

(1998) 11 BOM CK 0128

In the Bombay High Court

Case No : Criminal Writ Petition No. 287 of 1996

Mrs. A.S. Abraham and another

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 30-11-1998

Acts Referred:

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

Citation : (1999) 5 BomCR 117 : (1999) BomCR(Cri) 117 : (1999) 1 BOMLR 644 : (1999) 1 MhLj 368

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : A.P. Mundergi, for the Appellant; Ms. Usha Kejariwal, Assistant Public Prosecutor, for the Respondent

Judgement

D.G. Deshpande, J.—Petition is filed challenging the Order of the JMFC, Kalyan, rejecting the application of the petitioners-accused for discharge from offence u/s 2 of the Prevention of Insults to National Honours Act, 1971. The prosecution was launched by the State against the petitioners accused on the ground that they insulted the national flag by not holding any function or celebration on 1-5-1994, which was a Maharashtra Day. Sufficient time was granted to the A.P.P. to produce any notification by which holding of Maharashtra Day function by school was made obligatory by the State Government. She could not produce any notification. On the face of it the order of the Magistrate is unsustainable because not holding Maharashtra Day function and not hoisting the flag on that day cannot bring the matter within the purview of section 2 of the aforesaid Act.

2. It may be that the petitioners accused were liable to hold the function as per the circulars issued by the Government of Maharashtra. But if Maharashtra Day function is not held deliberately and intentionally that could be a subject matter of some departmental action by the State but not by prosecuting the accused under the aforesaid Act. Consequently, petition is required to be allowed. Hence, the order :

ORDER

3. Petition allowed. Rule made absolute.

4. Proceedings initiated against the petitioners under the Prevention of Insults to National Honours Act, 1971 and pending before the JMFC, Kalyan, are quashed. It is clarified that the State Government will be at liberty to take suitable action against the petitioners for not following the instructions or directions or circulars regarding Maharashtra Day celebration.

5. Petition allowed.