IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH

WP(C) No. 300 of 2007
(Agartala Bench)

Sri Abhishek Chandra @ Sachin Besarya,
S/o Late Pramod Chandra Bisaria,
Permanent resident of 11 Phayre Road,
Opposite Hutching's School, Pune Cantonment,
Pune, Maharashtra,
[holding the post of Project Director, DRDA, Government of Tripura, Udaipur, South Tripura, and presently residing at Udaipur, South Tripura]

- Petitioner

- Versus -

1. **The State of Tripura,**
Represented by the Chief Secretary to the Government of Tripura,
Agartala, West Tripura.

2. **The Principal Secretary to the Government of Tripura**,
General Administration (Personnel & Training) Department,
Secretariat Complex, Agartala, Tripura.

3. **The Central Bureau of Investigation**,
Represented by its Director, having its office at
CGO Complex, Lodhi Road, New Delhi.

4. **The Inspector of Police**,
The Central Bureau of Investigation, having its office at
CGO Complex, Lodhi Road, New Delhi.

5. **The Central Bureau of Investigation**,
Represented by the Deputy Superintendent of Police,
Having his office at T.P. Road, Agartala,
West Tripura.

- **Respondents**

BEFORE
HON'BLE MR JUSTICE IA ANSARI

Advocates for Petitioner

Mr. D. C. Kabir, Advocate.
Mr. Somik Deb, Advocate.

Advocates for Respondents.
Mr. N. C. Pal, Senior Government Advocate.
Mr. A. Lodh, Government Advocate.

Date of hearing	:	**22.07. 2011.**
Date of judgment	:	**05.09. 2011**

JUDGEMENT AND ORDER

With the help of this writ petition, made under Article 226, the petitioner, who holds a *caste certificate* acknowledging him as a member of the Scheduled Caste, has sought to get set aside and quashed, *inter alia,* the Memorandum, dated 05.12.2005, issued by the Under Secretary to the Govt. of Tripura, General Administration (Personnel & Training) Department, whereby a departmental proceeding is sought to be initiated against the petitioner on the ground that he has submitted a *false caste certificate* for the purpose of obtaining appointment in the Indian Administrative Service (in short, 'the IAS'). By this writ petition, the petitioner is also seeking setting aside and quashing of the Memorandum, dated 10.05.2006, issued by Under Secretary to the Govt. of Tripura, General Administration (Personnel & Training) Department, whereby the petitioner has been directed to respond to the show cause notice, issued to him under the earlier Memorandum, dated 05.12.2005, aforementioned, the First Information Report (in short, 'FIR') as well as the *charge-sheet* filed by the Central Bureau of Investigation (in short, 'the CBI') against the petitioner and some others under various penal provisions of law.

2. The petitioner, Abhishek Chandra, earlier known as Sachin Pramod Besarya, was born on 27.11.1975. His father, late PC Bisarya, joined Indian Police Service, on 11.11.1973, as a candidate of General category, the petitioner's mother's name being Majula Bisarya. The petitioner's brother, Abhinav Chandra, earlier known as Nitin Pramod Besarya, born on 30.12.1976, is also a member of the IAS.

3. By an order, dated 04.07.89, (Annexure P/9), the *Tehsildar* (i.e., Sub-Deputy Collector), Pune, issued a certificate that the present petitioner belongs to *Scheduled caste* community. Similar certificate was issued, on 21.08.1990, by the Tehsildar (i.e., Sub-Deputy Collector), Pune, in favour of the petitioner's said younger brother. This was followed by a scrutiny and verification of the *scheduled caste* status of the petitioner and, upon such scrutiny and verification, a Certificate of Validity community was issued, on 15.06.91, jointly by the Joint Director, Social Welfare (CV) M.S., Pune, and Deputy Director, Social Welfare, (CV) M.S., Pune. In the year 2002, the petitioner, having been emerged successful, as a *Scheduled caste* candidate, in the IAS, was appointed to the IAS (Manipur and Tripura Cadre).

4. However, on 23.12.2002, one Clement Ramesh Kumar, a member of the Indian Revenue Service, lodged a complaint with the National Council for *Scheduled caste* and Scheduled Tribe, alleging, *inter alia,* that the petitioner's younger brother, Abhinab Chandra, does not belong to *Scheduled caste* community. On the complaint being so made, the National Council for *Scheduled caste* and Scheduled Tribe referred the matter to the Vimukta Jati, Nomadic Tribes, Other Backward Class and Special Backward Class Caste Certificate Verification Committee, Pune Division, Pune, whereupon the said Verification Committee caused enquiry and verification thereto and, thereafter, concluded that the said complaint was untenable. Upon reaching this finding, the said Committee, by its order, dated 25.12.2002, affirmed the status of the younger brother of the petitioner as a member of the Scheduled Caste.

5. On 22.07.2004, on the basis, however, of a complaint made by one S.K. Gupta, Deputy Superintendent of Police, CBI, SCR–I, a preliminary enquiry was launched against the petitioner and his younger brother alleging that even though the petitioner and his younger brother belong to Kayastha community (General Category), they had claimed themselves to be members of *Scheduled caste* and thereby managed to have fraudulent entries in the IAS. On completion of preliminary enquiry, an FIR was lodged, on 04.07.2005, by S.S. Kishore, Deputy Superintendent of Police, CBI, New Delhi, initiating a criminal proceeding. Based on this FIR, a criminal case was registered at PS CBI, SCR-I, New Delhi. This was followed by memorandum/show cause notice, dated 05.12.2005, aforementioned, issued by Under Secretary to the Govt. of Tripura, directing the petitioner to assign reasons as to why appropriate action should not be taken against him for submitting a *false caste certificate* in order to get appointment in the IAS. While issuing the said memorandum, the issuing authority made a reference to the written complaint lodged by the CBI against the petitioner regarding submission of *false Caste certificate* by him in order to get his employment. On 02.02.2007, pursuant to the FIR, which was registered against the petitioner and his brother, a *charge-sheet* was submitted by the CBI in the Court of the learned Additional Chief Metropolitan Magistrate, Kakardooma, New Delhi, arraigning the petitioner, his younger brother and his mother as accused persons. The said *charge-sheet* also named, as accused, the deceased father of the petitioner and also the deceased Principal of the school, once attended by the petitioner.

6. I have heard Mr. Somik Deb, learned counsel, and Mr. D.C Kabir, learned counsel, for the petitioner. I have also heard Mr. N.C.

Pal, learned Senior Govt. Advocate, Tripura, and Mr. A. Lodh, learned counsel, for the CBI.

7. As already indicated above, the petitioner has put to challenge sustainability of the two memoranda, dated 05.12.2005 and 10.05.2006. The first memorandum directs the petitioner to show cause as to why departmental proceeding should not be initiated against him on the ground that he has submitted *false caste certificate* in order to get appointment in the IAS and the second memorandum directs the petitioner to respond to the show cause notice contained in the earlier Memorandum, dated 05.12.2005. These two memoranda are challenged, by way of this writ petition, on the ground that these two memoranda clearly indicate that the disciplinary authority has already concluded, as a matter of fact, that the petitioner had submitted a *false caste certificate* and managed to obtain thereby his entry into the IAS. The decision, thus, having already been taken, that the petitioner had submitted *false caste certificate,* the notice of show cause, contained in the two memoranda aforementioned, are, in substance, nothing but post-decisional hearing inasmuch as the disciplinary authority concerned has already concluded, without according opportunity of hearing to the petitioner, that he has obtained a *false caste certificate* and, with the help of this certificate, the petitioner has managed to become a member of the IAS. Without any finding from any statutory body or competent authority or the Court of law that the petitioner had submitted a *false caste certificate* as alleged, it is, according to the petitioner, wholly illegal to issue show cause notices to the petitioner in the manner as has been done in the present case.

8. By C.M. Application No.444/2007, which arose out of the present writ petition, the Court, as the record reveals, has stayed the operation of the impugned Memorandum, dated 05.12.2005, as well as the further proceedings thereof. The record also reveals that in CM Application No.444/2007, an order has also been made staying further proceedings of the case against the petitioner pending in the Court of the learned Additional Chief Metropolitan Magistrate, Kakardooma, New Delhi.

9. Referring to the case of **Kumari Madhuri Patil Vs. Addl. Commr. Tribal Development,** reported in **(1994) 6 SCC 241**, Mr. Deb has submitted that in terms of this decision, it is a Committee, which the decision, in **Kumari Madhuri Patil** (supra), describes as the *Scrutiny Committee,* which would be the only competent authority to give a finding as to whether a *caste certificate*, issued to a person, describing him as a member of the *Scheduled caste* community, is or is not true, correct and valid. The decision, in **Kumari Madhuri Patil** (supra), further lays down, submits Mr. Deb, that the Scrutiny Committee's decision, as regards the correctness, legality and validity of a *Scheduled caste* certificate, issued in favour of a person, shall be final and the same can be put to challenge before no authority or Court except by way of an application under Article 226 of the Constitution of India.

10. It has been pointed out by Mr. Deb that deriving strength from **Kumari Madhuri Patil** (supra) and Articles 341 and 342 of the Constitution of India, the Maharashtra Legislative Assembly has enacted the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, other Backward

Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act,2000, (in short, 'the Maharashtra Act'), which received the assent of the President on 23.05.2001.

11. Section 7 of the Maharashtra Act, further points out Mr. Deb, authorizes the Caste Scrutiny Committee, constituted by the Maharashtra Act, to examine, either *suo motu* or on the basis of the information gathered, cancel and/ or revoke a *caste certificate* issued in favour of an individual. Section 7(2) of the Maharashtra Act, in clear and express terms, ousts the authority of the Courts and Tribunals to adjudicate upon the social caste status of an individual save and except by way of judicial review under Article 226 of the Constitution of India.

12. Thus, according to Mr. Deb, the Scrutiny Committee, under the Maharashtra Act, is the only competent body or the authority to give a finding as to whether the *caste certificate*, which the petitioner holds or has used in order to become a member of the IAS, is or is not a *false caste certificate* and the decision, rendered by this body, would be final and cannot be challenged before any authority or court except by way of invoking Article 226 of the Constitution of India.

13. Continuing his argument, Mr. Deb points out, as already indicated above, that, on a complaint being made by one claimant, Ramesh Kumar, a member of the Indian Revenue Service, with the National Council for *Scheduled caste* and Scheduled Tribe, that the petitioner's younger brother does not belong to *Scheduled caste* community, a verification was conducted by the Verification Committee of the Council for *Scheduled caste* and Scheduled Tribe, and this Committee affirmed, on 25.12.2002, that the petitioner's

younger brother belongs to the *Scheduled caste* as a member of the *Bansor community.* This finding, points out Mr. Deb, has never been reversed, or superseded, or revoked or cancelled by any competent authority or Court and, in such circumstances, the prosecution of the petitioner and/or the *post-decisional* hearing, which the impugned Memoranda seek to hold, are not sustainable in law.

14. In short, what Mr. Deb submits is that in the light of the decision in **Kumari Madhuri Patil** (supra), it is the Scrutiny Committee, constituted under the Maharashra Act, which is the competent authority to determine the caste status of a person and either grant him certificate or cancel his certificate if the certificate is false and if anybody is aggrieved by the decision of the Scrutiny Committee, the only remedy provided to such a person is to invoke Article 226 in the High Court of competent territorial jurisdiction under Article 226 and by no other means. In the case at hand, according to Mr. Deb, when Maharashtra Act has already come into force and the *caste certificate*, which is alleged to be false, is a certificate granted by the State of Maharashtra, it is the Scrutiny Committee, under the Maharashtra Act, which is the only competent authority or body to say whether the certificate, in question, granted to the petitioner, is or is not a false one. Without obtaining any such finding against the caste status of the petitioner, labelling his certificate as false is, contends Mr. Deb, bad in law and the CBI does not derive jurisdiction to lodge any criminal proceeding by describing the said certificate as false and the State of Tripura has committed monumental error by issuing show cause notices stating to the effect as if the petitioner's status, as a person not belonging to the *Scheduled caste* Community, is incorrect and is really false. This course of action,

which the respondents have adopted, is, according to Mr. Deb, wholly untenable in law inasmuch as without a finding from the appropriate body as regards the validity of the petitioner's *caste certificate,* or an appropriate finding, in this regard, by the competent High Court under Article 226, and/or without even determining for itself as to whether what the CBI has alleged is true or sustainable in law, the disciplinary authority, i.e., the State of Tripura, has concluded that the petitioner's *caste certificate* is false and that the petitioner has obtained his entry into the IAS with the help of such a *false caste certificate*. This finding having been reached, reiterates Mr. Deb, without any opportunity of hearing having been given to the petitioner, the two Memoranda, containing the show case notices, as well as the criminal prosecution, are bad in law and the same may, therefore, be set aside and quashed.

15. Closely supporting Mr. Deb, Mr. Kabir, learned counsel, has pointed out, as I would show a little later, that none of penal provisions is attracted to the facts of the present case. The whole criminal prosecution is, according to Mr. Kabir, misconceived in law and may, therefore, be not allowed to be proceeded further and the same needs to be set aside and quashed, for, allowing the same to proceed would amount to abuse of the process of the Court.

16. Resisting the writ petition, the State of Tripura has contended that the writ petition is not maintainable inasmuch as the writ petition is liable to be relegated to the Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 (in short, 'the 1985 Act'). There is, however, an implied admission, in the counter-affidavit filed by the State of Tripura, that the two

memoranda, dated 05.12.2005 and 10.05.2006, were issued to the writ petitioner under the directions of the Central Government.

17. While considering the submission of the State of Tripura that Central Administrative Tribunal is the competent authority in a case of present nature, it needs to be noted that a careful reading of Section 14 of the 1985 Act would reveal that this Tribunal can only adjudicate upon matters relating to recruitment and matters concerning the conditions of service. It is, therefore, quite apparent that this Tribunal possesses no authority to decide issues, which have been raised in the present writ petition, particularly, when the writ petition seeks to get set aside not only the two memoranda aforementioned, which lay the foundation for disciplinary proceeding, but also the FIR and the *charge-sheet* filed by the CBI. The Central Administrative Tribunal is not the body meant for determination of the fundamental question of maintainability of a criminal proceeding or the question as to how a person's *scheduled caste* status has to be determined and when can a person be prosecuted and proceeded with departmental proceedings for obtaining entry into service with the help of a *false certificate*.

18. As far as CBI is concerned, it has resisted the writ petition, broadly speaking, on two grounds, namely, (**i**) that this Court does not have the territorial jurisdiction and (**ii**) that the materials, collected during investigation, are sufficient to warrant prosecution of the petitioner under various penal provisions as have been submitted in the *charge-sheet*.

19. Because of the fact that the CBI's counter affidavit strikes at the very root of the jurisdiction of this Court on the ground as indicated above that this Court has no territorial jurisdiction, it is necessary to,

first, appreciate as to what challenges the present writ petition is posing and whether such challenges could have been posed by way of a writ petition, made under Article 226 of the Constitution of India, within the State of Tripura.

20. While considering the above aspects of the matter, it needs to be pointed out that the two memoranda, which the petitioner has put to challenge in this writ petition, are, according to the petitioner, in the form of *post-decisional* hearing inasmuch as without giving any opportunity to the petitioner to show cause or hearing, the State Government has asked the petitioner to show cause as to why action shall not be taken against him, because an FIR has been registered against the petitioner by the CBI. The petitioner was directed to show cause as to "*why appropriate action should not be taken against him for submission of false caste certificate for getting appointment in the IAS.*"

21. Mr. Deb, learned counsel for the petitioner, is wholly correct in contending that the Memorandum, dated 05.12.2005, clearly shows that merely because FIR was lodged by the CBI alleging that the petitioner had submitted *false caste certificate* in order to manage entry into the IAS, the petitioner has been given notice to show cause as to why disciplinary action should not be taken against him for submission of *false caste certificate* in order to get employment in the IAS. This shows that the disciplinary authority believes that the petitioner has really submitted *false caste certificate* in order to obtain entry into the IAS and, in consequence thereof, needs to face disciplinary proceeding.

22. Mr. Deb, learned counsel, is, therefore, not incorrect, when he submits that without giving any opportunity of showing cause and/or

hearing to the petitioner, the disciplinary authority has already made up its mind that the petitioner has really submitted *false caste certificate* in order to obtain entry into the IAS. Merely because an FIR has been lodged, the FIR has led to investigation and, then, *charge-sheet* has been submitted, one, it is evident, would not be right in concluding that whatever has been alleged in the *charge-sheet* are true and need no proof.

23. In the facts of the present case, if the disciplinary authority wanted to take disciplinary action against the petitioner, the remedy really lied in giving, first, a show cause notice to the petitioner as to what the petitioner has to say in respect of the allegation that he has submitted a *false caste certificate* to obtain entry into the IAS and had the petitioner admitted this allegation, the situation would have been different; but if the petitioner denied, then, it was for the disciplinary authority to prove on record that the petitioner had really submitted *false caste certificate* as alleged against him. Without proving these facts, in the disciplinary proceeding, it would be wholly illegal, on the part of the disciplinary authority, to take any disciplinary action against the petitioner by concluding as if what is alleged stands proved. As the office Memorandum, dated 05.12.2005, is in the form of a notice to show cause against a *post-decisional* hearing so that the disciplinary authority can decide as to what penal action shall be taken against the petitioner, the office Memorandum aforementioned is *ex facie* illegal and such a memorandum could have been put to challenge by invoking High Court's jurisdiction under Article 226. As far as the Memorandum, dated 10.05.2006, is concerned, the disciplinary authority has really done nothing except that it has

forwarded to the petitioner a copy of the FIR with the request to furnish his (petitioner's) reply to the earlier show cause notice containing Memorandum, dated 05.12.2005, aforementioned.

24. For the purpose of clarity, the two impugned memoranda, namely, Memorandum, dated 05.12.2005, and the Memorandum, dated 10.05.2006, are reproduced below:

Memorandum, dated 05.12.2005:

"GOVERNMENT OF TRIPURA
GENRAL ADMINISTRATION (PERSONNEL & TRAINING) DEPARTMENT

No. F.35(4)-GA(P&T)/2004(S) dated Agartala, the 5th December, 2005

MEMORANDUM

WHEREAS, Shri Abhishek Chandra has been appointed to Indian Administrative Service in the year 2003 as a Scheduled Caste and joined in IAS on 01.09.2003 (A/N);

AND WHEREAS, a written complaint has been received by the Central Bureau of Investigation regarding submission of false caste certificate for getting employment.

AND WHEREAS, A ***FIR Under Sec. 154 CrPC has been registered at Central Bureau of Investigation****, Special Crime Region – 1, New Delhi, against Shri Abhishek Chandra, IAS (RR:MT:2003) regarding submission of false caste certificate and antecedent details for getting appointment in the IAS;*

NOW, THEREFORE, Shri Abhishek Chandra, IAS (RR:MT:2003) is hereby asked to show cause ***why appropriate disciplinary action should not be taken against him for submission of false caste certificate for getting appointment in the IAS****.*

Reply of Shri Chandra should reach the undersigned within 7 (seven) days from the date of receipt of this Memorandum.

Sd/-
(S. Chaudhuri)
Under Secretary to the
Government of Tripura.

To
Shri Abhishek Chandra, IAS,
Deputy Secretary to the Government of Tripura,
Rural Development Department,

Agartala.

Copy to:-
The Commissioner & Secretary, Government of Tripura,
R.D. Department, Agartala.
"

Memorandum, dated 10.05.2006:

"GOVERNMENT OF TRIPURA
GENRAL ADMINISTRATION (PERSONNEL & TRAINING) DEPARTMENT

No. F.35(4)-GA(P&T)/2004(S) dated Agartala, the 10th May, 2006

MEMORANDUM

Subject:- Reply of Show-cause.

The undersigned is directed to refer to the application dated the 25th February, 2006 of Shri Abhishek Chandra, IAS, Additional Director, Industries & Commerce, Tripura, on the subject mentioned above and to forward herewith a copy of written complaint and ***FIR (Under Sec. 154 CrPC)*** *with request to furnish the reply in reference to this Department Memorandum of even number dated 05.12.2005 within 7 (seven) days. If no reply is received within 7 (seven) days, the position shall be informed to the Government of India, Department of Personnel & Training, New Delhi.*

Sd/-
(S. Chakraborty)
Under Secretary to the
Government of Tripura.

To
Shri Abhishek Chandra, IAS,
Additional Director,
Industries & Commerce,
Agartala."

25. From a bare reading of both the memoranda, it becomes transparent that the notice to show cause was issued by the Memorandum, dated 05.12.2005, on the ground that an FIR had been lodged by the CBI against the petitioner alleging that the petitioner had submitted a *'false caste certificate'* in order to obtain appointment in the IAS. As both these memoranda are based on the First

Information Report, it is contended, on behalf of the petitioner, that if the criminal prosecution, set into motion by the FIR, in the present case, is not sustainable, the consequence would be that the two memoranda aforementioned, which wholly rest on the criminal prosecution, would, as a corollary, fail. In other words, what has been contended, on behalf of the petitioner, is that since the FIR, in the present case, is not sustainable in law, the impugned memoranda, being based on the registration of the criminal prosecution against the petitioner, must also fail.

26. The question, therefore, is: If this Court finds that the criminal prosecution, launched against the petitioner, is not sustainable in law, whether it would be within the power of this Court, under Article 226 of the Constitution of India, to set aside and quash the impugned memoranda, which rest upon the criminal prosecution. Another question, which naturally arises, is: If the findings of this Court be that the criminal prosecution, set into motion by the CBI, is not sustainable in law, whether the criminal prosecution too can be set aside and quashed, though the criminal prosecution is pending in the Court of the learned Additional Chief Metropolitan Magistrate, Kakardooma, New Delhi.

27. The above questions bring us to yet another significant question; and the question is: If a person is entitled to challenge a notice to show cause, served on him by his disciplinary authority, by way of writ petition under Article 226, which High Court would have the territorial jurisdiction to entertain and decide such a writ petition ?

28. The question, now, is: If a person is entitled to challenge a notice to show cause, served on him by his disciplinary authority, by way of writ petition under Article 226, which High Court would have the territorial jurisdiction to entertain and decide such a writ petition ?

29. In view of the fact that the challenge to the maintainability of the writ petition is posed on the ground of lack of territorial jurisdiction of the Agartala Bench of this High Court, it is imperative that this Court determines the layout of the territorial limits of the jurisdiction of a High Court to entertain an application made under Article 226 of the Constitution of India.

30. Article 226, as it stands today, reads as follows :-

> "***226. Power of High Courts to issue certain writs***.
>
> *(1) Notwithstanding anything in article 32, every High Court shall have/power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*
>
> *2) The power conferred by Clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.*"

31. While considering the question of territorial limits of the jurisdiction of a High Court under Article 226, it is necessary to bear in mind that Clause (2) of Article 226 did not, originally, exist. In the absence of Clause (2) of Article 226, when the question arose as to whether a High Court could invoke its jurisdiction, under Article 226, to issue writs based on the ground that the *cause of action* had arisen

within the territorial limits of the jurisdiction of the High court, the Constitution Bench, while interpreting Article 226 (as it stood then) observed, in **Election Commission, India Vs. Saka Venkata Subba Rao (AIR 1953 SC210),** as follows :-

> *". . . . . The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Article 226, which makes no reference to any cause of action or where it arises, but insists on the presence of the person or authority within the territories in relation to which the high Court exercises jurisdiction. "*

32. Thus, in **Saka Venkata Subba Rao** (supra), the Supreme Court had expressed the view, in no uncertain words, that in the absence of a specific provision in Article 226 on the lines of the Code of Civil Procedure, the High Court could not have exercised jurisdiction on the plea that the whole or part of the *cause of action* had arisen within its jurisdiction. In other words, what the Supreme Court, in **Saka Venkata Subba Rao** (supra), had held was that in the absence of a specific provision, in Article 226, suggesting that the *cause of action* would attract jurisdiction to enable a High Court to issue, under Article 226, writs, the High Court could not have exercised jurisdiction, under Article 226, on the plea that the whole or part of the *cause of action* had arisen within its jurisdiction. According to what **Saka Venkata Subba Rao** (supra) laid down was that a High Court can exercise jurisdiction, under Article 226, only if the person or authority to whom the writ is sought to be issued is located within the territorial limits of the High Court. Extended logically, the decision, in **Saka Venkata Subba Rao** (supra), conveyed that even if *cause of action* or part thereof had arisen within the territorial limits of a High Court, the High Court could not have issued writs unless the person

or authority to whom the writ was sought to be issued stood located within the territorial limits of the High Court. This view was followed in subsequent cases.

33. When the question was, once again, raised as to what are the limitations on the territorial jurisdiction of a High Court and if, on the ground of *cause of action* having arisen within the territorial jurisdiction of the High court, a High Court will be constitutionally competent to issue writ, the Supreme Court, in **Lt. Col. Khajoor Singh Vs. The Union of india and another (AIR 1961 SC532)**, following its earlier decisions in **Saka Venkata Subba Rao** (supra) and **K. S. Raashid and Son Vs. The Income-Tax Investigation Commission (1954 S. C. R. 738)**, observed thus: ". . . . . *Therefore, the view taken in* ***Election Commission, India Vs. Saka Venkata Subba Rao ([1953] S. C. R. 1144) and K. S. Rashid and son Vs. The Income-tax Investigation commission ([1954] S. C. R. 738.)*** *that there is two-fold limitation on the power of the High court to issue writs etc. under Art. 226, namely, (i) the power is to be exercised 'throughout the territories in relation to which it exercises jurisdiction', that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction, and (ii) the person or authority to whom the High court is empowered to issue such writs must be "within those territories" which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories, is the correct one."*

30. The Supreme Court further observed and held in **Lt. Col. Khajoor Singh** (supra), as follows :-

> *"Article 226 as it stands does not refer anywhere to the accrual of cause of action and to the jurisdiction of the High Court depending on the place where the cause of action accrues being within its territorial jurisdiction. Proceedings under Art. 226 are not suits; they provide for extraordinary remedies by a special procedure and give powers of correction to the High court over persons and authorities and these special powers have to be exercised within the limits set for them. These two limitations have already been indicated by us above and one of them is that the person or authority concerned must be within the territories over which the High Court exercises jurisdiction. Is it possible then to overlook this constitutional limitation and say that the High Court can issue a writ against a person or authority even though it may not be within its territories simply because the cause of action has arisen within those territories? It seems to us that it would be going in the face of the express provision in Art. 226 and doing away with an express limitation contained therein if the concept of cause of action were to be introduced in it."*

34. From a close reading, of what had been laid down in **Saka Venkata Subba Rao** (supra), and **Lt. Col. Khajoor Singh** (supra), it becomes clear that there were considered to be two-fold limitations on the powers of the High Courts to issue writs under Article 226, namely, (**i**) that the seat of the person or authority to whom the writ is issued must be within the territorial limits of the High Court meaning thereby that the writs could not have been issued by a High Court to run beyond its territorial jurisdiction and (**ii**) that *cause of action* could not be a ground for the High Courts to assume jurisdiction unless the person or authority to whom the writ is sought to be issued stood located within the territorial limits of the High Court.

35. The consequence of the views, expressed in **Saka Venkata Subba Rao** and **Lt. Col. Khajoor Singh** (supra), was that it was only the High Court of Punjab, which could exercise jurisdiction, under Article 226 of the Constitution, against the Union of India and other instrumentalities of the Union Government located in Delhi. To remedy this situation, Clause (1 -A) came to be inserted by the 15th Amendment act, 1963, conferring thereby, on the High Courts,

jurisdiction to entertain a petition, under Article 226, against the Union of India or any other body or authority located, in Delhi, if the *cause of action* arose, wholly or in part, within its jurisdiction. Clause (1 -A) was, later on, renumbered as Clause (2) of Article 226.

36. Thus, Clause (2) was introduced to Article 226 with the object of enlarging the scope of the writ jurisdiction of the High Courts; hence, by virtue of Clause (2) of Article 226, the power conferred by Clause (1)of Article 226 on the High Courts to issue writs can, now, be exercised by a High Court if the *cause of action*, wholly or in part, has arisen within its territorial limits. In other words, in the context of territorial jurisdiction, the maintainability or otherwise of a writ petition in a High Court, now, depends on the answer to the question as to whether the *cause of action* or any part thereof has arisen within the territorial limits of the jurisdiction of the High Court, whose interference is sought. If the answer to this question is found in the affirmative, the High Court will have the territorial jurisdiction to entertain the writ petition and not otherwise.

37. The fall-out of the above discussion is that with the insertion of Clause (2) to Article 226, a High Court can, now, exercise its writ jurisdiction if the *cause of action*, wholly or in part, arises within the territorial limits of jurisdiction of the High Court even if the seat of the Government or the authority concerned to whom the direction, order or writs, sought to be issued, is not located within the territorial limits of the High Court. Conversely put, what Clause (2) of Article 226 conveys is that if the *cause of action* has not arisen, wholly or in part, within the territorial limits of the jurisdiction of a High court, the High Court will not have the power to issue writ or writs even if the seat of

the government or of the authority concerned is located within the territorial jurisdiction of the High Court.

38. After an in-depth study of the subject of territorial jurisdiction of a High Court as postulated under Article 226, a three-Judge Bench of the Supreme Court, in **Oil and Natural Gas Commission Vs. Utpal Kr. Basu**, reported in **1994 (4) SCC 711**, laid down as follows :-

> "*(I) 5. Clause (1) of Article 226 begins with a non obstante clause-notwithstanding anything in Article 32 and provides that every High Court shall have power 'throughout the territories in relation to which it exercises jurisdiction', to issue to any person or authority, including in appropriate cases, any Government, 'within those territories' directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid* ***two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Par III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories.*** *In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. This is, at best, case in the writ petition.* "
>
> [Emphasis added]

39. It may be pointed out that in **Navinchandra N. Majithia Vs. State of Maharashtra and Others**, reported in **2000 (7) SCC 640**, which arose out of an application made, under Article 226, in the Bombay High Court, for quashing of an FIR lodged in the State of Meghalaya, the Supreme Court, while relying, amongst others, on its decision in **Utpal Kumar Basu** (supra), has observed, "*From the provisions in Clause (2) of Article 226, it is clear that the*

***maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court*.”**

[Emphasis added]

40. Thus, the language, used in Clause (2)of the Article 226, and the authorities, cited above, leave no room for doubt that a High court can, now, invoke its powers under Article 226 only if the *cause of action* arises, wholly or in part, within the territorial limits of the jurisdiction of the High Court and not otherwise irrespective of the fact as to whether the person or authority to whom the writ, sought to be issued, is located within or outside the territorial limits of the High Court.

41. In **Kusum Ignots and Alloys Limited vs. Union of India**, reported in (**2004**) **6 SCC 254**, it has been held, in no uncertain words, that even if a small part of the cause of action accrues within the jurisdiction of a High Court, such a High Court will have the jurisdiction to entertain an application under Article 226 of the Constitution.

42. Bearing in mind the fact that the basis for exercise of jurisdiction under Article 226 is the *‘cause of action’* and not the seat of power of the authority to whom writ is intended to be issued, it may, now, be pointed out that in **Hindustan Paper Corporation Ltd. and another Vs. Synergy Composites Pvt. Ltd and another,** reported in **2005 (3) GLT 1** (to which I was a party),a Division Bench of this Court, having considered the question as to whether a writ petition was maintainable, at Shillong Bench, of the Gauhati High Court, for

adjudication, in the face of the contention that no *cause of action* had arisen within the territorial limits of the jurisdiction of the Shillong Bench, had this to say in respect of Presidential Notification establishing a Permanent Bench at Shillong,

> *"46. What crystallises from the above discussion is that under the Presidential Notification, dated 04.02.95, aforementioned, the Shillong Bench of the Gauhati High Court shall exercise jurisdiction to issue writ under Article 226 only when the cause of action, wholly or in part, arises within the limits of the territorial jurisdiction of the State of Meghalaya. If the cause of action does not arise within the State of Meghalaya, the Shillong Bench shall have no jurisdiction to entertain a writ petition under Article 226. The mere fact that the Chief Justice has the power to withdraw a case from the Shillong Bench for the purpose of its hearing, at Guwahati, does not mean that if no cause of action has arisen within the State of Meghalaya, a writ petition can still be filed at Meghalaya and the Chief justice can, at his discretion, withdraw such a writ petition and fix it for hearing at the Principal seat at Guwahati. The proviso to paragraph 2 of Notification, dated 04. 02. 1995, aforementioned being an exception to the general power of the High Court, at the Shillong Bench, indicates that when a validity instituted case has arisen at the Shillong Bench, the Chief Justice can withdraw such a case from the Shillong Bench and can direct that the matter be heard at the Principal Seat at Guwahati. This does not, however, mean, we must emphasise, that if cause of action, either wholly or in part, has not arisen in a given case within the State of Meghalaya and no case has been validly instituted at the Shillong bench, the High Court, at Shillong Bench, can entertain such a writ petition under Article 226 merely on the ground that the Chief Justice may, in his discretion, in exercise of the powers contained in the proviso aforementioned, withdraw such a case to the Principal Seat at Guwahati for hearing.*
>
> *(47) What follows, as a corollary, from the above discussion is that it is the permanent bench at Shillong, which has to decide whether a cause of action in a given case has arisen or not within the territorial limits of the State of Meghalaya and if it is found by this Division bench that the cause of action, in the present case, has not arisen, wholly or in part, within the State of Meghalaya, the permanent bench at Shillong will have no jurisdiction to entertain such a writ petition or give relief to the parties concerned."*

43. From what have been laid down in **Hindusthan Paper Corporation Ltd.** (supra), it becomes clear that unless *cause of action*, in part or as a whole, can be shown to have arisen within the

territorial limits of the State of Tripura, this Bench (i.e., the Agartala Bench) will have no jurisdiction to entertain any writ petition including the present one. As a corollary thereto, it is not difficult to hold, and I do hold, that if the writ petitioner succeeds in showing that the *cause of action,* either *in whole* or *in part,* has arisen within the territorial jurisdiction of this Bench of the Gauhati High Court, then, this High Court would have the jurisdiction to decide this writ petition even if a *a part of the cause of action* lies in what have been done or what are being done or what were done in Delhi or in any other part of the country.

44. Having indicated the position of law that no writ petition can be entertained at the Agartala Bench of the Gauhati High Court, under article 226, if the *cause of action* has not, wholly or partly, arisen within the State of Tripura, I am, now, required to turn to the question as to whether any *cause of action* can be said to have arisen, in the present case, within the State of Tripura, so as to attract jurisdiction of the this High Court at the Agartala Bench. Determination of this question would, obviously, call for determination of the meaning of the expression, *'cause of action',* and the materials, which are to be considered for the purpose of determination of the question as to whether a *'cause of action'* or a part thereof has arisen or not within the territorial limits of a given court ?

45. Coming to the question as to what *'cause of action'* means, it may be pointed out that *'cause of action'* implies a right to sue. *'Cause of action'* is not defined in any statute. It has, however, been judicially interpreted, *inter alia,* to mean every fact, which would be necessary for the plaintiff to prove, if traversed, in order to support his right to

the judgment of the Court. Thus, the material facts, which are imperative for the suitor to allege and prove, constitute the *'cause of action'*. Negatively put, it would mean that everything, which, if not proved, gives the defendant an immediate right to judgment, would form part of *'cause of action'*. [See **Kusum Ignots and Alloys Ltd. vs. Union of India,** reported in (**2004**) **6 SCC 254**]

46. The *'cause of action'* has no relation whatsoever to the defence, which may be set up by the defendant, nor does it depend upon the character of the reliefs prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the *'cause of action',* or, in other words, to the media upon which the plaintiff asks the court to arrive at conclusion in his favour. [See **Chand Kour vs. Pratap Singh**, reported in (**1887-88**) **15 JA 1566**]

47. In **ONGC vs. Utpal Kumar Basu**, reported in (**1994**) **4 SCC 711**, the Supreme Court has made it clear that the answer to the question, as to whether a High Court has territorial jurisdiction to entertain a writ petition, must be arrived at on the basis of averments made in the petition, the truth or otherwise thereof being immaterial. The relevant observations, made in **Utpal Kumar** (supra), read as under:

> *"..............therefore,* ***in determining the objection of lack of territorial jurisdiction, the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words, the question whether a High Court has territorial jurisdiction to entertain a writ petition, must be answered on the basis of the averments in the petition, the truth or otherwise whereof being immaterial****. To put it differently, the*

> *question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court."* [Emphasis added]

48. What becomes transparent from the above discussion is that the expression, *'cause of action'* means a bundle of facts, which, if traversed, a plaintiff must prove to entitle him to receive a judgment in his favour. The *'cause of action'* bears no relation to the defence, which may be set up by the defendant, nor does it depend upon the character of the relief(s) sought for. The *'cause of action'* is nothing, but the media upon which the plaintiff or the petitioner seeks the Court to arrive at a conclusion in his favour. For determining, therefore, the question as to whether a court has territorial jurisdiction or not, the court must take into account all the facts pleaded in support of the *'cause of action'* without, however, embarking upon an enquiry as to the correctness or otherwise of the facts pleaded. Thus, the question as to whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the writ petition, the truth or otherwise whereof being immaterial. (See **Naveenchandra N. Majithia Vs. State of Maharashtra**, reported in (**2000**) **7 SCC 640**.

49. In **Union of India vs. Adani Exports Limited,** reported in (**2002**) **1 SCC 567**, the Supreme Court has held that in order to confer jurisdiction on a High Court to entertain a writ petition, the High Court must be satisfied from the entire facts, pleaded in support of

'cause of action', that the facts constitute a cause so as to empower the Court to decide a dispute, which has, at least in part, arisen within its jurisdiction. Facts, which have no bearing on the *lis* or the dispute involved in a case, do not give rise to a *'cause of action'* and cannot confer territorial jurisdiction on a High Court enabling it to exercise its writ jurisdiction under Article 226.

50. In the light of what is indicated by the Supreme Court, in **Adani Exports** (supra) and **Naveenchandra N. Majithia** (supra), it is more than clear that any controversy, in a writ petition, with regard to territorial jurisdiction has to be settled by the High Court on the basis of the facts pleaded, in the writ petition, in support of the *'cause of action'* without, of course, embarking upon an enquiry as to whether the facts pleaded are or are not correct.

51. In the backdrop of the law discussed above, when I revert to the case at hand, it becomes clear that the two Memoranda, which the petitioner has put to challenge, have been issued to the petitioner by the Government of Tripura, when the petitioner stood posted in Tripura and the petitioner still stands posted in Tripura. The legality or validity of these memoranda is, undoubtedly, determinable by this Court, in exercise of the powers under Article 226 inasmuch as the two memoranda have been served by the Government of Tripura, under whose control the petitioner has been serving. This is besides the fact that it is within the State of Tripura that the two memoranda aforementioned have been served on the petitioner.

52. The *cause of action* for the present writ petition has, thus, arisen within the territorial limits of this Bench of the Gauhati High Court

and this Bench has, therefore, the territorial jurisdiction to decide, by invoking Article 226, if the memoranda issued are sustainable in law ?

53. As the writ petition also puts to challenge the sustainability of the criminal prosecution aforementioned on the ground that the same has been launched against the law laid down in **Kumari Madhuri Patil** (supra) and the petitioner contends that when the criminal prosecution is bad in law, the two impugned memoranda, which have been issued to the petitioner in consequence of the launching of the criminal prosecution, too are not sustainable in law, it becomes evident that it is within the competence of this Court to determine if the criminal prosecution, launched against the petitioner, is sustainable in law and, if the finding of this Court be that the criminal prosecution is, in the light of the decision, in **Kumari Madhuri Patil** (supra), not maintainable, the two impugned memoranda must be made by this Court to fail. Viewed thus, the writ petition is, indeed, maintainable.

54. As already pointed out above, even a cursory reading of the Memorandum, dated 05.12.2005, makes it clear that no opportunity of hearing was given to the petitioner to have his say whether or not he was a member of the *scheduled caste* community and, yet, as rightly contended by Mr. Deb, a minute scrutiny of the impugned Memorandum shows that what the petitioner has been asked to show is why action should not be taken against him for submission of *false caste certificate* in order to obtain entry into the IAS. Thus, the disciplinary authority is satisfied, in the light of the impugned Memorandum, dated 05.12.2005, that as far as the petitioner is concerned, he had, indeed, submitted a *false caste certificate* so as to

gain his entry into the IAS. This conclusion was wholly illegal, particularly, when there was nothing before the disciplinary authority to show, except the fact that there was an FIR culminating into *charge-sheet*, that the petitioner had really submitted a *false caste certificate* to gain entry into the IAS.

55. It needs to be borne in mind that a High Court, under Article 226, exercises plenary jurisdiction, while entertaining a writ petition of the present nature, wherein validity of a show cause notice is put to challenge. If the show cause notice is found to be wholly without jurisdiction or with premeditated mind, a writ petition is maintainable inasmuch as even if the Court, in such a case, directs the disciplinary authority to hear the matter afresh, such a hearing would not yield any fruitful result. The State respondents, as the impugned memoranda show, have noticeably made up their mind that the petitioner has submitted *false caste certificate* to obtain entry into the IAS and this is clearly reflected by both the show cause notices, covered by the memoranda, dated 05.12.2005 and 10.05.2006. It is trite that a *post-decisional* hearing is not a substitute for pre-decisional hearing, for, it is to be noted that there is always a tendency to uphold the decision, which has already been taken in a given case. In this connection, the language, used in **K. I. Shephard v. Union of India**, reported in (**1987**) **4 SCC 431**, may be borne in mind. In fact, the relevant observations, in **K. I. Shephard** (supra), reads, *"….It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose….".* Going a little further, the Supreme Court held, in **Shekhar Ghosh vs. Union of India**, reported in (2007) 1 SCC 331,

thus” *“…….14. A post-decisional hearing was not called for as the disciplinary authority had already made up its mind before giving an opportunity of hearing. Such a post-decisional hearing in case of this nature is not contemplated in law. The result of such hearing was a foregone conclusion.”*

56. It needs to be noted that for ascertaining the correctness of the accusations made in the Memorandum, dated 05.12.2005, that the petitioner had submitted *false caste certificate* in order to obtain entry into the IAS, what is required for adjudication and determination is the question as to whether the petitioner belongs to *scheduled caste* community or not. The petitioner contends, on the strength of the documents produced, that the petitioner and his brother are members of *scheduled caste* community and since the petitioner’s brother’s status, as a member of *scheduled caste* community, has been upheld by the appropriate body, it is not possible for the CBI to challenge the same without getting the decision of the appropriate body withdrawn, cancelled, set aside or superseded. The petitioner also contends that so long as the caste certificate, given by the appropriate body, remains intact, prosecution of the petitioner, in the form of a disciplinary proceeding or otherwise, is nothing but abuse of the process of the Court and is, therefore, impermissible in law and, merely because the CBI claims that the *caste certificate,* relied upon by the petitioner, is false, the *caste certificate,* issued by the appropriate authority, cannot, in law, be treated as a false document.

57. The question, therefore, is: Is it, in the facts of the present case, for the CBI to claim, as a matter of fact, or as a matter of law, or both,

whether the caste certificate, granted in favour of the petitioner, is or is not false.

58. The question, raised above, takes us back to the case of **Kumari Madhuri Patil** (supra), which holds good even today. What has been laid down, in **Kumari Madhuri Patil** (supra), is the law within the meaning of Article 141 and no authority, even the CBI, can ignore or flout the directions given therein and/or the guidelines issued therein. In **Kumari Madhuri Patil**'s case (supra), the Supreme Court, streamlining the procedure for issuance of Social Status Certificates, scrutiny, approval and cancellation thereof, has clearly laid down that the application, for grant of Social Status Certificate, shall be made to the Revenue Sub-Divisional Officer, or Deputy Collector, or Deputy Commissioner and the certificate shall be issued by such an officer rather than an officer at the *Taluk* or Mandal level.

59. What is, however, important to note is that **Kumari Madhuri Patil**'s case (supra) lays down that the verification of caste certificate shall be done by the Scrutiny Committee. How such a Committee has to be constituted is also indicated by the Supreme Court in its decision in **Kumari Madhuri Patil**'s case (supra). What is most crucial to note is that, in terms of **Kumari Madhuri Patil**'s case (supra), it is the Caste Scrutiny Committee, which would be the competent authority to determine the allegation of falsity, or otherwise, of a caste certificate and shall have the power to cancel the certificate or confiscate the same.

60. What is, of course, of paramount importance to note is that **Kumari Madhuri Patil**'s case (supra) clearly lays down that an order,

passed by the Scrutiny Committee, shall be final and conclusive and would only be subject to the proceedings under Article 226 of the Constitution of India. Thus, it is the Caste Scrutiny Committee, as envisaged by **Kumari Madhuri Patil**'s case (supra), which is the competent body or authority to determine the falsity, or otherwise, of a caste certificate and the remedy of the person, who feels aggrieved by the determination of the question of falsity of a caste certificate by the Scrutiny Committee, lies in instituting a proceeding under Article 226 of the Constitution of India and by no other means. The relevant observations, appearing in this regard, in **Kumari Madhuri Patil**'s case (supra), read as under:

> *"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:*
>
> > *1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall*

be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer high-er in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the

parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ

> ***petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.***
>
> ***14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.***
>
> ***15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post. .....***"

[Emphasis added]

61. Apart from what have been indicated above, it is also imperative to bear in mind that, taking a cue from **Kumari Madhuri Patil** (supra) and deriving strength from Articles 341 and 342 of the Constitution of India, the Maharashtra Legislative Assembly has, as already indicated above, enacted the Maharashtra Act. Section 7 (1) of the Maharashtra Act, which is pivotal in nature, authorizes its Scrutiny Committee to examine *suo moto* or on the basis of information gathered, and cancel/revoke a social caste certificate issued in favour of an individual after complying with the principles of natural justice. Section 7(2) of the Maharashtra Act, in clear and express terms, ousts

the authority of any Court/ Tribunal to adjudicate upon the social caste status of an individual save and except by way of judicial review under Article 226 of the Constitution of India.

62. It is rightly submitted by Mr. Deb that since Section 7(1) of the Maharashtra Act has invested absolute authority for cancellation/ confiscation of a social caste certificate upon the Caste Scrutiny Committee, the solitary inference that is deducible is that it is only the body, named under the statute, that would have the authority to order such cancellation. In fact, even without deriving any support from Section 7(2) of the Maharashtra Act, when the legislature expressly confers an authority upon a tribunal, constituted under a special enactment, for adjudication of certain disputes, any collateral/ simultaneous vesting of jurisdiction upon some other body constituted under some other enactment would frustrate the legislative intent underlying the special enactment. This contention would be further reinforced from a plain reading of Section 7(2) of the Maharashtra Act, which, in no uncertain terms, has ousted the jurisdiction of all Civil Courts/Criminal Courts/Other courts/ Tribunals to adjudicate upon a dispute centering around the social caste status of an individual. The key words employed by the legislature '*the Order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or Court'* is suggestive of the said inference. It is submitted that the aforesaid statutory mandate is in harmony with the settled legal parameters. It is submitted that placed on the heels of Section 7 of the Maharashtra Act, it emerges that in the event, a social caste status is conferred by the Caste Scrutiny Committee and, thereafter, the same is not invalidated/cancelled by the Caste Scrutiny Committee, the order attains finality. It is

submitted that in the event, such an order is subjected to any scrutiny of any Court, the same would run *de hors* the mandate contained in Section 7(2) of the Maharashtra Act, leading to frustration of the legislative intent, underlying the special enactment (i.e., the Maharashtra Act), the mandates contained in Articles 341 and Article342 of the Constitution of India and also the guidelines issued in **Kumari Madhuri Patil** (supra).

63. What can also not be ignored, and has been rightly pointed out by Mr. Deb and Mr. Kabir, is that sub-Section (1) of Section 11 of the Maharashtra Act provides for punishment of a person, who obtains a *caste certificate* by furnishing false information or by filing false statement or documents or by any other fraudulent means. Sub-Section (1) of Section 11 of the Maharashtra Act reads as under:

> *"11.* ***Offences and penalties.***
>
> *(1) Whoever,*
>
> > *(a) obtains a false certificate by furnishing false information or filing false statement or documents or by any other fraudulent means, or*
> >
> > *(b) not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures any benefits or appointments exclusively reserved for such Castes, Tribes, or Classes in the Government, local authority or any other company or corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or co-operative society against the office, reserved for such Castes, Tribes or Classes by producing a false Caste Certificates;*

> *Shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years or with fine which shall not be less than two thousand rupees, but which may extend up to twenty thousand rupees, or both."*

64. Sub-Section (2) of Section 11 of the Maharashtra Act further makes it clear that no court shall take cognizance of an offence punishable under this Section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorized by the Scrutiny Committee for this purpose.

65. I find considerable force in the submissions of Mr. Deb and Mr. Kabir, learned counsel for the petitioner, when they point out that Section 11 of the Maharashtra Act, being a special law and having excluded the jurisdiction of all other courts to punish a person, who obtains a *false caste certificate* by furnishing false information, or by filing false statement or documents, or by any other fraudulent means, no other Court can deal with such cases and an aggrieved person's remedy lies in resorting to proceedings under Article 226. Relying on the decision of the Supreme Court, in **Kumari Madhuri Patil**'s case (supra), Mr. Deb and Mr. Kabir, learned counsel for the petitioner, submits that any penal provision, contained in the Penal Code, which provides for such punishment, would not be attracted and/or applicable to the case of the present nature until the time the Caste Scrutiny Committee and, in the present case, the Scrutiny Committee, constituted under the Maharashtra Act, determines and decides that a *caste certificate,* issued in the State of Maharashtra in favour of an

individual, such as, the present petitioner, is false, or based on false information or forged documents.

66. It needs to be pointed out that apart from the fact that sub-section (2) of Section 7 of the Maharashtra Act excludes the jurisdiction of all Civil as well as Criminal Courts or every body or authority except by way of invoking Article 226, the Maharashtra Act or sub-section (2) of Section 7 thereof cannot be considered completely divorced from, or wholly independent of, **Kumari Madhuri Patil's** case (supra). Consequently, when **Kumari Madhuri Patil's** case (supra) lays down that an order passed by the Scrutiny Committee shall be final and conclusive save and except a proceeding under Article 226, it logically follows that when the *caste certificate*, in question, has been granted by the Government of Maharashtra, it is the Scrutiny Committee, under the Maharashtra Act, which is the only competent authority to examine and affirm if the *caste certificate,* issued in favour of the petitioner and/or his brother is true, correct and valid. It further logically follows that when the *Scheduled caste*, Vimukta Jati, Nomadic Tribes, Other Backward Class and Special Backward Class *Caste certificate* Verification Committee, Pune Division, Pune, which has been constituted under the Maharashtra Act, has already rendered its decision, on 25.12.2002, that the *caste certificate,* issued to the petitioner's brother, is correct and valid, no prosecution for submission of *false caste certificate,* in order to obtain entry into the IAS by the petitioner, would be maintainable. So long as the *caste certificate,* issued by the *Scheduled caste*, Vimukta Jati, Nomadic Tribes/Other Backward Class and Special Backward Class *Caste certificate* Verification Committee, Pune Division, Pune, in favour of the

petitioner's brother remains intact, the petitioner, too, cannot, but be treated to be a member of the *scheduled caste*.

67. It is submitted, on behalf of the petitioner, that a Social Caste Certificate, having been scrutinized by the Caste Scrutiny Committee and held to be correct and valid, the scrutiny of the same *caste certificate* by a civil or criminal court would run contrary to the Supreme Court decision, in **Kumari Madhuri Patil**'s case (supra), inasmuch as the decision, in **Kumari Madhuri Patil**'s case (supra), is binding on all the Courts. Consequently, neither the CBI nor any State Government can, in such a situation, as the one at hand, carry out any investigation with regard to the correctness and/or validity of the *caste certificate* of the petitioner.

68. I find considerable force in the above submissions, made on behalf of the petitioner, inasmuch as the fact as to whether a *caste certificate*, issued to a person, is or is not true, correct and valid has to be determined by the Caste Scrutiny Committee in terms of the mechanism, which **Kumari Madhuri Patil**'s case (supra), lays down. In terms of the decision, in **Kumari Madhuri Patil** (supra), when there is a State legislation, in place, in the present case, the correctness and validity of the *caste certificate*, in the present case, which has been granted in the State of Maharashtra, cannot be scrutinized by way of investigation, or otherwise, by any authority or body or by any Court except the Scrutiny Committee. The only ground, perhaps, which remains open for investigation is as to whether the *caste certificate*, which the petitioner relies upon, is or is not a forged one and, if the *caste certificate* is found to be a forged one, there may, perhaps, be a criminal prosecution; but, if the *caste certificate* has been incorrectly

granted, in the State of Maharashtra, cancellation thereof has to be also under the mechanism of the Maharashtra Act and the validity of such a *caste certificate* cannot be challenged in any court of law, civil or criminal, on the ground that the petitioner does not belong to the *scheduled caste* except by taking recourse to Article 226 of the Constitution of India.

69. I find considerable force also in the submission, made on behalf of the petitioner, that the impugned Memorandum, dated 05.12.2005, proceeds on the basis of the conclusion, drawn by the disciplinary authority, that the petitioner does not belong to *scheduled caste* and this conclusion has been reached, it is clear, with no opportunity having been provided to the petitioner to have his say in the matter. This apart, the State Government appears to have abdicated its authority inasmuch as the pleadings and the materials on record clearly reveal that the State Government has issued the impugned Memorandum, dated 05.12.2005, merely because the Central Government has conveyed that the CBI has lodged the FIR and has asked the State Government to take action in this regard. In the face of Rule 2 of the All India Services (Conduct) Rules, 1968, it is, rightly contends Mr. Deb, only the Government of Tripura, which has the competence to initiate proceeding against the petitioner and it has to be the decision of the Government of Tripura as to whether or not to proceed against an officer belonging to the IAS cadre. It is trite in administrative law that whenever discretion is vested in an authority, the discretion has to be exercised by that authority, and that too, independent of, and free from, the influence and dictation of any other body or authority.

70. The two memoranda, dated 05.12.2005 and 10.05.2006, served on the petitioner, are founded on the criminal proceeding, which has been initiated against the petitioner and others. The criminal case has been investigated by the CBI and a report, in terms of Section 173 CrPC, has been submitted, on 02.02.2007, to the Court of the Additional Chief Judicial Magistrate (Metropolitan), New Delhi. The petitioner appeared, in the Court, in connection with the said criminal case and has been allowed to go on bail on 07.05.2007. The entire basis of the two memoranda, dated 05.12.2005 and 10.05.2006, are, as indicated above, the said criminal proceeding inasmuch as paragraph 23 of the counter-affidavit, affirmed by one Ratan Sanjoy, Superintendent of Police, CBI, Special Crime Branch–I, New Delhi, states, *"…….after completion of the investigation, Department of Personnel & Training, Govt. of India, was requested to initiate Regular Departmental Action for Major Penalty against the petitioner."* The Department of Personnel and Training, Government of India, in turn, asked the Government of Tripura to initiate departmental action and the State Government simply issued the Office Memorandum, dated 05.12.2005, aforementioned. From the affidavit, so filed, it is clear that the entire departmental proceeding was initiated and is based on the criminal proceeding.

71. In order, therefore, to determine the legality and validity of the departmental proceeding, or the show-cause notices, which have been issued to the petitioner under the two impugned memoranda, this Court is, first, required to determine if the criminal proceeding, in question, is tenable in law. For this purpose, the CBI has also been made one of the parties to this writ petition.

72. The present proceeding has been initiated against the petitioner on the basis of the preliminary enquiry, which came to be registered by the CBI, on 22.07.2004, against the petitioner, Abhishek Chandra @ Sachin Bisaria, and Abhinav Chandra @ Nitin Bisaria, both sons of Late Promod Bisaria, on the complaint of one S. K. Gupta, DSP, CBI, SCR 1, New Delhi, alleging, *inter alia,* that although these persons belong to *Kayastha* Caste (General Caste), yet they had got appointments, in the Indian Administrative Service, in the year 2003 and 2001, respectively, by furnishing *false caste certificate* and, further, that they had furnished false information, in their application forms, submitted to the Union Public Service Commission, regarding their antecedents to the effect that they had studied at St. Vincent's School, Pune, from Class I to Class X. At a later stage, when, in the opinion of the investigating authority, a *prima facie* case was found to have been made out, a regular case was registered against them and others under Sections 420, 466, 468, 471, 474 and 120B IPC.

73. What is, now, of immense importance to note is that *charge-sheet* has been submitted by the investigating authorities against five persons, namely, Abhishek Chandra @ Sachin Bisaria, Abhinav Chandra @ Nitin Bisaria, Late Dr. Pramod Chandra Bisaria @ P. C. Bisaria, Late Vishvambhar Shiv Prasad Sharma, and Manjula Bisaria. What is curious to note, in this regard, is that the principal allegation of '*forgery*' of the *caste certificate*s, in question, has been levelled against the father of the petitioner, mother of the petitioner and the principal of one of the schools, where the petitioner had studied, the allegation being that the petitioner's father and the principal of the said school had entered into a *criminal conspiracy* to prepare and

procure the said fake *caste certificates* and/or documentation on which the *caste certificates* were based.

74. The question, therefore, which needs to be examined, is as to whether any criminal prosecution of the present petitioner, in the face of the materials collected during investigation and furnished to the petitioner to sustain the charge-sheet, is possible under Sections 466, 468 and/or 120B IPC? This question is besides the question of maintainability, which has been discussed above in the light of the provisions contained in the Maharashtra Act. As regards prosecution of a person, who obtains a *false caste certificate* by furnishing false information or filing false statement or documents or by any other fraudulent means, Section 11 of the Maharashtra Act makes it clear that if a person obtains a fake *caste certificate* by furnishing false information or by filing fake statement or fake document or by other fraudulent means, he shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years or with fine, which shall not be less than two thousand rupees, but which may extend up to twenty thousand rupees, or both. In short, thus, the Maharashtra Act, as a special enactment, having provided for punishment of a person, if he obtains a fake *caste certificate* by furnishing false information or by filing fake statement or fake document or by other fraudulent means it is doubtful if, in a case of present nature, prosecution of a person, under the Indian Penal Code, would be maintainable when he obtains a fake *caste certificate* by furnishing false information or by filing fake statement or fake document or by other fraudulent means.

75. Thus, what is, however, crystal clear is that there being no allegation against the petitioner that the petitioner was a part of the *criminal conspiracy* aforementioned, the question of launching a case, against the petitioner, under Sections 466 and 468, read with Section 120B IPC, does not arise at all.

76. To put it a little differently, in the light of the definition of *'forgery',* as contained in Section 463 IPC, it is worth noticing that in order to sustain an accusation of *forgery* gainst the petitioner, it is necessary that he has been, at least, alleged to have been a part of a *criminal conspiracy* to commit *forgery,* especially, when it is not alleged that the petitioner had committed the *forgery.* True it is that a First Information Report is not expected to be an encyclopaedia of the prosecution's case. However, the present one is a case, wherein *charge-sheet* has already been submitted; but even the *charge-sheet* does not allege that the petitioner had committed *forgery* and/or was a part of the conspiracy to commit *forgery* and/or became, at any stage, a part of the *criminal conspiracy,* which his parents and the principal of the school concerned had allegedly entered into and executed. When there is no allegation, far less material, to show that the petitioner was a part of the alleged *criminal conspiracy*, the accusations or allegations, made against the petitioner, as far as Sections 466 and 468, read with Section 120B, are concerned, the same cannot stand. This becomes transparent if paragraph 4(ii) of the *charge-sheet* is read inasmuch as paragraph 4(ii) states, *"Pramod Chandra Bisaria (A-3), Late Vishavambhar Shiv Prasad Sharma (A-4) & Manjula Bisaria (A-5) entered into a criminal conspiracy and made false documents showing the caste of A-1 & A-2 as 'Hindu/BC-Bansor' while*

getting A-1 and A-2 admitted in the Maharana Pratap Vidyalaya, Jalgaon in 1985".

77. At the cost of repetition, one can, therefore, observe that there is no allegation whatsoever against the petitioner of either committing *'forgery'* himself, or having been a party to a *criminal conspiracy* to commit *'forgery'*, or his being a part of the *criminal conspiracy* to procure false or fake documents. All the allegations, in this regard, having been directed against the parents of the petitioner and the principal of the school concerned, the petitioner, who was barely 7 years old at the relevant point of time, cannot be roped in inasmuch as the petitioner was born in the year 1975 and his younger brother was barely 6 years old, when the alleged conspiracy was entered into and acted upon. Mr. Kabir has great substance, when he submits that when there is not even an allegation that the petitioner had been a part of the *criminal conspiracy*, which his parents and principal of the school concerned had entered into, no reference to the provisions of Section 82 and/or 83 IPC is even necessary and no prosecution for offence of commission of *forgery* under Section 465 IPC against the petitioner can be sustained. In other words, Mr. Kabir rightly points out that when the petitioner is not alleged to have committed *forgery* or he is not alleged to be a part of the *criminal conspiracy* to commit *forgery* or procure a false document, such as, a *false caste certificate,* his prosecution for *forgery,* as envisaged by Section 465 IPC, for commission of offence of *forgery,* is impermissible. When the petitioner cannot be prosecuted, for commission of the offence of *forgery* under Section 465 IPC, can he, in the face of the allegations made in the *charge-sheet*, be prosecuted for offences under Sections 420, 466, 468, 471, 474 and 120B IPC or is his prosecution for offences allegedly

committed by him under Sections 420, 466, 468, 471, 474 and 120B IPC maintainable ?

78. While on the question of *forgery*, it needs to be noted that Section 466 IPC punishes an act of *forgery* of record of Court or of public register, etc., and Section 468 punishes an act of *forgery*, which is committed for the purpose of *cheating*. In the present case, when the petitioner is not alleged to have committed *forgery* or when he is not alleged to have been a part of the *criminal conspiracy* to commit *forgery*, he cannot be prosecuted for forging any record by taking recourse to Section 466 IPC either.

79. Before proceeding further, it may be pointed out that it has been alleged, at para 3(xviii) of the *charge-sheet,* that the petitioner had changed his name from Sachin Pramod Bisaria to Abhishek Chandra. In this regard, it is noteworthy that the change, in the name of the petitioner, was notified, on 07.11.1996, in the Gazette of Government of Maharashtra. Mere changing of name is not an offence unless it can be shown to be a part of a *criminal conspiracy*.

80. In the present case, there is no allegation of *criminal conspiracy* against the petitioner as far as the offence of *forgery* is concerned. Hence, neither the criminal prosecution nor any departmental enquiry can be sustained against the petitioner for his changing of name from Sachin Pramod Bisaria to Abhishek Chandra, particularly, when the petitioner, and even his brother, had changed their respective names in accordance with the procedure established by law and when the same were duly notified in the official Gazette. Mr. Kabir is not entirely incorrect, when he points out that the sole reason for insertion of this wholly irrelevant aspect is to exhibit some element of the mental state

of the petitioner to try and represent himself as someone else, who he was not, with the status of *Scheduled caste*/Scheduled Tribe. It is really irrelevant as to whether the petitioner changed his name or not inasmuch as it is an admitted position that the petitioner's father was, initially, a member of the *kayastha* community (general category) and the change of the name of the petitioner, in the year 1996, or of his brother, in the year 1998, cannot, in the absence of anything else, be said to have any bearing on the *caste certificate* issued to them. In fact, the *caste certificate*s were issued in favour of the petitioner and his brother prior to the change of their names. Thus, the change in the name cannot be a circumstance, in the absence of any other material, to saddle the petitioner with the accusation, even *prima facie,* of conspiracy to commit *forgery*.

81. Coming to Sections 177, 420, 471 and 474 IPC, it needs to be noted that the *charge-sheet*, in question, seeks to implicate the petitioner with the offences aforementioned by making allegations, which are contained in paragraph 3(xix)(a) to paragraph 3(xxxii)(d) and against his brother in paragraph 3(xxxii)(a) to paragraph 3(xxxii)(d). All these offences, correctly points out Mr. Kabir, revolve around the basic offence that the petitioner had made certain false statements in his application form with regard to (**a**) his caste, (**b**) his academics at St. Vincent's High School, Pune, (**c**) father's name being Pramod Chandra and not Pramod Chandra Bisaria and (**d**) his father, originally, belonged to Pune, Maharashtra. For the purpose of convenience, and, in terms of the arguments placed before this Court, the four issues are dealt with in two parts, issues (a) and (d) being

dealt with together and, similarly, issues (b) and (c) being dealt with together.

82. In order to attract the penal provisions of Sections 177, 420, 471 and 474 IPC, the foundation of the prosecution's case lies in the allegation that the petitioner had made false declaration with regard to his caste and had used a *caste certificate*, which had been wrongfully or illegally procured by the other accused persons, i.e. his parents and the principal of the school, which I have already discussed above. In other words, what is alleged is that the petitioner has made a declaration that he belongs to *scheduled caste*, when he actually belongs to, and knew fully well to have belonged to, Hindu *Kayastha* Community (General Category) and, thus, cheated by dishonestly inducing the Union Public Service Commission (in short, the UPSC) to allow him entry into the IAS and, for this purpose, used fake *caste certificate* as genuine, while knowing that the said certificate was forged.

83. While considering the above allegations, it is well to remember that neither the father nor the grandfather of the petitioner was ever treated as a member of the *scheduled caste* and there is no dispute in this regard. As a matter of fact, it is even admitted by the petitioner that his father and grandfather were never treated as a member of the *scheduled caste*. What is, however, indispensable to note is that the petitioner claims that his father and his grandfather belonged to *Bansor* caste. This fact is acknowledged and admitted, in the order, dated 25.12.2002, which the *Scheduled caste*, Vimukta Jati, Nomadic Tribes, Other Backward Class and Special Backward Class *Caste certificate* Verification Committee, Pune Division, Pune, has passed.

This finding, rendered by the appropriate authority under the Maharashtra Act, has not yet been disturbed or varied.

84. What is, now, of paramount importance to recall is that, on 27.07.1977, *Bansor* community was recognized as *scheduled caste* by Presidential Order. Thus, it is not in dispute that the father and grandfather of the petitioner did not belong to *scheduled caste* inasmuch as *Bansor* community came to be designated as a *scheduled caste* in the year 1977. By operation of law, when the Presidential Order came into effect, *Bansor* community came to be designated, as a *scheduled caste*, in the State of Maharashtra. The School Leaving Certificate, dated 24.12.1976, of the petitioner's father, Pramod Chandra Bisaria, issued by the Head Master, Ganesh Primary School, Ghorpadi, Pune, shows his caste as Hindu *Bansor*. Similarly, even the School Leaving Certificate of the grandfather of the petitioner, Ganesh Prasad Besarya, issued by the Headmaster, Ganesh Primary School, Ghorpadi, Pune, showed his caste as Hindu *Bansor*.

85. Thus, it is evident from the admissions made in the counter-affidavit of the CBI itself that the petitioner's father and grandfather had, in fact, studied at Pune, though it has been stated, in the counter-affidavit by the CBI, that these details could not be verified except that the petitioner's grandfather had subsequently shifted to Lucknow in course of his employment and the petitioner's father had gone with him. Notwithstanding the fact that the certificates, as indicated above, were issued in favour of the petitioner's father and grandfather indicating that they belonged to *Bansor* community, what is imperative to note is that the certificates, in question, were, admittedly, obtained by the petitioner's father and the *charge-sheet*

does not even allege that the petitioner was ever a part of the *criminal conspiracy*, which had made the petitioner's father obtain the said certificate as a member of *Bansor* community. Even with regard to the commission of *forgery*, which I have already discussed above, there is neither allegation nor any material on record to show that the petitioner knew that his father had made any false statement or obtained any '*forged'* document, because the petitioner was, at the relevant point of time, barely seven years old. It is also not in dispute that the caste status of the petitioner was duly verified by the competent authority, i.e., the caste verification committee under the Maharashtra Act.

86. It has already been pointed out above that in the Maharashtra Act, specific provisions have been made to challenge and get cancelled a *caste certificate* issued. There is a complete mechanism, prescribed in the Maharashtra Act, as regards cancellation of a *caste certificate*.

87. It transpires from the counter affidavit of the CBI that various allegations have been made to the effect that the verification of the status of the petitioner's father and grandfather was not proper and the certificate of validity, which was given, on 14.03.1991, by a competent authority, is claimed by the CBI to have been issued without going into the genuineness of the information furnished to the authority concerned. The immediate consequence flowing from this accusation is that the basis of the *caste certificate* is false and the *caste certificate*, as a result thereof, is false. This is nothing, but amounting to challenging the correctness or validity or authority of the act of issuance of the *caste certificate* by the authority concerned. If anyone challenges the *caste certificate* or authority of the verification

thereof made by an authority, which was, at the relevant point of time, competent to issue the certificate, the remedy of such a person lies, as laid down in **Kumari Madhuri Patil's** case (*supra*) in challenging the same by way of a writ petition under Article 226 or else, the decision of the authority concerned, shall be, and shall remain, final.

88. In the present case, genuineness of a *caste certificate*, which has been granted in favour of the petitioner's brother was put to challenge and has been decided by the competent authority under the Maharashtra Act and the decision rendered by the authority concerned, on 25.12.2002, has never been challenged by the CBI or by any other person. Admittedly, the CBI has never challenged, by way of a writ petition under Article 226, the correctness, legality or validity of the *caste certificate* issued in favour of the petitioner. Viewed from this angle too, it becomes clear that without the High Court having declared, under Article 226, that the *caste certificate* is false and/or that the statements made therein are false, the allegation, made against the petitioner that his *caste certificate* is false, cannot be said to have any legal foundation or basis and must, as a sequel, fail.

89. One can also not ignore is that at no point of time, the CBI or any other authority took requisite steps, in accordance with law, to challenge the verification of the caste certificate, which the Caste Scrutiny Committee had done, and, to use Mr. Kabir's language, the CBI has rather jumped straight to the conclusion of falsity of the certificate, which, in the facts and circumstances of the case, cannot but be regarded as mere surmises, conjecture or suspicion.

90. What follows from the above discussion is that the caste status of the father and grandfather of the petitioner were verified by the Caste Scrutiny Committee under the Maharashtra Act and they accepted that the petitioner's father and grandfather belonged to *Bansor* community. This caste was, admittedly, not declared as a *scheduled caste* till 1977. Thus, the entry of the petitioner into the IAS, on the basis of the *caste certificate*, which has been issued, as indicated hereinbefore, and verified by the Caste Scrutiny Committee, which is the competent authority, cannot be said to be illegal or based on any false document. The *caste certificate* was issued in favour of the petitioner by a competent authority. Hence, the certificate, in question, can neither be regarded as a forged document nor is the certificate alleged by the CBI to be a forged one. This apart, the said certificate cannot be regarded or contended to be a false document until the time either the Scrutiny Committee, under the Maharashtra Act, or a High Court, in exercise of its power under Article 226 of the Constitution of India, holds the said certificate to be a false certificate. Mr. Kabir has considerable force in his argument, when he submits that the *caste certificate*, in question, cannot be termed as a false *caste certificate* in the absence of any finding having been rendered, in this regard, by an appropriate authority, under the Maharashtra Act, or by a High Court under Article 226 and, when the said certificate is not yet proved to be a *false caste certificate*, the petitioner cannot be prosecuted on the ground that he had used the said certificate knowing that the said *caste certificate* was a *false certificate*. This apart, there is not even an iota of material on record indicating, directly or indirectly, that the petitioner had known, in any manner whatsoever, that the said *caste*

certificate, issued in his favour, was a false one provided that the *caste certificate* is a false one.

91. What needs to be borne in mind is that a *charge-sheet* has already been filed against, amongst others, the petitioner. For the purpose of sustaining the *charge-sheet,* an investigation has been conducted. The investigation must, therefore, reveal some material, howsoever small that material may be, that the petitioner knew that his said certificate was a false one, particularly, when he was, admittedly, not a party to the alleged *criminal conspiracy* to obtain the said certificate. In the absence of any such material, as indicated hereinbefore, it is not only difficult, but impossible to maintain the *charge-sheet* as against the petitioner. On the other hand, the petitioner has placed on record, as already indicated above, the decision of *Scheduled caste*, Vimukta Jati, Nomadic Tribes, Other Backward Class and Special Backward Class *Caste certificate* Verification Committee, Pune Division, Pune. So long as the said decision, rendered, on 25.12.2002, is not put to challenge in the manner as the Maharashtra Act prescribes or before the High Court by taking recourse to Article 226, the certificate, in question, cannot be regarded as false and so long as the certificate cannot be regarded as false, the question of the petitioner using the certificate knowing the same to be false or the question of the petitioner inducing the UPSC or the Government of India to let the petitioner enter into the IAS cannot but be regarded as mere allegation having no legal foundation and must necessarily fail.

92. While dealing with the offence under Section 420 IPC, it needs to be borne in mind that *mens rea* is an essential ingredient of an

offence of *cheating*. In the present case, when the petitioner was, admittedly, not a part of the criminal conspiracy to commit *'forgery'* and it is not the petitioner, who had obtained the *caste certificate,* in question, there can be no prosecution of the petitioner for offence under Section 420 IPC. In the absence of any cogent accusations, indicating that the petitioner had, at any stage, come to know, or had any reason to believe, that the *Caste Certificate*, which had been obtained by his father, was a false one, the petitioner's prosecution, under Section 420 IPC is impermissible. This is besides the fact that the accusation against the petitioner is, otherwise also, not sustainable on the ground that falsity, or otherwise, of the *caste certificate* is, in the light of **Kumari Madhuri Patil**'s case (supra) and the discussions held above, for the Scrutiny Committee, under the Maharastra Act, to adjudicate upon, determine and decide.

93. If the CBI had any doubt or suspicion as to the validity of the petitioner's *caste certificate* or the validity or correctness of decision of the statutory authority, as described above, it was open to them to challenge the correctness of the said certificate or the correctness of the decision of the statutory authority by taking recourse to Article 226, which, admittedly, the CBI has not done. Hence, neither the Government of India, nor the CBI nor even the State Government derives any right or authority to make accusation that the certificate, in question, is false.

94. What is required to be noted, now, is that even if the *caste certificate* was found to be false, it would not have been sufficient to prosecute the petitioner for an offence under Section 420 or Section 471 IPC inasmuch as it is for the CBI to show that though the

petitioner was, admittedly, not a party to the *criminal conspiracy*, which his parents and the principal of the school aforementioned had allegedly entered into, yet the petitioner knew that his certificate was a false one and/or that the same was based on false or forged document. In the absence of any such tangible material on record, no fraudulent or dishonest intention can be imputed to the petitioner merely because the petitioner happens to have placed reliance on a document, or used a document, which had been obtained by his father, as indicated above, from the competent authority and the validity thereof has been upheld and affirmed by the competent authority. The petitioner cannot, therefore, be regarded to have committed any offence of *cheating* punishable under Section 420 by inducing the UPSC or the Central Government to let him enter into the IAS.

95. As the petitioner was, admittedly, not a part of the *criminal conspiracy* to commit any *forgery,* his prosecution under the penal provisions of Section 471, which punishes a person for fraudulently or dishonestly using as genuine any document, which he knows, or has reason to believe, to be a forged document, would not be attracted in the present case, particularly, when there is no material, howsoever insignificant, that the petitioner had, at any stage, knowledge or information that the *caste certificate,* which he was relying upon, was a false document.

96. Even assuming, for a moment, that the *caste certificate,* in question, is a false one, the petitioner's prosecution under Section 474 IPC as well is bad in law inasmuch as the petitioner cannot be said to be in possession of a document, which he knew to be '*forged'*. Without a person having the knowledge, or having the reason to believe, that a

document, in his possession, is a *'forged'* one, his prosecution under Section 471 IPC is impermissible in law. In fact, the document, in question, i.e., the *caste certificate,* is not alleged to be a *'forged'* one. The document was, admittedly, issued by a competent authority. In short, when a document is not alleged to be forged by the petitioner or the petitioner is not alleged to be a part of the *criminal conspiracy* pursuant whereof, the document, in question, was obtained by his father, the petitioner cannot, in the absence of any other material, be said to have had the knowledge that the document, in question, was a forged one. Thus, the petitioner's prosecution under Section 474 IPC too, as indicated above, is bad in law. The offences under Section 471 IPC, therefore, fails and so does the offence under Section 420 IPC. The offence under Section 474 IPC cannot stand even the briefest scrutiny of law inasmuch as no ingredient for the offence under Section 474 IPC can be said to exist. The petitioner was not, admittedly, a part of the *criminal conspiracy* to obtain a *forged* document nor is the petitioner claimed to be a party to the obtaining of a *false caste certificate* and in the absence of any of these two primary ingredients and, at the same time, when there is nothing else on record to show the knowledge of the petitioner, as alleged, it is not possible to hold even tentatively, that the petitioner has used the *caste certificate*, in question, with the knowledge that the same was forged or based on false information. It may be noted, in this regard, that these views of this Court are in addition to the fact that there is no decision by any competent Court or authority that the *caste certificate,* in question, is a false one or that the *caste certificate* was obtained on the basis of false information or forged documents.

97. It is also alleged against the petitioner by the CBI that the petitioner had given his father's name incorrectly and his own academic career too was also not properly described, while filing up the UPSC mains examination form. It is submitted, on behalf of the petitioner, that the petitioner's father's name had been adequately shown and the petitioner's academic career could not be fully shown for the simple reason that the form did not clearly provide space and instructions for the same and the petitioner had committed a *bona fide* error as explained in para 58 of the writ petition, which is reproduced below:

> *"58. Your humble petitioner firmly believes that he belongs to the SC community and he did not furnish any false information nor cheat anyone. Your humble petitioner urges that while filling up the UPSC mains examination form, he wrote that he studied from 1st to 10th in Vincents High School as there was insufficient space to write the names of all the schools he had studied. At the time of filling up the mains form, the exact dates of leaving and joining the schools were not known off-hand on the finger tips. The father of your humble petitioner was an IPS officer who was on transferable jobs and thus your humble petitioner studied in various schools but could not recollect the exact dates of joining and leaving the schools and this does not tantamount to furnishing false information because he had passed class 10th from the same school which he mentioned in the application form."*

98. It is submitted by Mr. Kabir, learned counsel for the petitioner, that even if it is assumed that it is correct that the petitioner had not filled up the names of all the school, where he had earlier studied, the same does not change the situation inasmuch as the petitioner's schooling is not the subject-matter of prosecution, for, the prosecution

is based upon, and revolves around, the alleged *false caste certificate*, which the petitioner, according to the prosecution, had submitted.

99. There is, indeed, force in the above submission, made on behalf of the petitioner, that when falsity of the *caste certificate* is the basis for launching of the prosecution and it is, again, the *caste certificate,* which forms the basis of issuance of the impugned memoranda directing the petitioner to show cause, it pales into insignificance whether the petitioner had or had not filled up, in the form aforementioned, his school's name correctly; more so, because the allegation of incorrectly filling up the form cannot lead to prosecution of the petitioner unless the allegation of the petitioner having knowingly submitted, and relied upon, a *false caste certificate* and obtaining thereby entry into the IAS is supported by materials on record, because the FIR has crystallized into a *charge sheet* and, hence, the *charge sheet* must disclose the materials on the basis of which the allegations made are intended to be supported.

100. When, therefore, falsity of the *caste certificate* is found to be either baseless and/or not open to challenge in any foram other than by way of making appropriate application or complaint to the Scrutiny Committee under the Maharashtra Act or to the High Court under Article 226 if the Scrutiny Committee decides the issue incorrectly, the proposed prosecution and, consequently, the proposed departmental action against the petitioner cannot be allowed to survive. To this extent, Mr. Kabir is not incorrect, when he refers to, and relies upon, the case of **Parminder Kaur Vs. State of U.P. (AIR 2010 SC 840),** wherein a Division Bench of the Supreme Court has, in fact, quashed a proceeding under, *inter alia,* similar provisions, namely, Sections

420, 463, 464, 465, 467, 468 and 471 on the ground that the proceeding was nothing but an abuse of the process of law, for, even if it is assumed that there was any wrongful mistake in the documentation, the petitioner would not have gained anything thereby and the said changes or errors did not result in any illegal gain to the appellant or illegal loss to anybody and such innocuous materials would not directly cause any offence to be made out. This is squarely the position with regard to the said aspect of the CBI's case inasmuch as it would appear that the offences aforementioned cannot be said to have been made out merely because description of the petitioner's academic career, in primary school, has not been correct. The allegation, so made, remains an innocuous material, which has no bearing on the main allegation of falsity of caste certificates, and, hence, if the main prosecution case fails, these smaller details and allegations would not re-build the case against the petitioner.

101. It is also relevant to note that the *charge-sheet* alleges commission of offence under Section 177 IPC against the petitioner and others. This *charge-sheet*, in so far as it relates to an offence under Section 177 IPC, is clearly not maintainable inasmuch as Section 195 CrPC states, in no uncertain words, *"….that no Court shall take cognizance of any offence, punishable under Sections 172 to 188 (both inclusive) of the IPC, or of any abetment of or attempt to commit such offence or of any criminal conspiracy to commit such offence, except on the complaint, in writing, of the public servant concerned or of some other public servant to whom he is administratively subordinate."*

102. Section 195 CrPC, thus, prescribes the condition precedent for taking of cognizance of an offence under Section 177 IPC. Obviously,

a complaint, in terms of the definition of *'complaint'*, contained in Section 2(d) CrPC, does not include a *charge-sheet.*

103. Clearly, therefore, no cognizance of an offence, under Section 195 CrPC, can be taken on the basis of a *charge-sheet* filed for prosecution of a person under Section 177 IPC. Mr. Kabir, learned counsel for the petitioner, is, therefore, not incorrect when he submits that the *charge-sheet*, in so far as Section 177 IPC is concerned, is not maintainable. [See **Bajranglal Parikh and Ors. Vs. State of Assam**, reported in **2008 (Suppl) GLT 486**].

104. What crystallizes from the above discussion is that, apart from the fact that the two impugned memoranda suffer from the infirmities, as indicated above, the basic question, which keeps staring at us, is whether prosecution of the petitioner is possible without determination of the question as to whether the *caste certificate,* in question, is or is not sustainable in law ? The answer to this question has to be, in the light of the discussions held above, an emphatic *'no'.* There can be no escape from the conclusion that so long as the *caste certificate,* in question, is not cancelled, withdrawn or revoked by the competent authority under the Maharashtra Act, or is not set aside or quashed by the High Court of competent jurisdiction under Article 226 of the Constitution of India, the sanctity of the *caste certificate*, its correctness, truthfulness or validity cannot be questioned in any criminal prosecution, where the falsity of the *caste certificate* becomes an issue for decision. This apart, in the facts and attending circumstances of the present case, and the law as discussed above, none of the penal provisions, which the CBI has referred to, and relied upon, is attracted. The continuation of the prosecution of the

petitioner will be nothing but abuse of the process of the Court. As the two impugned memoranda, served upon the petitioner, are based on the FIR, which the CBI had lodged, culminating into *charge-sheet,* the two memoranda shall, if allowed to survive, lead to abuse of the process of the Court and cause serious miscarriage of justice, which Article 21 guarantees to avoid.

105. On finding that the criminal prosecution, which has been launched against the petitioner, is not sustainable in law, it clearly follows that since the impugned memoranda, served on the petitioner, are wholly based on the criminal prosecution, the impugned memoranda, too, would not be sustainable. The consequence is that the impugned memoranda have to be set aside. Yet another consequence, flowing from the conclusion so reached, is that the criminal prosecution too shall be quashed.

106. It has been contended, on behalf of the CBI, that this Court does not have territorial jurisdiction to quash the criminal prosecution. The question, which, therefore, arises, is this: Had the criminal prosecution, as in the present case, been within the territorial jurisdiction of this Court, would it have been impermissible for this Court to quash the prosecution in exercise of its powers under Article 226? The answer to this question has to be in the negative.

107. In fact, to a pointed query made by this Court, even Mr. Lodh, learned counsel for the CBI, could not dispute that if this Court reaches the finding that the criminal prosecution is bad in law, the consequence would be to quash the criminal proceeding if the prosecution be within the territorial jurisdiction of this Court. Merely because, therefore, of the fact that the criminal prosecution is

launched at Delhi, will this Court lose its power to quash the criminal prosecution? This question brings us back to clause (2) of Article 226, which I have already discussed above, and which vests in the High Court the power under Article 226 if the cause of action or part thereof has arisen within the territorial jurisdiction of the High Court.

108. In the present case, there is no doubt in my mind that cause of action or part thereof has arisen within the territorial limits of this High Court and if cause of action or part thereof has arisen within the territorial limits of this Court, should this Court deny to exercise its power under Article 226, in respect of a prosecution, merely because the prosecution is being conducted at Delhi. It needs to be noted, in this regard, that in the absence of clause (2) of Article 226, the CBI could have contended that this Court does not have territorial jurisdiction, because the criminal prosecution is not within the limits of territorial jurisdiction of this Court.

109. In the face of, however, the re-inclusion of clause (2) of Article 226, it logically follows that even if a part of the cause of action has arisen within the territorial limits of this High Court, this High Court cannot refuse to give relief, which is within its competence. Because cause of action or part thereof has arisen within the territorial limits of this Court, it would bring, within the territorial limits of this Court's jurisdiction, criminal prosecution, wherever the criminal prosecution may be pending. Considered from this angle, it becomes clear that there is no legal impediment in exercising power, under Article 226, by this Court, in the fact situation of the present case, in respect of the criminal prosecution, which is pending, against the petitioner, in Delhi. The resultant effect is that it is not impermissible, but the obligation of this Court to exercise its power, under Article 226, in the

facts and attending circumstances of the present case and quash the criminal prosecution pending in Delhi.

110. In the result and for the reasons discussed above, the two impugned memoranda as well as the FIR and the *charge-sheet,* which the CBI has submitted, and the criminal prosecution, lying against the petitioner, are hereby set aside and quashed.

111. With the above observations and directions, this writ petition stands disposed of.

112. No order as to costs.

JUDGE

Rk/dutt