, these petitions deserve to be dismissed.

6. I have considered the points of arguments. So far as the petitioner in Criminal Revision Petition 988/2012 is concerned, the allegation is that the petitioner, though belonged to Konkani caste, gave false information to the Tahsildar that he belonged to Marathi caste for obtaining a caste certificate in order to secure employment in New Mangalore Port Trust. The allegation against the petitioner in Criminal Revision Petition 989/2012 is also the same. There is no dispute that these caste certificates were issued in 1977 and 1983. Therefore it becomes very clear that when the caste certificates were issued, the Act had not been enacted at all, it came into force from 30.1.1990. Article 20(1) of the Constitution of India clearly

says that, no person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an 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. Petitioners have been charge sheeted for the offence under section 3(1)(ix) of the Act. In view of Article 20(1) of the Constitution of India, they cannot be prosecuted for the offence under section 3(1)(ix) of the Act as the law did not exist on the day when the certificates were issued. This aspect has been made clear by the earlier judgments of this court. In ***Haridevanandaji Rao Pawar vs The State of Karnataka (Criminal Petition No. 2813/2008),*** it is held as below: -

> *"7. A certificate said to have been issued originally during 1984, but the provisions of section 3(1)(ix) of the SC/ST (Prevention of*

Atrocities) Act, 1989, came into effect during 1990. In order to prosecute the petitioner, the mischief should have been committed after the enactment of the provision but for the past act of mischief done by the petitioner by applying the principle of ex-post facto law, the petitioner has to be exonerated from prosecuting. However, the certificate produced by the petitioner along with annexure at page 5 of the petition shows that the petitioner belongs to Scheduled Tribe."

7. Then in the case of ***B.Venugopal vs The State of Karnataka (Criminal Revision Petition No. 321/2015),*** the judgment of this court in ***Haridevanandaji*** has been referred to reiterate the principle which is as follows : -

"8. Learned Judge of the trial court has not referred about the applicability of Article 20 of the Constitution of India, which is re-

iterated by this court in the case of Haridevanandaji Rao Pawar Vs. The State of Karnataka. The error so committed by learned trial Judge is apparent on the face of the record and hence the impugned order needs to be set aside and the matter be remitted back to the trial court to pass appropriate order, keeping in mind the principles re-iterated by this court and the mandate of Article 20 of the Constitution of India."

8. In fact the judgment of this court in ***Haridevanandaji*** was brought to the notice of the trial court but, it has wrongly held that the principle laid down therein is not applicable.

9. Further, if it is examined whether section 3(1)(x) of the Act chould be invoked against the petitioners, it may be stated that as the language of the said section indicates, it is altogether for a different purpose. This court had an occasion to deal with the applicability of section 3(1)(x) (now

section 3(1)(q) of the Act after amendment). Under what circumstances this section can be invoked is discussed in the case of ***Smt. K.Susheela vs The State of Karnataka and Another (Criminal Appeal No. 1361/2021).***

> *"7. Having heard the arguments, it is to be stated that Section 3(1)(q) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act [3(1)(ix as it stood) before amendment] reads:-*
>
> ***3. Punishments for offences of atrocities***
>
> *(1) whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-*
>
> *(q) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled caste or a Scheduled Tribe.*

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

8. If this section is read, it becomes clear that false or frivolous information should have been given to a public servant to cause that public servant to use his authority for causing injury or annoyance to a member of a scheduled caste or scheduled tribe. That means, a public servant should take action against a member of scheduled caste or scheduled tribe upon a false or frivolous information given by a person who does not belong to scheduled caste or scheduled tribe, and such action should result in injury or annoyance to a member of scheduled caste or scheduled tribe."

10. Therefore it is clear that if a false caste certificate is obtained by persons not belonging to Scheduled Caste/Scheduled Tribe by giving wrong information, it does not mean that a public servant is induced to take action against a member of Scheduled Caste/Scheduled Tribe. The said provision cannot be invoked in the charge sheet even if it is assumed for the argument sake that certificates are obtained by giving false information. In this view filing of charge sheet against the petitioners was unwarranted.

11. The trial court at the time of framing charge must examine whether any offence is made out from the charge sheet or not. When an application under section 227 Cr.P.C., is made, the trial Court has all the powers to discharge an accused if the charge sheet does not indicate any offence being committed. Even at the time of framing charge, the trial court has ample power to

examine whether the offence has been constituted or not, and if no offence is forthcoming from the charge sheet, the jurisdiction under section 227 Cr.P.C can be exercised for discharging the accused. In this case, apparently the trial court has not exercised jurisdiction under section 227 of Cr.P.C under an erroneous impression that only the High Court can quash the charge sheet. Indeed the High Court can quash the charge sheet, and at the same time if discharge is sought under Section 227 of Cr.P.C., the Sessions Court or the Special Court can discharge an accused if no offence is constituted. Therefore I find that these two petitions deserve to be allowed. Hence, I pass the following : -

ORDER

(a) Petitions are allowed.

(b) The orders of the trial court dated 22.8.2012 in both the cases are set aside.

(c) The applications filed by the petitioners under section 227 Cr.P.C are allowed. The petitioners are discharged of the offence under section 3(1)(x) of the Act.

Sd/-
JUDGE

ckl/-