

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.8857 OF 2018

BETWEEN

SMT. SAVITHRI @ SAVITHRAMMA
W/O LATE A.M. SURYANARAYANA NAIK
AGED ABOUT 64 YEARS
C/O V. THIMAYYA.
NO.59/A, 1ST STAGE
1ST PHASE, II-MAIN ROAD
GOKULA, MATTIKERE
BENGALURU - 560 054.

... PETITIONER

(BY SRI BHARATH KUMAR V., ADVOCATE)

AND

1. STATE OF KARNATAKA
THROUGH STATION HOUSE OFFICER
SIRA POLICE STATION
BANGALORE
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE - 560 001.
2. SUB-INSPECTOR OF POLICE
DIRECTORATE OF CIVIL RIGHTS
ENFORCEMENTS
TUMKUR RANGE
TUMKUR-56

... RESPONDENTS

(BY SRI VINAYAKA V.S, HCGP FOR R-1/STATE
SRI. JAGADISH - SPL. STANDING COUNCEL FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO :

a) QUASH THE FIR AND INFORMATION REGISTERED AS NO.163/2018 DATED 02.04.2018, WITH R-1 POLICE, FOR ALLEGED OFFENCES PUNISHABLE UNDER SECTIONS 198, 196, 199 AND 420 OF IPC R/W SEC.3(1)(q) OF SC/ST(POA) ACT, 1989 VIDE ANNEXURE-A AND A1;

b) QUASH THE FINAL REPORT FILED BY THE R-1 POLICE IN MATTER BEARING CRIME NO.163/2018 AND CURRENTLY RENUMBERED AS SPL.C.C.NO.326/2018, PENDING IN THE FILE OF THE III-ADDL. DISTRICT AND SESSION COURT, TUMKUR; WHEREIN THE PETITIONER HEREIN AS ARRAIGNED AS ACCUSED FOR THE OFFENCES UNDER SECTIONS 198, 196, 199 AND 420 OF IPC R/W SEC.3(1)(q) OF SC/ST(POA) ACT, 1989 VIDE ANNEXURE-B;

c) QUASH THE ENTIRE PROCEEDINGS IN MATTER BEARING CRIME NO.163/2018 AND CURRENTLY RENUMBERED AS SPL.C.C.NO.326/2018 PENDING IN THE FILE OF III-ADDL. DISTRICT AND SESSION COURT, TUMKUR; WHEREIN THE PETITIONER HEREIN IS BEING PROSECUTED OR THE ALLEGED OFFENCES UNDER SECTIONS 198, 196, 199 AND 420 OF IPC R/W SEC.3(1)(q) OF SC/ST(PCA) ACT, 1989 VIDE ANNEXURE-C.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS THROUGH VIDEO CONFERENCING ON 01.04.2022 THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner/accused under Section 482 of Cr.P.C for quashing the criminal proceedings in Special CC.No.326/2018 for the offence punishable under Section 198, 196, 199 and 420 of IPC and Sections 3 (1) (ix) of Scheduled Caste and

Scheduled Tribe (Prevention of Atrocities) Act, 1989 herein after referred as SC/ST (POA) Act, pending on the file of III Additional District and Sessions Court, Tumkur.

2. Heard the arguments of the learned Counsel for petitioner, learned HCGP for the State-respondent No.1 and Special Standing Counsel for respondent No.2.

3. The case of the prosecution is that the respondent No.2 filed a complaint to the police on 02.04.2018 which was registered as Crime No.163/2018 for the above said offences alleging that the petitioner who is said to belong to Brahmin community by birth and during the year 1974 she had married to one A.M.Suryanarayana Nayak, who is said to be belonging to the 'Nayak' caste which was classified under Scheduled Tribe. Subsequent to the

marriage of the petitioner she was residing with her husband and followed her husband's caste. Subsequently she applied for a caste certificate, claiming her caste as Scheduled Tribe. Accordingly she obtained the caste certificate and also secured a job with the Karnataka Public Service Commission (KPSC) and was appointed as Second Division Clerk and posted at Commercial Tax Department. Subsequently the Caste Verification Committee verified the certificate and annulled the certificate stating that she cannot claim her husband's caste as she is Brahmin by birth as per her SSLC certificate. Thereafter she was dismissed from service on 28.4.2012, hence the complaint came to be registered against her, which is under challenge.

4. Learned counsel for the petitioner has contended though the petitioner was a Brahmin by birth but by marrying to a 'Nayak' community person,

she followed the husband's caste and at that time the judgment of Hon'ble Supreme Court of India in "**N.E.Horo Vs Jahanara Jaipal Sing**" reported in **(1972) 1 SCC 771**, was in force and in the judgment it was clearly held that after marrying the member of the SC/ST the girl also becomes the caste of her husband until the later judgment of the Hon'ble Supreme Court which was declared only in the year 1996 in the case of **Valsamma Paul's Vs Cochin University** reported in **(1996) 3 SCC 545** and therefore she was terminated from the service and also contended that she has no criminal intention to cheat the authorities, but she bonafidely believed herself the caste of her husband and secured the job. Therefore, prayed for quashing the criminal proceedings.

5. Per contra, the counsel for the respondent No.2 who appeared for Directorate of Civil Rights

Enforcement (DCRE) has objected the petition and contended that the Division Bench of this Court in the case of ***G.S.Vasantha Lakshmi Vs State of Karnataka*** has categorically held that the Brahmin lady will not get the right of caste of her husband merely by marrying the member of the SC/ST and Supreme Court has categorically held in *Valsamma Paul's* case that the wife will not get the status of husband, merely marrying SC/ST person and no reservation is available under Article 16 (4) of the Constitution of India. The matter requires for adjudication, hence prayed for dismissing the petition.

6. Learned High Court Government Pleader also objected the petition.

7. Having heard the arguments of both the parties and perusal of the records, it is an admitted fact that the petitioner is a Brahmin by birth and she

married to a person belonging to 'Nayak' caste which falls under Scheduled Tribe. She had also secured job by obtaining a certificate as Scheduled Tribe and was appointed as SDA and posted to Commercial Tax Department. It is also an admitted fact, subsequently the caste verification committee had annulled the caste certificate and thereafter she was terminated from service. Subsequently, the case came to be filed against the petitioner for the above said offences.

8. The learned counsel for the respondent relied upon the judgment of the Division Bench in **Vasantha Lakshmi's** case wherein Vasantha Lakshmi who was Brahmin by birth and obtained certificate under the reservation of Scheduled Caste was appointed as Head Mistress in a school, as she had accepted her husband's community and continued as members of the caste. In the said case after her removal from the service she had challenged before the Karnataka

Administrative Tribunal and the same was dismissed and in the appeal the Division Bench of this Court confirmed the same by relying upon the judgment of the Hon'ble Supreme Court in the case of ***Muralidhar Dayandeo Keskera Vs Vishwanath Pandu Barde [1995 supp (2) SCC 549]*** and ***Valsamma Paul Vs Cochin Univeristy and Others (1996) 3 SCC 545*** the dismissal of the petitioner from the service was upheld.

9. It is also pertinent to note that the Hon'ble Supreme Court held in the ***Valsamma Paul's case*** that the reservation for a women under Section 15 (4) of the Constitution of India is not available if the non-member of the SC/ST person marries the member of the SC/ST.

10. The learned counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court in

N.E.Horo Vs Jahanara Jaipal Sing" reported in ***(1972) 1 SCC 771 dated 02.02.1972*** the Hon'ble Apex Court has held the person who is not belonging to tribal community by birth and by virtue of marriage, marrying the person from the Munda Tribe Community after due observance of all formalities and after obtaining approval of elders of the tribes, she becomes the husband's domicile. Until the pronouncement of the Hon'ble Supreme Court in (a) ***Kum.Madhuri Pati & Anr Vs. Addl.Commissioner, Tribal Development & Ors - 1994 (6) SCC 241***, (b) ***Valsamma pauls*** case and (c) ***Dayaram Vs Sudhir Batham and Others reported in 2012 (1) SCC 333*** the judgment of Hon'ble Supreme Court in ***N.E.Horo's*** case prevailed. Subsequently, there were various judgment and pronouncement of the Hon'ble Supreme Court changed the scenario in the case that a non SC/ST

member by marrying the member of the SC/ST member will continue as their birth caste but not as husband's caste.

11. Now coming to the case on hand, the petitioner had married a member of Scheduled Tribe in the year 1974, admittedly judgment of Hon'ble Supreme Court in **N.E.Horo's** case was the law of the land. Subsequent to the marriage, she applied for caste certificate and secured job under Scheduled Tribe community. Thereafter the caste verification committee, subsequent to the pronouncement of Valsamma's case issued show cause notice and annulled the caste certificate, consequently she was dismissed from service. The petitioner also approached the co-ordinate bench of this court in a writ petition by challenging the dismissal of the service and her dismissal was confirmed. In a similar case, in **Vasantha lakshmi's** case who had filed

petition before this Court in Crl.P.No.3983/2004 which came to be allowed and this Court had quashed the criminal proceedings holding that there is no criminal intention by securing her job and without having knowledge of prohibition. Though the division bench has upheld the dismissal of her service but in the criminal petition she was succeeded in getting the criminal proceedings against her quashed. Similarly in this case on hand, the petitioner though by birth was a Brahmin, but she had married the 'Nayak' community person and is having children and she bonafide believed and applied for the caste certificate and obtained the same from the authority and also obtained the reservation on the basis of her husband's caste. At that time the judgment of the Hon'ble Supreme Court in ***N.E.Horo's*** case was in force and subsequent to the development and in view of the ***Madhuri Patil's*** case and others cases and other

pronouncement of Hon'ble Supreme Court, because of the change of law, the non-member of the SC/ST people even if married the member of the SC/ST they cannot claim the right of reservation. Therefore, it cannot be presumed that in 1974 when she married to the Nayak community person she was not having any criminal intention to secure the job and cheat any person belonging to SC/ST and even otherwise the Special Act, *the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1988*, came into force only in 1989. Therefore, if any offence committed prior to the commencement of the penal Act, the person cannot be punished for the non existing law. In view of the Article 20 (1) of the Indian Constitution which is as below:

"20. Protection in respect of conviction for offences - (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*

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."

And in view of the observation that the petitioner had no criminal intention in the initial stage while obtaining the certificate and seeking reservation and got appointment but she bonafidely believed that she will get the caste of her husband in view of marrying the person who belongs to member of SC/ST. Therefore she had no intention to cheat any person belonging to any SC/ST and denial of employment opportunity to the person of SC/ST community. Therefore continuing criminal proceedings against the petitioner is abuse of process of law, which is liable to be quashed.

Accordingly petition is allowed.

Consequently, the Criminal proceedings against the petitioner in special CC.No.326/2018 for the offence punishable under Section 198, 196, 199 and 420 of IPC and Section 3 (1) (ix) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 herein after referred as SC/ST (POA) Act, pending on the file of III Additional District and Sessions Court, Tumkur, is hereby quashed.

**Sd/-
JUDGE**

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