

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 440 OF 2018

Dr. Varsha w/o Raj Salunke,
Age 39 years, Occupation Medical
Practitioner, R/o Plot No.1172, Sai
Nagar, CIDCO, N-6, Aurangabad. .. Applicant

VS.

The State of Maharashtra
Through CIDCO Police
Station, Aurangabad. .. Respondent

Mr. N. S. Ghanekar, Advocate for the applicant.
Mr. S. W. Mundhe, Additional Public Prosecutor for
respondent/ State.

**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI. JJ**
DATE : 26-02-2018

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Rule. Rule made returnable forthwith and heard learned counsels appearing for the parties by consent finally.
2. The applicant has invoked the inherent powers of this Court under Section 482 of the Code of Criminal Procedure in order to quash the First Information Report lodged against her.
3. The applicant is the Head Mistress of First Expression School.

A crime has been registered on the basis of the First Information Report (Hereinafter referred to as "FIR"), lodged by one PSI Poonam Shivaji Patil of Cidco Police Station, Aurangabad. It has been contended in the report that, the applicant had hoisted Flag on 26th January 2018 but failed to lower it down after sunset, and thereby she has committed offence punishable under Section 2 of the Prevention of Insults to National Honour Act 1971. The report has been lodged on 27-01-2018 under the Crime No. 32 of 2018.

4. The applicant is contending that, she is innocent and has been falsely implicated. Section 2 of the Prevention of Insults to National Honour Act 1971 is not attracted to the facts of the case. Not lowering the flag at nighttime i.e. after sunset is no violence and it does not amount to any insult, dignity and the honour of the National Flag. It is contended that, mere omission to lower the flag after sunset does not amount to any offence as the Flag Code does not prescribe for any punishment. She has therefore, prayed for quashing of the FIR.

5. The application has been objected on the ground that, not lowering down the national flag after the sunset shows disrespect to the Indian National Flag, and therefore, the Section 2 the said Act is attracted.

6. Heard learned advocate Mr. N. S. Ghanekar for the applicant

and learned Addl. Public Prosecutor Mr. S. W. Mundhe for respondent-State. It has been submitted on behalf of the applicant that, even if we take the contents of the FIR as it is, it does not attract the provisions of Section 2 of the Prevention of Insults to National Honour Act 1971. He relied on the decision in *Amgonda Vithoba Pandhare Vs. Union of India and others, 2012 All MR (Cri) 2380*. It was the identical case of a Head Master in Zilla Parishad Primary School, Sonlagi (Pandhrewasti) Taluka Jat Dist. Sangli and same allegations were made that after the flag hoisting programme was held on 26-01-2010 in the school in the morning, in the evening after the sunset the accused therein had not lowered the national flag. After taking note of Section 2 of the Prevention of Insults to National Honour Act 1971, this Court has held that it does not amount to an offence.

7. He has also relied on the decision in *Umesh s/o Kishanrao Chopde Vs. State of Maharashtra and Anr., 2012 All MR (Cri) 1724*. It is also a case of a Head Master of the school in which the flag was allegedly found hoisted till midnight on the flag post. A similar view has been taken in this case also. In both the cases this Court had relied on the decision in *Union of India Vs. Navin Jindal and Anr., 2004 (5) ALL MR 339 (S.C.)*, wherein after going through various sections and parts of the Flag Code, the Hon'ble Apex Court came to the conclusion that the Flag Code contends executive instructions of

the Central government, and therefore it is not a law within the meaning of Article 13 (3) (a) of the Constitution of India.

8. The learned Addl. Public Prosecutor tried to submit that the facts of the case are covered under Explanation 4 of Section 2 of the Prevention of Insults to National Honour Act 1971.

9. We are in agreement with the submission made on behalf of the applicant and also the decisions given by this Court in the aforesaid two cases. The facts of both these cases are similar. In "Amgonda" (Supra). It has been observed,

"7. Explanation 4 mentions various acts of dishonour in clauses (a) to (l). Perusal of the said section clearly reveals that one of the essential ingredients of the said offence is that disrespect, contempt of the flag should be intentional. Similarly, Explanation 4 gives various instances of disrespect to the Indian National Flag. The offence of not lowering down the flag after sunset does not fall either in the various instances which are mentioned in Explanation 4 or in Section 2 of the said Act. The averments in the complaint, therefore, even if they are accepted at its face value, does not constitute an offence within the meaning of Section 2 of the said Act."

"8. So far as the Flag Code is concerned, the said Flag Code is not an Act nor is it issued under any of the statutory provisions of the said Act and, therefore, it is not a statutory law enacted by the competent

legislature."

"9....."

"10. Another factor which also needs to be taken into consideration in the present case is that the petitioner was Head Master of the school and was proceeding to go to his school for lowering down the flag. However, while going to the school, on the way, he collapsed and had to be admitted in the hospital and he had instructed the other person to lower down the flag properly. This is not disputed by the respondent prosecution. This being the position, it cannot be said that the petitioner intentionally wanted to insult the honour of the flag and lastly, complaint appears to have been filed by respondent No.5, a person who was a political opponent of the petitioner and obviously it appears to have been filed with an malafide intention to harass the petitioner. In either case, therefore, the petitioner has made out a good case for quashing the complaint."

These observations are important and are applicable to the similarly situated applicant in the present case. Paragraph 07 referred above is the answer to the arguments levelled by the learned Addl. Public Prosecutor. Therefore, when the facts of the case do not disclose commission of any offence and only non-observance of the Flag Code then such non-observance which is not a law within the meaning of article 13 (3) (a) of the Constitution of India, it cannot be said to be covered under Section 2 of the Prevention of Insults to

National Honour Act 1971.

10. Taking into consideration the reasons above stated, the applicant who is a Head Mistress need not be asked to face the trial, and therefore this is a fit case where the FIR lodged against her deserves to be quashed and set aside. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) The First Information Report No. 32 of 2018 lodged with CIDCO Police Station, Aurangabad for the offence punishable under Section 2 of the Prevention of Insults to National Honour Act 1971, against the applicant is hereby quashed and set aside.
- 3) Bail bonds of the accused i.e. the present applicant shall stand cancelled.
- 4) Rule made absolute in the above terms.

[SMT. VIBHA KANKANWADI]
JUDGE

[PRASANNA B. VARALE]
JUDGE

vjg/-.