

(2012) 03 BOM CK 0246

In the Bombay High Court

Case No : Criminal Application (APL) No. 581 of 2011

Umesh Chopde

APPELLANT

Vs

State of Maharashtra and Vinod Jagannath Aswar

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Constitution of India, 1950 — Article 13, 13(3), 19, 19(1), 77
National Honours Act, 1971 — Section 2

Citation : (2012) BomCR(Cri) 696 : (2012) CriLJ 3142

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Advocate : A.B. Moon, for the Appellant; C.N. Adgokar, Addl.P.P. for Nonapplicant No. 1 and Mr. S.A. Mohta, Advocate for Nonapplicant No. 2, for the Respondent

Judgement

M.L. Tahaliyani, J.—Heard Mr. A.B. Moon, learned Counsel for the applicant, Mr. C.N. Adgokar, learned Additional Public Prosecutor for non applicant No. 1/State and Mr. S.A. Mohta, learned Counsel for non applicant No. 2. Admit. Heard finally by consent of learned Counsel for the parties.

2. A very short question arises for determination in this petition :

Whether noncompliance of Clause 2.1(xi) Flag Code necessarily amounts to an offence punishable under the Prevention of Insult to National Honours Act, 1971.

The said Clause runs as under :

where the Flag is displayed in open, it should, as far as possible, be flown from sunrise to sunset, irrespective of weather conditions.

3. In the present case, the applicant was a Headmaster of the School where the flag was allegedly found hoisted till midnight on the flag post. It was set down by the complainant Police Constable and complaint was made to the police station by the complainant. First Information Report was registered against the applicant

and further investigation is going on. While setting down the flag, a Photographer was called and photographs were taken. Statements of the Photographer and other persons presented on the spot have been recorded.

4. The applicant has submitted this application for quashing the First Information Report on the ground that he has been falsely implicated in this case. His submissions are two fold i.e. firstly he has been falsely implicated in this case as no incident as alleged had occurred, secondly even if it is admitted that the flag was found hoisted till midnight on the flag post, it does not amount to an offence.

5. During the course of hearing, Mr. A.B. Moon, learned Counsel for the applicant, has submitted that, in fact the applicant has been falsely implicated as all the arrangements were made to see that the evidence could be created against the applicant. Mr. A.B. Moon has further submitted that politically motivated case is prepared by the complainant at the instance of the other villagers. Mr. C.N. Adgokar, learned Additional Public Prosecutor for no applicant No. 1 and Mr. S.A. Mohta, learned Counsel for no applicant No. 2 have submitted that since the applicant has violated the flag code, his act is punishable u/s 2 of the Prevention of Insult to National Honours Act, 1971.

6. This issue has been decided by the Hon'ble Supreme Court in Union of India (UOI) Vs. Naveen Jindal and Another, in Civil Appeal No. 453/2004. The Hon'ble Supreme Court in Paragraphs 28 & 29 held as under:-

28. Before we proceed further, it is necessary to deal with the question, whether Flag Code is "law"? Flag Code concededly contains the executive instructions of the Central Government. It is stated that the Ministry of Home Affairs, which is competent to issue the instructions contained in the Flag Code and all matters relating thereto are one of the items of business allocated to the said Ministry by the President under the Government of India (Allocation of Business) Rules, 1961 framed in terms of Article 77 of the Constitution of India. The question, however, is as to whether the said executive instruction is "law" within the meaning of Article 13 of the Constitution of India. Article 13(3)(a) of the Constitution of India reads thus:

13. (3)(a) "Law" includes any Ordinance, order byelaw, rule, regulation, notification, custom or usage having in the territory of Indian the force of law.

29. A bare perusal of the said provision would clearly go to show that executive instructions would not fall within the aforementioned category. Such executive instructions may have the force of law for some other purposes; as for example those instructions which are issued as a supplement to the legislative power in terms of clause (1) of Article 77 of the Constitution of India. The necessity as regard determination of the said question has arisen as the Parliament has not chosen to enact a statute which would confer at least a statutory right upon a citizen of India to fly a National Flag. An executive instruction issued by the appellant herein can any time be replaced by another set of executive instructions and thus deprive Indian citizens from flying National Flag.

Furthermore, such a question will also arise in the event if it be held that right to fly the National Flag is a fundamental or a natural right within the meaning of Article 19 of the Constitution of India; as for the purpose of regulating the exercise of right of freedom guaranteed under Article 19(1)(a) to (e) and (g) a law must be made.

7. In the present case also, even if it is assumed for the sake of arguments that the applicant did not remove the flag before sunset, it could not amount to an offence. The department can take suitable action against the applicant for not following the flag code. Since it does not amount to an offence punishable u/s 2 of the Prevention of Insult to National Honours Act, 1971, the First Information Report needs to be quashed. Hence, I pass the following order.

8. The First Information Report No. 3047/2011 recorded at Akot Police Station of District Akola for the offence punishable u/s 2 of the Prevention of Insult to National Honours Act, 1971 against the applicant shall stand quashed.

9. Bail bonds of the accused shall stand cancelled. The application is disposed of accordingly.