

(1995) 02 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 3016 of 1995

N.P. Amrutesh and another

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 22-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Emblems and Names (Prevention of Improper Use) Act, 1950 — Section 3, 4

Citation : AIR 1995 Kar 290 : (1996) 6 KarLJ 464

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Mahantesh Hosamath, for the Appellant; N. Devadas and H.H. Kaladgi, Pleaders, Shylendra Kumar and Smt. Jayalakshmi for Central Government, Sri Nanjundaswamy and Shri Sridhar, for the Respondent

Judgement

1. This Writ Petition has been filed under Article 226 of the Constitution of India by the two petitioners, who are Advocates of this Court, as public interest litigation seeking the issuance of (a) writ of prohibition or order or direction against respondents 3 to 4 directing them not to exhibit Kannada film "Kona Eedaite" (which means in English that He Buffalo gives birth to a calf), on 2-2-1995, or on any subsequent dates in any film Cinema, theatre and Celluloid for general public either in the State of Karnataka, or anywhere within the territory of India, as well as, for directing respondents 1 and 2 to take back/withdraw the certificate/permission for exhibition of the aforesaid Kannada Film and for costs.

While, moving the writ petition, the petitioners also prayed for an ex parte interim order directing respondents not to exhibit the film on 2-2-1995 or on subsequent dates pending decision or disposal of this writ petition by the Court after witnessing and examining finding, if it is fit for being released for exhibition.

2. The petitioners' case has been that the petitioners have been practising as Lawyers in the High Court of Karnataka and Courts subordinate to it and have

always been interested in maintenance and upholding of the dignity and sovereignty of the nation and the Courts including the High Court forming part of judicial system of our country of which the petitioners considered themselves to be the part and parcel as the officers of the Courts being the Advocates. The petitioners have asserted that they are interested in taking recourse to the law Courts seeking relief of prohibition and curbing, of the exhibition of films, by the Courts which depict Courts and judicial system in an indecent manner. The petitioners have further alleged that they are not seeking any relief in their individual capacity, but, have got common interest to save the judicial system from being maligned and degenerated, as such they have filed this writ petition.

Whereas, in this Writ Petition, it has been alleged by the petitioners (sic) were pained to see and mark scenes disgracing as well containing sets, dialogues or things tending to mislead the people about working in Courts and thereby adversely affect the judicial system by depiction of that Kannada film aforesaid which is to be released on 2nd of Feb, 1995. The whole judicial system starting from the Lowest Court up to the Highest Court of the country has been brought down in the film, making a mockery of it, in the eye of the public when may have the view of the film. The petitioners have further mentioned that Respondent No. 1, is the Licensing Authority permitting the exhibition of the film in the State of Karnataka, while, Respondent No. 2, is the Censoring authority granting censor's certification and that the 3rd respondent in this Writ Petition is the producer of the film under the banner "Bellala International Films and 4th respondent is the film story writer and Director of the film, while, respondent No. 5, is the Distributor of the film. That the petitioners had actually seen and witnessed the Kannada movie aforesaid at Basant Coloured Laboratories, K. H. Road, Bangalore, in a pre-view show conducted in a range by the producer and director.

3. The petitioners state that the story of the film begins from Law College environment, where a poor brilliant law college student is prosecuting his studies, who becomes victim of the circumstances by intervention of the two lady students and their respective fathers, who are depicted to be the leading Advocates practising mainly on the criminal and civil sides. That on illegal gratification extended by both the lady students and their respective fathers in the purchasing of the ranks and gold medals from the Vice-Chancellor of the University, against the norms and values or merits of that brilliant rank student and a gold medallist in his career feels frustrated. It shows that the Law degrees are being sold to the lady persons and that one can purchase Law Degrees and gold medals by money or by use of their political influences irrespective of the fact that they happened to be not eligible for such degrees. It is further depicted that the two lawyers in the picture, while acting under the influence of their respective daughters are competing with each other in their effort to win over with that brilliant student as the son-in-law. It is contended by the petitioners that it has been depicted in the picture that for the sake of the daughters and their selfish motive of getting that poor but meritorious Law student married, they made hectic efforts in that regard by filing two false cases which are mainly

hosted against the said poor student for their oblique motives. One of the cases filed against the poor law student by one of the two Advocate fathers is based on allegations of rape alleged to have been committed by the poor law student on his daughter. While, in another case filed by the father of another girl, namely, the second lawyer, that poor student had been charged and alleged to be impotent and seeks a declaration, in that cases sought that he is impotent. Thereafter, both the cases were tried separately and the witnesses were examined. The Hon"ble Judge or the Presiding Officer of the Court indeed has been depicted as a person under the control of his Jawali/ Jamedar/Dafedar, who is standing on the dias of the Court by the side of the Judge every time interfering, and dictating terms to the Hon"ble Judge in the matter of hearing, lacing of evidence and the pronouncement of orders, that is, in the performance and discharge of this judicial duty. The Dafedar has always been shown to be instrumental in threatening and blackmailing the Hon"ble Judge by saying that his secret deals, acts and affairs of the Judge will be made known to his wife at house, if he (Judge) does not act on his advise. That in the film it is shown that tutored and ready made witnesses are always available to the needy clients and the Advocates in order to enable them to win the cases. The petitioners have also asserted that all these have been shown in and around the building of this Hon"ble High Court. One lady character named as Shashi Satyavati, who presents herself in the witness box in a vulgar manner in endowed/double meaning criticising the judiciary by making a statement that she has given evidence before various Courts at the convenience of litigants and their Advocates, at the same time, her name being familiar with all the Courts that she is "Sullovati". The whole procedure of recording the statements on the facts and the judgment is shown as a mockery. The petitioners have tried to illustrate the same by further asserting as under :

"The doctor, who gives evidence in the rape case says that rape has taken place on the victim girl by that poor law student depicted by name as Krishna and the very same doctor in the other case is shown to have stated him to be an impotent. In the first sitting of the Court, the judgment is being delivered in the first case, in which that very law student is held to be guilty of having committed the rape on the daughter of the first lawyer as per evidence of the witnesses and the documents therein and on the same day in the afternoon in the other case, the very same Court passed another judgment declaring the law student to be impotent as pleaded in the other case. This whole story has got tendencies of giving a false impression into the general public, who may witness the said film that decision and justice can be purchased by creating and producing of false and concocted evidence of purchased witnesses and making the Judge yield to the influences and threats."

4. That in continuation, the petitioners allege that another case was presented before the same Court by third Advocate, who is a Professor of Law also with the allegation that abovementioned two Advocates and their daughters with others jointly commit the theft of a calf born of a He Buffalo ("Kona called in Kannada).

In fact, it has been asserted in this petition that He Buffalo never gave birth to calf or the calves, irrespective of this undisputed fact that He Buffalo does not by itself give birth to calves or a calf. The 3rd lawyer succeeds before the same Court with the help of the same old witnesses and has been shown to have succeeded to establish that He Buffalo had given birth to a calf and the said calf has been stolen, therefore, the accused persons have committed the theft of the calf. That during the course of the film, quite often, it has been shown that goddess of justice is chased and tormented by goddess or witch of injustice, and by false and cooked evidence produced by police authorities and touts and that the goddess of justice showers tears in sheer helplessness and gives call for the help to save it from falsehood, concoction of evidence and from the act of witch of injustice and its associates which chase the goddess of justice to overpower it. If the act of the respondents in exhibiting the films by which the judicial system is but as an innuendo is permitted, then every producer of the other film will start doing the same things, thereby, there will be no end to the mockery being played and done with the judicial system and Courts. The Courts may become the simple spectators to damage being done to Court and the judicial system and that the public will think that going to Court to seek justice is a high drama and is meant only for rich and money-affordable persons, who can purchase witnesses to succeed in getting the decision in their favour. With regard to this public thinking, the petitioners' allegations are that the common and ordinary people will come to a conclusion and they may start thinking that a common man will not be able to get justice from the Courts of law by seeing such movies in which mockery is done with the institution of the Courts and system of judiciary. That Judiciary will lose its sanctity, dignity and honour if films and cinemas depicting pictures playing mockery with the Courts are allowed to be exhibited and this may affect the judicial system. It may even affect the rule of law and the sovereignty and dignity of the country as well as the democratic set up of the country. The exhibition of such films have a tendency to lower the judicial system of the Court and dignity of the country in the eye of its own people may also make the people think that by influences and money, the Courts exercise their powers in the course of administration of justice and thereby image of courts or judicial system will be tarnished. Therefore, such pictures require to be curtailed. If Censor Board passes such pictures, it is necessary for the High Court as Court of record to exercise its constitutional powers to issue directions to them as well to respondents 1 and 2 to take back or to withdraw the certificate of permission for exhibiting the films of such nature including the very same Kannada Movie "Kona Eedaite".

5. This petition had been filed on 31st Jan. 1995, and it had been placed before this Court on the 1st of Feb. 1995. This Court after having heard the Counsel for the petitioner and having gone through the Writ Petition directed issuance of notice to all the opposite parties for appearance as well as granted an interim order to the effect that: "Until further orders, it is hereby directed that the respondents shall not release Kannada Film "Kona Eedaite" to any one, nor the

show of the same shall be done in any theatre, cinema or the like, in any part of the State of Karnataka. Therefore, the State Government shall see that it is not exhibited until further orders of this Court."

Notices on behalf of respondent No. 1 --State of Karnataka was taken by the Government Pleader -- Sri H. H. Kaladgi and on behalf of Respondent No. 2 -- the Union of India, Minister for Information and Broadcasting, the notice was accepted by the Additional Central Government Standing Counsel -- Miss. Jayalakshmi. The notices were issued to respondents 3 to 5 as well and time was given to file the affidavit.

6. Before the date fixed for the filing of the counter-affidavit or rejoinder-affidavit, appearance had been put on behalf of respondents 3 to 5, by filing a short counter-affidavit along with application for vacation of the interim order of stay. A memo was also filed for the taking up of the matter on 2nd Feb. 1995, because, respondents 3 to 5 were going to be affected adversely by the interim order and it was asserted every day's stay would cause heavy and unbearable loss. The learned Government Counsel of both the State and the Central Governments agreed that the matter may be taken up at 3 O'clock, the petitioners did not object for that request but, desired that it will be better that the petition may be heard and finally disposed of otherwise if the stay order is vacated, then, this petition may be rendered as having become infructuous and if interim order continues for long the respondents would suffer irreparable loss, may it be not to the extent as stated by the respondents.

7. While, filing the application for vacation of the stay order, the respondents have also filed the copy of the certificate issued by the Central Board of Film Certification, which certifies unrestricted public exhibition of the film under the signatures of Regional Officer for the Chairman, Central Board of Film Certification, Government of India and further certifies other things in the film including the final length of the films after cuts, as being mentioned in the certificate. In the present certificate of the Kannada film "Kona Eedaite", the various cuts made under the direction of the Central Board had been mentioned under the Heads 1 to 14.

At 3 O'clock, the case was taken. The two petitioners -- namely Shri. N. P. Amrutesh and K. Ramashetty, (they are petitioners) --Advocates, assisted by their colleague -- Sri Mahantesh Hosamath, a learned Counsel, made submissions in support of this petition and it was also pointed out that the petitioners had witnessed the film prior to its revision and certification by the Censor Board sometimes in the month of August, 1994, and their petition has been based on what they had seen in the film at that time. After certification had been finally done on January 16th, 1995, they were not aware of the cuts as directed by the Board. On behalf of the opposite parties, the cuts were brought to the notice of the Court, the petitioners along with one more Counsel and the respondents' Counsel and the respondent's Counsel Sri. Nanjundaswamy, very fairly submitted that if there is anything in the film which in the opinion of this

Court, appears to suffer from some defect or requires to be cut that portion which is found by this Court as having the tendency of lowering down the judicial system, the respondents' Counsel will consider to cut that off accordingly. On behalf of the State, the case had been argued by the Government Counsel -- Sri. N. Devadas as well as by Sri H. H. Kaladgi. On behalf of respondent No. 2, the Senior Central Government Standing Counsel -- Sri D. V. Sylendra Kumar as well as Miss. Jayalakshmi, has put in appearance. Some preliminary objections as to the maintainability of this writ petition were taken by the learned Central Government Standing Counsel to the effect that petitioners are not personally affected adversely by the film and by its non-exhibition, they are not to gain anything and by exhibition they are not going to lose anything nor will it be going to cause any injury to the petitioners so the petitioners have no locus standi to maintain this petition. Whereas, the preliminary objection taken by the Counsel for respondents and it was met on the ground that they are the Officers of the Courts being Lawyers and Advocates practising in the High Court and Courts subordinate thereto are very much interested in the maintenance of the dignity and sovereignty of the country as well as the dignity of the Courts and the judicial system which is one of the important pillars of our democratic fabric, so they are entitled to file this petition in public interest as public interest litigation. As regards the merits of the case, the petitioners submitted and placed before me this Writ Petition and pressed the allegations made in this Writ Petition. Counsel for the respondents 3 to 5 submitted that certain portions have been deleted as mentioned by the Censor Board and the petitioners have not seen the films as revised, though, they have seen the films prior to its certification, so there is no ground of any objections now exist. That the two petitioners and the Government Counsels of both the Governments submitted that let the film be looked and witnessed and examined today itself and if there is anything objectionable, then, it may be deleted before the exhibition of the film to the general public, so that, the film may not have adverse effect on the mind of people with reference to Court and that the film was exhibited between 4-30 p.m. to 6-45 p.m. on that day, i.e., 2-2-1995, in a small Committee room of this High Court. After exhibition of the film, the two petitioners as well as Shri. Mahantesh Hosamat, one of the members of the bar made certain contentions which are going to be referred hereinafter, and thereafter, both (sic) the Government's Counsels as well as Counsel for Respondents 3 to 5 were heard in presence of the parties in open Court Hall No. 13 of this High Court.

8. After hearing all the parties, as on 2-2-1995 it had by that time become 8.30 p.m., a detailed and reasoned order could not be dictated, only a short relevant order was dictated by this Court the relevant paras of which reads as under:--

"For detailed reasons to be given later on, the writ petition is to be allowed only to this extent that the respondents may release the film after having deleted the objectionable portion thereof, which is to the effect that the Jamadar of the Court is standing by the side of the Judge and every time when evidence is examined or case is argued, he takes consultation from the Jamadar in course of hearing

and decision of the case. That scene is rather unnatural as well as that scene may have the tendency of causing an adverse effect on the course of administration of justice and prestige of Courts in the eye of people.

So, as mentioned earlier, it is directed that let the scene in which the Jamedar gives advise or giving an impression that he is being consulted, be deleted and cut-off from the reel. After having done that, the film can be released and be exhibited.

The Writ Petition is thus partly allowed. Let this order be communicated to the parties immediately.

The petitioner shall before releasing the film file a memo intimating the Court that, that scene has been deleted. Let the copy of this order be communicated to the Counsel for the parties including learned Central Government Standing Counsel and the Government Counsels today.

Reasons will be given later on."

8A. Now, the reasons for my decision in the context of arguments and counter-arguments of the parties" Counsel as well as that of all the Government Counsels, after having given considerations thereto, are being given hereinafter having referred to the contentions made by the parties.

On behalf of the opposite parties, it has been, as mentioned earlier, submitted that this Writ Petition at the instance of the present petitioners was not maintainable. The petitioners contested the said contention and they submitted that the petitioners are the citizens of India as well as they are persons practising as Advocates of the High Court and Courts subordinate thereto. They are very much interested in the maintenance of the rule of law and dignity of the Courts and the judicial system of the country as envisaged by the Constitution and any act if that appears to have the tendency or likelihood of adversely affecting the prestige or dignity of the country, the Constitution and the constitutional institutions, particularly, those related to the judiciary, namely, the Courts, the petitioners always think it to be their pious obligation and duty to bring the same to the notice of the Courts and to seek due and proper relief for the purpose of getting those things prevented and prohibited. Therefore, the petitioner assert that they are seeking relief from this Court. They further argued that lawyers are also much important part of the instrumentality of the judicial system and the Courts. If at all it is their duty to assist the Court of law in protecting the Constitution, the National flag, the institutions established by the Constitution in particular, the Courts. The petitioners, though they have no personal interest or personal anguish against the film or the respondents, yet they are well entitled to file the petitions in the public interest and in the interest of judiciary which is one of the pillars of democracy, as if the institution of Judiciary goes down, there cannot be anything but rule of jungle and thereby, apprehension of complete good bye to the doctrine of rule of law and democracy. As such, the petitioners claim that they are entitled to maintain this writ petition.

9. The petitioners' Counsel on the merits of the case submitted that in the present case, there are yet certain scenes which are objectionable and which may affect the Courts and Judiciary adversely as well as its majesty or dignity. Therefore, the petitioners submitted that the picture or film in question may have an adverse effect on the prestige of the Judiciary and judicial system, if it is brought to the notice of the public. It has exhibited certain things which are far distant from realities of functioning of Court. The petitioner as well as Shri Mahantesh submitted that the persons presiding over the Courts, namely, the Judges, while, trying the case or, while, hearing the arguments or, while, dictating the judgments are shown to behave as if the Judge was acting under the threat or on the advise of their Jamedar/Dafedar that Jamedar was threatening to communicate some deficiency or weakness of the Judge to wives, so that they may suffer badly. On that basis, it appears to have been projected as that the Orderly Jamedar is always well competent to influence the decision of the Court, and so, it is definite that in the public eye, the prestige of the Court may go down and the litigants and public may think of developing contacts with Jamedars and try to play mischief with the Presiding Offices of the COURT. Such a scene which has been depicted of the Judge that at every time when he is recording evidence, he is acting under some third force, or the like from Jamedar that the Judge should give ears to him, otherwise, his weakness will be communicated to his wife or the scenes that the Judge is taking advises from Jamedar and Jamedar keeps standing on the dais of the Judge such a sequence make the film uninhabitable as appear to be resulting in damaging prestige of the Courts of law and the democratic structure of the country. Therefore such a scene (sic) he deleted and the respondents he restrained from exhibiting such a film. The second submission of the learned petitioners is that picture is depicting in the scene that in the Court Hall it self goddess of justice is being chased by the witch of injustice or goddess of injustice and she cries in all helplessness and goddess or witch of injustice prevails over justice in the Court on account of nothing but false, concocted evidence and makes a mockery of the system of justice. If this scene is allowed that goddess of justice is being chased by evil forces in Courts, then, peoples' faith in administration of justice by Courts will be damaged. So, this scene requires to be curtailed and unless it is so done, it may adversely affect the Court. Either film of this type be not allowed to be exhibited or let the respondents cut out and delete such objectionable portions. That by depicting the story to the effect apart from the roles of the two ladies in whose cases on the false evidence produced by their monies fathers -- the two Advocates, i.e., both the persons are able to get conflicting judgments in one case the poor law student is held to be impotent, while, in another case on the same evidence, Court hold him guilty of rape, and finally scene of the He Buffalo is depicted. The picture depicts that by false evidence even it can also be established that the Bull or He Buffalo gave birth to a calf or calves and He Buffalo's calf was stolen by the accused of that case depicting thereby, that by use of the false, forged or purchased untrue evidence, even greater impossibilities can also be got established and such verdicts can be taken. Such a

scene the petitioners submitted has got a tendency of adversely affecting the mind of ordinary man so far as relates to justice and course of administration of justice given by the Courts, so this also requires to be deleted. The two petitioners as well as Shri Mahantesh Hosamath, Advocate, who was assisting the petitioners in the presentation of the case has submitted that there are two other scenes which adversely affect the prestige of the Courts and honour of the National Flag and the Nation. That in the film, it has been depicted that the Lawyer throws away his robe and coat in the Court completely disturbed and thereafter gets intoxicated of drinks, comes and falls down in front of the Tricolor National Flag boasting on the pillar within the campus of the building of this Court, this is rather derogatory of the National Flag and the judicial system. It gives an impression as if the Lawyer falls down thinking as if the prestige of the National Flag is unsafe in the hands of the Lawyers and the Judges, because the Lawyer himself becomes confused and goes to the extent of taking alcohol or drinks and forgets his duty in the prevalent circumstances which shows he falls down before the National Flag, as if the prestige of National Flag is not safe. It was urged by petitioners that use of National Flag in cinema and public, except on National days is prohibited under law and use thereof as such wrong and scene above referred needs be deleted and out-off. Sri Mahantesh submitted that there is a lyric "Narkade Hesare Ann", in English, it means what is the name of Hele and thereafter, another person strikes with the tool and says "order", "order" as if indicating that Hell is nothing but the order of the Court and so, it is derogatory and these scenes should also be deleted and cut-off.

10. On behalf of respondents 3 and 4, Sri Nanjundaswamy, the learned Counsel assisted by Sri Sridhar, submitted that firstly that whatsoever objectionable if at all was in the film that had been removed and cut under the direction of the Censor Board, and as such, there is no need for prohibiting the exhibition of this film. He invited my attention to the certificate issued by the Central Film Censor Board which has been filed by the respondents along with short counter-affidavit. He further submitted that really, the theme of entire film is not to depict the Court or the judicial system in any manner, which may be said to be, derogatory of the dignity of the Court or the judicial system. It really has got the theme of bringing new sight and a ray of hope to the common man, who sometimes, on frustration, starts feeling on account of some cases, in which sometime because of deficiency of the parties Counsel either in defence or of prosecution, the false evidence prevailed and as a result thereof, in some cases, the real culprits might have been got acquitted and sometimes on the same or similar grounds or similar reasons, the innocent persons got convicted or suffered. The reasons for the same may be various and it might be particularly on account of some defective cross-examination which might have failed to bring out the truth or sometimes it might have happened that witnesses might have been won over or so tutored that falsity of the case could not be brought out or the curtain of falsity of evidence could not be removed and the Court had to rely on the evidence as like the present picture subject-matter of the petition, there might

have been failure of justice or the real justice could not have reached the doors of (sic) she submitted, no doubt, in such a situation, there could be some frustrations to the common man and the picture depicted the frustration of the common man even to the extent of his mind being shadowed by confusion and that confusion lead him to think that if there is money or power one can control the prosecuting agency, one can avail false witnesses and get even a false case established and Courts may be helpless spectators and the depiction of case of theft of the calf of He Buffalo and its proof by false evidence aims to bring such prevalence of false evidence and faults of system with an aim to make people think and ponder and the learned in law to find ways and means to get rid of such deficiency. It was submitted that it appears to be with the common manor Villager who feels, (might be wrongly or rightly) when he finds that he is not able to get justice for one reason or other or on preponderance of false evidence. It further indicates that when an honest lawyer sometimes stands perturbed and disturbed, it is a feeling of utmost frustration of the lawyer, that he throws out his gown and band taking that he may not be successful on account of his simple heartedness and honesty and his method of adopting fair means. It is shown that he comes and completely surrenders and falls down on the earth of this High Court building before the National Flag as one helpless to save its honour, that is, the honour of the National Flag for which it stands, namely, justice, social, economic and political. That the perusal of the story and film shows that it takes new turn at this stage and a new insight comes to him, from whatever source it might be, may be from the National Flag, the honour of the nation that the sense of duty comes to him again and he rises, takes out the gown and band his armour of law and thereafter becomes a man of action with law or dharma with him and thereafter, the scene takes a complete turn that injustice cannot be allowed to prevail in the law Courts that false evidence cannot prevail over the truth and demon or witch of injustice cannot prevail over the goddess of justice. The scene depicts that there is victory always of truth over untruth, of justice and justice emanating from Courts over injustice, of the rule of law and the rule of Dharma is to prevail, that is, the final theme of the Kannada film. That persons taking shelter under false evidence and giving false evidence cannot save themselves, as arms of law and those, of course, of administration of justice are long and strong enough to control. Behind Dharma, there is law of divinity to protect the law and rule of law even as deployed in the case. The divine power comes to help and it gets all those, who rely on false evidence or Adharm or unlawful activities punished and the last Sitlok quoted in the picture "Yada Yada Hidharmasya Glanir Bhavati Bharata/Abyudhanam, Adharmasya Tadatmanam Shrajamyahum."

The learned counsel submitted that the real theme of the picture is only one of inculcating the idea and the thought and belief that they are wrong who think that evil can prevail over the good, the reality is that justice is to prevail over injustice and Courts are meant for that and lawyers have to act as the men of action having the shelter of Divine mother India and its National symbol -- the

National Flag, so, in view of the theme of the picture, the order of prohibition is neither in the national interest nor in the interest of the petitioners or the law Courts. The respondents' counsel submitted that the scene depicting earlier temporary attack and victory or prevalence of injustice over the goddess of justice, if would not have been shown, then, how could it be brought out what the ordinary common frustrated man's feelings at times are, and could it be depicted or shown and how could it be proved to be a false notion or wrong way of thinking. He further submitted how could it be depicted, that if all those connected with the administration of justice are always active and vigilant as the men of action with truth and interest actively to bring the truth, then justice is bound to prevail, so also the rule of law. It is just like the course of day and night Day definitely prevails over the darkness over of night, and light of enlightenment, and purely of heart and mind and action diminishes, darkness starts appearing and prevailing as night and it is only of light of moon with purity of insight may make one display truth from falsehood, otherwise, darkness is bound to prevail so, kept your light of purity and learning and character enlightening from the divinity of nation, its culture and National flag which symbolize Nation (India) and its culture and sovereignty.

11. The learned counsel submitted that the scene objected to on behalf of the petitioners that Jamedar is shown every time to be standing by the side of the Judge, on the dias and no doubt, sometimes, he is shown to be talking to the Judge and is so depicted and it gives an impression as if Jamedar is giving some advise or some threat to the Judge. That is in a very low tune as if giving an impression that he is trying to blackmail the Judge. The learned counsel submitted that there is nothing as blackmail, but, the intent might be to show that there may be forces which may affect or which may make attempt to affect the mind of the Judge in such way and such attempts need be curbed and no encouragement be given to such effects, or to things having the tendency of adversely affecting and influencing the Judge or Judge's mind or working. The learned counsel for the respondents 3 to 5 further submitted that his clients, i.e., respondents 3 to 4 are ready to the cut-off and for deletion of any reel or scene if that requires not to be exhibited and needs to be deleted and also the scene showing the orderly interfering with the Judge if is required to be cut-off on the ground that scene might create some wrong or bad impression on the common people's mind let it no doubt deleted along with any other portion which this Court find necessary to be deleted.

12. In addition to the raising of the preliminary objections as mentioned above, Sri D. V. Shylendra Kumar, learned Senior Standing Counsel for Central Govt. assisted by Miss. Jayalakshmi, Additional Standing Counsel, submitted that the picture had been proved (sic) and examined as will appear from the perusal of the document annexed with the application and affidavit filed by respondent No. 3 and the Censor Board has taken every precaution to see that no objectionable portion be allowed to be screened or exhibited in film to public it is thereafter, that a certificate for unrestricted publication thereof has been granted or issued

by the Central Board of Film Certification, Government of India. The Central Govt. Senior Standing Counsel further submitted that this film portrays the theme just reverse to the one suggested by the petitioners and alleged by the counsel for the petitioners. The theme learned Senior Standing Counsel submitted is rather appreciable in which justice prevails over injustice, truth prevails over the untruth, forgery or fraud perpetuated either the person appearing as a false witness or some one making use of false and purged evidence, the theme is that such persons cannot save their skin from the rule of law and punishment.

13. Learned Senior Standing Counsel further submitted that National Flag and the incident of confused disparate counsel, who conies and falls down in the High Court building before the National Flag near the rod on which the flag is hoisted and then, turns into man of action, really, adds to and enhances the prestige of the National Flag inside the Court or Assembly buildings as infusing in him enthusiasm and spirit to work like Dhanurdhari Arjun or Karmyogi Arjun of Bhagwat Geeta. This is a message to the Lawyers that if they, whether as Lawyers or in future course of their life either as members of judiciary or as members of Legislature or as the members of the political execution of the country act devoted to the theme of the National Flag bestowing their all life and self to the well being of country and the ideals and objects for which National Flag stand, then rule of law and justice are to prevail and (sic) message beyond doubt of this scene in the film.

14. On behalf of the Stale Government respondent No. 1, this case has been argued by the Government Advocate Sri N. Devadas as well as by Sri H. H. Kaladgi, the learned Govt. Pleader. Both these learned Advocates for the State Government submitted that except for one thing, the rest of the entire picture including that of our charges and charge of theft of the calf of the He Buffalo can be said to be worth being depicted in the context of the whole story of the film, and that it has not got in any manner the tendency of adversely affecting the prestige of the Court or the judicial system of our country. May be that the story writer and film producer have tried to make out some effort or foundation to depict to bring that at certain times, real culprits get acquitted and innocent may get, in spite of best efforts, convicted and that such a situation might create such feelings in ordinary common persons residing in far off villages to the effect thai all depends upon proof of evidence and even if one can secure the false evidence of strong nature, he can succeed and succeed also in proving even the impossibilities such as the one the Bull or He Buffalo Can give birth to a calf and that calf has been stolen and thus can get the conviction of his adversary even if he happens to be an innocent person. But, the theme of the picture appears to dislodge such notions and feelings. The theme of the picture appears to be dislodging such disparate feelings of any common man, common person, if one so enjoys and to bring new hope to them and encouragement to lawyers and Courts of Conscience to find out the truth, and to be to depict that the hands of law are strong enough to deal with such culprits, who purge evidence or appear

as a false witness or those who produce false witnesses and get justice polluted in order to somehow to get success or money and that it finally depicts that the goddess of justice succeeds and prevails over the witch of injustice. The learned Government Advocates also submitted that the incident shown in front of the National Flag being hoisted on the pole in the building of this Court film it was contended to be appearing to throw an idea that the Tricolor National Flag or the pole, where it is unfurled represents the Divine Mother India, its aspirations and the surrendering of before Divine Mother India and whose symbol is the National Flag, definitely presents an idea enlightenment and encouragement for lawful acts and action, an idea of service in the interest of nation and National Institutions including Judiciary. The learned Government Counsel urged, if the Advocates fully devoted to the maintenance of nation, nation's sovereignty, its honour and its legal system with full sense of duty either as a lawyer or on being elevated as a member of the Bench of the Judiciary or as a member of the Political Executive or as a Legislature act as true leaders of public to serve the cause of justice to self, people and Nation the light of justice will always prevail over the darkness, of injustice, and Goddess of Justice will prevail over the dark coloured "witch of injustice". So, the entire theme it has been submitted by the learned Govt. Advocates deserves to be exhibited, except with one modification. Sri Devadas and Sri H. H. Kaladgi submitted that the part of film or movie where the Jamedar of the Judge appears on the Court dias every time during the trial, hearing and decisions of the cases and polluting the mind of the Judge and shown as if he is interfering with the Judge or giving advise to Judge and the Judge shown nodding his head as if accepting Jamedar's suggestion or advise in course of trial or hearing of the case is nothing but interfering with the Courts of justice as well had got a tendency, might not be intended, of lowering the dignity of Courts, but, which may give a very bad impression to the ordinary common peoples, even educated may be misled thereby of such scenes wherever in the entire film appears, need to be removed and proved or deleted or cut-off. The learned Government Counsel for State submitted scenes relating to National Flag and falling of counsel before it in Court premises, in their view, did not appear of them to suffer from breach of law and assertions of petitioners and Shri Mahantesh in that regard, appear to be unwarranted, but yet it needs thorough examination.

15. I have applied my mind to the contentions of the two petitioners -- Advocates as well as to their assisting colleague --Sri Mahantesh. I have also applied my mind to the contentions made by Sri Nanjundaswamy, counsel for respondents 3 to 5 and also to the contentions made by the learned Senior Standing Counsel for the Central Government as well as to the contentions made by the learned Govt. Advocates in the context of film "KONA EEDAITE".

Maintainability of the petition :--

16. As regards maintainability, the present petition has been filed by the Advocates practising in this Court, who allege to be interested in upholding the

dignity, honour of the Court and the judicial system and who were interested that the administration of justice is not marred. They believe, as they claim that once the dignity of the Court is marred, or by any act of any person, the prestige of the Court is likely to be adversely affected, it is their duty to bring it before the Court and seek proper remedy directing non-performance of such an act or to prohibit such persons from doing such acts which adversely affect or which has tendency of affecting the faith of the people, from the justice imparted by the Court and therefore the petitioners have claimed to be entitled to bring this petition for a writ of mandamus or prohibitory order restraining the opposite parties from releasing the film "KONA EEDAITE" in question as well as seeking a direction that the State authorities should also be directed that the film in question if it has got any scene or dialogue having the tendency of adversely affecting the dignity and majesty of the Court, be not released for being exhibited.

17. In my opinion, there is much force in this contention of the petitioners counsel, lawyers, as they are the part of the instrumentality of the Court as Judges are and it is their duty to see that no act of their nor any act of any other person be allowed to adversely affect the dignity and the majesty of the Courts as well as to further see that the faith of the people with reference to the administration of justice by the Court is not marred in any manner and so it is beyond doubt their duty to abstain from such an act which may adversely affect the prestige of the Court on one hand and on the other hand to bring to the notice of the Court such things which have tendency to mar or to adversely affect the prestige of the Court and the judicial system or which have the tendency to adversely affect the faith of the people in the justice administered by the Court and so they can approach the Court and seek such reliefs which may prevent the doing of such acts, which may betray faith of people from the Courts and justice imparted by it. They have also got responsibility to see that honour of the nation is also not adversely affected by the acts of the people, but all that they are expected or entitled to do is to act in accordance with law and by approach to Legal Forum as well.

18. When I so observe, I find support from what has been laid down by Their Lordships of the Supreme Court in this respect, in the case of S.P. Gupta Vs. President of India and Others, Their Lordships observed as under :

"25. There can be no doubt that the petitioners have a vital interest in the independence of the judiciary and if an unconstitutional or illegal action is taken by the State or any public authority which has the effect of imparting the independence of the judiciary, the petitioners would certainly be interested in challenging the constitutionality or legality of such action. The profession of lawyers is an essential and integral part of the judicial system and lawyers may figuratively be described as priests in the temple of justice. They assist the Court in dispensing justice and it can hardly be disputed that without their help, it would be well nigh impossible for the Court to administer justice. They are really

and truly officers of the Court in which they daily sit and practice. They have, therefore, a special interest in preserving the integrity and independence of the judicial system and if the integrity or independence of the judiciary is threatened by any act of the State or any public authority, they would naturally be concerned about it, because they are equal partners with the Judges in the administration of justice."

Justice Tulzapurkar, another Judge in the same decision dealing with the role of lawyers has been pleased to observe as under (at p. 390 of AIR):--

"609. In fact, in the task of administration of justice the role of Judges and the role of lawyers are complementary to each other and the practising lawyers as a class are an integral part of justicing machinery rendering assistance to the Judges in the discharge of their function of reaching justice to the litigants appearing before the Courts; in other words, the practising lawyers, who are nothing short of partners in the task of administration of justice undertaken by the Judges, are vitally interested in the maintenance of a fearless and an independent judiciary to ensure fair and fearless justice to the litigants."

19. That being the position that lawyers being vitally interested in the maintenance of independence of judiciary, its majesties and honour, have got sufficient interest in the subject-matter of the writ petition, in which according to the allegations made in the writ petition, there have been some portions objectionable and likely to affect the prestige of the Court or fair administration of justice and faith of people in the Court and as such it cannot be said of Advocates that the petition at their instance cannot be maintainable.

20. I further find support from another decision of the Supreme Court in the case of Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others, In that case a petition under Art. 129 of the Constitution of India had been moved before the Supreme Court by Sri C. K. Daphtary and 3 other Advocates, bringing to the notice of the Court the contempt alleged to have been committed by the respondents of that case namely, O. P. Gupta and Rising Sun Press. In that case, after issue of notice to the parties of the alleged contempt, an application was filed by Sri O. P. Gupta -- the first respondent, that the petition under Art. 129 of the Constitution was not maintainable and deserves to be dismissed and one of the objections was that the petitioner Sri C. K. Daphtary and other Advocates had no locus standi, to move the petition under Art. 129 of the Constitution. Dealing with that objections, Hon"ble Sri Sikri, C.J., as he then was, delivering the judgment of the Court had been pleased to observe as under (at p. 1151 of AIR):--

"This Court can issue a notice suo motu. Further, the Advocate of this Court, including the President of the Supreme Court Bar Association, are perfectly entitled to bring to our notice any contempt of this Court."

21. His Lordship Hon"ble Sikri, C.J., in paragraph 94, referring to the contentions on behalf of the respondents further observed (at p. 1151 of AIR):--

"Be that as it may, there is nothing in law which prevents this Court from entertaining a petition at the instance of the President of the Supreme Court Bar Association and three other Advocates of the Court. The Bar is vitally concerned in the maintenance of the dignity of Courts and the proper administration of justice."

22. In another case also the question of right of Advocates to file the writ petition on behalf of the citizens for the enforcement of law and protection of fundamental rights of ordinary citizens has been upheld by a Division Bench of Allahabad High Court in the case of Vishwa Hindu Adhivakta Sangh v. Union of India, reported in 1993 LCD 112 the Division Bench after having referred to the decision of the case namely Bangalore Medical Trust Vs. B.S. Muddappa and others, where their Lordships of the Supreme Court had laid it down that public spirited citizens having faith in rule of law are rendering great social and legal service by espousing the cause of public nature and that they cannot be ignored or overlooked on technical or conservative yardstick of rule of locus standi or absence of personal loss or injury."

23. The Division Bench of the Allahabad High Court (consisting of Hon"ble Hari Nath Tilhari and Hon"ble A. N. Gupta, XL), delivering the judgment in the above case --Vishwa Hindu Adhivakta Sangh v. Union of India, observed as under:--

"Applying the above principles to the facts of the present case, it can well be said that the petitioner. Advocates Association and their members have got a claim. Apart from their own individual rights, they have responsibility towards public at large and to come forward to espouse the cause of many persons of weaker section who could not come to Court to agitate their rights enshrined under Art. 25 of the Constitution of India of faith and religion and patriotism in the sense of love for nation and for the national heritage and for all those great men including the great Rama whom the people of this country worshipped as God and in the words of Poet Iqbal as "IMAM-A-HIND" and who as well as has been recognised by the framers of the Constitution as a national figure of cultural heritage of India as has been mentioned above."

24. The above observations of Their Lordships of the Supreme Court and Allahabad High Court, lead me to hold that even where the counsel find or reasonably believe that there is likelihood of the prestige or dignity of the Courts or the judicial system is going to be adversely affected by some act likely to be done by some agency, even by some individuals, even after obtaining certain licenses, they are entitled to approach the Court, for seeking suitable orders, restraining the doing of such acts which have tendency of adversely affecting the prestige or dignity of the Court or which has tendency to adversely affect the faith of people in the judiciary or where they feel that the honour of Nation or the National Flag is likely to be adversely affected. It is another thing that in the final resort after examination of the facts, Court may on merits come to its conclusion other than the apprehension of the petitioners as alleged and dismiss the petition, but that would not be a dismissal on account of maintainability thereof,

instead it may be a dismissal of petition on merits. Thus in my opinion the petitioners are entitled to maintain the petition.

Brief Synopsis and the story of the film "KONA EEDAITE".

25. Before proceeding with the merits of the case and other contentions raised by learned counsels for the parties, it will be just and proper to have a brief synopsis of the story. It runs as under:--

26. There are two girls by name -- Smitha and Shanthi, who as per story are the daughters of two eminent Advocates --Nagaraj Rao and Seshagiri Rao. They are well monies persons. These girls are shown to be law students and they fall in love with their college mate one Krishna, who is also a poor law student. Later the girls have been shown not to be very brilliant but they secure gold medal by some other means and that boy Krishna though shown to be a brilliant boy, he is deprived of that gold medal, Krishna belongs to a poor family. These two girls, fall in love with their college mate Krishna and try to win over Krishna towards themselves separately, i.e., each one tries to win over Krishna. Krishna rejects their offer of love. These two girls are shown, in spite of their best effort, pomp and show, definitely failed in their efforts to win the heart of that boy. Later on plans are hatched by the two Advocate fathers of the two girls. The father of one of the girls mentioned above gets a criminal case filed against that boy with the allegations to the effect that rape had been committed by that boy Krishna, on the daughter of that Advocate namely one of the girls, while the father of the other girl student gets a case filed against that boy that the said poor boy Krishna had been married to the daughter of the second Advocate and thereafter that boy Krishna is alleged to have been discovered to be impotent and declaration to that effect is sought in the other case. Both the cases are tried separately but witnesses examined in both the cases are almost same, particularly the doctor and those witnesses have been shown to be purge red witnesses, but in both the cases the same Judge is shown to be delivering the judgments or order separately, in one case at 11.30 a.m. and in other at 2.30 p.m. which suffer from conflict of findings and decisions. In the case of rape, on the basis of the evidence, that is shown, finally, Krishna is held to be guilty of committing rape, while in the latter case on the basis of the false evidence same witnesses (later shown to be false), he is held to be and declared to be impotent and thereby it has been shown that by false evidence anything can be proved, even that which is impossible. Even in a case of murder it has been shown that, because of the prosecution agencies and police having been won over, by concocted and false evidence, having been produced by the police, the case of murder is shown alleged to be that of one sheer suicidal and the accused on that basis gets himself acquitted though occurrence had been indicated and shown to be a case of murder. Another story is shown, which indicates as if a case full of impossible allegations can be established by false and concocted evidence, namely the case of theft of the calf born to a bull or He Buffalo. It is shown that the ordinary people and villagers start thinking and the persons interested in

getting concocted cases established, start thinking that even the impossibility can be proved in the Courts by production of false evidence. The scene thereafter takes turn that on knowing the innocent Krishna's story, a lawyer with genuine interest in the profession of law -- Vishnu, who had appeared for Krishna, who had failed, found himself disgusted falls on the earth, i.e., he is shown to have entered into the premises of the Court building namely, the building of this Karnataka High Court and completely falls down before the National Flag, after having taken off his gown, the Robe, coat, band etc., in sheer frustration before the National Flag and at the place where the National Flag is hoisted. Within a few minutes of his falling down completely in front of the National Flag, that man regains his consciousness, enlightenment and the sense of duty and then Krishna's friend Vishnu, with an application ., of his mind, intellect and labour and faith in the system of judiciary, conducts the case and by his intellectual exercise, cross-examination, witnesses, succeeds in establishing that Nagaraj Rao and Scshagiri Rao -- the two Advocates had tried to put the innocent Krishna behind the bars for the simple reason of Krishna's not accepting either of the daughters of two Advocates, to marry in spite of offer or gestures of love made by the girls and though he at an early stage had been put behind the bars, on the basis of false and concocted evidence. But later on in the changed situation, the Court succeeds in deciphering chaff and grains and finds out the falsity of the cases and evidence ted by Nagaraj Rao and Seshagiri Rao and their daughters as well as of other witnesses examined on their behalf and the Court is shown to have convicted and sentenced the two Advocates namely, Nagaraj Rao and Seshagiri Rao and their daughters as well as other witnesses, on the charge of surgery and of giving or having produced false evidence on the one hand and on the other getting his colleagues Krishna acquitted.

27. The story and its theme, though initially at times it may appear that injustice is going to prevail over justice or that one can win his cases by producing false evidence, concocted evidence, purchased evidence, appears to show and exhibit to its viewers the idea that whatsoever may be the circumstances, it is the virtues win over the vires, justice prevails over injustice and that the false and concocted witnesses or evidence or persons producing false and concocted evidence, suffer and gel their due punishment. In the end there is a Shloka taken from "Geetha", and quoted, in it -- which reads as under:--

"Yada Yadahi Dharmasya Glanirbhavathi Bharatha, Abhyuthanam Adharmasya Tadatmanam Shrujamyaham."

28. When I monitor and examine the story with a balanced mind, I find and in my opinion, the basic theme of the story as depicted in the film produced before the Court is appreciable, which glorifies the justice and judicial system and which really imparts lessons to the persons involved in the field of law and administration of justice -- social, economic and political, whether they be lawyers or others, that every one of us who is involved in that process and works in order to help the Nation in attaining goal before us of making India -- the

Bharat, a real democracy, where justice is to prevail with rule of law to be order of day in all spheres opole social, economic or political, they "each one of us" will have to surrender his self or egos or selfish motives completely to the goal of justice and the goal which is before the Nation, its ideals, for which this Nation lived and lives. We have to bestow ourselves and our individual self to the cause of the honour of the Nation, Nation's culture, a complete "surrender for the cause of and honour of the nation and The National Flag which has been shown as a Symbol of Nation." It has been attempted and tried to be shown that this great symbol of Nation and its oneness and unity i.e., the Tricolor National Flag, shows light and sense of duty, as behind it is a divine power, divine Mother India and the divinity makes a man who is confused and is unable to find way, a man full of vigour, enlightens the path of duty, as confused Arjun get the insight, light and enlightenment and his own real Dharma and duty towards the Nation to discharge the duty and to implement and "enforce the rule of Dharma -- the rule of Law under the shelter of divine power of Lord Krishna adopted and accepted as one of the National character of India and its cultural heritage as the adoption and depiction of scene of Mahabharat, where Lord Krishna has been shown and depicted at the beginning of Chapter IV of the Constitution of India as originally adopted and signed by all members of the Constituent Assembly on 24-1-1950, -- giving lesion of Nish Kam Karma Yoga to frustrated Arjun (as per one copy of original Constitution available). So in my opinion the them of Film and its story appears to be appreciable and not one which may be said to require the Court to ban the exhibition or release of the film.

29. It may be taken note of that to realise the bliss or pleasure of light of the day, one has to realise and to pass, for some times through the dark holes or through the darkness of the night. Day has to come after night has gone. If there are miseries, happiness, pleasant ness have also to come. Unless a person realises the results or knows about the results of evil acts and the consequences thereof, he may not be able to realise the good things, such as justice -- social, political and economic and to exhibit that, both the sides have to be brought to the notice along with their consequences and enlightenment as to how can good or justice prevail over evil or injustice and this had been done.

30. We may take the story of "Ramayan". Ram's importance and importance of his deeds enhanced why? Because he had to face the King -- we may call Rakshasa Raj --Ravan, who though was very learned of his time, was known as pandit, a great demon no doubt and he had been or at time was depicted and shown to be exploiter of the weaker and Ram had been shown as one who protected the poor, weaker and exploited one.and then there had also been shown to be a right between just and unjust, between exploiter and the exploited or the one raising voice against exploitation. If both pictures would not have been depicted, perhaps the story of Ram and that of Anjaneya - Bhagwan Marutinandan who worked with Rama in struggle and battle against the exploiter would not have been immemorial and would not have attained the place in our life as part of our cultural heritage as it has got. That even today it is being

remembered and after getting our independence when we have adopted our new constitution, framers of the constitution adopted Rama as one of the National and constitutional heroes of unification of India, Indian culture and depicted the portrait of Rama on the original Constitution, he being shown as coming on Pushpak with Seetha and Lakshman, after having conquered over the King of Lanka Ravan (See Chapter III of Original Constitution bearing signature of members of Constituent Assembly).

31. So we have to see the story involved in the present case and examine it in the context of its basic theme and various aspects harmoniously and when I so examine it, I find myself unable to issue the direction that the film be not exhibited, instead I allowed it to be released and exhibited by the short order dated 2-2-1995 (but subject to certain modifications or cuts for reasons to be given later on.

32. There is no doubt that the film has been a subject-matter of the proposing and examination during the period i.e., the period commencing from the time when it was first witnessed by the petitioners and the date on which the certificate was issued or the writ petition had been filed. It has been thoroughly examined and scrutinised by the Censor Board and while issuing the certificate the Censor Board has issued the endorsement containing what is to be cut and deleted. It is being produced herewith in extenso as under:--

"Endorsement on certificate No. 19673-U, dated January 16, 1995, to the film "Kona Edhaithe". (Kannada-35 m.m., Colour) (REVISED)

Declared length, 3498.05 Mtrs. in 14 Reels

Cuts:

Feet/Frs.

1.

Reel-4

In the song domalu domalu, the hero falling over heroine and rolling over to be deleted. . .Deleted

8.03

2.

Reel-6

The visual of Krishna throwing Musambi and grapes on Shanthi to be deleted. . .Deleted

12.01

3.

Reels-8 &9

The following lines (only dialogues) appearing in reels Nos. 8 & 9 to be deleted ::
The taluka court theerpu Jilla Court ke preshe Jilla Court na nyaya high court halli maya High Court Kotre Shikshe, Supreme Court nalle rakshe, Supreme Court nalle sothre devara hathira bikshe". .Deleted

Sound only.

4.

Reel-4

The chase of nyaya devate by anyaya devate to be reduced by 50%(Reduced & length retained. (67.04 Ft.)

53.13.

5.

Reel-9

The dialogue of anyaya devate (artha viathaea ninna nyaya murthygalindaane ninnannu hodestheniea ninna nyaya murthy galindale ninnanna aachet halli suthene, astee all, ea ninna nyayamurthy ninnannu ajtaathalannagi maadithene, istadaru neenu ille iddeeyalla to be deleted).(visual also deleted)

66.05

6.

Reel- 10

Delete the words "Court" in the statement of the clerk ee court-nalle nadeyuva anyaya galannu thadeyalarade. . .Deleted

Soundonly,

7.

Reel- 10

Delete the words "mammulagi nimmameneli hengasarige thingalu thappade anthittuko eenagalhe guru, appearing in the statement of Ramaiah.(Visual also deleted).

7.03

8.

Reel- 10

The dialogue of lady lawyer "ayyo nanage aa bhagya ilia bidi nanna savathi - varsha varshanu basiraaguthale" to be deleted.(visual also dieted)

34.05

9.

Reel- 10

The entire dialogue and visual sorting from "padrnashrec prasasthi pateda.....naniman manthri mandala belada hage" to be deleted. (visual also deleted)

54.07

10.

Reel- 11

Delete the entry of Umashree into the Court raising her hand and repeated placing it on Geetha (Visual).

22.15

11.

Reel-14

The words Thammantha nyayamurthege addatharika elitha jddare" appearing in the dialogue of Seshagiri to be deleted. (visual also deleted)

7.09

12.

Reel- 14

The entire dialogue making references to justice Venkatachalaiah and others to be removed. (Shot No. 149 to the end of the reel) Deleted

Sound

only

266.13 Ft.

Total cuts OR

81.31 Mtrs.

Final length of the film after cuts will be 3417.00 Mtrs. in 14 Reels.

Bangalore

Dated 16-1-95.

Sd/-

Regional Officer

for Chairman,

Central Board of Film Certification.

Scene as to tussle between Goddess of Justice Qua Goddess or Witch of Injustice.

I wish to proceed with the other contentions of the learned Counsel for the petitioner. That the petitioners submitted that the first objectionable item in the film is depiction of Goddess of justice being chased in the Court Hall by the Goddess or witch of injustice. This really leads or is likely to lead one to think that, in the Court Halls injustice prevails and justice is being chased by evils. Petitioners and their colleague when advanced this argument, they failed to take note of, that the picture does not end therewith, instead the picture runs and it depicts finally that a man of action having devotion to the goal before him and taking inspiration from the Nation and the culture of this Nation, which is portrayed as being represented by Tricolor National Flag, brings out irrespective of whatsoever darkness may come, for some time and whatsoever black dark clouds may cover for some time, in the final resort truth and justice and succeeds to attain real goal. It is Goddess of Justice that finally prevails and the Demon or the Witch of injustice gets a death blow from the hands of Goddess of justice. The exploitation comes to an end and those producing false and purgered evidence do not get free, but they get the due conviction and punishment for purgery. Without showing the evil effect of such evil deeds, the worth of virtues namely, the justice which we call Goddess of justice and its victory over the injustice could not be depicted. So if we take the two that scenes, which indicates the depiction of Goddess of justice in the initial stage being chased by Witch of evils and falsehood in the form of Witch of injustice is non-separable from later half and final scene and that scene has to be looked into in the context of entire story, its scenes, the theme and the final result. The final result and the theme really beyond doubt is that the justice is to prevail over injustice, provided the Lawyers and all and all those involved, in doing justice to the people, in assisting the flow of justice to people in every sphere even on the administrative side, act with insight, act with devotion, with earnestness towards the goal, towards the ideal which is represented by the National Flag, justice is bound to prevail in every sphere of life. So I do not think that it can be said to be any objectionable portion in the context of entire film and the whole theme thereof.

Scene as to theft of Calf of He Buffalo :

33. Another argument had been raised with reference to the part of the story where it is alleged and depicted that even the calf of the buffalo can be stolen and its theft can be proved by production of false evidence. It was urged that such a scene may create wrong impression. If we look to this portion in the context of entire theme of this film, it does not appear to have been depicted to show nor does it appear to have been depicted to show nor does it appear to make one think that any one can successfully prove by evidence something that is an impossibility. No doubt this portion of the story depicts the feeling or

thinking of frustrated people who at times may feel frustrated, where there is some fault in deciphering grain from the husk, from finding of the truth from the falsehood, may be because of incomplete or defective cross-examination of or the like or witnesses or like being won over and the culprits gets acquitted or innocent persons are convicted. This portion of He Buffalo's calf being stolen depicts only the mental status of frustrated mind, but again this scene has to be viewed along with the other latter part of the story that those who think so or entertain such thinking they should clear off their heads of such notions. Hands of law and the arms of justice are long and learned Counsel of the Court are well competent, provided that they are devoted to the sense of duty towards the Narain, the national objectives, objects and the existence of the Institution of Court that they can bring out the truth and falsehood cannot be allowed to prevail in the Court and justice is always to prevail in the Court, as our Judiciary is alive. Our Goddess of Justice is neither blind nor its eyes tied with dark black rapper or clothes. Its eyes are open to help deciphering of truth from falsehood, justice from injustice, good from evil, the exploited from exploiters. It depicts Goddess of Justice dressed in which i.e., pure, full of purity and open eyed gives a message of purity, fairness, fearlessness and devotion to Dharma i.e., law and capacity to differentiate between right and wrong, just and unjust and gives call to all of us to think and ponder over the question if depiction of Goddess of Justice in Courts as blind or with eyes folded by black cloth is just and proper.

34. Another submission had been made on behalf of the petitioners that the scene that has been depicted in the film about the frustrated Lawyer who comes out of the Court, throws his coat and gown and in utter desperation throws himself at the place where the National Flag is hoisted in this Court and the contention has been made to the effect that this scene is objectionable, as it affects the sanctity of the Lawyers' uniform and the uniform of the Court and it also according to the Counsel for the petitioners appears to be one discrediting the honour of the National Flag, and the scene is against law prohibiting exhibition or use of National Flag. Scene as to Tricolor National Flag and Action of desperate Lawyer :

35. I have applied my mind to this aspect of the matter with utmost seriousness. The scene is that the Lawyer appears to be frustrated looking to his failure in the initial stage to decipher the right from the wrong and to bring out the truth from the cover of or from the falsehood or untruth and false evidence. He finds that evil to be prevalent everywhere in whatever form it may be, in the earlier two instances of Krishna being convicted for rape as well as being declared impotent on account and on the basis of false and concocted evidence and the murderer getting acquitted on the basis of false and purgered evidence or distorted weak type of evidence adduced by the prosecution or the police at the instance of the guilty persons, a case of murder is alleged, presented and shown as if that was a case of suicide. That lawyer being frustrated with the shadow of clouds of falsity and concocted evidence is shown to have lost initial faith in himself and in his profession as a lawyer. Desperately if he is shown to have thrown out his gown

and coat in front of the National Flag, what does this depict? It depicts the desperate feelings of a person who has lost his heart, Lost his mental equilibrium and his becoming frustrated on account of circumstances prevailing in the present day social order everywhere and then frustrated as he is, he really surrenders before the divine power which is enshrined in and all round the symbol of this Nation, the honour of this Nation, namely; the Tri Colour National Flag hoisted in the Court premises. He does not continue to be lying down simpliciter. He gets an inspiration and sense of duty as the divine Mother of India and of the cultural heritage of this Country. To surrender before the National Flag and the (sic) sense of duly makes him realise as to what he has to do. He becomes a man of balanced mind and man of conviction towards national goal of obtaining or procuring justice -- social, economic and political and becomes aware of his duties and performs it with zeal and enthusiasm now and then succeeds in bringing the justice and attains the goal. Can such a scene be said to be derogatory? It really gives a message, which our National Flag gives us, not only to the Judges or Lawyers but to the. people of this Country who were involved -- whether working as the members of political executive or a judiciary or of legislature, who are in the helm of affairs of the Country, as well as those who assist in attaining of that goal by the three organs that we have to first surrender to -- ourselves and our individual self, to the cause for which our National Flag stands. It is then the real sense of duty will arise, an enlightenment may come, we will be able to attain the goal set up by the Forefathers who have brought independence after a long struggle and gave the National Flag to this Nation and a Constitution. Let us realise and examine for a moment the importance of the National Flag, and the message it imports.

Tri Colour National Flag :

36. Article 51 of the Constitution of India, which has been inserted by 42nd Constitutional Amendment Act of 1976, brings out in clear terms what National Flag directs or inspires us to follow and to do.

37. It is the need of the time that the children and the people of India must know and remember the sanctity and importance of that Flag and must take and listen the message which it gives. That message is really enlightening and this is what has been depicted in this picture. This National Flag has been the source of our inspiration and it encouraged many to lay their lives to the cause of the country and in our struggle of Freedom and to save its honour and without being of frightened even by the bullets of the British imperialism of the foreigners or the like. This Flag originally had three colours --Red, White and Dark Green and change therein was adopted on the recommendations of All India Congress Committee by its resolution of August, 1931, which read as under:--

"The flag to be three coloured, horizontally arranged, as before, but the colours shall be saffron, white and green in the order stated here from top to bottom, with the spinning wheel in dark blue in the centre of the while stripe; it being understood that the colours have no communal significance, but that saffron

shall represent courage and sacrifice. white peace and truth and green shall represent faith and chivalry, and the spinning-wheel the hope of the masses."

38. A.I.C.C. considered and adopted it as above. When India became free a Committee for this purpose was appointed in July, 1947 with Dr. Rajendra Prasad as its Chairman and other eminent persons being there as members of the Committee, and Pandit Jawaharlal Nehru as the special invitee therein. The committee panel in its proceedings decided on July 18, 1947, that Hon"ble Pandit Jawaharlal Nehru shall move the resolution in constituent assembly in the following terms.-

"The National Flag shall be a horizontal Tricolor of deep saffron (kesari), white and dark green in equal proportion. In the centre of the white band, there shall be a Wheel in navy blue to represent the Charkha. The design of the Wheel shall be that of the Wheel (Chakra) which appears on the abacus of the Sarnath Lion Capitol of Ashoka."

39. It was also resolved that after the Assembly has approved the Flag, President of the All India Women"s Conference should be formally invited to present a flag of the approved design on behalf of the women of India to the Nation.

40. While presenting the resolution with regard to the National Flag, Sri Pandit Jawaharlal Nehru observed and said.-

"I remember and many in this House will remember how we looked up to this flag not only with pride and enthusiasm but with a tingling in our veins, also how, when we were sometimes down and out, then again the sight of this flag gave us courage to go on."

40A. He further said while addressing the Constituent Assembly as under:--

"It is the flag which has been variously described. Some people, having misunderstood its significance, have thought of it in communal terms and believe that some part of it represents this community or that. But I may say that when this Flag was devised there was no communal significance attached to it. We thought of a design beautiful to look at. We thought of a Flag which would in its combination and in its separate parts would somehow represent the spirit of the Nation, the tradition of the nation, that mixed spirit and tradition which has grown up through thousands of years in India. So we devised this Flag. Perhaps I am partial but I do think that it is a very beautiful Flag to look at purely from the point of view of artistry and it has come to symbolize many other beautiful things, things of the spirit, things of the mind, that give value to the individual"s life and to the nation"s life, for a nation does not live merely by material things, although they are highly important. It is important that we should have the good things of the world, the material possessions of the world, that our people should have the necessities of life. That is of the utmost importance: Nevertheless, a nation, and especially a nation like India with an immemorial past, lives by other things also, the things of the spirit. If India had not been associated with these

ideals and things of the spirit during these thousands of years, what would India have been? It has gone through a very great deal of misery and degradation in the past, but some how even in the depths of degradation, the head of India has been held high, the thought of India has been high, and the ideals of India have been high."

41. Dealing with the Charkha or the wheel, Pandit Jawaharlal further said;

"Our minds went back to many wheels but notably one famous wheel, which had appeared in many places and which all of us have seen, the one at the top of the capitol of the Ashoka column and in many other places That wheel is a symbol of India's ancient culture, it is a symbol of the many things that India had stood for through ages. So we thought that this Chakra emblem should be there, and that wheel appears..... It carried on its cultural tradition, not unchanging, not rigid, but always keeping its essence, always adapting it self to new developments, to new influences. That has been the tradition of India, always to put out fresh blooms and flowers, always receptive to the good things that it receives, sometimes receptive to bad things also, but always true to her ancient culture."

Therefore this Flag that I have the honour to present to you is not, I hope and trust, a Flag of Empire, a Flag of Imperialism, a Flag of domination over anybody, but a Flag of freedom not only for ourselves, but a symbol of freedom to all people who may see it."

42. Supporting the resolution. Dr. S. Radhakrishna who later had been the President in India spoke very high of the Tri Colour Flag and he said :

"The Flag links up the past and the present. It is the legacy bequeathed to us by the architects of our liberty. Those who fought under this Flag are mainly responsible for the arrival of this great day of Independence for India..... What is essential today is to equip ourselves with new strength and with new character if these difficulties are to be overcome and if the country is to achieve the great ideal of unity and liberty which it fought for."

Dr. Radhakrishna further said, explaining the white colour:-

"White means the path of light. There is darkness even at noon as some people have urged, but it is necessary for us to dissipate these clouds of darkness and control our conduct by the ideal light, the light of truth, of transparent simplicity which is illustrated by the colour of white.

We cannot attain purity, we cannot gain our goal of truth, unless we walk in the path of virtue. The Ashoka's wheel represents to us the wheel of the Law, the wheel of the Dharma. Truth can be gained only by the pursuit of the path of Dharma, by the practice of virtue, Truth, Satya, Dharma, Virtue, these ought to be the controlling principles of all those who work under this Flag. It also tells us that the Dharma is something which is perpetually moving This wheel is a rotating thing, which is a perpetually revolving thing, indicates to us that there is a death in stagnation. There is life in movement. Our Dharma is Sanatana,

eternal, not in the sense that it is a fixed deposit but in the sense that it is perpetually changing. Its uninterrupted continuity is its Sanatana character. So even with regard to our social conditions it is essential for us to move forward.

The red, the orange, the Bhagwa colour represents the spirit of renunciation. It is said:

Sarva tyaga rajadharmesu drasta

All forms of renunciation are to be embodied in Raja Dharma, Philosophers must be Kings. Our leaders must be disinterested. They must be dedicated sprints. They must be people who are imbued with the spirit of renunciation which that saffron colour has transmitted to us from the beginning, of our history. That stands for the fact that the World belongs not to the wealthy, not to the prosperous but to the meek and the humble, the dedicated and the detached. That spirit of detachment, that spirit of renunciation is represented by the orange or the saffron colour and Mahatma Gandhi has embodied it for us in his life and the Congress has worked under his guidance and with his message. If we are not imbued with that spirit of renunciation in these difficult days, we will again go under.

The green is there -- our relation to the soil, our relation to the plant life here on which all other life depends. We must build our Paradise here on this green earth. If we are to succeed in this enterprise, we must be guided by truth (white), practise virtue (wheel), adopt the method of self-control and renunciation (saffron). This Flag tells us "Be ever alert, be ever on the move, go forward, work for a free, flexible, compassionate, decent, democratic society in which Christians, Sikhas, Moslems, Hindus, Buddhists will all find a safe shelter."

43. It will also be not out of place to refer to certain other members of the Constituent Assembly and what they said in this regard.

44. Dr. Mohammad Saadulia, while addressing the Constituent Assembly, he speaks and says:--

"In my opinion the Flag symbolizes the evolution of our aspirations, the fulfilment of our struggles and the ultimate result of all our sacrifices..... I am glad, Sir, that the Flag remains as it is and that the amendments proposed were not moved, for India is represented in the different colours of this Flag. India is very well noted for her spiritual attainments. Everywhere it is admitted that India has got a great spiritual message to send out to the different countries of the world. The saffron, as is well known, is the colour of all those people who live the spiritual life not only among Hindus but also among Muslims. Therefore, the saffron colour should remind us that we should keep ourselves on that high plane of renunciation, which has been the realm of our Sadhus and saints, Pirs and Pandits.....

Next I come to the white portion. White both among Hindus and Muslims is the emblem of purity. I congratulate the High Command of the Indian National

Congress that by a bold stroke of imagination they took up the white cap as the symbol of their creed. The presence of the white portion in this Flag should remind every one who takes it up that we must be pure not only in word but also in deed. Purity should be the motto of our life, individually as well as in connection with the State.

Lastly, Sir, green reminds me of the fact that it was the emblem of the Flag which was raised by Bahadur Shah in 1957. But it has more than a sentimental or symbolical value to us Muslims because green was the colour of the Flag of the Muslims from the time of the great Prophet of Arabia thirteen centuries ago."

He further says about Dharmachakra.-

"Dharmachakra of Ashoka reminds us of the condition of the people at the time of that Buddhist Emperor of India. He ruled not for his personal aggrandisement but for the contentment, peace and prosperity of the people under his charge. This emblem now embodied in our National Flag ought to remind every administrator and every citizen of the federation of India that we should forget the past and look to the future and try to carry on the tradition of that Buddhist Emperor Ashoka..... This Chakra was a religious emblem and we cannot dissociate our social life from our religious environments."

45. The Nightingale of India and the first Governor of U. P., and the Member of Constituent Assembly Smt. Sarojini Naidu, while addressing the House on the occasion when the resolution regarding the Tricolor National Flag was introduced and placed before the Constituent Assembly by Pandit Jawaharlal Nehru, said.-

"I think that the time has come in the onward march of the world-civilization when there should be no longer any sex consciousness or sex separation in the service of the country. I, therefore speak on behalf of that ancient reborn Mother with her undivided heart and indivisible spirit, whose love is equal for all her children, no matter what corner they come from in what temples or mosques they worship, what language they speak or what culture they profess."

"Many many times in the course of my long life, in my travels abroad -- for I am vagabond by nature and by destiny, I have suffered the most terrible moments of anguish in free countries, because India possessed no flag. A few of those moments I would like to recall.

On the day when peace was signed at Versailles after the last war, I happened to be in Paris. There was great rejoicing everywhere and flags of all nations decorated the Opera House. There came on the platform a famous actress with a beautiful voice, for whom the proceedings were interrupted while she wrapped round herself the flag of France. The entire audience rose as one man and sang with her the National Anthem of France -- the Marseillaise. An Indian near me with tears in his eyes turned to me and said "When shall we have our own Flag?" "The time will soon come" I answered. "When we shall have our own Flag and our own Anthem",

I was asked to speak at a peace celebration in New York soon after the peace had been signed. Forty-four Nations had their Flags fluttering in the great hall in which the Assembly met. I looked at the Flags of all the the Nations and when I spoke I cried that though I did not see in that great Assembly of Free Nations the Flag of Free India, it would become the most historic Flag of the world in the not distant future."

The Utterances and observations of the one of the great ladies Tndia has produced -- "what an Indian with tears in eyes has said to her or asked of her, are clearly indicative of the pathos and anguish of a patriot when he or she found National Flag to be absent or was not to be there in the Conference Hall. Smt. Naidu continuing her address said -

"But here today we retrieve that sorrow and that shame: we attain our own Flag, the Flag of Free India. Today we justify, we vindicate and we salute this Flag under which so many hundreds and thousands of us have fought and suffered. Men and women, old and young, princes and peasants, Hindus and Muslims, Sikhs, Jains, Christians, Zorostrians, all of them have fought under this Flag. When my friend Khaliquzzaman was speaking, I saw before me the great patriots, my friends and comrades of the Muslim community who, had suffered under this Flag. I thought of Mohamed Ali, of Shaukat Ali, of of Ansari and of Ajmal Khan. I could mention the smallest community in India, the Parsi community, the community of that grand old man Dadabhai Naoroji, whose grant-daughters too fought side by side with the others, suffered imprisonment and made sacrifices for the freedom of India. I was asked by a man who was blind with prejudice : "How can you speak of this flag as the flag of India? India is divided.". I told him that this is merely a temporary geographical separation. There is no spirit of separation in the heart of India. Today I ask one and all to honour this Flag. That wheel, what does it represent? It represents the Dharma Chakra of Ashoka the Magnificent who sent his message of peace and brotherhood all over the world. Did he not anticipate the modern ideal of fellowship and brotherhood and cooperation?. Does not that wheel stand as a symbol for every national interest and national activity? Does it not represent the Charkha of my illustrious and beloved leader, Mahatma Gandhi and the wheel of time that marches and marches without hesitation and without halt? Does it not represent the rays of the Sun? Does it not represent eternity? Does it not represent the human mind? Who shall live under that flag without thinking of the common India? Who shall limit its functions?. Who shall limit its inheritance? To whom does it belong? It belongs to India. It belongs to all India. Pandit Jawaharlal Nehru told us that India has never been exclusive. I wish he had added: India welcomes all knowledge from friend and foe alike"..... Mrs. Naidu further told the importance of the Flag and said.

"Remember under this Flag there is no prince and there is no peasant, there is no rich and there is no poor. There is no privilege; there is only duty and responsibility and sacrifice."

46. These addresses really reveal the basic theme and the basic idea that lies behind our National Tri colour. It gives the message to us of courage, spirit, sacrifices, peace, truth and chivalry, the green revolution and hope of masses.

47. We those who have been bestowed with the responsibility of making India, whether we are serving the Nation in Legislatures or in judiciary or the members of political executive, we can attain our goal, our object of keeping the Flag and honour of the Nation high and building up of India, as our preamble of Constitution indicates that it cannot be attained unless we walk in the path of virtue, unless we bow to the rule of law or to the rule of Dharma. Dharma represents law and practice of virtue i.e., truth and we have to act constantly with those objectives in view, with a spirit of renunciation, dedication and detachment. The essential factor with reference to the flag that it has to be of no other cloth but it has to be of Khadi, hand spun, be cotton or silk, it represents the idea of the working masses and encouragement to cottage industries to provide part time job to the people involved in agriculture. It may be mentioned here that the above quotations have been taken from Volume-1 of B. Shiva Rao's work -- The framing of India's Constitution, Select Documents.

48. The above mentioned theme has again been communicated in the concluding Session of the Constituent Assembly, when the Constituent Assembly had completed its task of framing of the new Constitution by the President of the Constituent Assembly Dr. Rajendra Prasad and it is worthy of being noticed. In his concluding address, Dr. Rajendra Prasad, apart from other things said as under :--

"A law giver requires intellectual equipment but even more than that capacity to take a balanced view of things, to act independently and above all to be true to those fundamental things of life -- in one word -- to have character. It is not possible to devise any yardstick for measuring the moral qualities of a man and so long as that is not possible, our Constitution will remain defective."

49. Dr. Rajendra Prasad, further emphasises in the course of his concluding address.-

"Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provisions in it which appear to some to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the people at large. If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them. There is a

fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences and so forth. It requires men of strong character, men of vision, men who will not sacrifice the interest of the country at large for the sake of smaller groups and areas and who will rise over the prejudices which are born of these differences." .

50. Dr. Rajendra Prasad in the course of his address further said.-

"Mahatma Gandhi laid stress on the purity of the methods which had to be pursued for attaining our ends. Let us not forget that this teaching has eternal value and was not intended only for the period of stress and struggle but has as much authority and value today as it ever had before. We have a tendency to blame others for everything that goes wrong and not to introspect and try to see if we have any share in it or not. It is very much easier to scan one's own actions and motives if one is inclined to do so than to appraise correctly the actions and motives of others. I shall only hope that all those whose good fortune it may be to work this Constitution in future will remember that it was a unique victory which we achieved by the unique method taught to us by the Father of the Nation, and it is up to us to preserve and protect the independence that we have won and to make it really bear fruit for the man in the street. Let us launch on this new enterprise of running our Independent Republic with confidence, with truth and non-violence and above all with heart within and God over head."

51. Just representing the very theme of the India's cultural heritage and the message of the Divine Mother Geetha.-

"Yatra Yogeeshwaraha Krishnaha Yatra Partha Dhanur Dhara Tatr Shri Vijaya Bhooti Dhurvaneeti Matr Mum."

52. Really the National Tricolor Flag represents the sovereignty of the Nation i.e., India its culture, its cultural heritage and its unity and independence, and all that for which our Divine Mother India -- Bharat i.e., our nation stood or stands. This being the message of the Constitution as mentioned above and as appearing from the various addresses referred to above, the representation of the National Flag and the representation of disgusted pleader or the lawyer from the miseries of life and other evils, when he surrenders to the grandeur and majesty of the National Tricolor and the things it represents, the ideals it represents, a new enlightenment comes to him and then he becomes a man of action as Dharnudhari Arjun prepared to use his "Arms", fight against exploitation. Arms in the sense of his intellect, his character, his learning and his complete devotion to the rule of law, helps him in changing the whole picture, bringing the new idea of complete victory of the Goddess of Justice over the witch of injustice. Is it illegal or forbidden by law, does it amount to mis-user or improper user. In my humble opinion the presentation of the National Flag or use of National Flag, to indicate an idea, that underlines in and around the Tricolor cannot be said to be an act

dishonouring, instead it is an act bestowing the honour to the National Flag.

53. A doubt has been expressed about the legality of use of Tricolor National Flag in the scene and picture as depicted. In my opinion that submission or doubt which has been expressed by the petitioners or Shri M. Hosmath as well as by Sri H. H. Kaladgi, Govt., Pleader is based on mis-conception, as appears from consideration of relevant provision of law hereinafter.

54. Article 51A of the Constitution of India, imposes fundamental duties on citizens. It reads as under :--

"51.A. Fundamental duties.-- It shall be the duty of every citizen of India -

(a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement."

55. A perusal of the above Constitutional provision reveals that it imposes fundamental duties on every citizen of India and amongst others a duty to maintain and uphold the Sovereignty of India, its Constitution as well as the duty to honour the National Flag and National Anthem and cherish the great and noble ideals of our freedom struggle.

56. Every duty carries corresponding rights and it impliedly confirms a right including there to make use of National Flag in a manner that may be keeping pace with the honour of the National Flag and the honour of the Divine Mother -- India, i.e., our National and cultural heritage and with the duty to uphold and maintain the great ideals for which this nation always stood and to build up the

character and life commensurate therewith and the ideals depicted by its colour and Dharma Chakra. It can be used to inculcate in people and in children and the future generation, the great theme and noble ideals for which it stands maintaining its honour with carefulness that its honour may not be damaged and special responsibility as such which it appears to have been cast on holders of constitutional office through which the sovereign authority or sovereignty of country is being exercised namely -- the political executive, judiciary and the legislature, apart from defence forces. The Tricolor Flag as the symbol of our Country -- India, its sovereignty and its great culture and cultural heritage acts as guide and controller of activities thereof by every time reminding and conveying them the message in the words of Dr. S. Radhakrishnan-- "Be ever alert, be ever on to move, go forward, work for a free democratic flexible, compassionate, descent, democratic society, in which Christians, Sikhs, Muslims, Hindus, Buddhists will all find shelter".

57. Further its user by its people and particularly by Holders of High Constitutional Offices exercising the sovereign power of the nation of which jurisdiction vested in the courts specially in Courts of Record i.e., High Courts and Supreme Court, is part or branch, conveys a message, to them in the words of Smt. Sarojini Naidu as under : -

"Under this Flag there is no prince, there is no peasant, there is no rich and there is no poor. There is no privilege, there is only duty and responsibility and sacrifice", which cannot be duly discharged or performed unless we develop in ourself the spirit of renunciation and sacrifice, purity of heart thought and action and faith in rule of law and Dharma and complete devotion to Mother India and its Honour and Sovereignty."

58. Can it be imagined that law prohibits the user of National Flag for such objects or such a user of Tri Colour National Flag?. In my opinion not, in view of Article 51A. User of National Flag which is keeping pace with its honour can never be held to be prohibited nor can its user as source of inculcating sense of honour for nation or its cultural heritage, its sovereignty and independence and the great ideals it stands for, be said to be an user prohibited by law.

59. Let us further examine the legal position. There is an Act known as "The Emblems and Names (Prevention of Improper Use) Act, 1950" i.e., Act No. XII of 1950 and there is another Act known as "The Prevention of Insults to National Honour Act, 1971, i.e., Act No. 69 of 1971". The two Acts have been enacted with an object to prevent the improper use of Emblems and Names and to Prevent Insults to objects of National Honour such as National Flag, the Constitution of India or to National Anthem and make the acts of misuser or improper user as well as the acts which amount to insult to National Honour or object of National Honour punishable under law, and not the user of National Flag as an object of National Honour and as symbol of India, its sovereignty, integrity, honour or its heritage, nor Is its user-as something to inculcate feeling of patriotism and of respect and honour, to the Tricolor National Flag or to Nation or

to thing it represents, prohibited.

60. The preamble of the Emblems and Names (Prevention of Improper Use) Act, 1950, reads as under: -

"An Act to prevent the improper use of certain emblems and names for professional" and commercial purposes."

61. The definition Clause of the Act i.e., Section 2(a) defines "Emblem" to mean.-

"any emblem, seal, flag, insignia, coat-of-arms or pictorial representation specified in the Schedule";

62. Section 3 of the Act XII of 1950 makes provision for Prohibition of Improper User of certain Emblems and names, and reads as under :

"Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade-mark or design, any name or emblem specified in the schedule or any colourable imitation thereof without the previous permission of the Central Government or of such officer of Government as may be authorised in this behalf by the Central Government".

Section 4 of the above Act No. XII of 1950, provides for the prohibition of registration of certain companies bearing any name or trademarks or designs which bear emblem or name specified in scheduled as well as for prohibition to the grant of a patent in respect of an invention which bears a title containing any emblem or name, provided the use of such emblem is in contravention of the provisions of Section 3 of the Act.

63. Section 5 of this Act makes contravention of the provisions of Section 3 of the Act punishable as an offence and provides the extent to which fine may be imposed S. 6 of the Act provides that no prosecution for any offence under this Act is to be instituted without previous sanction of Central Government or of the officer specifically authorised in this behalf by Central Government. u/s 8 of the Act No. XII of 1950, the power has been conferred on the Central Government to add or to alter the schedule which is to be exercised by publishing the said addition or alteration, in the form of Notification in Official Gazette and indicates the effect of those alteration or additions in Schedule. That Section 9 of Act No. XII of 1950, confers rule making power and reads as under:--

"9. Power to make rules.-- The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act."

64. A perusal of the entire scheme of "The Emblems and Names (Prevention of Improper Use) Act, 1950, and of Sections 3 and 4 per se reveals that its object is to prevent improper use of Names and Emblem. That Section 3 of the Act prohibits the use or the continuance of use. for the purpose of Trade, business,

calling trade mark etc., as mentioned in the section it self, or the like purpose -- of Emblem or names. As per Section 3 of the Act, use of emblem or names given in the Schedule for the purpose or objects referred to in that section or the like has been declared as improper and user of the names or emblems or imitation thereof for those objects or purposes is prohibited and not otherwise. It further provides even the use of emblems or names for those aforesaid purpose can be made only after obtaining the previous permission of the Central Government. A use of emblem or name for purpose other than those referred to in Section 3 or akin to that, in my opinion may well be taken to be not prohibited unless it does not amount to be an Act of insult to National Honour to which case Act No. 9 of 1971 may apply.

65. In the case of *Sable Waghire and Company and Others Vs. The Union of India (UOI) and Others*, their Lordships of the Hon'ble Supreme Court has been pleased to lay down the law on the subject as under (at p. 1176 of AIR) :--

"12.....The subject matter of the legislation is also to be gathered from the totality of the provisions of the Act read with the preamble and the Schedule.".....

66. Their Lordships in para 15 quoted the Statement of Objects and Reasons as under (at pp. 1176-77 of AIR) :--

"The General Assembly of the United Nations Organisation recommended in 1946 that members of the United Nations should take necessary legislative or other appropriate measures to prevent the use, without proper authority, and in particular for commercial purposes, of the emblem, the official seal and the name of the United Nations and of the abbreviations of that name. A similar recommendation has since been received also from the World Health Organisation for prevention of the use of its name (and abbreviations), emblem and official seal, Instances have also come to light of the use in India (and abroad) of the Indian National Flag and emblem and of the names or pictorial representations of Mahatma Gandhi and other national leaders, for commercial and trade purposes and in a manner likely to offend the sentiments of the people. The provisions of the Indian Trade Marks Act 1940, Indian Patents and Designs Act, 1911, Indian Merchandise Marks Act, 1889, and the Indian Companies Act, 1913, are not adequate to prevent these abuses. The Bill seeks to prevent the improper use of these names, emblems, etc., for the purpose of trade, business, calling, profession patent or design, and to Impose a penalty for misuse of emblems, etc., specified in the Schedule and empowers the Central Government to make additions and amendments in the schedule as and when necessary."

Their Lordships of the Supreme Court observed as under (at p. 1177 of AIR) :--

"16.....In order to arouse national sentiments everywhere invocation of "Chhatrapati Shivaji" in manifold ways in the era of struggle for independence of our country is now, by turn of history, repealed by an ardent worship of the proud heritage by a grateful nation. Law reflecting the national consciousness,

therefore, forbids ordinary commercial use of the sacred name by individuals in their own interest as opposed to national interest".

"17. We take it that the scheme disclosed in the provisions of the Act read with the preamble and the Objects and Reasons make it clear that there was imperative necessity for regulating the use of certain emblems is prohibited it self provides guidance....." There is, therefore, no excessive delegation of legislative power by Parliament in favour of the Central Government. From the Objects and Reasons, the preamble and the provisions of the Act with the built-in limitations in Section 3 taken with the Schedule, a policy is clearly discernible and there is sufficient guidance therein to enable the Central Government to exercise its power under the Act....."

Their Lordships of the Supreme Court further observed as under (at p. 1177 of AIR) :--

"18.....Section 3 in terms provides for enabling the affected persons to adjust their business or affairs inasmuch as the Central Government can permit some time to alter their emblems, designs, etc., to carry on with their trade....."

67. It may be mentioned here that item No. 3 of the Schedule to the Emblems and Names (Prevention of Improper Use) Act No. 1950 is "The Indian National Flag."

68. So what is prohibited u/s 3 of the Act is not the user but it is improper user of National Flag or emblem that is prohibited, and if it is used for the objects and purpose referred to therein or akin thereto, the user may be termed as improper user and it is prohibited.

69. The Prevention of Insults to National Honour Act, 1971, as mentioned earlier prevents insults to National Honour. Sections 2 and 3 thereof read as under :--

"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 extent to three years, or with fine, or with both.

Explanations 1 to 3.....

"3. Prevention of singing of Indian National Anthem, etc., whoever intentionally prevents the singing of the Indian National Anthem or causes disturbance to any assembly engaged in such singing shall be punished with imprisonment fora term which may extend to three years, or with fine, or with both."

70. These two sections realty define and explain what is an insult to National Honour and make it an offence punishable as mentioned in two Sections.

71. My attention had been invited to para 12.2 of Flag Code -- India. It reads as under :--

"The use of the National Flag or any colourable imitation thereof for the purpose of any trade, business, calling or profession or in the title of any patent or in any trade mark or design without the prior permission of the Central Government is an offence under the Emblems and Names (Prevention of Improper Use) Act, 1950."

72. No doubt this clause is instructive of the principles under the provisions of "The Emblems and Names (Prevention of Improper Use) Act, 1950 and it does not appear to be different in any manner from Section 3 of the said Act of 1950. If we look to para 12.3, it again indicates that it is in the nature of an instruction which provides that insult to National Flag or any part thereof, as mentioned therein is liable to be punished under Prevention of Insults to National Honour Act. There are certain other relevant provisions of the Code, which require to be taken note of, such as, 6.1, 6.1A and 6.2. They read as under :--

"6.1. The Display of National Flag shall be unrestricted throughout the Country on the following occasions :--

(1) Republic Day -- during the period from commencement to the close of the celebrations.

(2) National Week -- 6th April to 13th April, in memory of martyrs of Jaiyanwala Bagh;

(3) Independence Day;

(4) Mahatma Gandhi's birth day and;

(5) Any other particular day of national rejoicing as may be specified by the Government of India."

6.1A. "The display of National Flag shall be unrestricted in a State on the anniversary of the formation of that State."

6.2. The Government of India may authorise the unrestricted display of the National Flag on any special day in any local area on account of local celebrations."

Note :-- Even on the occasions mentioned above, the provisions of this Code regarding the display of National Flag on motor cars shall not be regarded as relaxed."

73. These rules provide for display of National Flag and has to be done although on National days and on special occasions. Section III of the Code appears to be collection of instructions, provide a guidance as to correct display of National Flag. Section IV further is instructive of incorrect display of National Flag and Section V indicates or provides only guiding factors in an instructive manner as to what may be termed as "Mis-use" of the National Flag. Paras 5.1 to 5.9

thereof indicate or gives an indication and may be said to be bit instructive only of mis-user of Flag. Instructions contained in Sections III, IV and V, indicate and provide a guidance to one in the matter of use of the Flag in the correct and proper manner and to avoid incorrect display thereof and mis-use thereof. As mentioned earlier Section-VI of the Code provides that on the Republic Day, on the National Week i.e., 6th April to 13th April, in the memory of the martyrs of Jailianwala Bagh, Independence Day, Mahatma Gandhi's birthday and on any other particular day of national rejoicing as may be specified by the Government of India, the display of the National Flag shall be done in unrestricted manner. Section VII deals with the Salute and Section IX provides that National Flag may be hoisted in Schools, Colleges, sports camps, scout camps etc., on special occasions and also to inspire respect for the Flag and further says that a model set of instructions for guidance is given in Annexure to that Code. Section X provides instructions in the matter of official display of the National Flag in it. There is para-10.4, which relates to the Motor Cars also, as this Code is collection of various instructions it appears to be drafted in a bit improper manner which I may indicate later.

Para 10.4. reads as under :--"

10.4. Motor Cars :--

(a) The Privilege of flying the National Flag on Motor cars is limited to the :--

1. President;
2. Vice-President;
3. Governors and Lieutenant Governors;
4. Heads of India Missions abroad in the countries to which they are accredited;
5. Prime Minister and other Cabinet Ministers; Ministers of State and Deputy Ministers of the Union; Chief Minister and other Cabinet Ministers; Ministers of State and Deputy Ministers of States; Ministers of State and Deputy Ministers of Union Territories;

Chief Executive Councillor and other Executive Councillors, Delhi;

(6) Speaker of the Lok Sabha; Deputy Chairman of the Rajya Sabha; Deputy Speaker of the Lok Sabha; Chairman of Legislative Councils in States;

Speakers of Legislative Assemblies in States and Union Territories;

Deputy Chairman of Legislative Councils in States;

Deputy Speakers of Legislative Assemblies in States and Union Territories;

Chairman and Deputy Chairman of Metropolitan Council in Delhi;

(7) Chief Justice of India, Judges of Supreme Court; Chief Justice of High Courts;

The dignitaries mentioned in Clauses (5) to (7) may fly the National Flag on their cars, whenever they consider it necessary or advisable.

(b) When a foreign dignitary travels in a car provided by Government, the National Flag will be flown on the right side of the car and the Flag of the foreign dignitaries will be flown on the left side of the car."

74. I have mentioned just immediately above that the instructions which appears to be improperly drafted, for the two reasons as they appear from it. The first reason is that the Flag Code of India do not indicate under what provision of statute law or under the provisions of which act it has been issued. The Flag Code in it from the very beginning only contains the following :--

"The National Flag is flown at different places in various occasions. To ensure that the correct usage regarding the display of the National Flag is well understood, the instructions issued from time to time on the subject have been embodied in this Code for general guidance."

74A. The very preamble of this Code, which appears to have been issued by the Ministry of the Government of India, per se indicates and shows that this Code only contains instructions or to say the executive instructions issued from time to time and they have been embodied in the form of compiling the Code for the general guidance, as to correct usage regarding display of National Flag. These can be read as such to be only executive instructions issued by the Home Ministry and this has been given the form of the Code. This Code per se does not indicate under what provisions of law or Act, it has been issued. That as regards power to frame rules is concerned, no doubt under the Emblem and Names (Prevention of Improper Use) Act, 1950, it has been provided that Government may by Notification in the Official Gazette make rules to carry out the purpose of this Act. The Book-let or the Flag Code per se does not indicate or show that these are statutory rules to have been framed issued under any Act or u/s 9 of Act No. 12 of 1950, because when the rules are to be framed or made, the mode for making of the rules to carry out the purpose of the Act has been prescribed by Notification thereof in the Official Gazette. The Flag Code does not per se indicate that these are the Rules framed by the Central Government, after publication in the Official Gazette. The note contained therein, as quoted above, says and indicates that these instructions issued from time to time, which have been embodied in this Code for general guidance. So per se this appears to be collection of only executive instructions which have been issued from time to time and nothing more.

75. That one more flaw may be pointed out, which has been pointed out by the Division Bench of the Allahabad High Court it self, in the Civil Miscellaneous Writ No. 9011/93, decided on 31-8-1993, In Re: Scope and Extent of applicability of Flag Code and use of National Flags on the cars by the Puisne Judges of the High Court, That flaw firstly has been indicated in the letter of the then Judicial Secretary and Legal Remembrancer, Government of Uttar Pradesh Sri K. L.

Sharma (now Judge of Allahabad High Court) to the Secretary of Home Affairs and the learned Judges of the Division Bench referred to that flow. Para 2 of that letter reads. (at p. 16 of AIR) -

"2. The Hon"ble Judges of the High Courts have not been included in the list of dignitaries mentioned in the National Flag Code whereas Deputy Ministers and Parliamentary Secretaries have been included therein. The Hon"ble Judges of the High Courts are the Constitutional functionaries and are equivalent in status to Minister of State as disclosed by the Warrant of Precedence of the Government of India. The Hon"ble Judges were not provided staff car by the Government until the amendment by Parliament in the High Court Judges (Service Conditions) Act in 1986 whereby every judge of the High Court has been provided with a chauffeur driven official car."

76. The National Flag Code is intended to include high dignitaries of the three wings of the State, namely Legislature, Executive and Judiciary. If the idea of restricted use is to prevail, it should be equally applied in the case of dignitaries of the executive on the basis of comparative status and consequently it should not exclude the Judges of the High Courts who are responsible for dispensation of justice not only to the people of India but also to the executive and the legislature by virtue of which they become entitled to justice to themselves."

77. After having referred in detail to the case of Review Petn. No. 249 of 1992 in All India Judges" Association and Others Vs. Union of India and Others, the Division Bench observed as under In Re: Scope and Extent of applicability of Flag Code and use of National Flags on the cars by the Puisne Judges of the High Court,

"The Judges of the High Court cannot be compared to the authorities mentioned in para 10 of the counter affidavit, because while the Judges discharge sovereign functions the tatter do not do so and at best it can be said that they assist in the discharge of sovereign functions."

The Division Bench held that the omission to provide use of National Flag to the Hon"ble Judges of the Court on their cars to be wholly arbitrary, illegal and discriminative and vocative of the doctrine of equality.

In the case of All India Judges" Association reported in All India Judges" Association and Others Vs. Union of India and Others, their Lordships of the Supreme Court, has been pleased to observe as under (at pages 2501-02 of AIR) :--

"The judicial service is not service in the sense of "employment". The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the Members of the Council of Ministers and the Members of the Legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be

conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, Those who exercise the State power are the Ministers, the Legislators and the Judges, and not the members of their staff who implement or assist in implementing their decisions. The Council of Ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the Legislators are different from the legislative staff. So also the Judges from the judicial staff. The parity is between the political executive, the Legislators and the Judges and not between the Judge and the administrative executive."

Their Lordships further observed as under (at p. 2502 of AIR) :--

"Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice.....Self reliance is the foundation of independence. The society has a stake in ensuring the independence of the judiciary, and no price is too heavy to secure it. To keep the Judges in want of the essential accoutrements and thus to impede them in the proper discharge of their duties is to impair and whittle away justice it self."

Their Lordships of the Supreme Court further observed in that case as under (at p. 2503 of AIR) :-

"..... With the inauguration of the Constitution and the separation of the State power distributed among the three branches, the continuation of the linkage has become anachronistic and is inconsistent with the constitutional provisions. As pointed out earlier, the parity in status is no longer between the judiciary and the administrative executive but between the judiciary and political executive. Under the Constitution, the judiciary is above the administrative executive and any attempt to place it on par with the administrative executive has to be discouraged."

78. These observations by their Lordships of the Supreme Court in the context of the oath administered to the Chief Justice and Judges of the High Court as well as to the Ministers or members of the political executives or to the Chief Justice and Judges of the Supreme Court of India and other authorities and holders of public offices under Constitution, speaks of the specific position of the members of the judiciary, particularly the Chief Justice and Judges of the Supreme Court and Chief Justice and Judges of the High Court to be one of the pillars of the democracy and in the democratic set up as Courts of record and has rightly observed their position is akin to that of political executive and they cannot be equated to that of administrative executive. But this aspect of the law under the Constitution has completely been ignored or omitted, while providing para-10.4 of the Flag Code. It may be a case of omission in that para-10.4(7), but the omission in making a collection of instructions and codification of various instructions cannot dilute the position that emerges from the Constitution. Every constitutional dignitary who holds the constitutional office with which exercise of

a branch of sovereign power under the Constitution is entrusted with confidence, he is given oath to bear allegiance to the Constitution of India and to uphold sovereignty and integrity of India and to act without fear, favour, affection etc. Why this oath is administered? The reason is that the sovereignty has been vested and he is made holder of sovereign power or a branch of it with faith and it is being exercised by the country under the Constitution by the persons belonging to these three wings of the State and at the head of the State to assist the President in discharge of his duties. The Constitution contains a provision as Art. 51A, that even as a citizen to abide by the Constitution and respect its ideals and institutions and the National Flag and Anthem. Then the ideal of sovereignty, ideal of the honour of the nation in the form of National Flag, calls upon them to be kept at high place where all these constitutional dignitaries live and function or move, so as to keep them alive, at all those moments, to the sovereignty of nation's honour, to the great ideals for which this Tricolor National Flag stands and to the pledge taken by each of them. The great symbol of nation i.e., its Tricolor flag -- always requires to be kept with him, if not in hand, in front of him including on the car, as per implied requirements under the law of the Constitution.

79. The executive instructions contained in Flag Code issued as such in some manner, lack in proper adherence with the spirit of the Constitution, for the illustration as it appears to be the case with para-10.4, when it omits to mention the Judges of the High Court as well, it cannot be taken that it was the intention of the authorities issuing instructions that the duty cast on all holders of the constitutional post, including the duty to maintain specifically the honour of the nation and the National Flag is not cast on the Judges of the High Court or correlative right to use the National Flag does vest in High Court Judges. It appears that specific provision of para-10.4 of the National Flag Code containing the instruction of user of National Flag on motor cars of all those belonging to the branches of State -- political, executive, judiciary and legislative, has got a purpose and objective of indicating where the sovereignty of the nation lies and whose duty it is utmost to save it and its honour and that the first duty lies on all those holders of the constitutional post to uphold it and its honour. The rule or instructions are never intended to run counter to the spirit and scheme of the constitution. But if the executive instruction run counter to the scheme of the Constitution as explained by Supreme Court, they cannot prevail and as such the omission referred to above is either unintentional and accidental as opined by Allahabad High Court in *In Re: Scope and Extent of applicability of Flag Code and use of National Flags on the cars by the Puisne Judges of the High Court*, and does affect the position of Judges of the High Court nor does leave them to the mercy of executive instruction in the matter of seeking blessing and protection for evil effect of Maya, from the divinity lying around the Tricolor, even when they move on official car by the use of Tricolor or National Flag on it. The provisions of the code firstly do not provide or contain any negative provision that National Flag cannot be used at all by any one, secondly if it would have contained any

such negative provision if such a provision could have been operative under law, validly, it is rather doubtful but I do not express any opinion thereon and leave it to be considered at proper stage. Maintenance of dignity and honour of the National Flag requires all those who hold high offices and who are expected to make use of the National Flag in ordinary course as well being the persons belonging to three pillars of the State that they shall abide by following and adhering to the noble ideals, for which this National Flag stands and not by simple ritualistic approach on one or two occasions and keeping the Flag in box or the like.

80. A reading of the provisions of these two Acts along with the provisions of the Constitution as well as the National Flag Code, which is nothing but collection of executive instructions per se indicates and leads to the position that there is no prohibition as regards the use of National Flag properly and correctly keeping pace with the dignity and honour of the National Flag as symbol of our country and its sovereignty, independence and of our national heritage and it may also be used for the purpose of inspiring among others, the ordinary citizens and among the children the sense of honour and respect for the National Flag, to inspire in them feelings of nationalism and to lead them to feel to act as it used to be when our people used to sing with pride the song in the honour of the National Flag during Freedom Movement and thereafter on the attainment of Independence as under :--

"VIJAYEE VISHWA TIRANGA PYARA JHANDA OONCHA RAHE HAMARA ISKI SHAN NA JANE PAYE CHAHE JAN BHALE HI JAYE"

81. If the user of the National Flag is to inspire among the people that they have to live and die to save the honour of the nation its sovereignty its cultural heritage and honour of the country which this National Flag represents and to inculcate such ideas as of patriotism, nationalism and national integration, whether it is done by putting the National Flag on the motor car of the Judge or by exhibition of the flag at the proper moment even in the picture as in the case of the scene abovementioned, i.e., the lawyer completely surrendering before the National Flag and he getting a new light from the divine spirit lying around the flag, the divine spirit of the Mother India. The user of the flag cannot be said to be either prohibited nor it can be said to be mis-user of the flag without any doubt, nor can such an act be said to be an act of improper user of National Flag nor can be termed to be an act of insult to the National Flag within the purview of Sec. 2 of the Prevention of Insult to National Flag Act of 1971.

82. Apart from this the Government authorities appointed for examining and scrutinising the picture before certification by it namely respondent No. 2 has also examined it and allowed it to be exhibited and shown in the film. So even in the film though it might be said to have been used, in connection with the trade or film business, the authority which has been appointed in this matter on behalf of the Government of India has approved it and further as it is not an exhibition merely for the business purpose, but it has been an exhibition of that scene of

the National Flag in the context of the whole theme of the picture for the purpose of conveying the message of the nation and the National Flag, in my opinion this scene does not require to be cut off, it is fit one to be shown and the contention in this regard made by the petitioners and others in this respect is without substance.

83. The dialogue "Narakada Hesarenu? and other person striking the rod and say "Order", "Order", in my opinion cannot be taken to communicate the idea which is suggested by Sri Mahantesh Hosmat. Really it can be said to indicate that none can be allowed to talk or think like that and is directed by other person to maintain order and not to talk nonsense in the context and tone the utterance came and is of not much significance.

Scene as to Jamadar's presence on Dias of Judge and intervention with Judge's business.

84. That as regards the scene in which it has been shown that Jamadar or Daffedar is at every moment standing on the Dias by the side of the Judge and every time the Judge appears to be having consultation or giving ears to what Jamadar says and nodding his head, it gives an impression as if the Jamadars or outside forces, which have got no concern in the matter of administration of justice can affect the course and flow of justice and can be of use, particularly to adversely affect the mind of the Judge or control the mind of the Judge. It should be taken note of that we have always believed and provided for in our Constitution as well as by law interpreted by the Supreme Court that India always provided for and stands for independence of judiciary. It has made provision in the Constitution to keep its judiciary independent, devoted to the goals of the Constitution and wedded to the Constitution. Our Judges take oath to bear faith and allegiance to the Constitution of India and to uphold the sovereignty and integrity of the country-India and to duly and faithfully and to best of their own ability, knowledge and judgment, perform the duties of their offices, without fear or favour, without affection and without ill-will and they take oath to uphold the Constitution first and the laws framed thereunder and running in consonance with the letter and spirit of the Constitution, the Judges do act in accordance with the Court traditions and the requirements of the Constitution. It is wrong to depict that the third external forces or outside elements can or do interfere with the course of administration of justice by them. They are devoted and wedded to the goal of Constitution as one of the 3 wings of the country in which the sovereignty of the country is vested. They realise the duty to be devoted to the maintenance and upholding of integrity and the sovereignty of the country. The scene which shows reverse, even if it might have been with any other good motive or object or it might have been put with some other object, and not with an object to deteriorate the prestige of the courts or the course of administration of justice, even then it is really a scene which indicates and represents something to the contrary to all and as some unreality and has got tendency, if such scenes are allowed to be exhibited, of firstly affecting the mind

of the common people as if the class-4 employees or some other elements can be made use of by them, for the purpose of polluting the course of justice.

85. That being so, in my opinion, this is a factor which goes against the film "Kona Eedaite". This scene could not be explained and justified also and in the end the learned counsel for respondents 3 and 4 also expressed that the parties represented by them, i.e., respondents 3 and 4 are agreeable to any cuts in the film that the Court may direct.

86. Keeping all this picture in view, the question before me is whether exhibition of the film should be allowed or that restraint or prohibition order or direction in the nature of mandamus restraining the respondents from exhibiting or releasing of this film be issued. The other question is if they have to be allowed to release the film and to exhibit it, whether some direction should be given to the respondents to delete or cut off any portion of the film and then to release and exhibit it. Really this last mentioned scene of Jamadar interfering with Judge functioning or acting in a manner as if controlling the mind and action of Judge in course of administration of justice should have been directed, by the Censor Board, to be deleted and Censor Board should have also excluded the scene ought to have been cut off, but there might have been some mistake or ignorance in not directing that portion to be cut off from the film. Any way this Court's powers under Art. 226 of the Constitution are wider and this Court can issue suitable directions in the matter.

87. Having given my due consideration to this aspect of the matter, I opine and am of the view that it would be just and proper that, as the entire theme of the picture ordinarily is appreciable and it indicates imparting a message to the society, or to the people who might be disheartened, the great ideals which inspired the people of this country, who fought for freedom, the great ideals of purity, courage and chivalry and faith and of green revolution and the insight, and if surrendered to divine entity of India and to the great ideals for which the great men worked in this country for thousands of years and who have been depicted in the Constitution, representing the cultural heritage of the country, in the original Constitution which was signed by the members of the Constituent Assembly, and the National Flag which represents all that including the sovereignty and independence of the country, its honour can bring light, new light, it can infuse new courage in the disheartened people and they have to work for the building up of the just and honourable new India, where the justice -- social, economic and political shall prevail. This message of getting a new spirit being infused in us to work with honesty and intelligence and faith the divine spirit will bring all success.

88. In my opinion in all fairness beyond doubt release and exhibition of this film does not require to be prohibited or stopped, but when it has to be released definitely the necessary directions need to be given to the respondents to delete the objectionable portion mentioned above, relating to the Court scene of the Judge and the Jamadar and to permit them to exhibit that picture.

Conclusion :

89. Having thus applied my mind and having thus considered the issues raised before me in the light of contentions made before me, I arrive at the following conclusion :

(i) That the present writ petition filed under Art. 226 of the Constitution of India by the two public spirited advocates of this High Court, has been and is maintainable, irrespective of the fact they might not be suffering personally any injury or loss by the release of the film "KONA EEDAITE", due to (sic) being part of the machinery of the administration of justice and being equal partners with the Judges in administration of justice they are naturally concerned about the threat or apprehension of any act, of any person, likely to cause any damages or injury to the dignity and honour of Court in the eyes of people and to justice administered by it, so they can maintain and file the petition before this Hon'ble Court for the prohibition of such act or exhibition of such act or film by grant and issuance of proper order or direction.

(ii) That story and basic theme of the film cannot be termed nor can be held to be derogatory of honour or dignity of the Court or administration of justice by Courts, instead judged in the context of the entire picture and its theme, the film "KONA EEDAITE" is the one which enhances and highlights the justice, the concept of justice and the role of lawyer, devoted to the cause for which our Tricolor stands and speaks of our Constitution that is justice -- social, economic and political and it communicates the message that this goal of "justice" to people can be attained by true devotion and by a truly devoted lawyer --devoted to nation, its ideals etc., for the symbol of our nation, which is our Tricolor flag. It communicates that darkness of untruth, injustice is bound to make room or place for justice and virtue provided the devotee on the path of justice is truly devoted to goal, so there is no question of its being prohibited from being released.

(iii-a) That the scheme and ideal behind the National Tricolor Flag and concept of honour and respect of Tricolor flag and for all which it represents, coupled with the scheme of Art. 51-A of the Constitution of India, its scheme read with the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 and the Prevention of Insult to National Honours Act 1971 do not reveal nor provide for any provision prohibiting the use of National Flag (The Tricolor Flag) which keeps pace with dignity and honour of India, its sovereignty and its cultural heritage and the ideals for which it stands and the honour of National Tricolor Flag, as well as its user as a conscious keeping of all the citizen specially those who are fastened with the duty of exercising the sovereign power of the country as part and parcel of one of the three wings or branches of the State, is not prohibited, nor its user to inculcate and inspire in the citizens and children the confidence and sense of honour and respect for it and for all that it represents, is prohibited under any law in operation.

(iii-b) That use of Tricolor National Flag or any Emblem referred to in Schedule to

the Act of 1950, if and when the user is improper within the four corners of language of S. 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950 or if and when it amounts to be an act of Insult to National honour within the frame work of the provisions of the Prevention of Insult to National Honour Act, 1971, in those cases and situations only the user thereof is prohibited and amounts to be an offence only, the depiction of scene along with National Tricolor in the film does, in context of theme of the picture, not come within prohibition or prohibitory clause.

(iv) The depiction or exhibition of scene relating to National Tricolor Flag and that of lawyer who falls down flatly before the National Flag after having thrown his band, coat etc., in utter frustration and dejection after having lost (sic) his mind like a man of inaction and later on he rise up as a man of action, depicts nothing but the idea that complete surrender of self, self ego, self interest (be it individual, communal, provincial, castes or regional) for the honour and maintenance of honour of the nation and National Flag and ideals and causes it represents -- give a new light, new insight, courage and strength to one, who had become disheartened once, -- to work with new zeal and insight and that fellow can bring change in the order of day and attain the goal of justice as had been said by Pandit Jawaharlal Nehru in Constituent Assembly on 18-7-1947. ".....How when we were sometimes down and out then again the sight of this flag gave us courage to go". Depiction of such idea is neither derogatory of Tricolor flag nor the use of Tricolor to depict such idea appears to be prohibited by law.

(v) The scene relating to presence of Jamadar on the dias of Court by the side of the Judge and interfering with the Judge in the course of recording of evidence, hearing and decision, i.e., in the course of administration of justice and Judge being shown as taking consultation from the Jamadar and giving cars and nodding his head thereon and the like is damaging to the institution that is Courts and judiciary, and works as an eclipse on the entire theme of picture "Kona Eedaite" and this scene deserves condemnation and its deletion or cut off or removal from the picture without deletion and cutting thereof, the opposite parties must be prevented from releasing and exhibiting the said film.

(vi) That writ petition is to be allowed partly by issuance of writ of preventive nature, i.e., by issue of writ or order or direction in the nature of writ of mandamus directing them not to release as well as not to allow the release and exhibition of the film "KONA EEDAITE" until and unless the respondents 3 to 5 delete and cut off the portion of reel wherein Jamadar of Court is being shown on the dias by the side of the Judge and appears to be in any manner interfering with the working of Judge in the course of administration of justice and as soon as this cut is done, the respondents 3 to 4 may be allowed to release the film.

90. This direction had to be issued to respondents 1 to 5 to see that the film is exhibited only after the above cut is made in the film and the above order has been passed and accordingly the writ petition is and has been allowed partly as above as well as per directions issued on 2-2-1995.

Let the direction in the nature of mandamus be issued to respondents not to release or exhibit the Kannada Film "Kona Eedaite" unless and until abovementioned scene of Jamadar and the Judge referred to above is deleted or cut off from reel and as soon as that scene of Jamadar interfering the functioning of the Judge in the course of administration of justice is done and intimated to this Court by affidavit, copy of which is provided to respondents 1 and 2, respondents 3 to 5 will be allowed to show, release and exhibit the above picture "KONA EEDAITE", as per short order given on 2-2-1995.

The cost of the petition are to be borne by the parties.

91. Order Accordingly.