

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 7021 OF 2014**

- 1 All Sisters Welfare Education ... **Applicants**
Society, Katkat Gate Road, (Orig. Accused)
Ravindra Nagar, Roshan Gate,
Aurangabad.
2. Annisa Urdu Primary School,
Katkate Gate Road,
Ravindra Nagar, Roshan Gate,
Aurangabad.

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Jinshi Police Station,
Aurangabad.
2. Shaikh Nadeem Alias Nadeem
Rana, Age Major, Occu: Nil
R/o Near Citizen Health Club,
Roshan Gate, Aurangabad.

... Respondents

Mr. S. R. Kolhare and Mr.P. S. Kochar, Advocate for the
applicants
Mr. R. V. Dasalkar, APP for the respondent No.1-State.
Mr. S. B. Bhosale, Advocate for respondent No.2.

**CORAM : T. V. NALAWADE AND
K. L. WADANE, JJ.**

DATE: : 15th June, 2018

JUDGMENT (Per K. L. Wadane,J.):

1. Rule. Rule made returnable forthwith. With the
consent of the parties, the application is taken up for
final hearing.

2. The applicants/original accused have challenged the criminal complaint registered against them with Jinshi Police Station, Aurangabad so also the criminal proceedings bearing SCC No.1853/2015, pending against them before the J.M.F.C., Aurangabad for the offence punishable under section 2 of the Prevention of Insult to National Honour Act, 1971 and section 188 read with 34 of the Indian Penal Code.

3. Applicant No.1 is a Education society situated at Roshan Gate, Aurangabad, duly registered under the provisions of Bombay Public Trust Act, 1950 and Registration of Societies Act, 1860, through its president and it runs applicant No.2 School and receiving 100% grant in aid from the State of Maharashtra.

4. It is the case of the applicants that the complainant filed a complaint on 17.09.2014 before the Jinsi Police Station alleging therein that the applicants school alongwith Winners English School have not performed the Flag Hoisting Ceremony in respect of Marathwada Mukti Sangaram Din, on the basis of which, crime as referred above came to be

registered against the applicants under the provisions of Prevention of Insult of National Honour Act, 1971, without verification. It is submitted that applicant No.2 school has conducted the Flag Hoisting Ceremony on 17.09.2014 in the School premises and report its was also sent to the Education Officer (Primary), Zilla Parishad, Aurangabad.

5. During investigation, the Investigating Officer has recorded statement complainant Shaikh Nadeem, and other witnesses who have stated that there was no flag hosting ceremony at the applicants school on the occasion of Marathwada Mukti Sangaramim Din. The investigating officer has filed the charge sheet against the applicants accused which is pending before the JMFC, Aurangabad.

6. Heard learned Mr. S. R. Kolhare learned counsel for the applicants, Mr. R. V. Dasalkar, learned APP for the respondent No.1-State and Mr. S. B. Bhosale, learned counsel for respondent No.2.

7. Learned counsel appearing for the applicants submits that the criminal proceeding is initiated without considering the truth. The applicants have

conducted the flag hoisting ceremony in the school on the occasion of Marathwada Mukti Sangram Din. The learned counsel for the applicants further submits that this Court, in Writ Petition No. 1261/2016, accepted the undertaking of not committing similar offence in future and granted the relief which is claimed in the present application. The present applicants have also given such undertaking before this Court, which is already taken on record.

8. On perusal of the pleadings in the application and the documents on record, such as news article and report of the Headmistress of the School, etc. prima facie, it appears that the applicants have conducted the flag hoisting in the school on 17.09.2014. Be that as it may, in the present application, the applicants have given following undertaking by way of affidavit:

"1 The 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 51A (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 ceremony on the occasion of 17th September 2015, 17th September, 2016 and 17th September 2017 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. As stated above, the applicants have conducted flag hoisting ceremony on the occasion of Marathwada Mukti Sangram Din on 17th September 2015, 17th September, 2016 and 17th September 2017 and they have undertaken to strictly abide by their fundamental duties. This Court has accepted similar undertaking in Criminal Writ Petition No.1216/2016 and allowed the petition.

10. In that view of the matter, it is not desirable to continue the criminal proceedings against the applicants and in order to secure ends of justice we deem it appropriate to allow the application. Hence following order:

O R D E R

- i. The application is allowed in terms of prayer Clause B-1.
- ii. Rule is made absolute accordingly.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

JPC