

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 21st OF NOVEMBER, 2023

MISC. CRIMINAL CASE No. 36923 of 2022

BETWEEN:-

- 1. UTKARSH VERMA S/O SHRI ASHOK VERMA, AGED ABOUT 25 YEARS, OCCUPATION: SERVICE, R/O 63, MAULANA AZAD MARG, TEHSIL SENDHWA, DISTRICT BARWANI (MADHYA PRADESH)**
- 2. DR. MRS ANSHU VERMA W/O SHRI SAMANT KUMAR, AGED ABOUT 31 YEARS, OCCUPATION: PRIVATE PRACTICE, R/O 63, MAULANA AZAD MARG, TEHSIL SENDHWA, DISTRICT BARWANI (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI L. C. PATNE – ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION SENDHWA CITY, TEHSIL SENDHWA, DISTRICT BARWANI (MADHYA PRADESH)**
- 2. SHRI ANKIT CHAVRA S/O SHRI VIJAY CHAVRA, OCCUPATION: BUSINESS, R/O TILAK MARG, SHRIRAM CHOWK, NIWALI ROAD, SENDHWA (MADHYA PRADESH)**

.....RESPONDENTS

***(R.NO.1 BY SHRI HEMANT SHARMA – GOVT. ADVOCATE; AND
R.NO.2 BY SHRI ROHAN VERMA – ADVOCATE)***

Whether approved for Reporting : YES

This petition coming on for admission this day, the court passed the following:

ORDER

The petitioners have preferred this petition under Section 482 of Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') invoking the extraordinary jurisdiction of this Court for quashment of First Information Report (in short, 'FIR') dated 09/05/2018 (Annexure-P/1) registered at Crime No.123/2018 at Police Station Sendhwa City, District Barwani (M.P.) for the offences punishable under Section 420, 465 and 468 of Indian Penal Code, 1860 (in short 'IPC'), charge sheet No.352/2019 dated 31/12/2019 (Annexure-P/2) and the impugned order dated 19/05/2022 (Annexure-P/5) passed in Sessions Trial No.73/2020 by the 2nd Additional Sessions Judge, Sendhwa, District Barwani, whereby an application preferred under Section 227 of Cr.P.C. by the petitioners has been dismissed.

02. The facts of the case in brief are that the petitioners while fillip up the form their caste certificate, not reflected the income of their father and have fraudulently filled up their own income to demonstrate that they belong to non-creamy layer OBC category and as a result of which succeeded in getting an OBC caste certificate issued from the office of Sub Divisional Officer (Revenue), Sendhwa, whereas the OBC caste certificate should have been prepared based upon the income of their father Shri Ashok Verma, who at the relevant point of time was serving on the post of In-charge Principal, Government PG College, Sendhwa, District Barwani. When the Sub Divisional Officer (Revenue), Sendhwa came to know about this fact he cancelled the caste certificate issued in favour of the petitioners and directed to launch criminal prosecution

against them. Accordingly, impugned FIR (Annexure-P/1) at Crime No.123/2018 has been registered at Police Station Sendhwa City, District Barwani against the petitioners on 09/05/2018.

03. After completion of investigation, impugned charge sheet No.352/2019 dated 31/12/2019 (Annexure-P/2) has been filed against the petitioners before the trial Court. The petitioners have preferred an application under Section 227 of the of Cr.P.C. After hearing both the parties, the trial Court *vide* order dated 19/05/2022 (Annexure-P/5) passed in Sessions Trial No.73/2020 dismissed the aforesaid application.

04. Learned counsel for the petitioners submits that petitioners are innocent and have been falsely implicated in the offence on the basis of conjecture and surmises without there being any evidence or incriminating material. Essential ingredients for the charges under Section 420, 465 and 468 of IPC are not fulfilled. Nothing has been proved that the petitioners deceived the complainant by making false or misleading representation or by dishonest concealment or by any other act or omission. The trial Court while dismissing the application under Section 227 of Cr.P.C. lost site of this material aspect of the case that the order passed by the SDO (Revenue), Sendhwa is without jurisdiction. The petitioners have never used the earlier caste certificates issued to them. They have never fabricated or forged the document with criminal intent or intention. The father of the petitioners Shri Ashok Verma has also been issued a permanent caste certificate of OBC category by the competent authority of the State Government. Hence, he prays that the FIR registered at Crime No.123/2018, charge sheet No.352/2019 dated 31/12/2019 and the impugned order dated 19/05/2022 passed by the trial Court be quashed against the petitioners accordingly.

05. *Per contra*, learned counsel for the respondent No.1 / State opposes the petition and prays for its rejection by submitting that no case for interference is made out. The impugned order Annexure-P/5 passed by the trial Court is just and proper. There is sufficient evidence available on record against the petitioners in respect of the aforesaid offence.

06. Learned counsel for the respondent No.2 also opposes the petition and prays for its rejection by submitting that petitioners have committed the aforesaid offence and sufficient evidence is available against them, therefore, no interference is required.

07. Heard learned counsel for the parties at length and perused the case diary and all other documents available on record.

08. The law is well settled that the jurisdiction of this Court under Section 482 of Cr.P.C. is wide enough and that if the proceedings are going to result in abuse of process of the Court, then the High Court in exercise of powers under Section 482 of Cr.P.C. can quash such proceedings and nothing will come in the way.

09. Learned counsel for the petitioners submits that petitioners have never used the earlier caste certificates issued to them by the SDO (Revenue), Sendhwa for any purpose. Use of the aforesaid certificate is immaterial, therefore, the application made by learned counsel for the petitioners is not appears to be *bona fide*. It is noteworthy that both the petitioners are highly educated persons, therefore, it cannot be presumed that they have filled concerned form without knowing the truthfulness of this fact. There is a specific column in para 6 of “आय बाबत् स्व प्रमाणित घोषणा-पत्र” (Appendix-1) regarding the total annual income of all the family members, but both the petitioners have not fill the said

para and left it blank.

10. From perusal of the proforma (6.3-C) for Caste Certificate of Other Backward Classes in para 7, there is a specific class for income of the family from all sources. The petitioners have also left blank that fields, therefore, the conduct and intention of the petitioners cannot be considered *bona fide* at this stage.

11. The burden lies upon the petitioners to prove that they have filled all the required details in the said application according to the Rules, it is a matter of evidence and the same cannot be considered at this stage without recording the evidence.

12. In the case of In the case of **Ramveer Upadhyay and Anr. Vs. State of U.P. & Anr.** passed in **Special Leave Petition (Crl.) No.2953 of 2022**, Hon'ble the apex Court has held as under:-

“.....Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.”

Thus, it is clear that although this Court cannot make roving inquiry at this stage, but if the uncontroverted allegations do not make any offence, only then this Court can quash the FIR. The allegations made against the petitioners established *prima facie* case punishable under Section 420, 465 and 468 of the IPC. Therefore, the claim of the petitioners that there is no evidence available against them, cannot be accepted at this stage.

13. The apex Court in the case of **CBI Vs. Arvind Khanna** reported in **(2019) 10 SCC 686** in paragraph No.17 has held as under:-

“17. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

18. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

14. From perusal of the impugned order dated 19/05/2022 passed by the 2nd ASJ, Sendhwa it appears that scope of consideration by this Court at the stage of framing of charges is very limited.

15. The Hon'ble Supreme Court in the case of **Dilawar Balu Kurane Vs. State of Maharashtra** reported in **(2002) 2 SCC 135**, has laid down the scope for consideration in the following manner:-

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited

purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4: 1979 SCC (Cri) 609]).”

16. It is noteworthy that at the stage of framing of charges, the trial Court should have considered the material available on record with a view to find out if there is ground for presuming that the accused persons have committed the offence or that there is not sufficient ground for proceeding against them and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction, but in the instant case sufficient *prima facie* evidence is available against the petitioners.

17. Keeping in view the aforesaid discussion in entirety as well as the material available on record and the law laid down by Hon'ble the apex Court, this Court does not find any illegality, irregularity or impropriety in impugned order dated 19/05/2022 passed by the trial Court.

18. In view of the aforesaid, this Court is of the considered opinion that no case is made out for quashment of FIR dated 09/05/2018 registered at Crime No.123/2018 at Police Station Sendhwa City, District Barwani (M.P.), charge sheet No.352/2019 dated 31/12/2019 and the impugned order dated 19/05/2022 passed in Sessions Trial No.73/2020 by the 2nd Additional Sessions Judge, Sendhwa, District Barwani.

19. Accordingly, this petition is hereby dismissed.

Certified copy as per rules.

(ANIL VERMA)
J U D G E

Tej