

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

CRIMINAL WRIT PETITION NO.1261 OF 2016

1. Shaikh Sohail Ahmed,
Age 30 yrs, Occ: Incharge Head Master
In Hakam Urdu Primary High School,
At Chikalthana,
Tq and Dist. Aurangabad.
2. Sanjivani Raosaheb Pathare,
Age 39 Yrs Occu In charge Head Mistress
In Zubeda Yasin Secondary School,
At Chikalthana,
Tq and Dist Aurangabad. **PETITIONERS**

VERSUS

1. The State of Maharashtra,
Through – Police Inspector,
CIDCO, MIDC, Police Station,
Tq and District : Aurangabad
2. Manisha Uttam Kharat,
Age Major,
Occu: Political Worker
R/o Shivalaya Chowk, Bajaj Nagar,
Waluj Tq and District : Aurangabad.
RESPONDENTS

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Mr.S.R.Kolhare, Advocate for the petitioners
Mr.S.G.Karlekar, APP for the Respondent/
State
Mr.M.D.Gitte, Advocate for respondent no.2

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 16.02.2017
Pronounced on : 01.03.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Petition is filed with the following prayer:

B. By Writ of Certiorari or any other Appropriate writ OR direction like nature, The Charge sheet dated 21st January 2015 and Complaint i.e. S.C.C. No 301331 of 2015, Pending before the file of Learned XVIII. J.M.F.C Aurangabad under the section 2 of the Preventions of Insults of National Honor Act 1971, C.R.No II 55/15 may kindly be quashed.

4. Brief facts for filing this Petition are as under:

Petitioner no.1 is the Incharge Head

Master of Hakam Urdu Primary School situated at Chikalthana, Taluka and District Aurangabad. Petitioner no.2 is the Incharge Head Mistress in Jubeda Yasin High School at Chikalthana, Taluka and District Aurangabad, run by the Minority Education Society, namely All Sisters Education Society situated at Roshan Gate, Taluka and District Aurangabad. Respondent no.2, who claims to be the President of Maharashtra Pradesh Congress at Waluj, Taluka and District Aurangabad on 17th September, 2014, filed a complaint before respondent no.1, alleging therein that, petitioners have not conducted the flag hoisting ceremony in respect of Marathwada Mukti Sangram and declared holiday.

5. The Investigation Officer, after recording the statement of complainant on 1st December, 2014, has registered Crime No.II 55/2014 under Section 2 of the Prevention of Insult to National Honour Act, 1971 [for

short 'the Act of 1971']. Respondent no.1, without making any investigation, has straightway filed charge sheet for the offence under the Act of 1971 without considering the fact that the flag hoisting of Marathwada Mukti Sangram is not covered under the Act of 1971.

6. The learned counsel appearing for the petitioners submits that the learned Magistrate has taken cognizance of the offence without applying mind. It is further submitted that petitioner nos.1 and 2 have conducted the flag hoisting ceremony at the Head Quarter of the petitioners' School, which is situated at Ravindra Nagar, Taluka and District Aurangabad and the flag hoisting of the Marathwada Mukti Sangram is not at all covered under the provisions of the Prevention of Insult to National Honour Act, 1971, is only restricted to the Indian National Flag.

7. Pursuant to the notices issued to the respondents, respondents have caused appearance in the Petition.

8. It appears from the perusal of the pleadings in the Petition that the petitioners have attended the flag hoisting at the Head office. Be that as it may, in the present Writ Petition, the petitioners have given following undertaking by way of affidavit, which reads thus:

1 Petitioners hereby undertake to abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem as provided in Article 51-A (Fundamental duties).

2 That, these petitioners have conducted flag hoisting ceremony on the Occasion of Marathwada Mukti Sangram on 17th September 2014, at the Head Quarter of the Management,

situated at Ravindranagar, Kaktkat Gate Tq and Dist Aurangabad, thereafter, they have conducted flag hoisting of ceremony on the occasion of 17th September 2015 and 17th September 2016 at their respective schools.

4. That, Petitioners hereby undertake to strictly abide by their fundamental duties by conducting flag hoisting to the ceremony of Marathwada Mukti Sangram and other National Ceremony i.e. 26th January and 15th August by conducting flag hoisting without failure.

9. In our considered view, as stated by the petitioners, they have attended the flag hoisting at the Head Quarter and henceforth they are ready to abide by undertaking, which is reproduced herein above. In that view of the matter, in order to secure ends of justice we deem it appropriate to allow the Writ Petition. The Rule is made absolute in

terms of prayer clause-B and the W.P. stands
disposed of accordingly.

[K . K . SONAWANE]
JUDGE

[S . S . SHINDE]
JUDGE

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