

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5618-2024
Reserved on: 05.03.2024
Date of Decision:12.03.2024

MAMAN CHAND SHARMAPetitioner

Vs

STATE OF PUNJAB AND OTHERSRespondent(s)

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Ms. Kamal Sharma, Advocate for
Mr. Amit Arora, Advocate for the petitioner.

Mr. Athar Ahmed, DAG, Haryana

HARKESH MANUJA, J.

1. By way of present petition filed under 482 Criminal Procedure Code, 1973 (hereinafter referred to as “Cr.P.C”) petitioner prays for quashing of judgment dated 02.05.2023 passed in CRR-12 of 2022 by learned Additional Sessions Judge, Bhiwani (hereinafter referred to as “Revisional Court”) which upheld an order dated 15.01.2020 passed by Judicial Magistrate 1st Class, Bhiwani (hereinafter referred to as “JMIC”) while dismissing criminal Complaint bearing no. COMA-718 of 2019 filed for violation of Flag Code of India, 2002 (hereinafter referred to as “Flag Code”) under Section 2(2)(v) and Section 3.10 of Prevention of Insults to National Honour Act, 1971 and amendment Act, 2005 (hereinafter referred to as “National Honour Act”) and the Emblems and Names (Prevention of

Improper Use) Act, 1950 (hereinafter referred to as “Emblems Act”) read with Section 34 of Indian Penal Code, 1861.

2. Brief facts of the case are that on Independence Day, i.e.15.08.2016, the National Flag was unfurled at the Government Middle School, Bhiwani. Allegedly, the National Flag was improperly fixed on a pole to the left of the speaker platform, and the National Song was sung in violation of the Flag Code, National Honour Act, and Emblems Act by respondents 2 to 4. An FIR, dated 15.08.2016, was registered bearing no. 322/2016. During investigation, a site plan (Ex. C1) was prepared by Sh. Chander Pal, DSP (HQ), Bhiwani, on the same day, while later another site plan (Ex. C2) was prepared on 08.09.2016 by Sh. Dharmender, Draftsman, District Police Office, Bhiwani. Respondents 2 to 4 were acquitted in the FIR by an order dated 23.01.2018, passed by the Additional District & Sessions Judge, Bhiwani.

3. Aggrieved thereof, the petitioner filed a criminal complaint bearing No. COMA-718/2016 before the learned JMIC, which was dismissed vide Order dated 15.01.2020. Subsequently, the petitioner filed revision petition in the Revisional Court, which was also dismissed vide Judgment dated 02.05.2023. Hence, the present petition.

4. Learned Counsel for the petitioner argued that both the Courts below erred while dismissing the petitioner's Complaint against respondents 2 to 4 for their alleged involvement in the insult and dishonour of the National Flag and National Song on 15.08.2016. He contended that in both site plans, Ex. C1 & Ex. C2, only two facts were mentioned: the place of occurrence (stage) and the place

where the National Flag was unfurled. According to him, Ex. C1 clearly indicated that the area marked as "B" was nothing more than a stage, whereas the location marked as "A" was the spot where the National Flag was fixed on the ground without a pedestal, on the left side of the speaker's stage during the unfurling. He further argued that during the petitioner's deposition as CW-1, it was stated that he witnessed the flagpole on the left side of the speaker's stage. Additionally, Sh. Dharmender, while deposing as CW-3, mentioned that there was no mark to ascertain that the pole was embedded in the ground, implying the absence of a pedestal. Therefore, the learned Counsel asserted that respondents 2 to 4 had violated the provisions of the Flag Code, Indian Honour Act, and Emblems Act and should have been punished for it, according to settled legal principles.

5. Learned State Counsel on the other hand vehemently opposed the prayer made on behalf of the petitioner and contended that the Courts below rightly appreciated the evidence produced and prima facie no offence under the aforesaid provisions was found thus, the order passed by Id. JMIC dismissing the petitioner's complaint and judgment in revision warrants no interference.

6 Having heard the Counsel for both the parties and gone through the paper-book, I am unable to find substance in the contentions raised on behalf of the petitioner.

7 A perusal of the record shows that on the date of incident; at the time of unfurling of the National Flag and singing of the National song petitioner's presence at the spot looks doubtful and thus story put forth by him cannot be said to be above suspicion. Learned JMIC vide order dated 15.01.2020 categorically

dealt with the issue at hand and concluded that no prima-facie case to summon the accused was made out. Relevant extract is reproduced as under: -

“.....On perusal of the site plans Ex.C1 and Ex.C2, it is found that the position of speaker's platform is not shown in these site plans. Further in these site plans, it is not shown that the pole of National Flag was put on the floor without pedestal. In the site plan Ex.C1, the place marked with letter B is shown where the flag was unfurled. This site plan was prepared on 15.08.2016 by DSP, Bhiwani. In this site plan, the position of speaker platform is not shown. The site plan Ex.C2 was prepared by the Draftsman on 08.09.2016 and he was examined in the case FIR No.322/2016 as PW1. In his cross-examination, he categorically mentioned that when he visited the spot, there was no flag, chair, lecture stand etc. So, from the site plan Ex.C2 prepared by him, the position of the flag in respect to speaker's platform is not proved. The complainant has admitted that he has no photographs of the stage, flag and no recording of singing of the National Anthem in the school. In absence of recording of the singing of National Anthem, it can not be said that it was not sung in the specified time. In these circumstances, no prima-facie case is made out to summons the accused in the present case for trial.....”

Even the Revisional Court vide Judgment dated 02.05.2023 while dismissing the revision preferred by petitioner/revisionist/complainant disbelieved his contentions that National Flag was unfurled in his presence and National song was improperly sung and held that his testimony cannot be said to be incontrovertible in absence of any prima facie evidence corroborating alleged disrespect of National Flag and National song. Relevant excerpt is reproduced as under: -

“12. A perusal of the statement of revisionist-complainant reveals that on 15.08.2016, he went to Government Middle School, M.C. Colony, Bhiwani at 8.25 A.M. alongwith Dr. Parvesh Lata and Sh. Lalit Pardhan to give a representation. Dr. Parvesh Lata being the most qualified lady was eligible person for unfurling the National Flag on the Independence Day but Vikas Kumar, Headmaster completed the ceremony before her arrival. It was unfurled by Smt. Sunia d/o Satbir Singh. Thus, it is clear that when respondent unfurled the National Flag, the revisionist-complainant was not present.....

.....The complainant has admitted that he has no photographs of the stage, flag and no recording of the singing of National Anthem in the school. Mere statement of complainant which is not corroborated by any

evidence is not sufficient to summon the respondents as accused. In these circumstances, the learned JudicialMagistrate 1 Class, Bhiwani has rightly observed that prima-facie there is no evidence on record which is sufficient to summon the respondents as accused to face trial.”

8. No substantial material on record has been pointed out before this Court, enabling to draw a different opinion in the given facts and nothing has been pointed out to infer that any relevant deposition or documentary evidence has either been ignored or misread. Resultantly, in view of the discussion made herein above, finding no illegality or perversity with the concurrent findings recorded in the order dated 15.01.2020 passed by JMIC and the judgment dated 02.05.2023 passed by Revisional Court, present petition is **dismissed**.

12.03.2024
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No