
(2012) 04 MP CK 0150

In the Madhya Pradesh High Court

Case No : Miscellaneous Cr. C. No. 12496 of 2011

Kantilal Bhuria

APPELLANT

Vs

Sanjay Sarvaria

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Constitution of India, 1950 — Article 51A(a)

Criminal Procedure Code, 1973 (CrPC) — Section 482

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

Citation : (2012) ILR (MP) 2606 : (2012) 3 MPLJ 541

Hon'ble Judges : R.C. Mishra, J

Bench : Single Bench

Advocate : Manish Datt, for the Appellant; C.K. Mishra, Government Advocate for respondent No. 3/State, for the Respondent

Judgement

R.C. Mishra, J.—Shri Manish Datt, Advocate for the petitioner. None for respondent Nos. 1 and 2, even in the second round. Shri C.K. Mishra, Govt. Adv. for the respondent No. 3/State. Arguments heard. This is a petition, u/s 482 of the Code of Criminal Procedure (for short "the Code") for quashing the prosecution for the offence punishable u/s 2 of the Prevention of Insults to National Honour Act, 1971 (for short "the Act"). Corresponding trial is pending as Complaint Case No. 2434/2011 in the Court in Shri S.S. Jamra, JMFC, Damoh. Cognizance of the offence has been taken upon the complaint made by the respondent Nos. 1 and 2 by JMFC, Damon. It contained the following allegations:--

On 25-5-2011 at about 12 Noon, the petitioner, an Union Cabinet Minister and President of M.P. Congress Committee, arrived at Tendukheda, to address a meeting of Party workers, in an official vehicle whereon National Flag, having a hole of 11/2" in diameter, was flying and even on being apprised of the condition of the Flag, he made a fun of it by saying that it is similar to that of the Government in the State and thus, allowed the disrespect to the National Flag to continue.

2. Learned counsel for the petitioner has strenuously contended that continuance of the prosecution is an abuse of the process of the Court as, apparently, he had no intention to bring National Flag into disrespect. According to him, the prosecution is politically motivated. To buttress the contentions, attention has been invited to the following facts:--

(i) The petitioner was treated as a State Guest and, accordingly, the vehicle displaying the National Flag was provided to him by the Collector of the District on behalf of the State Government and therefore, it was the duty of the officer concerned to ensure that the Flag, to be used for being flown thereon, was free from any apparent defect and deficiency.

(ii) The petitioner belongs to Indian National Congress (INC), which happens to be the rival political party of Bhartiya Janta Party, the Ruling Party in the State.

3. While opposing the prayer for quashing the proceedings, learned Govt. Advocate has pointed out that the petitioner is also guilty of perpetuating the insult to the National Flag.

4. Before entering into the merits of the rival contentions, it would be necessary to advert to the penal provision that is couched in the following terms:--

Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise shows disrespect to or 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.

5. Further, specific instances of disrespect to the Indian National Flag have been enumerated in the Explanation 4 appended to section 2 as under:--

Explanation 4:-- The disrespect to the Indian National Flag means and includes:--

- (a) a gross affront or indignity offered to the Indian National Flag; or
- (b) dipping the Indian National Flag in statue to any person or thing; or
- (c) flying the Indian National Flag at half-mast except on occasions on which the Indian National Flag as flown at half-mast on public buildings in accordance with the instructions issued by the Government; or
- (d) using the Indian National Flag as a drapery in any form whatsoever except in State funerals or armed forces or other para-military forces funerals; or
- (e) using the Indian National Flag -
 - (i) as a portion of costume uniform or accessory of any description which is worn below the waist of any person; or
 - (ii) by embroidering or printing it on cushions handkerchiefs napkins

undergarments or any dress material; or

(f) putting any kind of inscription upon the Indian National Flag; or

(g) using the Indian National Flag as a receptacle for receiving, delivering or carrying anything except flower petals before the Indian National Flag is unfurled as part of celebrations on special occasions including the Republic Day or the Independence day; or

(h) using the Indian National Flag as covering for a statue or a monument or a speaker's desk or a speaker's platform; or

(i) allowing the Indian National Hag to touch the ground or the floor or trail in water intentionally; or

(j) draping the Indian National Flag over the hood, top and sides or back or on a vehicle, train, boat or an aircraft or any other similar object; or

(k) using the Indian National Flag as a covering for a building; or

(l) intentionally displaying the Indian National Flag with the "saffron" down.

6. It is true that Article 51A(a) of the Constitution of India enjoins a duty on every citizen to respect the National Flag but even if the allegations as made against the petitioner in the complaint are taken at their face value and accepted in their entirety, no offence of its disrespect as punishable under the Act would be made out. As such, the case against the petitioner falls under category (1) and (7) of the cases, as enumerated in State of Haryana and others Vs. Ch. Bhajan Lal and others, attracting interference under the inherent powers. Accordingly, the petition is allowed and the proceedings in Complaint Case No. 2434/2011 pending in the Court of JMFC, Damon are hereby quashed.