

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.18 of 2016

Arising Out of PS.Case No.116 Year- 2015 Thana – Ishakchak District- BHAGALPUR

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Premlata Kumari, Wife of Sri Ravi Shankar Mishra, Resident of Anandbag,
Bhikhanpur, P.S. - Isakchak, District - Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar Through The Director General of Police, Govt. of Bihar, Patna
2. The Superintendent of Police, Bhagalpur.
3. The Deputy Superintendent of Police, Bhagalpur.
4. The Station House Officer Ishakchak, P.S.Bhagalpur.
5. Mantun Singh, Son of Late Biso Singh, Posted as Assistant Sub - Inspector,
Ishakchak, P.S. - Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Gopal Mishra

For the State : Mr. Rajesh Kumar, AC to GA 10

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

ORAL JUDGMENT

Date: 04-05-2016

The petitioner has sought quashing of FIR of Ishakchak PS
Case No. 116/2015 registered against the petitioner for the alleged
offences under Section 2/3 of the Prevention of Insults to National
Honour Act, 1971 (hereinafter referred to as 'the Act') for the reason
that the FIR does not disclose any offence against the petitioner.

The stand of the petitioner is that she is the Headmistress of
a School posted in Rajkiya Madhya Vidyalaya, Bhikhanpur,



Bhagalpur. On 15th August, 2015, the petitioner being the head of the institution hoisted the national flag at the roof of the school building and thereafter she proceeded to her residence. The petitioner is a patient of Diabetes type II. On the same day, she fell ill in the afternoon suffering with loose motion and vomiting resulting in convulsion and other complications. Ultimately, she had to be admitted in a medical clinic and was discharged when her condition became stable. In the aforementioned circumstances she failed to lower down the national flag at sunset.

On the basis of complaint about the national flag being kept flying after sunset, an A.S.I. of Ishakchak Police Station, inspected the place and seized the national flag. A report was submitted by him before the Station House Officer, Ishakchak P.S., upon which Ishakchak PS Case No.116/2015 was registered against the petitioner.

Learned counsel for the petitioner refers to a judgment of the Supreme Court in the case of **Union of India vrs. Navin Jindal & Another[(2004) 2 SCC 510]**, wherein it has, inter alia, been held that the Flag Code which, inter alia, prescribes that the national flag after sunset be lowered down is not a law within the meaning of Article 13 of the Constitution of India. The Supreme Court held as under:-

“78. Flag Code is not a statute; thereby the fundamental right under Article 19(1)(a) is not regulated. But the guidelines as laid down under the Flag Code deserve to be followed to the extent it provides for preservation of dignity and respect for the National Flag.

The right to fly the National Flag is not an absolute right. The freedom of expression for the purpose of giving a feeling of nationalism and for that purpose all that is required to be done is that the duty to respect the flag must be strictly obeyed. The pride of a person involved in flying the flag is the pride to be an Indian and that, thus, in all respects respect to it must be shown. The State may not tolerate even the slightest disrespect.”

To appreciate the arguments of the parties, Clause 2.2 (xi) of the Flag Code needs to be extracted. It reads as under:-

“2.2. A member of public, a private organization or an educational institution may hoist/display the National Flag on all days and occasions, ceremonial or otherwise. Consistent with the dignity and honour of the National Flag –

.....

(xi) where the Flag is displayed in open, it should, as far as possible, be flown from sunrise to sunset, irrespective of weather conditions.”

The said clause does not mandatorily contemplate lowering the Flag after sunset. The Supreme Court in Navin Jindal’s Case (supra) held as under:-

“(i) Right to fly the National Flag freely with respect and dignity is a fundamental right of a citizen with the meaning of Article 19(1)(a) of the Constitution of India being an expression and manifestation of his allegiance and feelings and sentiments of pride for the nation.

(ii) The fundamental right to fly the National Flag is not an absolute right but a qualified one being subject to reasonable restrictions under clause (2) of Article 19 of the Constitution of India.

(iii) The Emblems and Names (Prevention of Improper Use) Act, 1950 and the Prevention of Insults to National Honour Act, 1971 regulate the use of the National Flag.

(iv) Flag Code although is not a law within the meaning of Article 13(3)(a) of the Constitution of India for the purpose of clause (2) of

Article 19 thereof, it would not restrictively regulate the free exercise of the right of flying the National Flag. However, the Flag Code to the extent it provides for preserving respect and dignity of the National Flag, the same deserves to be followed.

(v) For the purpose of interpretation of the constitutional scheme and for the purpose of maintaining a balance between the fundamental/legal rights of a citizen vis-à-vis, the regulatory measures/restrictions, both Parts IV and IV-A of the Constitution of India can be taken recourse to.”

Learned counsel for the petitioner further refers to a Division Bench judgment of Bombay High Court in Writ Petition No. 3459 of 2011 (Amgonda Vithoba Pandhare vs. Union of India & Ors.), whereby in identical circumstances, the Principal of a school was charge-sheeted. It was held that the failure to lowering down of the national flag after sunset does not fall either under Explanation 4 or Section 3 of the Act.

Learned counsel for the petitioner again refers to an order of the learned Single Judge of Kerala High Court in Cr. Misc. No. 1208 of 2016 (P.K.Satheesh Babu vrs. State of Kerala), wherein FIR lodged for not lowering down the national flag after sunset was quashed.

Keeping in view the judgments and the provisions of law, we find that failure to lowering down the national flag after sunset is not disrespect to the national flag. Thus, the charge is quashed as no offence could have been disclosed against the petitioner for not

lowering the flag after sunset.

This writ petition is allowed accordingly.

(Hemant Gupta, J)

