

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1083 OF 2015

[1] Revansidh s/o Virbhadrapa Dasmane, Age 58 years, Occu. Service, R/o Lohara,Tq.Lohara Dist. Osmanabad	Deleted as per Court's leave dated 29.7.2016
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2. Gopal s/o Suresh Sutar, Age 35 years, Occu. Service, R/o Lohara, Taluka Lohara, District Osmanabad	.. Petitioners
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Versus

1. The State of Maharashtra, Through Police Inspector, Police Station, Lohara, Taluka Lohara, District Osmanabad	
2. Rajaram s/o Kishanrao Potdar, Age 60 years, Occu. Retired, R/o Lohara, Taluka Lohara, District Osmanabad	..Respondents

Mr A.N. Sabnis, Advocate h/f Mr V.D. Gunale, Advocate for petitioners
 Petitioner No.1 deleted as per Court's leave dated 29.7.2016
 Mr N.T. Bhagat, A.P.P. for respondent No.1
 Respondent No.2 served

CORAM : V.K. JADHAV, J.

DATE : 29^h July 2016

PER COURT

1. Learned Counsel for the petitioners submits that Petitioner No.1 died during pendency of this petition and thus, seeks permission to delete his name from the array of petitioners and also seeks leave to amend the prayer clause (B).

2. Leave granted. Learned Counsel is permitted to delete petitioner No.1 from the array of petitioners and amend the prayer clause (B).

3. Heard both sides.

4. The petitioner No.2, who is the original accused in R.C.C.No.15 of 2013, pending on the file of Judicial Magistrate, First Class, Lohara, by way of this petition is seeking quashing of the order dated 27.11.2014, passed below Exh.1 in S.C.C. No.95 of 2013 and further quashing of Summary Case No.19 of 2013 pending before the Judicial magistrate, First Class, Lohara.

5. Brief facts giving rise to the present petition are as follows:

6. Petitioner No.1, who is no more was working as in-charge Head Master in the school at Lohara. Petitioner No.2 is working as a P.T. Teacher in the same school. Respondent No.2/original complainant has filed complaint on 10th February 2012 before Judicial Magistrate, First Class, Lohara bearing Misc. Application No.8/2012 alleging therein that on 26th January 2012 at about 8.05 a.m., in the said school, while hoisting the flag on occasion of Republic Day, the present petitioners and one more accused have insulted the national flag and thereby committed the offence under Section 2 of the Prevention of Insults to National Honour Act, 1971. Learned Judicial Magistrate, First Class, Lohara vide order dated 10th February 2012 directed the Police to carry out the investigation as per the provisions of Section 156 (3) of the Cr.P.C. Accordingly, the concerned Police Inspector has registered the Crime No.1/2012 against the petitioners

and one Sheshrao Ram Ghodke, who is working as Peon in the said school, for the offence punishable under Section 2 of the Prevention of Insults to National Honour Act, 1971. After due investigation, the Police Station, Lohara has submitted 'B' Summary report to the Court. It has stated in the said report that there is a dispute in the management of said institution and, therefore, such types of complaints are usual affairs in the said institution. It has further mentioned in the said report that in fact, respondent No.2 and one Dagadu Jadhav themselves have committed an offence under Section 2 of the Prevention of Insults to National Honour Act, 1971 and the complaint filed by the respondent No.2 is false. Learned Judge of the trial Court has accordingly issued notice to the complainant and the complainant, in response to the said notice appeared before the Court and protested the said 'B' Summary. After hearing the complainant, learned Judge of the trial Court has not accepted the 'B' Summary report in respect of present petitioners and accordingly, issued summons to the present petitioners. However, the Court has accepted the said 'B' Summary report in respect of third accused person. Hence, this petition.

7. Learned Counsel for the petitioners submits that due to the dispute in the management, the false complaint came to be lodged by respondent No.2. On the other hand, on the day of incident, respondent No.2 and one Dagadu Jadhav have caused obstruction in the flag hoisting ceremony and accordingly, one Sheshrao Ram Ghodke has lodged complaint in the concerned Police Station and accordingly, Crime No.8/2012 for the offence punishable under

Section 353 read with Sec.34 of Indian Penal Code came to be registered against the present respondent No.2 and said Dagadu Jadhav. Learned Counsel further submits that said Dagadu Jadhav is terminated Head Master of the school and at his instance, the respondent No.2 lodged false complaint against the petitioners. He submits that the trial Court ought to have accepted 'B' summary and accordingly dismiss the complaint pending before it.

8. Learned A.P.P. submits that even though the 'B' Summary report was submitted before the Court, the Court has issued notice to the complainant and after giving opportunity of being heard to the complainant, issued summons to the present petitioners. No fault is found in the impugned order. There is no substance in the present writ petition.

9. On perusal of the complaint filed by respondent No.2, it appears that on that day, the flag hoisting was performed by petitioner No.1 and at that time, petitioner No.2 – accused No.3 was present there and he had given command for the national anthem. It has further alleged in the complaint that at that time, the flag did not reach to the upper portion and before that, the said command was given for national anthem. Since the respondent No.2 has raised objection and further directed to take the photograph of the flag, the petitioner No.1 ran away from the said place and the complainant directed the staff members to keep the position as it is and went to the Police Station and lodged the complaint. In the counter complaint lodged by original accused No.2 in the present crime, it has alleged that at the time of

flag hoisting, respondent No.2 has obstructed the flag hoisting ceremony and he himself pulled the rope of the flag. Further, he held the rope of the flag in his hand and directed the staff members to call the photographer. In that process, the flag came down from its original place to the extent of one feet. On the basis of these allegations, Crime No.8 of 2012 came to be registered in the said Police Station for the offence punishable under Section 353 read with Sec.34 of Indian Penal Code.

10. I have carefully gone through the 'B' Summary report submitted by the concerned Police Station. It has specifically mentioned in the said report that the said school is run by a private institution and there are two groups in the said educational institution. They have filed complaints against each other. Crime No.174/2011 came to be registered against the terminated Head Master Dagadu Jadhav in the Police Station. He is the main witness in the complaint lodged by respondent No.2. It has specifically mentioned in the report that in fact, respondent No.2 - Rajaram and his witness Dagadu Jadhav insulted the flag on the day of incident. It appears that there are two groups in the institution. One group headed by respondent No.2 has not bothered even to use the flag hoisting ceremony to settle their personal score. I do not find any substance in the complaint lodged by respondent No.2. Learned Judge of the trial Court ought to have considered the enmity between the two groups of the said educational institution. In view of this, I proceed to pass the following order :

ORDER

(I) Criminal Writ Petition is hereby allowed in terms of prayer clause (B).

(II) Criminal Writ Petition is accordingly disposed of.

(V.K. JADHAV, J.)

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