

Karnataka High Court

M Mohan vs State By Ulsoor Gate Police ... on 17 November, 2008

Author: A.S.Pachhapure

V. _BAN:;;a;I.Qg§; V'

..,(::sfgf"s;a:""sATHIsH R GIRJI, ADv.,;

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 17TH DAY OF NOVEMBER 2008

BEFORE

THE HON' BLE MR. JUSTICE A s 9AcHHA.91:}g=i:'__'_L-"'',;~

CRIMINAL REVERSION PETITION No.57Q_17-ES_1

BETWEEN:

M MOHAN

S/O MUNISWAMY

48 YEARS

N0 224, BASHYAMNAGAR.~_

SRIRAMPURA ' . ,

BANGALORE

PETITIONER

(BY sRI.~vs"\$;§ANK§ARAP§fi\ 'aw ADVS.,)

STATE BY' vuLs0oR'w«

GATE 9oLIcE..sT.n:I'3t.oN~--. ' '

REP. 531* _s. 9. _ _H'1'c-:1»; 'BLDG,

m RESPONDENT

I§Ii.5:1:> 11/8 397 RM 401 CR.P.C. 3*: Tax:

ADVQCA'I'E.. ma ma PETITIONER PRAYING THAT THIS

HoN*'2L1«:qcr3URT MAY BE PLBASED TO SET ASIDE THE

V.JUDGMENVT':.0E' comvzcrrzon Am') SENTENCE DT. 14.5.99

vv.'---_p;2-3.32:1) BY THE C.M.M., BRNGALORE, IN c.c.

'~.1<:Q.2'e21/90. AND THE JUDGMENT or CONVICTION AND

sx-;Nt{*EN<:E. 13:' . 8.3.04 9355213 B1' was 9.0., FAST
TRACK (saasszousy couar-:12, BANGALORE, IN

.£2RL.A.NO.145/99 AND ACQUIT THE PETITIONER.

Crl.RP being heard and reserved for orders,
this day the Court pronounced the following:

ORDER

The petitioner has preferred this revision challenging his conviction and sentence for.....the offence punishable {Use 198, 419, 420 of trial held by the Chief Metropolitan Bangalore confirmed in Fast Track Court, Bangalore it i i t

2. The facts releveht forbthe of this revision are as underr°iK V I V R The petitioner béfége the trial Court. It is all_e.-yeti accused, a person:'. _Abelc>ngjir-£3-.Alto'4"i'rsia'i--du' community, obtained a czertificate "from tlhecill□hsildar, Bangalore north as belonging lAdi- Dravida caste for securing a the government. He submitted an I 13.7.1978 for the post of the Security~~Guu..aArd in the ITI company, wherein the 3"-w___V'posts "we_re to be filled up in accordance with the "r_eVse'riA'atic»n. It is alleged that though the ix"..□'acl€;used belonged to Naidu community, obtained a u□certificate to the effect that he belonged to Adiw□avida and as there was a post reserved for K On appreciation of the material on record, the trial Court convicted the accused for. the above said offences and sentenced him té undergo _ imprisonment for two years for each. ef _the□_" offences and ordered the" Sentence =rto;_ runj concurrently. Aggrievedp by dthe, conuictidn Band >, sentence the accused preferred "Crl;A.e □egléd/99 and the Fast Track .Court'»Qhich□diemissed the appeal on merits *\$¢nf;;nin\$7ft□_ conviction. Aggrieved by_p the wicencnrrrenthihfindings of conviction the Lpetitienerw □; "approached this Court in ré?i\$§□€."" M'i d'

3. Il hate Theard "the 'learned counsel for the petitioner and faigg lthe learned Govt., Pleader.:'* n V l i T

--t_4f;f"Thgvjv,poi\$£§i that arise for my considerationparerb r,_ (1) "_Whether the judgement of the " * trial Court convicting the petitioner for the offence punishable U/S 198, 419, 420 IPC and the sentence thereon confirmed in Crl.Appeal is illegal and perverse?

(2) What order? ggdgw

5. It is the contention of the learned counsel for the petitioner that there is no evidence that the certificate given by hinV is either forged or false and that the;enii\$ufnou& question of cheating. In the circumstanoea;ihefi- submits that the conviction and sentence ereereo□by the Courts below are illegal and perver3e."i

6. Learned Govt.F,}Bieaae: 'aubmite" that ii there are concurrent fin□nga_ ana- that the petitioner has not mean out anf ground to warrant interference. ;_ ,x"v."iV 7, uagg;"c5¢iq xnei eenwifrom the evidence, PW.1 is *the Vnenagéri who was working in the factory ana*ne";é¢a1q\$sa the letter » Ex.P.1 from one \$Nateshan;;ietating that accused does not in, helongEto_Seheduled Caste community and that he Ain'9aoApereonjwbelonging to Naidu community and reeuested i\$W.1 to make an enquiry and to take Z"* _ appropriate action, as the certificate produced V"«. □y _the accused as belonging to Adi--Karnataka i"aicante is a false certificate. He verified and ijfound that

accused had given such a certificate and thereafter he submitted a report to the Deputy Inspector General of police under Ex.P.3. is/\t the caste of the accused has been shown as HIndu

-- Naidu. So, the perusal of the dooueeata referred to above and Exs.P.24, 25 and éé §§§aa: I that the accused belongs to Nalou commue£ty{ So; " thereafter he looked into 3*-'::ts>,.f7o_'.nfiv in':.y&h14¢:i~:g._;r;;;rT caste has been shown as ,a person beloaoahgg to ° Adi~Bravida i.e., Scheduled: caste =oomeuolty- and after collecting all;_theaet:oocamentaFh eroduced them before the police oarihorthel"lgrestigation.

9. pw,4 la the eetiréo teacher, Sevashrama High school issued Ex.P.1'?, the admission ehtract, ih=ehlch it was revealed that the aouuaed zéaidu community and he also speak; about the oroduction of Ex.P.14, 15 _V and j17u.to VP□3. : P.5 is also the retired ;?V teacher}: Qherein he states that when he was 'Aw«.§rk':;igV-:':as;_ af.~:teacher in Sevashrama high school the v□oíce 'have showed him the extract of the 1h"ahadiasioa register of the school and the register h«. "revealed that the accused belongs to Naidu ""□community. The extract has been produced at 'tvEx.P.19. PW.6 is the ASI, who registered the complaint in Crime No.22i88 and sent the saié complaint - Ex.P.20 to the Magistrate along with o/more FIR. Furthermore, PW.7 is the retired Dy.5.P who has recorded the statement of these witnesses.

10. From this evidence the prosecution intends to establish that the accused 'has committed an offence UfS 198, 419 and 42% ef the . IPC. It is relevant to note that in the transfers certificate at Ex.P.22, the religion, o\$,itheh accused has been shown as Hindus and ;;n- colnmni' No.9 as to whether the candidate belongs to SC or ST, the blank is filled in mentioning as 'haidu'. The cumulative record *" .□\$iP.i3" has also been produced which' reveél" that ,the lceste of the accused. has. heeniishcy□ as Hindu (A.D) to mean Adi--Dravida.t_ i'_□h,P;§~' is the copy of the app3,i}:cstAion "fi_vi:ed for the post in which the ;V_ accnsed has stated that he belongs to Adi--Dravida Acaste.~ Eg.§L5 is the caste certificate which is it" sioned by the Tahsildar, Bangalore North taluk, 3""g in which it is certified that the accused beiongs i'» to Adi--Dravida caste. Ex.?6 is the form which 'o»□a1so contains the caste as Adi-Dravida and Ex.P.7 i= is the affidavit sworn by the accused stating that he belongs to Adi*Dravida M SC community.§%i:\ I1 signature said to have been forged. If a charge of forgery has to be proved, it is necessary for the investigating agency or the prosecutionfiteW. prove the diesimilarities in the _ei\$netere_ by5_f* examining the expert and by eeneing the a\$¢gm\$□g\$\$ to the opinion of the expert}: inc §§g\$;.ef□\$:%" has been made at all to :\$rove 'theta the hcaeete certificate does net_ beer 'the "signatnre~ of the Tahsildar. The reiance;_en' the} letter of the Tahsildar and ithe :□p□\$yfVC\$m@iseiener, without examining ,~th¢e f iehf'com□etei\$§ illegal and imProPeF□fyficK i iii if: V 12¢ _r\$££he£eo:e{i~_when the prosecution claims that the "eae□g certificate is forged or fal3e;"it is necessary to examine the concerned iTaheiidar' who ieened the certificate. It is ireleeantzto mete that whenever a certificate has to be issned by any person, who is authorised in f*», *law td_iesue, he has to make verification and an 7enqeiry and thereafter has to issue the f=_f°certificate. Leave apart that with regard to the u".enquiry or verification the prosecution has not at all examined the Tahsildar who says that his signature has been forged. In the circumstances, K2 the perusal of the evidence at PWs.1 to 33 does not reveal anything as regards the fdrged signatures.

13. New coming to the questi&§ ga?llt5lu whether the accused has. ~given tiara false, certificate, he states that the□belongs' toia□diée. Dravida community and it□g Cu□hl3tiVee"recerd =l produced at Ex.P.18, in the ceiuen efsrelieion at page 2 of the said abeueentg it is stated Hindu (AD). Though, it is, statee ey tee witnesses that the word 'A□ is net efitge□ty them, that much of material rtséif is iesuffieient to prove that there is an ih\$erti6n;~_'Furthermore, Ex.□1 and D.2 are the=doéument\$"preduced by the accused and perusal_ef these deeuments reveal that Ex.D.1 is it □the eg□egt pf the register of birth during the imenth'of2Se□ember 1954. The name of the father of the ace□ed has been written as Nmniswamy and i*u_*the name of the mother has been written as "hajaeaa. In the column regarding the caste, it i*rliis;mentioned as 'AD' to mean Adi-Dravida. Ex.D.2 i*.:s the certificate issued by the Administrative officer of the Gram panchayath, wherein it is stated that the father of the accused as K B Muniswamy and mother as Thayamma, who are the persons belonging to Scheduled caste community. The comparison of £33. B1 and D2 reveaia:hthe~u change in the name of the mother of the accnaedi□Ex.D.1, contains the name gaf~.th\$"□§{5\$goja5_ Rajamma. Ex.B.2 containa the nape as \$ha\$aa\$a;t On the basis of this itseif, ithevgtriai"*Cohrt rejected the version of the accused. ..in

14. It is relevant to note that the accused states that his father ehieradnitting him to the school to _o\$er\$5¢ei the Vhneiiaation stated the caste as €fNai\$5K'enaf there} is no reason to disbelieeeeAthiggiaitferenoeiwalso. The documents issued ty the encnationat authorities are not the documents to raieé Conclusive proof of caste of a h'aperaoh.,: The V investigating agency has not ",ap\$:eacnéa the authorities concerned who make the entries Aof: birth and death to find out as to ' whether ,the accused belongs to Scheduled caste xtigcommanity or Naidu community. In the absence of _j,anye such investigation, the mere production of ~ 'the documents and getting them marked itself is " not sufficient to prove the guilt of the accused. some of the documents produced by the school

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O R D E R Petition is allowed. Conviction, of "fhé□petitioner few the offence punishabié :U[S i98□ R/W 193, 419 and 429 IPC :aé"*exge;e¢ fin tci.d= NO.2621/90 and confirmed in c£1.7\$;JN6;i45/99gf:\$ set aside. The accused ig acquitted bf t□é*séid ? charges. The bail bands exécutéd by the □cused are cancelled.

ENS.