

(2002) 07 OHC CK 0001

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 714 of 2001

Chandra Sekhar Mohanty

APPELLANT

Vs

Stae of Orissa

RESPONDENT

Date of Decision : 05-07-2002

Acts Referred:

Contempt of Courts Act, 1971 — Section 2

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482

Prevention of Insults to National Honour Act, 1971 — Section 2

Citation : (2003) CLT 623 (Suppl CrI) : (2003) OLR 623 (Suppl CrI)

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : A. Mohapatra, J.M. Rout, B. Mallick and B.B. Mohanty, for the Appellant; A.K. Mishra, S.C., for the Respondent

Judgement

P.K. Tripathy, J.—Heard.

2. In this application u/s 482, Code of Criminal Procedure Petitioner prays to quash the order dtd. 10710.2000 passed in G.R. Case No. 671 of 2000 of the Court of S.D.J.M. Kendrapara which was registered against the Petitioner on the allegation of committing the offence u/s 2 of the Prevention of Insult to National Honours Act. 1971 (in short the Act").

3. Mr. A. Mohapatra learned Counsel for the Petitioner drawing attention of the Court to the FIR as well as the provision of Section 2 of the Act. argues that since no prima facie case is made out the impugned order is not sustainable in the eye of law.

4. Mr. A.K. Mishra learned Standing Counsel on the other hand strenuously argues that hoisting a discoloured National Flag by the Petitioner is an offence u/ s 2 of the Act and the Petitioner being a responsible Government servant should not have done so and as such the accusation prima facie makes out the offence against the Petitioner.

5. Upon perusal of the case diary which is produced by the learned Standing Counsel it appears that witnesses examined by the Investigating Officer have consistently stated that a discoloured National Flag was hoisted by the Petitioner and when the said conduct of the Petitioner was challenged Petitioner stated that the Flag was supplied by the office and no new Flag has been supplied in spite of request. The case diary does not disclose about the Investigating Officer ascertaining from the superior authority of the Petitioner, if he had made a request or requisitioned for a new Flag on the ground of the old supplied Flag had been discoloured. There is no dispute between the parties on the aforesaid factual aspect borne out from the case diary.

6. Section 2 of the Act reads as hereunder:

2. Insult to Indian National Flag and Constitution of India - Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Explanation 1 - Comments expressing disapprobation or criticism of the Constitution - or of the Indian National Flag or of any measures of the Government with a view to obtain an amendment of the Constitution of India or an alteration of the Indian National Flag by lawful means do not constitute an offence under this section.

Explanation 2 - The expression "Indian National Flag" includes any picture painting, drawing or photograph or other visible representation of the Indian National Flag, or of any part or parts thereof, made of any substance or represented on any substance.

Explanation 3 - The expression "public place means any place intended for" use by, or accessible to, the public and includes any public conveyance learned Counsel for the Petitioner argues that the alleged conduct of the Petitioner does not come within the ambit of any circumstance enumerated in the above quoted provision of law and therefore Petitioner is not liable to be prosecuted. He further, argues that hoisting of the discoloured flag was done by the Petitioner not with disrespect or dishonour to the National Flag but as a compulsory official function when a new flag was not supplied on request and requisition. On the other hand, learned Standing Counsel argues that the act complained is an offence u/s 2 as it provides that "or otherwise brings into contempt whether by words, either spoken or written, or by acts the Indian National Flag or the Constitution of India or any part thereof. According to him hoisting of a discoloured flag comes within the scope of the above quoted provision to constitute the offence. Indeed the contention of the learned Standing Counsel is akin to law and therefore hoisting of a discoloured National Flag amounts to dishonour to the National Flag of the country and that constitutes an offence u/s

2 of the Act.

7. Notwithstanding that, in this case it is to be seen whether such an offence is prima facie established against the Petitioner for the acts complained which has been noted in the proceeding paragraph. The above quoted portion from Section 2 (in the preceding paragraph) significantly mandates the law that "otherwise brings into contempt". The Act does not define any term used in that statute much less the term "contempt". The Code of Criminal Procedure or Indian Penal Code have also not defined the word "contempt" Section 2 of the Contempt of Courts Act. 1971 defines the term "Contempt of Court" and "Civil Contempt" and it has been provided that wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court is Civil Contempt. Thus, the aforesaid definitions does not help this Court much to construe the meaning of the terminology "Contempt" so far as the present dispute is concerned. In that respect, in Black's Law Dictionary "Contempt" has been defined as "a wilful disregard or disobedience of a public authority" (page 390 of the 4th Edition, 1951). In the Law Lexicon by P. Ramanath Iyer it has been stated that "contempt is a wilful disregard or disobedience of a public authority" (page 235 6th Reprint Edn. 1995). In Webster 3rd New International Dictionary the term Contempt has been defined in variously and the meaning which are relevant for the present purpose are quoted as hereunder:

the act of despising or the state of mind of one who despises the feeling,
with which one regards something that is esteemed low vile, or worthless:
the condition of having no respect, concern, or regard for something.
(Page 491. 3rd Col. of Vol. I).

The admitted position in the Case Diary is that the Petitioner as the Circle Inspector of Schools on August. 15th hoisted the alleged discoloured flag in his office in due discharge of his official duty. There being Government Circular for following such procedure he was duty bound to do the same on the Independence Day. There is no evidence worth the name on record that he hoisted the National Flag which was discoloured one with a view to disrespect or disregard the honour of the National Flag in any manner. He simply hoisted the flag which had been supplied to him by the office. Therefore, from the alleged conduct of the Petitioner a case of contempt to the National Flag by the Petitioner is not made out at all. Apart from that, the conduct displayed by the Petitioner was in due discharge of his official duty and therefore even if the investigating officer did not investigate into the case as to whether the Petitioner had requisitioned for a new flag, but at least he should have sought for the sanction as provided in Section 197. Code of Criminal Procedure when the nature of service of the Petitioner comes within that category.

8. It is true that by hoisting a discoloured flag the Petitioner has failed in his

moral obligation by failing to tender due respect to the National Flag. Such conduct is admonishable as well as deprecable more particularly with a person in the teaching line or working under the Department of Education. But degradation of moral of the Petitioner in this case is not constituting the offence u/s 2 of the Act for the reasons already indicated above. If for such an alleged conduct the Petitioner is to be prosecuted then his superior authority who has the legal obligation and official control to supply flag in good condition should also be prosecuted for abatement of such offence because of omission to do the required act of supplying a good flag and thereby compelling hoisting of a discoloured flag. Indeed the State Government through its executive machinery should see to it that incident of the complaint type should not happen whether or not that constitute an offence u/s 2 of the Act because we the people of India have a representative Government which is not only to protect the life and liberty of the citizen of the country but also to show due and proper regard to the National Flag and the Constitution of India. A copy of this judgment be sent to the Chief Secretary to the State so as to take adequate measures for nonrecurring of such incident henceforward. It is also observed that it will be proper for the investigating authority i.e., Police Department to meticulously see that such occurrence do not happen and in the event of happening of any such occurrence the matter should be properly investigated and the person who hoisted the discoloured flag as well as the authority who is the silent abettor of such offence shall be booked for such offence if after proper instruction from the State Government such officers shall not desist from hoisting discoloured National Flag. A copy of this observation shall also be communicated to the Secretary to Government, Home Department and the Director General of Police for due information and necessary action.

9. Be that as it may, the aforesaid admitted position in the Case Diary and the statements of the witnesses, in this particular case, does not constitute an offence u/s 2 of the Act against the Petitioner and lack of the ingredients to show or suggest a wilful disregard or dishonour by the Petitioner to the National Flag.

Under such circumstance the criminal proceeding against the Petitioner vide G.R. Case No. 671 of 2000 of the Court of S.D.J.M., Kendrapara stands quashed.