

Rangappa and Others Vs. The State of Karnataka

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Court : Karnataka Dharwad

Decided On : Sep-18-2014

Judge : L. Narayana Swamy

Appeal No. : Criminal Petition No.101220 of 2014

Appellant : Rangappa and Others

Respondent : The State of Karnataka

Judgement :

(Prayer: This criminal petition is filed u/s 482 of Cr.P.C. seeking to set aside the entire criminal proceedings in Spl. Case No.43/2013 for an offence p/u/s 196, 197, 198, 199, 200, 420 of IPC and 3(I)(ix) SC/ST (PA) Act, 1989, pending on the file of the Prl. Dist. and Sessions Judge, Bagalkot, insofar as it relates to the petitioners; and etc.)

1. A case has been registered against these petitioners in Special Case No.43 of 2013 for the offence punishable under Section 196, 197, 198, 199, 200 and 420 of IPC and Section 3(I)(ix) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989 pending on the file of Principal District and Sessions Judge, Bagalkot. They have obtained certificate as belonging to Scheduled Tribe community to get Government benefit under "Swarna Bhoomi" scheme. The second respondent has lodged a complaint before jurisdictional police alleging that Adhyaksha of the Karnataka Valmiki Sangha, Mudhol Branch has made a

complaint informed that for the year 2011-2012, the petitioners have availed subsidy for a sum of Rs.5,000/- each in a total of Rs.30,000/- from Government under "Swarna Bhoomi" scheme. The petitioners, though they do not belong to Scheduled Tribe community, have made a false claim in order to get the benefit under the scheme.

2. The learned counsel appearing for the petitioners submits that the petitioners obtained the said certificate in order to get the benefit under the above referred scheme and in view of the fact that the Tahsildar has initiated action, they have surrendered the caste certificates and returned the amount, which was collected from the Government. Now the petitioners are not in possession of any certificates, as if they belong to Scheduled Tribe and no benefits under any of the Government schemes are in their possession. Instead, a case has been registered against the petitioners and hence the proceedings is required to be set aside. The learned counsel further submitted that as per the Government Order dated 11th March 2002 in No.SWD 713 AD 93, the authorities are to drop proceedings, if any, initiated on the basis of false certificate obtained. Referring to the said Government Order, this Court in Writ Criminal Petition No.8999 of 2009 disposed of on 14th July 2009 quashed the proceedings in similar circumstances. In another judgment in Criminal Petition No.7739 of 2009 disposed of on 14th October 2009 also similar proceedings has been quashed. Hence, the learned counsel submits that the petitioners are to be extended similar benefit in this case also.

3. Per contra, the learned High Court Government Pleader, submits that these petitioners have obtained the caste certificates from "Nemmadi Kendra" which is not competent to issue any certificate and the operators of the said Kendra has also been arrayed as accused No.7, who, in collusion, has issued such certificate which is an offence to the State as well as persons belonging to scheduled tribe community. The Government order dated 11th March 2002 referred hereinabove is not applicable. The petitioners do not belong to the Scheduled Tribe community and under these circumstances, the prosecution rightly launched case against the accused. He further submits that surrendering caste certificate after taking benefits and surrendering the benefits which have been obtained, do not take away the effect of commission of offence.

4. Heard both. As per the order issued by Government of Karnataka and the Government of India, the competent authority to issue caste certificate is only the Tahsildar; and the beneficiaries have to make an application to the Tahsildar in a prescribed format and the machinery provided therein will have to examine and as per the Government Order, the Caste Certificate could be issued to the persons whose caste has been named in the schedule of 1950 Government Order. The Government of Karnataka has issued an enactment, viz. The Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment, etc.) Act, 1990, and prescribed authorities and procedure to issue income and caste certificate. Any certificate issued in contravention with the provisions referred to above is illegal and would be contrary to law and is liable to be punished. The competent authority, other than the one referred to therein, shall not issue any such certificate. If that is done, the benefit, which is ought to be provided to a scheduled caste and scheduled tribe person as per the mandatory provisions of Constitution of India, could prove futile. When a scheme is launched only to be extended to the person belonging to scheduled caste and scheduled tribe and if the benefit will not reach the real needy and an attempt is made by other persons, to knock out the benefit meant for the needy people by adopting illegal means and by obtaining false caste certificate suppressing the fact, then that act is nothing but concealing of truth and at the same time it also amounts to express of falsehood. As the legal maxim says it is suppressio veri - expressio falsi that is, a suppression of truth is equivalent to an expression of falsehood.

5. In the instant case, petitioners admittedly do not belong to scheduled tribe community. They have approached "Nemmadi Kendra" and the operator of the said Kendra has illegally generated false certificates resulting in the extension of government benefits to the petitioners. This itself is self-explanatory to the effect that the falsehood or concealment was made to get illegal benefits under government schemes, which is an offence as against the State as well as the claimants. Under these circumstances, the action of the respondent initiating case against the petitioners is well-founded.

6. The learned counsel for the petitioners referring the Government Order dated 11th March 2002 has submitted that in similar circumstances direction has been

issued to the authorities not to launch any criminal case. Since the case on hand is similar, the said direction is applicable to the case and hence a direction is sought to quash the proceedings initiated against the petitioners. The said Government order has been followed in many cases. In order to find out as to whether the petitioners are entitled for scheme, I have gone through the Government Order thoroughly. Government of Karnataka in its Order No.SWL 63 SAD 85 dated 23rd January 1986, benefits for reservation in admission to educational institutions and education concessions were extended to persons belonging to Nayak, Naik, Beda, Valmiki, Pariwara and Talwara communities pending decision of Government of India to treat these communities as synonyms of Nayaka. The said Government order also further directs that no penal or disciplinary action should be taken and prosecution, if an/, launched shall be kept in abeyance and shall not be pursued against persons belonging to the above communities for having obtained caste certificates as belonging to 'Nayaka' community. Further, suspension orders, if any, in such cases shall be revoked and persons retrenched if any shall be reinstated. The said Government Order further clarifies that the benefits were made available to persons belonging to 'Maaleru' community for having obtained caste certificates as belonging to 'Maleru' (Scheduled Tribe) and persons belonging to 'Kuruba' community for having obtained caste certificates as 'Jenu Kuruba' (Scheduled Tribe) or 'Kadu Kuruba'. Similar benefits were also extended to 'Gond/Rajgond' (Scheduled Tribe) community and persons belonging to 'besta' and Koli' who have obtained false caste certificate as 'Koli Dor' and 'Tokrekoli' (scheduled tribe) at par with Nayaka, Pariwara, Talawara, etc. This extension of benefits to synonymous terms was objected by Government of India in its letters dated 10th June 1986 and 17th December 1993 for extending the benefits, which are meant for scheduled tribes to persons belonging to a community which are not included in the list of scheduled tribes and the benefits extended to persons belonging to scheduled tribes were not in conformity with Articles 341 and 342 of the Constitution of India. The Government of India, in the letters cited above, further directed the State Government to withdraw the benefit extended in the synonymous terms as Caste Certificates obtained as if they belong to Scheduled Tribes, in the interest of Scheduled Castes and Scheduled Tribes.

7. In the light of above objections made by the Government of India, the State Government issued notification. In view of the benefits extended as per 23rd January 1986, objection made by Government of India as per 10th June 1986 and 17th December 1993, many authorities including public sector undertakings were facing difficulties in taking action against the persons who have made false caste certificates. In order to overcome this and also in order to comply with the judgment of the Hon'ble Supreme Court in MAHARASHTRA v. MILIND in Civil Appeal No.2294 of 1986 dated 28th November 2000, wherein it has been held that in the facts and circumstances of the case, no action shall be taken against the persons, who have obtained caste certificates contrary to Government Orders dated 17th December 1993 and 10th June 1996 and further directed to treat the persons who have been appointed, as if they had been appointed on general category. In this background, Government of Karnataka issued Order No.SWD 713 SAD 93 dated 11th March 2002. The said order is required to be understood in the light of discussion made above. This Government order was never issued to acquit all the persons who have committed crime by obtaining false caste certificates. The said Government order is also with regard to Pariwara, Talwara, Maaleru, Kuruba communities and Besta and Koli communities would accordingly cease. This was confused with regard to issue of certificate to any caste of scheduled tribe or backward class, but some of the backward class candidates have obtained certificate as Scheduled Tribes and in order to resolve the dispute, the said government order was issued and the preamble of the said order reads thus:

GOVERNMENT ORDEF, NO. SWD 713 SAD 93,

BANGALORE DATED: 11TH MARCH 2002

In partial modification of Government Orders read at (1) and (2) Government are pleased to order as under:

1. The benefits of reservation in admission to educational institutions and educational concessions extended to Pariwara, Talwara, Maaleru, Kuruba communities in G.Os read st (1) and (2) above and Besta and Koli Communities accordingly cease. All persons of these communities who have obtained ST caste

certificates shall surrender them immediately to the issuing authority for cancellation. They shall not be liable for penal action provided they surrender their certificates. The issuing authority shall cancel such certificates.

2. Wherever it comes to the notice of the appointing authority that a ST certificate has been issued to a persons belonging to these communities and which has not been surrendered or cancelled necessary action shall be taken for cancellation of such certificate by issuing authority, with due regard to the principles of natural justice."

8. As per this Government Order, a direction was issued to surrender the caste certificate forthwith and clarify that all these certificates have been cancelled with effect from 11th March 2002. When the purpose of this notification is to cancel the certificates, who have obtained false caste certificates concealing their original caste, when the State has launched criminal cases, against those persons, and wherever orders have been passed by this Court, in spite of the said order, the Government has issued caste certificates, but the same was not brought to the notice of this Court and the Government has not defended their action. Had it been brought to the notice of this Court, this Court would not have passed orders of this nature. That is what has happened in the judgment of the Hon'ble Supreme Court in the case of MILAND (supra) where a direction was issued not to initiate criminal action in view of the fact that with regard to status or caste, but has been wrongly narrated before the Courts to the effect that the Hon'ble Supreme Court contend that all the claims made falsely. It is to be remembered that a person who makes a false claim has no right to defend their case. On the basis of it, when such being the case, it is the duty of the Government to initiate action. The summary of the Government notification is confined only with regard to appointments already made in respect of persons belonging to Pariwara, Talwara, Maaleru, Kuruba, Kadu Kuruba, Jenu Kuruba, Gonda/Rajgonda, Koli, Kolidhor and Tokrekoli castes shall be treated as appointments made under general category with effect from the date of this order, i.e. 11th March 2002 and they shall not be eligible for any benefit in future as the one belonging to scheduled tribe. However, they can claim reservation benefit in respect of castes of which they belong as per the existing government order and this benefit is confined only to the castes referred to above.

The benefit is to be extended in the circumstances where a certificate is obtained by virtue of confusion. But the caste Kuruba, which did not, at any point of time belong to Kadu Kuruba, if any person had made a false claim that he is a kadu Kuruba, then the person will not get the benefit under this Government order. The said person has to substantiate his case that either his father or the ancestors are Kadu Kurubas and he is protected person of Kadu Kuruba from Madikeri region and entitled to take benefit of kadu kuruba.

9. The petitioners who claim that they are not persons belonging to scheduled tribes and they have been colluded with "Nemmadi Kendra" which is not a department of Government, nor has any competence to issue caste certificate as referred above and also under 1950 government order, but as already stated earlier, they generated caste certificates holding that the petitioners belong to scheduled tribe community in order to make false claim. Hence, action is also to be taken against the said "Nemmadi Kendra". The judgment referred to by the learned counsel for the petitioner in Criminal Petition No.8999 of 2009 disposed of on 14th July 2009 and the judgment in Criminal Petition No.7739 of 2009 disposed of on 14th October 2009 is not applicable in the facts and circumstances of this case. It is believed that failure on the part of the Government in not representing the case properly has resulted in these orders. With these observations, the petition stand disposed of. Further, it is also observed that any person, by obtaining false caste certificate has obtained appointment either in the State or the Central Government, and if it is found that the person has made false gains based on the false certificate, then the said person has to be prosecuted for the above offence. It is necessary to refer to the legal maxim *lex punit mendaciam*, that means law punishes falsehood.

10. The observations made in this petition shall not influence the learned Principal District and Sessions while disposing of the criminal proceedings on its file and the learned judge is directed to dispose of the proceedings strictly in accordance with law.

11. Accordingly, the petition is disposed of. In view of disposal of the main petition, IA.1 of 2014 does not survive for consideration. Accordingly the same is disposed

of.

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