



**Reserved on : 21.01.2026**  
**Pronounced on : 21.02.2026**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21<sup>ST</sup> DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.11694 OF 2024

**BETWEEN:**

SRI VENUGOPAL B.C.,

[REDACTED]

... PETITIONER

(BY SMT.RADHIKA K., ADVOCATE FOR  
SRI THIMMEGOWDA N., ADVOCATE)

**AND:**

1 . THE STATE OF KARNATAKA  
BY BAGALAGUNTE POLICE STATION  
BENGALURU – 560 073  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDING  
BENGALURU – 560 001.

2 . SRI B.M.CHIKKANNA

[REDACTED]

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1;  
SRI T.R.RAMAKRISHNA, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF BNSS, 2023 PRAYING TO QUASH THE ENTIRE FIR IN CR.NO.377/2024 PENDING ON THE FILE OF THE XXXI ACJM, BANGALORE CITY REGISTERED BY BAGALUGUNTE POLICE, FOR THE ALLEGED OFFENCE U/S 2 OF PREVENTION OF INSULT TO THE NATIONAL HONORS ACT, 1971.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.01.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

The petitioner is before this Court calling in question registration of a crime in Crime No.377 of 2024 registered for offences punishable under Section 2 of the Prevention of Insult to National Honors Act, 1971 (hereinafter referred to as 'the Act' for short).

2. Heard Smt K. Radhika, learned counsel appearing for the petitioner; Sri B.N.Jagadeesha, learned Additional State Public Prosecutor appearing for respondent No.1 and Sri T.R. Ramakrishna, learned counsel appearing for respondent No.2.

3. Facts, in brief, germane are as follows:-

The petitioner is the Principal of Bagalagunte Government High School, Nagasandra and claims to be a reputed teacher. On 02-10-2024 celebrations of Gandhi Jayanthi at Bagalagunte

Government High School, Nagasandara took place. WhatsApp status of all the students and many others are found with regard to the celebrations of Gandhi Jayanthi at the school premises. The 2<sup>nd</sup> respondent notices that in the whatsapp status, the petitioner is standing with his slippers on the National Flag. Alleging that the petitioner has disrespected the Indian National Flag, seeks action to be taken against him by registering a complaint against the petitioner on 05-10-2024. This becomes a crime in Crime No.377 of 2024 as obtaining under Section 2 of the Act. Registration of crime drives the petitioner to this Court in the subject petition.

4. The learned counsel appearing for the petitioner Smt. Radhika K, would vehemently contend that the mobile phone of the petitioner was with the students. The students have edited the picture of the petitioner and placed him above the National Flag. He had no intention to insult the National Flag nor had any knowledge about what was being circulated by the students. It is her submission that petitioner is a very strict teacher. Therefore, the students have an animosity against him and have edited his image only to create embarrassment to the petitioner. The

petitioner is a reputed teacher and has been the Principal of Bagalagunte Government High School for 7 to 8 years. He has great respect to the National Flag and he could not even imagine of disrespecting the National Flag. There is no instance of antecedent except the one that is now projected in the subject crime. She would further contend that the 2<sup>nd</sup> respondent/complainant has an axe to grind against the petitioner and has therefore, registered the subject crime. The Police even without looking to the pictures have registered the crime.

5. Per contra, the learned Additional State Public Prosecutor Sri B.N.Jagadeesha appearing for the 1<sup>st</sup> respondent would vehemently refute the contentions by contending that according to the picture the petitioner is standing on the National Flag. Whether the students have edited and posted it or otherwise must necessarily mean that the case has to be investigated into. It is the say of the petitioner that his mobile phone was given to the students and the students have circulated the picture by editing, it is a disputed question of fact. Therefore, he would contend that it is

not a case where this Court should interfere in exercise of its jurisdiction under Section 482 of the Cr.P.C.

6. The learned counsel appearing for the complainant would also toe the lines of the learned Additional State Public Prosecutor in contending that it is a clear insult to the National Flag and, therefore, the investigation in the least must be permitted in the case at hand.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The position of the petitioner as Principal of Bagalagunte Government High School, Nagasandra is a matter of record. Gandhi Jayanthi celebrations were held in the institution is again a matter of record. The entire issue now gets triggered from registration of the complaint by the 2<sup>nd</sup> respondent who claims to be the President of Human Rights Protection Committee, a registered organization. The complaint reads as follows:

“ರವರಿಗೆ,

ಮಾನ್ಯ ರಾಜಾಧಿಕಾರಿಗಳು,  
ಬಾಗಲಗುಂಟೆ ಪೊಲೀಸ್ ಠಾಣೆ,  
ಬಾಗಲಗುಂಟೆ, ಬೆಂಗಳೂರು ನಗರ.

ಮಾನ್ಯರೇ,

ವಿಷಯ : ಬಾಗಲಗುಂಟೆ ಸರ್ಕಾರಿ ಪ್ರೌಢಶಾಲೆಯ ಪ್ರಾಂಶುಪಾಲರಾದ  
ವೇಣುಗೋಪಾಲ್‌ರವರು 'ಗಾಂಧಿ ಜಯಂತಿ' ಪ್ರಯುಕ್ತ ಅವರ  
ವಾಟ್ಸಾಪ್ ಸ್ಟೇಟಸ್‌ನಲ್ಲಿ ಶುಭಾಶಯ ಕೋರುವ ಭಾವಚಿತ್ರದಲ್ಲಿ  
ನಮ್ಮ ರಾಷ್ಟ್ರಧ್ವಜದ ಮೇಲೆ ಚಪ್ಪಲಿ ಕಾಲಿನಿಂದ ನಿಂತಿದ್ದು, ನಮ್ಮ  
ರಾಷ್ಟ್ರಧ್ವಜಕ್ಕೆ ಅಪಮಾನ ಮಾಡಿರುವ ಇವರ ವಿರುದ್ಧ ಕೂಡಲೇ  
ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಲು ಒತ್ತಾಯಿಸಿ.

ಈ ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ನಾನು ಈ ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ಕುಟುಂಬ  
ಸಮೇತವಾಗಿ ವಾಸ ಮಾಡಿಕೊಂಡಿದ್ದು, ಜೀವನೋಪಾಯಕ್ಕಾಗಿ ರೈತನಾಗಿ ಮತ್ತು ಬಿಲ್ಡಿಂಗ್ ಕನ್ಸ್ಟ್ರಕ್ಷನ್  
ಮಾಡುತ್ತಿದ್ದು, ಹಾಗೂ ರಾಕ್ ಥಂಡರ್ಸ್ ಪಬ್ಲಿಕ್ ವೆಲ್‌ಫೇರ್ ಟ್ರಸ್ಟ್‌ನ ಕಾರ್ಯದರ್ಶಿ ಮತ್ತು ಇದರ  
ಅಂಗಸಂಸ್ಥೆಯಾದ ಹೂಮನ್ ರೈಟ್ಸ್ ಪ್ರೊಟೆಕ್ಷನ್ ಕಮಿಟಿಯಲ್ಲಿ ಕರ್ನಾಟಕ ರಾಜ್ಯಾಧ್ಯಕ್ಷನಾಗಿ ಮತ್ತು  
ಕರ್ನಾಟಕ ದಲಿತ ಸಂಘರ್ಷ ಸಮಿತಿ (ಅಂಬೇಡ್ಕರ್ ಸಿದ್ಧಾಂತ) ಯಲ್ಲಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸಂಘಟನಾ  
ಸಂಚಾಲಕನಾಗಿ ಹಾಗೂ ಆರ್-5 ನ್ಯೂಸ್ ಮೀಡಿಯಾ ನೆಟ್ವರ್ಕ್ ಮತ್ತು ನ್ಯೂಸ್-81 ಕನ್ನಡ ಚಾನೆಲ್‌ಗಳ  
ಸಿ.ಇ.ಓ. ಆಗಿ ಅನ್ಯಾಯವಾದ ಸಾರ್ವಜನಿಕರಿಗೆ ಪ್ರಾಮಾಣಿಕವಾಗಿ ನ್ಯಾಯ ಕೊಡಿಸುವ ಕೆಲಸ ಮತ್ತು ಹಸಿದ  
ಹೊಟ್ಟೆಗೆ ಅನ್ನ ನೀಡುವ ಕಾರ್ಯಕ್ರಮ ಹಾಗೂ ಸರ್ಕಾರಿ ಶಾಲೆಯ ಮಕ್ಕಳಿಗೆ ವಿದ್ಯಾಭ್ಯಾಸಕ್ಕೆ  
ಬೇಕಾಗಿರುವಂತಹ ಸಾಮಗ್ರಿಗಳನ್ನು ಕೊಡಿಸುವ ಮುಖೇನ ಕರ್ನಾಟಕ ರಾಜ್ಯದಲ್ಲಿ ಪ್ರಾಮಾಣಿಕ ಸೇವೆಯನ್ನು  
ಮಾಡಿಕೊಂಡು ಬರುತ್ತಿದ್ದೇನೆ (ನಾನು ಯಾವುದೇ ರೀತಿಯ ರಿಯಲ್ ಎಸ್ಟೇಟ್ / ಬಡ್ಡಿ ವ್ಯವಹಾರ /  
ಲಿಟಿಗೇಷನ್ ಸೈಟ್ / ಸಾರ್ವಜನಿಕರಿಗೆ ಸೇವೆ ಸಲ್ಲಿಸಿರುವುದಕ್ಕೆ ಯಾವುದೇ ಸಾರ್ವಜನಿಕರಿಂದ ಹಣ  
ಪಡೆಯದೆ ಪ್ರಾಮಾಣಿಕ ಕೆಲಸ ಕಾರ್ಯ ಮಾಡಿಕೊಂಡು ಬರುತ್ತಿದ್ದೇನೆ).

ದಿನಾಂಕ 02-10-2024 ರಂದು ಬಾಗಲಗುಂಟೆ ಸರ್ಕಾರಿ ಪ್ರೌಢಶಾಲೆಯ ಪ್ರಾಂಶುಪಾಲರಾದ  
ವೇಣುಗೋಪಾಲ್‌ರವರು 'ಗಾಂಧಿ ಜಯಂತಿ' ಪ್ರಯುಕ್ತ ಅವರ ವಾಟ್ಸಾಪ್ ಸ್ಟೇಟಸ್ (ದೂರವಾಣಿ ನಂಬರ್  
9448430124) ನಲ್ಲಿ ಶುಭಾಶಯ ಕೋರುವ ಭಾವಚಿತ್ರದಲ್ಲಿ ನಮ್ಮ ರಾಷ್ಟ್ರಧ್ವಜದ ಮೇಲೆ ಚಪ್ಪಲಿ ಕಾಲಿನಿಂದ  
ನಿಂತಿದ್ದು ನಮ್ಮ ರಾಷ್ಟ್ರಧ್ವಜಕ್ಕೆ ಅಪಮಾನ ಮಾಡಿದ್ದು, ಸಮಾಜಕ್ಕೆ ಮತ್ತು ವಿದ್ಯಾರ್ಥಿಗಳಿಗೆ ಉತ್ತಮ ಮಾರ್ಗ-  
ದರ್ಶನ ನೀಡಬೇಕಾದ ಗುರುಗಳೇ ಈ ರೀತಿ ನಮ್ಮ ರಾಷ್ಟ್ರಧ್ವಜಕ್ಕೆ ಅಪಮಾನ ಮಾಡಿರುವುದು ಖಂಡನೀಯ  
ವಿಚಾರವಾಗಿದ್ದು, ಆದ್ದರಿಂದ ಕೂಡಲೇ ಇವರ ವಿರುದ್ಧ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳಬೇಕೆಂದು ನಮ್ಮ

ಕಮಿಟಿಯ ವತಿಯಿಂದ ಒತ್ತಾಯಿಸುತ್ತೇನೆ. ಈಗಾಗಲೇ ಇವರನ್ನು ಸೇವೆಯಿಂದ ವಜಾಗೊಳಿಸಲು ಶಿಫಾರಸ್ಸು ಮಾಡಿ, ಇವರ ವಿರುದ್ಧ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಲು ದಿನಾಂಕ 03-10-2024 ರಂದು ಕ್ಷೇತ್ರ ಶಿಕ್ಷಣಾಧಿಕಾರಿಗಳು, ಬೆಂಗಳೂರು ಉತ್ತರ ವಲಯ-04, ರವರಿಗೆ ನಮ್ಮ ಪತ್ರ ಮುಖೇನ ಒತ್ತಾಯಿಸಲಾಗಿದೆ. ಅದರ ಪ್ರತಿಯನ್ನು ಮತ್ತು ರಾಷ್ಟ್ರಧ್ವಜದ ಮೇಲೆ ನಿಂತಿರುವ ಭಾವಚಿತ್ರವನ್ನು ಇದರೊಂದಿಗೆ ಲಗತ್ತಿಸಿದೆ.

ವಂದನೆಗಳೊಂದಿಗೆ,

ಇಂತಿ ತಮ್ಮ ವಿಶ್ವಾಸಿ

ಸಹಿ/-

(ಬಿ. ಎಂ. ಚಿಕ್ಕಣ್ಣ)

ರಾಜ್ಯಾಧ್ಯಕ್ಷರು

ದಿನಾಂಕ: 03/10/2024 ರಂದು ಪಿಯಾರ್‌ದುದಾರರು ನೀಡಿದ ದೂರು ಅರ್ಜಿಯನ್ನು ಸ್ವೀಕರಿಸಿ ಠಾಣಾ NCR ನಂ.688/2024 ರಲ್ಲಿ ನಮೂದಿಸಿದೆ."

The complaint becomes a crime in Crime No.377 of 2024 for offences punishable under Section 2 of the Act. Section 2 of the Act reads as follows:

**"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 shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.**

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

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

*Explanation 3.*—The expression “public place” means any place intended for use by, or accessible to, the public and includes any public conveyance.

***Explanation 4.*—The disrespect to the Indian National Flag means and includes—**

- (a) a gross affront or indignity offered to the Indian National Flag; or
- (b) dipping the Indian National Flag in salute to any person or thing; or
- (c) flying the Indian National Flag at half-mast except on occasions on which the Indian National Flag is flown at half-mast on public buildings in accordance with the instructions issued by the Government; or
- (d) using the Indian National Flag as a drapery in any form whatsoever except in State funerals or armed forces or other para-military forces funerals; or
- (e) using the Indian National Flag,—
  - (i) as a portion of costume, uniform or accessory of any description which is worn below the waist of any person; or
  - (ii) by embroidering or printing it on cushions, handkerchiefs, napkins, undergarments or any dress material; or
- (f) putting any kind of inscription upon the Indian National Flag; or
- (g) using the Indian National Flag as a receptacle for receiving, delivering or carrying anything except flower petals before the Indian National Flag is unfurled as part of celebrations on special

- occasions including the Republic Day or the Independence day; or
- (h) using the Indian National Flag as covering for a statute or a monument or a speaker's desk or a speaker's platform; or
  - (i) allowing the Indian National Flag to touch the ground or the floor or trail in water intentionally; or**
  - (j) draping the Indian National Flag over the hood, top and sides or back or on a vehicle, train, boat or an aircraft or any other similar subject; or
  - (k) using the Indian National Flag as a covering for a building; or
  - (l) intentionally displaying the Indian National Flag with the "saffron" down.

(Emphasis supplied)

Section 2 mandates that whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise shows disrespect to or brings into contempt the Indian National Flag or the Constitution of India or any part thereof shall be punished with imprisonment which may extend up to 3 years. Explanation-4 has several sub-explanations. Sub-explanation (i) of Explanation-4 mandates that allowing the Indian National Flag to touch the ground or the floor or trail in water intentionally would become an offence under Section 2. This provision has borne interpretation by several High Courts. Therefore, before embarking upon

consideration of the case on its merit, I deem it appropriate to notice the jurisprudence on the issue.

9.1. The Apex Court in **V.K. NASWA v. UNION OF INDIA**<sup>1</sup> has held as follows:

“ .... .... ....

**3.** The issue involved in the case has been dealt with by this Court elaborately in *Union of India v. Naveen Jindal* [(2004) 2 SCC 510 : AIR 2004 SC 1559] interpreting the clauses contained in the Flag Code, 2002 and explained as under what circumstances and in what manner the national flag can be hoisted by the individuals. The Flag Code is divided into three parts. Part II provides for the mode and manner of hoisting/displaying/use of national flag by the members of public, private organisations, educational institutions, etc. From reading of clause 2.1 of Section 1 appearing in Part II of the Flag Code, it is evident that:

“**2.1.** There shall be no restriction on the display of the national flag by members of general public, private organisations, educational institutions, etc. except to the extent provided in the Emblems and Names (Prevention of Improper Use) Act, 1950 and the Prevention of Insults to National Honour Act, 1971 and any other law enacted on the subject.”

This Court has further held that the Flag Code is not the law within the meaning of Article 13(3)(a) of the Constitution of India. However, the right to fly the national flag is a fundamental right. **Further, the Flag Code provides guidelines to be observed for preservation of dignity and respect to the national flag.**

**4. In view of the above, the national flag is both a benediction and a beckoning. Thus, in case a person**

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<sup>1</sup> (2012) 2 SCC 542

**shows any kind of disrespect to the national flag or does not observe the terms contained in the Code, legal action may be taken against him under the relevant statutory provisions. However, these are the questions of fact as to whether on a particular event a particular person has shown any kind of disrespect to the national flag.** For that purpose, the petitioner has already filed complaint before the authorities concerned. Thus, he cannot pursue the remedy simultaneously by filing the writ petition and on that count the petition is liable to be dismissed. More so, such a factual controversy cannot be examined in a petition under Article 32 of the Constitution of India.”

(Emphasis supplied)

The Apex Court holds that the National Flag is both a benediction and a beckoning. Failure to show proper respect renders the delinquent to legal action.

9.2. In the case of **VIKRAM DATTA V. STATE OF M.P.**<sup>2</sup>, the High Court of Madhya Pradesh has held as follows:

“.... .... .”

**7.** The first information report reflects that Station House Officer has received the information about the Flag in existence on the Flag-post in the night at 1.30 am. The Flag was there on the Flag-post. Section 2 of the Act of 1971 reads 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

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<sup>2</sup> **2018 SCC ONLINE MP 1802**

Flag or Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.”

**8.** Undisputedly, the Flag was on the Flag-post at night and it should have been taken off before sunset. The person who was in-charge to do this exercise was certainly the Peon - Ishwarlal, who during pendency of this petition u/s. 482 of Cr.P.C. expired. There is no evidence on record to establish that it was the duty of the petitioner to hoist the Flag every morning and unfurl in the evening before sunset. Even in the High Court, it is not the duty of Hon'ble the Chief Justice or the puisne (sic : puisne) Judge to hoist and unfurl the Flag before sunset. The duty has been assigned to a particular employee who is doing the job. **In the present case, there is no documentary evidence on record to establish that the said duty was assigned to the Principal of the College to hoist the Flag in the morning and to unfurl in the evening before sunset. There is no mens rea on the part of the petitioner.**

**9.** The Bombay High Court in *Amgonda Vithoba Pandhare v. Union of India* : LA WS (BOM) 2012 1138, has dealt with the Act of 1971. Para 6 to 10 of the aforesaid judgment reads as under:—

“6. We have gone through the averments made in the complaint and we have also perused the Prevention of Insults to National Honour Act, 1971 and the provisions of Flag Code of India, 2002. So far as Section 2 of the said Act of 1971 is concerned, it reads 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 shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Explanation 1:— Comments expressing disapprobation or criticism of the Constitution or of the Indian national Flag or of any measures of the government with a view to obtain an amendment of the Constitution of India or an alteration

of the Indian National Flag by lawful means do not constitute an offence under this section.

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

Explanation 3:— The expression “public place” means any place intended for use by, or accessible to, the public and includes any public conveyance.

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

- (a) a gross affront or indignity offered to the Indian National Flag; or
- (b) dipping the Indian National Flag in salute to any person or thing;
- (c) flying the Indian National Flag at half-mast except on occasions on which the Indian National Flag is flown at half-mast on public buildings in accordance with the instructions issued by the Government; or
- (d) using the Indian National Flag as a drapery in any form whatsoever except in State funerals or armed forces or other paramilitary forces funerals; or
- (e) using the Indian National Flag as a portion of costume or uniform of any description or embroidering or printing it on cushions, handkerchiefs, napkins or any dress material; or
- (f) putting any kind of inscription upon the Indian National Flag; or
- (g) using the Indian National Flag as a receptacle for receiving, delivering or carrying anything except flower petals before the Indian National Flag is unfurled as part of celebrations on special occasions including the Republic Day or the Independence Day; or
- (h) using the Indian National Flag as covering for a statue or a monument or a speaker's desk or a speaker's platform; or
- (i) allowing the Indian National Flag to touch the ground or the floor or trail in water intentionally; or
- (j) draping the Indian National Flag over the hood, top and sides or back or on a vehicle, train, boat or an aircraft or any other similar object; or
- (k) using the Indian National Flag as a covering for a building; or

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

**7. Explanation 4 mentions various acts of dishonour in clauses (a) to (1). Perusal of the said section clearly reveals that one of the essential ingredients of the said offence is that disrespect, contempt of the flag should be intentional. Similarly, Explanation 4 gives various instances of disrespect to the Indian National Flag. The offence of not lowering down the flag after sunset does not fall either in the various instances which are mentioned in Explanation 4 or in Section 2 of the said Act. The averments in the complaint, therefore, even if they are accepted at its face value, does not constitute an offence within the meaning of Section 2 of the said Act.**

**8. So far as the Flag Code is concerned, the said Flag Code is not an Act nor is it issued under any of the statutory provisions of the said Act and, therefore, it is not a statutory law enacted by the competent legislature.**

9. The Apex Court had occasion to consider whether the Flag Code has any statutory course and in the case of *Union of India v. Navin Jindal*, decided on 23.1.2004 in Civil Appeal No. 453 of 2004, after going through various sections and parts of the Flag Code, the Apex Court came to the conclusion that the Flag Code contains executive instructions of the Central Government and, therefore, it is not a law within the meaning of Article 13(3)(a) of the Constitution of India. In view of the ratio of the judgment of the Apex Court, therefore, it cannot be said that violation of the instructions which are given in the Flag Code would amount to an offence which is punishable under Section 2 of the said Act.

10. Another factor which also needs to be taken into consideration in the present case is that the petitioner was Head Master of the school and was proceeding to go to his school for lowering down the flag. However, while going to the school, on the way, he collapsed and had to be admitted in the hospital and he had instructed the other person to lower down the flag properly. This is not disputed by the respondent prosecution. **This being the position, it cannot be said that the petitioner intentionally wanted to insult the honour of the flag and lastly, complaint appears to have been filed by respondent No. 5, a person who was a political opponent of the petitioner**

**and obviously it appears to have been filed with an malafide intention to harass the petitioner. In either case, therefore, the petitioner has made out a good case for quashing the complaint."**

**10. In the aforesaid case also, the Flag was not brought down before the sunset and the Bombay High Court has held that it cannot be said that the petitioner intentionally wanted to insult the honour of the Flag. On the contrary, the person who was the political opponent lodged the complaint in the matter. In those circumstances, a case was made out to quash the complaint.**

**11.** In another case decided by the Bombay High Court in *Umesh Kishanrao Chopde v. State of Maharashtra*, 2012 Cri LJ 3142, the Head Master of the school failed to remove the Flag before sunset. The Bombay High Court in Para 7 and 8 of the aforesaid judgment, held as under:—

"7. This issue has been decided by the Hon'ble Supreme Court in (2004) 1 Scale 677, *Union of India v. Naveen Jindal* 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."

**8. 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 under Section 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."**

**12.** The High Court of Kerala has also dealt with a similar situation in the case of *Satheesh Babu P.K. v. State of Kerala* : LAWS (KER) 2016 3115 and held as under:—

"2. The learned counsel for the petitioner has invited the attention of this Court to the decision rendered by the Division Bench of the Bombay High Court in *Amgonda Vithoba Pandhare v. Union of India* : (2012) 4 Bom CR (Cri) 219, wherein it was held that:

**"Explanation 4 gives various instances of disrespect to the Indian National Flag. The offence of not lowering down the flag after sunset does not fall either in the various instances which are mentioned in Explanation 4 or in Section 2 of the said Act. The averments in the complaint, therefore, even if they are accepted at its face value, does not constitute an offence within the meaning of Section 2 of the said Act."**

3. Their Lordships had relied on the decision of the Apex Court in *Union of India v. Navin Jindal* rendered in Civil

Appeal No. 453 of 2004, wherein it was held that the Flag Code contains executive instructions of the Central Government and, therefore, it is not a law within the meaning of Article 13(3)(a) of the Constitution of India. It is a model code of conduct to be followed compulsorily by all the citizens of India. **Apart from that, penal consequences cannot be invited unless there is a statutory provision for the same. Going by the decisions noted supra, it seems that the prosecution in this case is quite unnecessary. Apart from that, it seems that there was no intention on the part of the petitioner to dishonour the National Flag. True that it was an omission on his part in lowering the National Flag at or before sunset. The prosecution seems to be quite unnecessary and, therefore, the same can be quashed."**

**13.** Similar view has been taken again by the Bombay High Court in *Kalimoddin v. State of Maharashtra* : LAWS (BOM) 2015 3324. Our own High Court in *J.P. Dutta v. Ravi Antrolia* : LAWS(BOM) 2009 4 109 has dealt with Section 2 of the Act of 1971. **It was a case where a private complaint was filed against the film-producer, wherein the allegation was that the National Flag has been used to cover the coffins of soldiers. This Court has quashed the complaint. It is very unfortunate that such frivolous complaint was filed for showing the Flag over the coffins of brave hearts who died for the nation. Learned Single Judge after taking into account all the facts has quashed the complaint in the matter.**

14. In the case of *Naveen Jindal* (supra), **it has been held that violation of the Flag Code cannot amount to an offence under the Act of 1971. In the considered opinion of this Court as there was no mens rea on the part of the petitioner, he has not committed any act within the meaning of Section 2 of the Act of 1971."**

9.3. In the case of **SRI RAVIKUMAR S.B. v. STATE OF KARNATAKA**<sup>3</sup>, the coordinate bench of this Court has held as follows:

"....."

6. Having heard the learned Advocates appearing for parties and on perusal of records it would disclose that National Flag was kept flying at Changadahalli Grama Panchayat Office on 11.01.2018 after sunset. Hon'ble Apex Court in the case of **UNION OF INDIA vs. NAVEEN JINDAL AND ANOTHER** reported in **(2004) 2 SCC 510** has held that Flag Code which prescribes after sunset Flag has to be lowered down, is not a law within the meaning of Article 13(3)(a) of the Constitution of India. It has been held:

"78. Flag Code is not a statute; thereby the fundamental right under Article 19(1)(a) is not regulated. But the guidelines as laid down under the Flag Code deserve to be followed to the extent it provides for preservation of dignity and respect for the National Flag. The right to fly the National Flag is not an absolute right. The freedom of expression for the purpose of giving a feeling of nationalism and for that purpose all that is required to be done is that the duty to respect the flag must be strictly obeyed. The pride of a person involved in flying the flag is the pride to be an Indian and that, thus, in all respects respect to it must be shown. The State may not tolerate even the slightest disrespect."

7. Paragraph 2.2(xi) of the Flag Code, 2002, mandates that a member of public, private organization or an educational institution may hoist/display the National Flag on all days or occasions, ceremonial or otherwise. Consistent with the dignity and honour of the National Flag and the Flag so displayed in any public place should be hoisted from sunrise to sunset, irrespective of weather conditions. Thus, said clause does not mandatorily contemplate lowering of National Flag so hoisted

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<sup>3</sup> **CRL. P. 8306/2018, Decided on 26-03-2019**

after sunset. Section 2 of the Act which has been pressed into service reads as under:

**“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 shows disrespect to or brings] into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.”

**8. A bare reading of above provision would clearly indicate that burning, mutilating, defacing, defiling, disfiguring, destroying, trampling upon or otherwise showing disrespect to, or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, in any public place or in any place within the public view, is punishable with imprisonment for a period of three years, or with fine, or with both.**

**9. Failure to lower down the National Flag after sunset no doubt does not fall under “Explanation 4” to Section 2 of the Act. Under identical circumstances Bombay High Court in W.P.No.3459/2011 in the matter of *AMGONDA VITHOBA PANDHARE VS. UNION OF INDIA & ORS.* has held that Principal of a school who was charge-sheeted for not lowering down the National Flag after sunset would not be liable to be proceeded with as said act of the accused does not fall under Explanation 4 to Section 2 of the Act for which accused was charge-sheeted. Under similar circumstances, Kerala High Court in Crl.Misc.No.1208/2016 in the matter of *P.K.SATHEESH BABU VS. STATE OF KERALA* has also held that not lowering down the National Flag after sunset would not be an offence under Section 2 of the Act and as such proceedings initiated against petitioner therein came to be quashed.**

10. These two judgments have been consistently followed by other High Courts including High Court of Patna in W.P.No.18/2016 in the matter of *PREMALATA KUMARI VS. STATE OF BIHAR AND OTHERS*. Hence, keeping in view the above judgments and provisions of Prevention of Insults to National Flag Act, 1971, this Court is of the considered view that failure to lower the National Flag after sunset would not amount to disrespect to the National Flag and it would not attract provisions of the Act invoked."

9.4. In the case of **ANJU RATHAUR v. OMPRAKASH RATHAUR<sup>4</sup>**, the High Court of Chhattisgarh has held as follows:

"... .."

**7. The question for consideration is whether learned Magistrate is justified in taking cognizance against the petitioner under Section 2 of the Act, 1971 ?**

**8.** At this stage, it would be appropriate to notice Section 2 of The Prevention of Insults to National Honour Act, 1971, which states as under:—

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

**Explanation 1.** xxx xxx xxx

**Explanation 2.** xxx xxx xxx

**Explanation 3.** xxx xxx xxx

**Explanation 4.** The disrespect to the Indian National Flag means and includes

xxx xxx xxx

xxx xxx xxx

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<sup>4</sup> 2019 SCC ONLINE CHH 349

(1) intentionally displaying the Indian National Flag with the "Saffron" down.

**9. Thus, in order to prove that the petitioner, being the President of Janpand Panchayat, Sakti, Distt. Janjgir-Champa has unfurled the Indian National Flag with the Saffron down at Pandit Deendayal Stadium, Sakti, the complainant has to prove the intention on the part of the petitioner to unfurl the national flag with saffron down and then only cognizance for offence under Section 2 of the Act, 1971 can be taken against the person concerned.**

**10.** Reverting to the facts of the case, it is quite vivid that pursuant to the complaint made by respondent No. 1, learned Magistrate called for the report from concerned police station, in which, it has clearly been pointed out that only because of incorrect tying of rope, the National Flag was unfurled by the petitioner/accused and such an error was committed by Shri N.P. Gopal, P.T.I. while preparing the National Flag for hoisting and for that error, Shri N.P. Gopal, P.T.I. is responsible. The aforesaid report states as under:—

**11. Thus, on the basis of aforesaid report, it is quite vivid that there was no intention on the part of the petitioner to unfurl the Indian National Flag with saffron down and it was the responsibility of that teacher of the school, as such there was no such disrespect shown by the petitioner intentionally while unfurling the National Flag. Thus, there is no material on record to show an intention or mens rea to disrespect the National Flag by the petitioner and thereby to undermine the sovereignty of nation and thus, the petitioner cannot be made to suffer a trial upon the charges which are not disclosed from the material on record, as such, the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused/petitioner as held by the Supreme Court in the matter of *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335].**

**12.** Accordingly, the initiation of prosecution for the offence punishable under Section 2 of the Act, 1971 against the petitioner is hereby quashed. The Cr.M.P. is allowed to the extent indicated hereinabove.”

9.5. In the case of **SUSHRISUMAN BAHANJI v. STATE OF UTTARAKHAND**<sup>5</sup>, the High Court of Uttarakhand has held as follows:

“.... ....

**12.** The Act, 1971 has come in force w.e.f. 23.12.1971. In the statement of objects and reasons, it is mentioned that cases involving deliberate disrespect to National Flag, the National Anthem and the Constitution have come to the notice in the recent past. Some of these incidents were discussed in both the Houses of Parliament and members expressed great anxiety about the disrespect shown to the national symbols. Government was urged to prevent the recurrence of such incidents.- Disrespect to the National Flag and the Constitution or the National Anthem is not punishable under the existing law. Public acts of insults to these symbols of sovereignty and the integrity of the Nation must be prevented. Hence, the Bill.

**13.** At this stage, it is necessary to notice the provision of section 2 of the Act, 1971. The provision of section 2 of the Act, 1971 is to the following effect:

“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 shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any

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<sup>5</sup> **2020 SCC ONLINE UTT 1372**

part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

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

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

*Explanation 3.*— The expression “public place” means any place intended for use by, or accessible to, the public and includes any public conveyance.

*Explanation 4.*— The disrespect to the Indian National Flag means and includes—

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

- (g) using the Indian National Flag as a receptacle for receiving, delivering or carrying anything except flower petals before the Indian National Flag is unfurled as part of celebrations on special occasions including the Republic Day or the Independence day; or
- (h) using the Indian National Flag as covering for a statute or a monument or a speaker's desk or a speaker's platform; or
- (i) allowing the Indian National Flag to touch the ground or the floor or trail in water intentionally; or
- (j) draping the Indian National Flag over the hood, top and sides or back or on a vehicle, train, boat or an aircraft or any other similar subject; or
- (k) using the Indian National Flag as a covering for a building; or
- (l) intentionally displaying the Indian National Flag with the "saffron down."

**14. A bare reading of abovementioned provision would clearly indicate mat burning, mutilating, defacing, defiling, disfiguring, destroying, trampling upon or otherwise shown disrespect to, or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, in any public place or in any place within the public view, is punishable with imprisonment for a period of three years, or with fine, or with both.**

**15. Reverting to the present facts, the materials as available, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute the alleged offence against the applicants.**

**16.** According to the prosecution, a protest was organized by the supporters of Baba Ramdev and Bharat Swabhimaan Trust for not arresting a Journalist by the police. The applicant-accused Jaideep was the leader of this protest. Women and other people were also involved in that protest. During investigation, name of the other applicants-accused persons came into light. Statements of the informant and witnesses were recorded by the Investigating Officer under section 161 of the Code. The learned Counsel for the applicants submits that none

of these witnesses had given any clear evidence that the National Flag was insulted by these applicants-accused persons. The case or the prosecution is that these applicants showed disrespect to the Indian National Flag by allowing the National Flag to touch the ground and by eating on the Flag. The learned Counsel for the applicants further submits that none of these witnesses, during investigation, stated that the applicants allowed the National Hag to touch the ground or they were eating on the Hag.

**17.** The learned Counsel for the applicants argued that the Investigating Officer had filed the charge-sheet on the grounds that the demonstration and hunger strike were organized in the leadership of the applicants and it was the responsibility of these applicants to keep the supporters disciplined. According to the Investigating Officer, in these circumstances, the applicants were responsible for insulting the National Flag.

**18.** The learned Counsel for the applicants relied upon the judgment of Madhya Pradesh High Court in *Ganesh Lal Bathri* (supra), where the Madhya Pradesh High Court observed, "Similarly the applicant cannot be sent up for trial on account of vicarious liability on the basis of an omnibus statement made by the complainant."

**19.** In this matter, neither in the F.I.R. nor in the evidences, collected during the investigation, none of the ingredients of section 2 of the Act, 1971 had been pleaded or adduced against the applicants. It is the contention of the learned Counsel for the applicants that alleged offence would not come within four corners of section 2 of the Act, 1971 and entire prosecution is due to political vendetta, without any legal basis.

**20.** The learned Counsel for the State fairly concedes that no direct evidences were found during the investigation against the applicants that they showed disrespect to the National Flag. The learned Counsel for the State also concedes that the individuals shown in the photographs, attached to the information of the informant, could not be identified by any person during

**the investigation. The ingredients of offence punishable under section 2 of the Act, 1971 are not forthcoming from the records as against the applicants. The allegations contained in the F.I.R. and the charge-sheet do not satisfy the essential ingredients of offence punishable under section 2 of the Act, 1971 against the applicants. This is a case where there is a total absence of allegations against the applicants for the offence punishable under section 2 of the Act, 1971. In the matter on hand, the allegations made in the F.I.R. as well as the material collected during the investigation, even if they are taken on their face value and accepted in their, entirety, do not *prima facie* constitute the offence punishable under section 2 of the Act, 1971 against the applicants accused persons.**

9.6. The High Court of Bombay, in the case of **DYANDEO**

**v. STATE OF MAHARASHTRA**<sup>6</sup>, has held as follows:

“.... .... .”

10 Relevant portion of Section 2 of the Act reads as under :

*Section 2 : 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 any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.*

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

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<sup>6</sup> **CRL. WP 1965/2019, Decided on 09-02-2021**

*Explanation 4 – The disrespect to the Indian National Flag means and includes- (I) allowing the Indian National Flag to touch the ground or the floor or trail in water intentionally; or..'*

11. **As can be seen, if one takes into consideration Explanation 4, the very act of drawing a rangoli on the ground of a National Flag depicting the Ashok Chakra could be an offence under Section 2 of the Act. However, the use of word 'intentionally' in that Explanation is conspicuous and cannot be overlooked. Meaning thereby that like many offences, there has to be a requisite mens rea. In absence of which the offence cannot be made out. Suffice for the purpose to refer to the decisions (supra) cited on behalf of the petitioners. In these cases the National Flag remained hoisted even after sun set and still the Court quashed the proceeding/criminal cases, for the very reason of absence of material to infer any mens rea on the part of the accused.**

12. **Coming back to the facts, though the respondent No. 2 examined himself and also examined couple of other witnesses like Education Officer and the photographer, conspicuously, in his testimony he has not at all mentioned about he having approached the petitioners, before the rangoli was trampled, requesting to remove it. Though such an allegation was made in the complaint he failed to substantiate it on oath during the course of hearing before charge. Obviously, the Education Officer is not a witness to the incident and the photographer who has been examined to take photographs of the rangoli and possible marks of trampling.**

13. **Even going by the allegations as it is, it is not the case of the respondent No. 2 about the petitioners themselves having trampled over the rangoli. His only grievance appears to be the petitioners being the Headmaster and the Office bear, it was their responsibility to remove it on their own or at least on request being made by the respondent No. 2 when he along with villagers had approached them. If such is the state of affairs it would be sheer abuse of**

**process of law if the petitioners are made to face the charge without there being iota of material in spite of conducting hearing before charge about any intention on their part to insult the National Flag.**

14. It is in view of such state of affairs, it would be just and proper to quash the proceeding before the Magistrate."

9.7. In the case of **STATE v. D. SENTHILKUMAR**<sup>7</sup>, the High Court of Madras has held as follows:

".... ....

**19.** This Court will deal with the second issue that has been taken up for consideration under the following heads:

1. The historical significance of the National Flag of India and the Constituent Assembly Debates;
2. Constitution of India and the Act;
3. Provisions of the Flag Code of India, 2002; and
4. Essential Ingredients to attract an offence under Section 2 of the Act; and
  - 4.1. Importance of *Mens Rea* in a case of this nature;
  - 4.2. Interpretation of Insult; and
  - 4.3. Interpretations rendered by various High Courts on the purport of Section 2 of the Act.
5. Compulsive Patriotism and its Fetishization.

**20. The Historical Significance of The National Flag of India and The Constituent Assembly** (Constituent Assembly of India Debates (Proceedings)-Volume IV, Tuesday, the 22<sup>nd</sup> July 1947, Resolution Re. National Flag)

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<sup>7</sup> 2021 SCC ONLINE MAD 1184

**21.** In 1921, a student named **Pingali Venkayya** presented a flag design as a distinctive symbol representing its nationalist objectives and rallied the millions. With changes over the next few decades, the present Flag in its colours, design and proportion was adopted as the National Flag of India.

**22. Pandit Jawaharlal Nehru**, when moving the Resolution regarding the National Flag before the Constituent Assembly of India on 22<sup>nd</sup> July 1947, said:

*This Resolution, Sir, is in simple language, in a slightly technical language, and there is no glow or warmth in the words that I have read. Yet I am sure that many in this House will feel that glow and warmth which I feel at the present moment for behind this Resolution and the Flag which I have the honour to present to this House for adoption lies history, the concentrated history of a short span in a nation's existence. Nevertheless, sometimes in a brief period we pass through the track of centuries. It is not so much the mere act of living that counts but what one does in this brief life that is ours; it is not so much the mere existence of a nation that counts but what that nation does during the various periods of its existence; and I do venture to claim that in the past quarter of a century or so India has lived and acted in a concentrated way and the emotions which have filled the people of India represent not merely a brief spell of years but something infinitely more. They have gone down into history and tradition and have added themselves on to that vast history and tradition which is our heritage in this country. So, when I move this Resolution, I think of this concentrated history through which all of us have passed during the last quarter of a century. Memories crowd upon me. I remember the ups and downs of the great struggle for freedom of this great nation. 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. Then, many who are not present here today, many of our comrades who have passed, held on to this Flag, some amongst them even unto death and handed it over as they sank,*

*to others to hold it aloft. So, in this simple form of words, there is much more than will be clear on the surface. There is the struggle of the people for freedom with all its ups and downs and trials and disasters and there is, finally today as I move this Resolution, a certain triumph about it--a measure of triumph in the conclusion of that struggle."*

*... 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. (Cheers). And wherever it may go--and I hope it will go far,-not only where Indians dwell as our ambassadors and ministers but across the far seas where it may be carried by Indian ships, wherever it may go it will bring a message, I hope, of freedom to those people, a message of comradeship, a message that India wants to be friends with every country of the world and India wants to help any people who seek freedom. (Hear, hear). That I hope will be the message of this Flag everywhere."*

**23.** *Sir S. Radhakrishnan* added, "the Flag links up the past and the present. It is the legacy bequeathed to us by the architects of our liberty."

**24.** *Mr. Frank R. Anthony*, in his speech, said that "This Flag flies today as the Flag of the Nation, it should be the duty and privilege of every Indian not only to cherish and live under it but if necessary, to die for it."

**25.** *Dr. Joseph Alban D'Souza* prayed, "Vivat, Crescat, Floreat India", "May India under the aegis of this Flag live, grow and flourish".

**26.** *Mr. Chaudri Khaliquzzaman* said, "I know that a flag to look at, is simply a piece of cloth but a country's flag symbolises its ideals and its aspirations, both moral and spiritual."

**27.** *Pandit Govind Malaviya* observed:

*"As I have already stated, when a flag or any other thing is accepted by a nation as its ensign, it becomes the dearest object of the nation and assumes the most important and the highest place in the life and history of that nation. This, our Flag, has been the symbol of the hopes and dreams of our hundred million souls for the last 27 years. For the honour of this flag millions holding it dearer than their lives, suffered tremendously. Numberless people went to jails leaving their children starving. People had their heads and bones broken by the lathis of police and the military to keep it aloft. Unarmed young men and students of the country opened their chests before the bullets of the English military or police to protect the honour of his Flag. For generations it has been our Flag and the great feeling, emotion and enthusiasm we have in our hearts for this Flag is beyond human description."*

**28.** A symbol is a mark, sign, or word that indicates, signifies, or is understood as representing an idea, object, or relationship. A Country's National Flag is a symbolic manifestation intended as an inclusive, representative and integrated comity. The National Flag, therefore, conjures a rush of pride in the whole being of its citizens.

**29.** Rejecting what is symbolic of a Nation brings to mind the words of the character Philip Nolan in Edward Everett Hale's short story 'The Man without a Country', *"Remember, boy, that behind all these men... behind officers and government, and people even, there is the Country Herself, your Country, and that you belong to her as you belong to your own mother. Stand by her, boy, as you would stand by your mother...!"*

### **Constitution of India and the Act**

**30.** Article 19(1)(a) of the Constitution (hereinafter referred to as "the Constitution") guarantees all citizens, *'right to freedom of speech and expression.'* However, the right is not absolute and is subject to reasonable restrictions, and the law on the same is settled. Article 51-A (1) simultaneously lays down that citizens are duty-bound *'to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.'*

**31.** The earliest legislation on the subject of 'insults to national honour' in India was enacted by the State of Tamil Nadu in the year 1957. The Prevention of Insults to National Honour Act, 1957 (Tamil Nadu Act No. XIV of 1957) was enacted in the wake of the Anti-Hindi Agitation Movement in order to *'prevent certain offences against the Indian National Flag, pictures, effigies and statues of the Father of the Nation, or the Constitution of India.'*

**32.** Section 4 of The Prevention of Insults to National Honour Act, 1957 made the *'burning etc., of Indian National Flag'* as an offence punishable with imprisonment for a term which may extend to 3 years or with fine or both. The explanation to the provision clarified that the term 'Indian National Flag' includes 'any pictorial representation thereof.'

33. This Act is, therefore, the precursor to The Prevention of Insults to National Honour Act, 1971 (Act No. 60 of 1971), legislated by the Parliament. The Introduction to the Act highlights that the need for a law on this subject was imperative in the wake of 'incidents involving deliberate disrespect to the National Flag, the National Anthem and the Constitution and the need to 'prevent the recurrence of such incidents.'"

**34.** The Statement of Objects and Reasons of the Act is extracted hereunder so as to set clarity to the malice that the law set out to handle and eliminate:

*"Cases involving deliberate disrespect to National Flag, the National Anthem and the Constitution have come to the notice in the recent past. Some of these incidents were discussed in both the Houses of Parliament and members expressed great anxiety about the disrespect shown to the national symbols. Government were urged to prevent the recurrence of such incidents. Disrespect to the National Flag and the Constitution or the National Anthem is not punishable under the existing law. Public acts of insults to these symbols of sovereignty and the integrity of the nation must be prevented. Hence the Bill. The scope of the law is restricted to overt acts of insult to and attack on, the national symbols by burning trampling, defiling or mutilating in public. It is not intended to prohibit honest*

and bonafide criticism of the symbols, and express provisions to this effect have been made in the Bill.”

**35. Under the scheme of the Act, Section 2 penalizes any act which insults the Indian National Flag and the Constitution of India with imprisonment, which may extend to 3 years or with fine, or with both. Explanation 1 exempts any comments or criticism that are made with a view to obtaining an amendment of the Constitution or alteration of the Flag. Explanation 2 to Section 2 elucidates as to what constitutes “Indian National Flag”. Explanation 3 expresses what “public place” occurring in Section 2 is. Explanation 4 analyses what disrespect to the Indian National Flag means and includes.**

**36.** The provision is extracted hereunder:

*2. Insults 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 shows disrespect to or brings] into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.*

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

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

*Explanation 3.-The expression “public place” means any place intended for use by, or accessible to, the public and Includes any public conveyance.*

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

- (a) a gross affront or indignity offered to the Indian National Flag; or
- (b) dipping the Indian National Flag in salute to any person or thing; or
- (c) flying the Indian National Flag at half-mast except on occasions on which the Indian National Flag is flown at half-mast on public buildings in accordance with the instructions issued by the Government; or
- (d) using the Indian National Flag as a drapery in any form whatsoever except in State funerals or armed forces or other para-military forces funerals; or
- [(e) using the Indian National Flag,-
- (i) as a portion of costume, uniform or accessory of any description which is worn below the waist of any person; or
- (ii) by embroidering or printing it on cushions, handkerchiefs, napkins, undergarments or any dress material; or]
- (f) putting any kind of inscription upon the Indian National Flag; or
- (g) using the Indian National Flag as a receptacle for receiving delivering or carrying anything except flower petals before the Indian National Flag is unfurled as part of celebrations on special occasions including the Republic Day or the Independence day; or
- (h) using the Indian National Flag as covering for a statute or a monument or a speaker 's desk or a speaker 's platform; or
- (i) allowing the Indian National Flag to touch the ground or the floor or trail in water intentionally; or
- (j) draping the Indian National Flag over the hood, top and sides or back or on a vehicle, train, boat or an aircraft or any other similar object; or
- (k) using the Indian National Flag as a covering for a building; or
- (l) intentionally displaying the Indian National Flag with the "saffron" down.]

**37.** Subsequently, the Flag Code of India, 2002 (hereinafter referred to as "the Code") was brought into force as an attempt to bring together the provisions of the Emblems and

Names (Prevention of Improper Use) Act, 1950 and the Act, and 'all such laws, conventions practices and instructions' issued by the Government from time to time with respect to the display of the National Flag and the manner thereof.

**38.** Clause 2.1. of Section I of the Code provides that "There shall be no restriction on the display of the National Flag by members of the general public, private organisations, educational institutions etc., except to the extent provided in the Emblems and Names (Prevention of Improper Use) Act, 1950 and the Prevention of Insults to National Honour Act, 1971 and any other law enacted on the subject."

**39.** The Code, however, does not have the force of a statute and is not 'law' under Article 13(3)(1) of the Constitution as held by the Hon'ble Supreme Court in *Union of India v. Naveen Jindal*, reported in (2004) 2 SCC 510. It contains a set of procedures and parameters to be followed while using the Flag.

**40.** A comprehensive reading of the provisions extracted herein above would show that the Act seeks to lay a reasonable restriction over the fundamental right to expression guaranteed by the Constitution under Article 19 by laying down the parameters that would circumscribe certain overt acts to be beyond such threshold, moving into the realm of causing deliberate insult to the National Flag, the Constitution and emblems thereof. It further provides for the proprieties to be observed while displaying the national Flag.

### **Provisions of the Flag Code of India, 2002**

**41.** Unlike the 1971 Act, the Flag Code of India is not placed on the footing of a statute. Rather, the Flag Code is a set of Executive instructions as to proper use of the National Flag. In *Naveen Jindal* (cited supra), the Supreme Court took into account three important dimensions in order to find out an answer to the question of whether the Flag Code is a Law under Art. 13(3)(a) namely:

1. Importance of National Flag,
2. Constituent Assembly Debates and

### 3. Rules existing in other countries.

**42.** The relevant portions of the judgment are extracted hereunder:

*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 bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law."*

*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.*

**43.** The court further held that,

*(iv) Flag Code although is not a law within the meaning of Article 13(3)(a) of the Constitution of India for the purpose of clause (2) of Article 19 thereof it would not restrictively regulate the free exercise of the right of flying the national Flag.*

**Essential Ingredients to attract an offence under Section 2 of the Act.**

**44. For any act to be termed as an offence under Section 2, *Actus Reus* and *Mens Rea* should be established. The *Actus Reus* being any of the actions in Section 2 and Explanation 4 and the *Mens Rea* being the intention to show disrespect or contempt. As to what constitutes an offence, the decisions of the Hon'ble Supreme Court and various High Courts are extracted hereunder.**

**45. The High Court of Bombay in *Amgonda Vithoba Bandhare v. Union of India*, reported in (2012) 4 Mah LJ 768 held that:**

***"7. Explanation 4 mentions various acts of dishonour in clauses (a) to (l). Perusal of the said section clearly reveals that one of the essential ingredients of the said offence is that disrespect, contempt of the Flag should be intentional Similarly, Explanation 4 gives various instances of disrespect to the Indian National Flag The offence of not lowering down the Flag after sunset does not fall either in the various instances which are mentioned in Explanation 4 or in Section 2 of the said Act. The averments in the complaint, therefore, even if they are accepted at its face value, does not constitute an offence within the meaning of Section 2 of the said Act.***

***8. So far as the Flag Code is concerned, the said Flag Code is not an Act nor is it issued under any of the statutory provisions of the said Act and, therefore, it is not a statutory law enacted by the competent legislature.***

***9. The Apex Court had occasion to consider whether the Flag Code has any statutory course and in the case of Union of India v. Navin Jindal, decided on 23.1.2004 in Civil Appeal No. 453 of 2004, after going through various sections and parts of the Flag Code, the Apex Court came to the conclusion that the Flag Code contains executive instructions of the Central Government and, therefore, it is not a law within the meaning of Article 13(3)(a) of the Constitution of India. In view of the ratio of the judgment of the Apex Court, therefore, it cannot be said that violation of the***

***instructions which are given in the Flag Code would amount to an offence which is punishable under Section 2 of the said Act."***

**46.** Relying on *Amgonda* (cited supra), the Bombay High Court held the following in the case of *Dr. Varsha w/o Raj Salunke v. State of Maharashtra*, reported in 2018 SCC OnLine Bom 2805 : (2019) 1 AIR Bom R (Cri) (NOC 12) 5.

"9. .... In "*Amgonda*" (Supra). It has been observed,

***'7. Explanation 4 mentions various acts of dishonour in clauses (a) to (l). Perusal of the said section clearly reveals that one of the essential ingredients of the said offence is that disrespect, contempt of the Flag should be intentional. Similarly, Explanation 4 gives various instances of disrespect to the Indian National Flag. The offence of not lowering down the Flag after sunset does not fall either in the various instances which are mentioned in Explanation 4 or in Section 2 of the said Act. The averments in the complaint, therefore, even if they are accepted at its face value, does not constitute an offence within the meaning of Section 2 of the said Act.'***

***8. So far as the Flag Code is concerned, the said Flag Code is not an Act nor is it issued under any of the statutory provisions of the said Act and, therefore, it is not a statutory law enacted by the competent legislature.***

***Therefore, when the facts of the case do not disclose commission of any offence and only non-observance of the Flag Code then such non-observance which is not a law within the meaning of Article 13(3)(a) of the Constitution of India, it cannot be said to be covered under Section 2 of the Prevention of Insults to National Honour Act 1971."***

### **Importance of Mens Rea in a case of this nature**

**47.** From a perusal of the penalising provision and even the Statement of Objects and Reasons to the Act, what is deduced is that *Mens Rea*, i.e., to cause insult,

**show disrespect or to bring into contempt towards the National Flag or The Constitution is seen at a high threshold. The intention to commit such an act must be so malafide and apparent to attract an offence under Section 2 of the Act.**

**48.** At this juncture, it is pertinent to take into account the judgement of the High Court of Madhya Pradesh in *Ganesh Lal Bathru v. State of MP*, reported in 2002 SCC OnLine MP 599, where the Court interpreted "*otherwise beings into contempt*" as:

***"6. From a perusal of the relevant provisions of the Act so also the Code and on a careful scrutiny of materials on record, it is clear that there is a dearth of materials to show an intention or mens rea to disrespect the national Flag and thereby to undermine the sovereignty of nation. The applicant was working as the Principal of a Government High School and being the incharge could hoist the Flag but since the complainant was authorised to do so, the applicant could not have played any mischief unless there is a positive material to the contrary, in tying the Flag in reverse Order through a lower staff to show down the complainant....***

***...In addition to that, the inclusive clause of section 2 'or otherwise brings into contempt' cannot be stretched that far as to include acts in question which are absolutely devoid of elements of mens rea or disrespect and thus fall outside the definition of contempt as given in Black 's Dictionary."***

**49.** In the case of *Tamizhazhagan v. The Revenue Divisional Officer* reported in (1966) 2 Mad LJ 194, **this Court while dealing with the validity of Prevention of Insults to National Honour Act, 1957 and Section 5 of the said Act, summarised the meaning of patriotism, and the intention of the legislature behind the impugned statute, held as follows:**

*"18. Patriotism and loyalty to the Constitution are matters of feeling and conduct with the human spirit. They are capable of drawing out of man the highest of his noble qualities and supreme sacrifice. They belong to the category of feelings which, at any rate at the present stage of society and world order, man regards as of paramount importance. From such belief flows sentiments of great regard and veneration to objects which symbolise such feelings. The Constitution of India which the people of India have given themselves, symbolises the realisation of their cherished dreams after decades of unparalleled sacrifice, and it is but natural to expect any citizen of India to regard with veneration any document that embodies the Constitution. True, the Constitution can be amended and has been amended several times, but the Constitution is an organic instrument and carries within it the power to get itself amended. To the instrument as it stands he pays his deepest homage. It symbolises to him his hard-won sovereignty; it contains his charter of rights.*

*19. It is quite a common feature to be observed that people in this country, at least large sections, look with veneration upon any parchment, paper, palm leaf, or slate, which records any writing as manifestations of Goddess Saraswathi. If, in such circumstances, the State should think it necessary to declare the wilful burning of any article embodying the Constitution or part of it, an offence, the State is only discharging its duty, and reflecting the sentiments of large sections of the Indian public, it is only making punishable an act which may otherwise go unpunished, though it might have offended the sentiments of large sections of the community, and deeply wounded their feelings. It will be a case of mala in se, that is, an offence against nature or contrary to the moral sense of the community, and not a mere mala prohibita that is, an offence against laws which enjoin positive duties and forbid things which are not mala in se, to which is annexed a penalty for non-compliance.*

*20. Here we would like to quote the observations of the Supreme Court in Veerabadran Chettiar v. Ramaswami Naicker. The decision impliedly recognise the duty of the State to protect the sentiments and susceptibilities of its different groups of citizens. That was a case of religious susceptibilities. The question in that case was whether the breaking in public of an unconsecrated clay idol of God Ganesa held sacred by a large section of Hindus with the express intention of insulting the feelings, of the Hindu community would be an offence under Section 295, Penal Code, 1860. The Penal Code, 1860 had used the words "any object held sacred by any class of persons." Differing from this Court and holding that idols are*

only illustrative of those words and the objects destroyed need not be consecrated ones, *Sinha, J.*, delivering the judgment of the Supreme Court, remarks at page 1035:

*A sacred book like the Bible, or the Koran, or the Granth Saheb, is clearly within the ambit of these general words. If the Courts below were right in their interpretation of the crucial words in Section 295, the burning or otherwise destroying or defiling such sacred books will not come within the purview of the penal statute. In our opinion, placing such a restricted interpretation on the words, of such general import, is against all established canons of construction. Any object, however trivial or destitute of real value in itself if regarded as sacred by any class of persons, would come within the meaning of the penal section. Nor is it absolutely necessary that the object, in order to be held sacred, should have been actually worshipped. An object may be held sacred by a class of persons without being worshipped by them. It is clear, therefore, that the Courts below were rather cynical in so lightly brushing aside the religious susceptibilities of that class of persons to which the complainant claims to belong. The section has been intended to respect the religious susceptibilities of persons of different religious persuasions or creeds. Courts have got to be very circumspect in such matters, and to pay due-regard to the feelings and religious emotions of different classes of persons with different beliefs, irrespective of the consideration whether or not they share these beliefs or whether they are rational or otherwise, in the opinion of the Court.*

**35. Now, the impugned legislation penalises only wilfully burning of any copy or a copy of a part of the Constitution of India, and the word 'wilfully' is of considerable import in the context of its user. It is not every burning of a copy of the Constitution that is made an offence. Wilfully' there, is not just the equivalent of knowingly or intentionally. It is something more. It is burning the Constitution purposely, the purpose getting apparent from the two succeeding words 'desecrates' or 'insults' and as revealed by the Short Title to the Act and the Preamble. Wilfully', as we see it, denotes an evil intention and it is found in Stroud's Judicial Dictionary, 3<sup>rd</sup> Edition, Volume 4, at page 3305, that such is the common use of the word in the English language. Wilfully' in the context does not mean merely intentionally as opposed to accidentally which meaning it sometimes has.**

***In The Queen v. Senior, wilfully' is stated to mean that "the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it". The paper embodying the Constitution must be burned as embodying the Constitution; there must be deliberation to burn a copy or part of the Constitution with the***

***intention of desecrating or insulting No doubt if the words' wilfully burns' stand by themselves, it may take in an innocent burning of the paper containing the Constitution. But the words take their colour from the context. The enactment is not made in vacuo. The circumstances in which the Act came to be passed, the object and purpose of the Act as revealed in the Preamble and the other parts of the Act provide the key to the understanding of the language and place a limitation on the words' wilfully burns'."***

### **Interpretation of the term 'Insult'**

**50. In *Tamizhazhagan* (cited supra), this Court while interpreting the terms 'insult' and 'desecration', after delving into the principles of interpretation in construing general language used by the legislature in an enactment, held as extracted hereunder:**

*"36. In Craies on Statute Law, 6<sup>th</sup> Edition, at page 177, the principles of interpretation in such circumstances as gathered from the case-law are set out thus : From Cox v. Hakes (2), the following statement is extracted:*

*"It cannot, I think, be denied that, for the purpose of construing any enactment, it is right to look, not only at the provision immediately under construction, but at any others found in connection with it which may throw light upon it, and afford an indication that general words employed in it were not intended to be applied without some limitation. General words therefore must be understood as used with reference to the subject-matter in the mind of the Legislature and limited to it."*

***We are on a penal statute and when interpretation of the statute becomes necessary, it should lean towards preserving the liberty of the subject. That the word 'burns' in S. 5 of the Act can only refer to burning with an intention of desecrating or insulting in the context of its user, will be apparent from the following illustration given in Maxwell on Interpretation of Statutes, 11<sup>th</sup> Edition, at page 324:***

***"On the same principle, an Act which prohibited the 'taking or destroying' of the a pawn or fish would not***

***include a 'taking' of spawn to remove it to another bed, for the word 'destroying' with which 'taking' was associated, indicated that the taking which was prohibited was dishonest or mischievous."***

***It is an established principle of interpretation of statute that if very general language is used in an enactment, which it is clear must have been intended to have some limitation put upon it, the Preamble may be used to indicate to what particular instances the enactment is intended to apply-see Craies on Statute Law, 6<sup>th</sup> Edition, at page 203. If need be, we would read the conjunction 'or' before 'insults' in S. 5 as 'and', that the section may read:"Whoever wilfully burns or desecrates and insults". Vide Maxwell on Interpretation of Statutes, 11<sup>th</sup> Edition, at page 230 for an illustration where an absurd consequence was avoided and the real intention of the Legislature which was beyond reasonable doubt was effected by reading 'or' as 'and'."***

**51.** The court went on to note the meaning of the terms 'insult' and 'desecrate',

***"37. In Frank and Wagnalls' New Standard Dictionary' insult' is explained thus:"To treat with gross indignity, insolence or contempt, by word or act; officer an indignity or affront to;" 'Desecrate' is defined in the Dictionary as "divert from sacred to a common use; give up to sacrilege; profane, as to desecrate a shrine or holy vessels".***

**52.** Further, it held,

***"38. Learned Counsel contends that even if a person burns a copy of the Constitution in the fastness of his own house, he could be held guilty under the section, and the wide sweep of the enactment beyond the needs makes the Act unconstitutional. We do not construe the Act like that. The gist of the offence is insult and if insult is to be effective, it has to be conveyed. The law does not take note of uncommunicated or unexhibited ideas or thoughts or feelings. In the Law Lexicon of India, Ramanatha Iyer Edition, page 603,***

***Insult' is explained as being 'active' like outrage. The language is 'whoever insults', not 'whoever thinks he insults' : insult cannot be taken by a copy of the***

***constitution : it will hurt the millions who pay homage to the Constitution. The burning that is banned is not one intended for absorption of stone walls or for edification of stoic philosopher-spectators. It is a burning that one may expect would provoke and offend those hostile to the idea, while exciting the friendly and sympathetic to extremes of demonstration, with likelihood of violent clashes between the two.***

***59. On ultimate analysis the position resolves to this : whenever the question arises whether a particular offence involves moral delinquency, the particular case will have to be decided on its own facts, and the conclusion will have to be in accordance with the public morals of the time and the common sense of the community as ultimately judicially interpreted. Here again, the context and the purpose for which the character of the offence has to be determined will have a bearing on the matter. The question has to be approached not in an abstract fashion, but bearing in mind the implications of the particular offence, and the requirements and object of the statute for which the moral element has to be assessed.***

**Interpretations rendered by various High Courts on the purport of Section 2 of the Act**

**53. In the case of *Sarvadnya D. Patil v. State of Goa*, reported in 2001 SCC OnLine Bom 753, the Bombay High Court held that there should be an intentional overt act in order to attract an offence under Section 2 of the Act. The relevant portions of the judgement are extracted hereunder:**

***"5. It is doubtful whether omission to hoist the National Flag or hold the Flag Hoisting ceremony on the aforesaid days of national importance would fall within the ambit of "or otherwise brings into contempt". The definition clearly indicates positive acts such as burning mutilating defacing defiling etc. In order to be liable for punishment under Section 2, it is necessary that the act complained of must be intentional. The omission to hold the flag hoisting ceremony cannot be said to be sui generis with the positive acts mentioned preceding the words "or otherwise". Even otherwise, there is no statutory provision making it mandatory to hold the flag***

***hoisting ceremony on 19<sup>th</sup> December, 2000 i.e. Goa Liberation Day and other days of national importance."***

**54.** In *The Publisher, Sportstar Magazine, Chennai v. Girish Sharma*, reported in 2000 SCC OnLine Mad 896, this Court, while dealing with a case as to whether an opinion published in a magazine highlighting the importance of the national Flag in light of the Flag being displayed upside down at a sports tournament, held as follows:

***"10. The reading of the above provision would make it clear that whoever in any public place brings into contempt the Indian National Flag shall be punished.***

.....

***12. The perusal of the above paragraphs would make it clear that the Indian Flag was placed upside down in the Tournament took place on 8.3.1997, in which Chess was played by V. Anand and Veselin Topalov and the said figure was published by the Publisher, the petitioner herein.***

***13. In paragraph 4 of the complaint, the complainant would state that the said figure of the Indian Flag which was placed upside down was published by the petitioner in his Magazine, thereby the Publisher caused dishonour and insult to the Indian Flag and Nation.***

***14. In short, it is the case of the complainant that the publication of the photograph displaying the event which took place in a foreign country where the Indian Flag was placed upside down while the Indian player and the foreign were playing, would amount to offence under the Act. Thus, it is clear that it is not the case of the complainant that the Indian Flag was placed by the Publisher in a wrong way or upside down.***

***15. On going through the article, which is the material on the basis of which complaint has been filed, it is clear that initially the Indian Flag was kept upside down, but the same was corrected by the Organisers within a few minutes. This is only an information disseminated through the press.***

***16. For placing Indian Flag upside down, it cannot be stated that the Publisher was in any way responsible. On the other hand, the mistake***

*committed by the Organisers of the Tournament was clearly displayed and depicted through the photograph informing the reading public that the mistake committed by the Organisers in placing the Indian Flag in a wrong way at the beginning stage has been corrected by them even in the middle of the play.*

*17. Moreover, the writer of the article also would express his opinion that, "When Indian Flag was placed upside down, the Indian player Anand did not play well, but once this was corrected, the Indian player started to play well and won two games". This opinion given by the writer of the article would indicate that the players can play well only when the National Flag is placed in the correct way. Therefore, the publication of the photograph and writing the article about it giving the above opinion would not amount to insult to the National Flag. On the other hand, it is the warning to the Organisers not to place the Indian Flag upside down.*

*18. It would also indicate that when the Indian players play in foreign countries, they have to verify whether the Indian Flag placed in the Chess Table is in a correct way and thereafter, they have to play and only then, play would be a fair play and they would also play well.*

*19. The photograph and the opinion given in the article by the writer, in my view, is to impress upon the players as well as the Organisers of the Tournament that at least in the future, the Flags of the respective countries must be placed in a correct way and proper placement of the National Flag only would pave the way for the proper play. Therefore, this is only a comment by the press which indicates the importance of the honour to be given to the National Flag.*

*20. Under those circumstances, this publication of the photograph and the events which took place in the foreign country while the chess was played along with the opinion of the writer of the article, would not attract any ingredients of Section 2 of the Act."*

**55.** In the case of *Ajitinder Singh v. State of Punjab*, reported in 2000 SCC OnLine P&H 52, the court held the following.

***"7. Flying the National Flag on the Government vehicles does not come within any of the categories mentioned in the aforesaid Section nor does it amount to insult to Indian National Flag. The learned Counsel for the petitioner is not able to draw my attention to any of the provisions of law or authority to show that flying the National Flag on the car used by Respondent No. 5 amounts to insult to the National Flag. A reading of Section 2 of the Prevention of Insults to National Honour Act, 1971 does not prohibit flying of the National Flag on the bonnet of the car. Therefore, this contention of the learned Counsel for the petitioner is also rejected."***

**56.** In *P.V. Joseph v. State of Kerala*, reported in 2016 SCC OnLine Ker 11466, the Kerala High Court held that a **prosecution would be unnecessary in a case where there was no intention on the mind of the accused person to dishonour the National Flag. The relevant portion of the judgement is extracted hereunder:**

***"4. Going by the decisions noted supra, it seems that the prosecution in this case is quite unnecessary. Apart from that, it seems that there was no intention on the part of the petitioners to dishonour the National Flag. True that it was an omission on their part in lowering the National Flag after the prescribed time. The prosecution seems to be quite unnecessary and therefore, the same can be quashed."***

**57.** In *A.K. Viswanathan v. Angamali Municipality Represented by its Secretary*, reported in 2019 SCC OnLine Ker 3978, the Kerala High Court held:

***"13. In other words, it is indirectly admitted in the complaint that the petitioners had no intention to insult or to show disrespect to the National Flag."***

***14. ....even assuming that the averment in Annexure-A1 complaint that the National Flag lowered down by the second accused was one hoisted on the morning of 17.08.2015 on the flag post, it cannot be found that he had any intention***

***to insult or to show disrespect to the National Flag by lowering it down. Even as per the averment in the complaint, the petitioners had done so on a misunderstanding that the National Flag which was hoisted on the flag post on the Independence Day was thereafter not lowered down."***

**58.** In *Addanki Ranjith Ophir v. State of Andhra Pradesh*, reported in 2017 SCC OnLine Hyd 499, the Andhra Pradesh High Court held:

***"6. Printing of the photo of the Jesus Christ on the said book does not in any manner fall within the purview of Section 2 of the said Act."***

**61.** Patriotism is not determined by a gross physical act. The intention behind the act will be the true test, and it is possible that sometimes the very act itself manifests the intention behind it. In the present case, even if the entire set of facts stated in the complaint are taken as it is, it must be seen as to what would have been the actual feeling with which the participants would have dispersed after the function was over. Will they be feeling great pride in belonging to this great nation, or would the pride of India have come down on the mere cutting of a cake during the celebration? Without any hesitation, this Court can hold that the participants would have felt only the former and not the latter. For proper understanding, let us take a hypothetical case where there is widespread participation in an Independence Day or Republic Day celebration. During such celebrations, the participants are provided with a national flag to be worn by them. In reality, after the participants leave the venue on completion of the celebrations, they do not continue to possess this Flag forever, and it becomes part of any other waste paper. **Will this mean that each of the participants has insulted the national Flag and should be proceeded against under Section 2 of the Act? The obvious answer is in the negative. If persons are allowed to give such broad meaning to the word 'insult', many will become very uncomfortable and hesitant to handle the national Flag. The National Flag is given during the function as a symbol of our national pride. Once such a feeling is created in the minds of the participants, the purpose for which the national Flag was given or used will be achieved.**

**62. The Flag Code does provide a mechanism to destroy flags in private, in a manner consistent with the dignity of the Flag, and as a responsible citizen, it should be followed in letter and spirit. Not all will be aware of this procedure, and therefore, that by itself will not make them susceptible to committing an offence under Section 2 of the Act. This Court ventured to give such an extreme illustration only to drive home the point that a wayfarer, for the mere sake of publicity, should not be allowed to expose people to criminal prosecution for some innocuous acts which by themselves cannot be construed to be an insult to make it an offence under Section 2 of the Act.**

**63.** In view of the above discussion, this Court is of the considered view that the complaint given by the Respondent does not make out an offence under Section 2 of the Act, and the second issue is answered accordingly.”

9.8. In the case of **GAURISHANKAR GARG v. STATE OF M.P.**<sup>8</sup>, the High Court of Madhya Pradesh has held as follows:

“.... ....

**5.** Learned counsel for the petitioners submits that even if the allegations contained in the FIR are treated to be true, then too they do not constitute any offence as alleged. In support of his contentions, learned counsel has placed reliance on decisions of the Apex Court in the cases of *State of Haryana v. Bhajanlal*, 1992 Supp (1) SCC 335, *Union of India v. Naveen Jindal*, (2004) 2 SCC 510, *Ganesh Lal Bathri v. State of M.P.*, (2003) 2 J LJ 296, *Amgonda Vithoba Pandhare v. Union of India* : LAWS (BOM) (2012) 1 138, *Umesh Kishanrao Chopde v. State of Maharashtra*, 2012 Cri LJ 3142 and the Single Bench decision of this Court rendered at

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<sup>8</sup> **2021 SCC ONLINE MP 1763**

Indore Bench in M.Cr.C. No. 5230/2012 (*Dr. Vikram Dutta v. State of M.P.*) decided on 25.01.2018.

**6.** The relevant provisions of Sec.2 of 1971 Act read thus:—

“2. Insult to Indian National Flag and Constitution of India. Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both. Explanation 1.-Comments expressing disapprobation or criticism of the Constitution or of the Indian National Flag or of any measures of the Government with a view to obtain an amendment of the Constitution of India or an alteration of the Indian National Flag by lawful means do not constitute an offence under this section. Explanation 2.-The expression “Indian National Flag” includes any picture, painting, drawing or photograph, or other visible re-presentation of the Indian National Flag, or of any part or parts thereof, made of any substance or represented on any substance. Explanation 3.-The expression “public place” means any place intended for use by, or accessible to, the public and includes any public conveyance.

**7. Section 2 attracts punishment of imprisonment for a term of three years or with fine or both when a person is found in public place within public view burning mutilating, defacing, defiling, disfiguring, destroying, trampling upon or bringing or otherwise bringing into contempt by words spoken or written or by act begin the Indian National Flag. Allegation against petitioners is of leaving National Flag at hoisted position at about 8.30 PM i.e. between sunset and sunrise. This act of petitioners does not squarely fall within Sec.2 of 1971 Act. Thus, the act of leaving the National Flag in hoisted position even after sunset may be an act of advertent or inadvertent forgetfulness and subject matter of misconduct but not contemptuous unless it is shown that hoisting and flying the National Flag between sunset and sunrise is expressly prescribed as an offence in specific terms.**

8. The fundamental rule of interpretation of penal provision requires that every penal provision is to be interpreted strictly. If an act does not fall within the four corners of the offence described by the statute, then the said act cannot suffer rigors of penal provision.

10. In this regard, the decision of The Apex Court in *R. Kalyani v. Janak C. Mehta*, (2009) 1 SCC 516, is noteworthy:—

11.

“37. Maxwell in *The Interpretation of Statutes* (12<sup>th</sup> Edn) says: “The strict construction of penal statutes seems to manifest itself in four ways : in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfillment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction.”

38. In *Craies and Statute Law* (7<sup>th</sup> Edn. At p. 529) it is said that penal statutes must be construed strictly. At page 530 of the said treatise, referring to *U.S. v. Wiltberger*, [2 Wheat. 76 (US)], it is observed, thus:

“The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law. This rule is said to be founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the Legislature, and not in the judicial department, for it is the Legislature, not the Court, which is to define a crime and ordain its punishment.”

39. In *Tuck & Sons v. Priestler*, [[L.R.] 19 Q.B. 629] which is followed in *London and County Commercial Properties Investments v. Attn Gen.*, [[1953] 1 WLR 312], it is stated:

“We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation, which will avoid the penalty in any particular case, we must adopt that construction. Unless penalties are imposed in clear terms they are not enforceable. Also where

various interpretations of a section are admissible it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive.”

**10. From the above, it is evident that the act of leaving the National Flag at hoisted position between sunset and sunrise does not satisfy the ingredients which constitute the offence punishable u/S.2 of 1971 Act.**

**11.** Learned counsel for respondents has attempted to seek assistance from the Indian Flag Code, 2002 (for brevity, “Flag Code”), in particular, Clause of Sec.2(2.2)(xi) of Flag Code. He submits that in particular Clause under the said Flag Code allowing National Flag to remain hoisted between sunset and sunrise is prohibited. As such it is urged that if provision of Sec.2 of 1971 Act is read in conjunction with the said clause of Flag Code, then petitioners have prima facie committed the offence punishable u/S.2 of 1971 Act.

**12.** The relevant clause of the Indian Flag Code, 2002 is reproduced below for ready reference and convenience:—

“2(2.2)(xi)- Where the Flag is displayed in open, it should, as far as possible, be flown from sunrise to sunset, irrespective of weather conditions.”

**13.** It is not in dispute that the said Flag Code is not “law” as defined in Article 13 of Constitution of India and is a mere compendium of executive instructions as held by the Apex Court in *Union of India v. Naveen Jindal*, (2004) 2 SCC 510, the relevant extract of which reads thus:—

“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 bye-law, rule, regulation, notification, custom or usage having in the territory of India 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."

**14. As such since the Flag Code does not have any statutory force it cannot attract any offence. Besides, the Flag Code lays down that as far as possible National Flag should be flown between sunrise and sunset. Meaning thereby that it should not be flown between sunset and sunrise. Use of expression "as far as possible" in the said clause of Flag Code, which is a mere instruction, is sufficient for this Court to conclude that flying of National Flag between sunset and sunrise is not prohibited by law."**

*(Emphasis supplied in each instance)*

In the light of the judgments rendered by different High Courts on the issue, the High Court of Madras being the most comprehensive consideration, it becomes necessary to notice whether *mens rea* existed for insult of the flag, as the provision itself indicates that allowing the National Flag to touch the ground or the floor or trail in water, intentionally. Therefore, *mens rea* becomes the key ingredient of an offence under Section 2 of the Act. Whether *mens rea* is present in the case at hand is necessary to be noticed.

10. On 02-10-2024 when the picture cropped up, the student admitted the guilt and gave an explanation that he has placed the picture of the Principal upon the National Flag unknowingly. The communication of the leader of the students to the Principal reads as follows:

“ಗೆ,  
ಮುಖ್ಯ ಶಿಕ್ಷಕರಿಗೆ  
ಸರ್ಕಾರಿ ಪ್ರೌಢಶಾಲೆ ಬಾಗಲಕೋಟೆ  
ಬೆಂಗಳೂರು ಉತ್ತರ ವಲಯ - 4  
ಬೆಂಗಳೂರು ಉತ್ತರ ಜಿಲ್ಲೆ

ಇಂದ,  
ಯಶವಂತ ಗೌಡ  
10 ತರಗತಿ

ಸರ್ಕಾರಿ ಪ್ರೌಢಶಾಲೆ ಬಾಗಲಗುಂಟೆ,

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಕ್ಷಮಾಪಣೆಯನ್ನು ಕೋರುತ್ತಿರುವ ಬಗ್ಗೆ

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ತಮ್ಮಲ್ಲಿ ಕ್ಷಮಾಪಣೆ ಕೋರುತ್ತಿರುವುದೇನೆಂದರೆ ದಿನಾಂಕ 2/10/2024 ರಂದು ಗಾಂಧಿ ಜಯಂತಿ ಎಂದು ಶಾಲೆಯಲ್ಲಿ ಆಚರಣೆ ಮಾಡಲು ತಾವು ನಮ್ಮಗಳಿಗೆ ಹೇಳಿಕೊಟ್ಟಿರುವ ದೇಶಭಕ್ತಿಯನ್ನು ನಮ್ಮ ಜೀವನದಲ್ಲಿ ಪಾಲಿಸುವ ಸಲುವಾಗಿ ರಾಷ್ಟ್ರೀಯ ಹಬ್ಬಗಳನ್ನು ನಮ್ಮ ಹುಟ್ಟು ಹಬ್ಬಗಳಿಗಿಂತ ಹೆಚ್ಚು ಮುತುವರ್ಜಿ ವಹಿಸಿ ಆಚರಣೆ ಮಾಡಬೇಕು ಏಕೆಂದರೆ ಅದರ ಹಿಂದೆ ಸಾಕಷ್ಟು ಬಗೆಯ ಬಲಿದಾನ ಇದೆ ಎಂಬುದನ್ನು ಅರಿತುಕೊಂಡು ಆಚರಣೆ ಮಾಡಲು ನಾವೆಲ್ಲರೂ ಬೆಳಿಗ್ಗೆ 6:30 ಗಂಟೆಗೆ ಸರಿಯಾಗಿ ಶಾಲೆಗೆ ಬಂದಿರುತ್ತೇವೆ ನಾವು ಬರುವ ವೇಳೆದಾಗಲೇ ಮುಖ್ಯ ಶಿಕ್ಷಕರಾದ ತಾವು ಶಾಲೆಗೆ ಬಂದದ್ದನ್ನು ನೋಡಿ ಮತ್ತಷ್ಟು ಕಾಳಜಿಯಿಂದ ಗಾಂಧಿ ಜಯಂತಿ ಆಚರಣೆಯಲ್ಲಿ ತೊಡಗಿಕೊಂಡು ತಮ್ಮ ಜೊತೆಯಲ್ಲಿರುವ ಕ್ರಮದಾನವನ್ನು ಮಾಡಿರುತ್ತೇವೆ ಈ ದಿನದಂತೆ ಬಿಬಿಎಂಪಿ ವತಿಯಿಂದ ನಮ್ಮ ಶಾಲೆಯ ರಂಗಮಂದಿರದಲ್ಲಿ ಸರ್ಕಾರ ವತಿಯಿಂದ ನಡೆಯುವ ಗಾಂಧಿ ಜಯಂತಿ ಕಾರ್ಯಕ್ರಮದ ನೇರ ಪ್ರಸಾರವನ್ನು ವೀಕ್ಷಣೆ ಮಾಡಲು ಎಲ್‌ಇಡಿ ವಾಲ್ ಮತ್ತು ಸೌಕರ್ಯ ಮಾಡಿರುತ್ತಾರೆ ಕಾರ್ಯಕ್ರಮದ ನೇರ ಪ್ರಸಾರವನ್ನು ವೀಕ್ಷಣೆ ಮಾಡಲು ಎಲ್ಲಿಗೆ ಇಂಟರ್‌ನೆಟ್ ವ್ಯವಸ್ಥೆಯನ್ನು ಕಲ್ಪಿಸಲು ನಿಮ್ಮ ಮೊಬೈಲ್ ಅನ್ನು ರಂಗ ಮಂದಿರ ಎಲ್ ಇಡಿ ವಾಲಿ ನಲ್ಲಿಟ್ಟು ಗಾಂಧಿ ಜಯಂತಿ ಆಚರಣೆಯಲ್ಲಿ ತೊಡಗಿರುತ್ತಾರೆ ವಿದ್ಯಾರ್ಥಿ ನಾಯಕನಾದ ನಾನು ಎಲ್ ಇಡಿ ವಾಲ್ ನಲ್ಲಿ ನೇರ ಪ್ರಸಾರವಾಗುವ ಗಾಂಧಿ ಜಯಂತಿ ಕಾರ್ಯಕ್ರಮದ ಮೇಲ್ವಿಚಾರಣೆಯನ್ನು ಮಾಡುತ್ತಿದ್ದು ಈ ಸಂದರ್ಭ ದಲ್ಲಿ ತಮ್ಮ ಮೇಲಿನ ಗೌರವ ಪ್ರೀತಿಯಿಂದ ತಮ್ಮ ಮೊಬೈಲ್ ಅನ್ನು ಬಳಸಿಕೊಂಡು ಗಾಂಧಿ ಜಯಂತಿಯ ಶುಭಾಶಯಗಳು ತಿಳಿಸುವ ಸಂಬಂಧ ತಮ್ಮ ಫೋಟೋಗೆ ರಾಷ್ಟ್ರಾಧ್ಯಕ್ಷದ ಬ್ಯಾಗ್ರಾಂಡ್ ಅನ್ನು ಎಡಿಟ್ ಮಾಡಿ ಗಾಂಧಿ ಜಯಂತಿಯ ಶುಭಾಶಯಗಳು ಶುಭಾಶಯಗಳು ನೀಡುವ ಸಂಬಂಧ ನಿಮ್ಮ ಮೊಬೈಲ್ ನ ಸ್ಟೇಟಸ್ ಗೆ ಎಡಿಟ್ ಮಾಡಿರುವ ಒಂದು ಫೋಟೋವನ್ನು ಹಾಕಿರುತ್ತೇನೆ ಇದಕ್ಕೆ ಕಾರಣವೇನೆಂದರೆ ನಿಮ್ಮಗೆ ರಾಷ್ಟ್ರಪತಿಯ ಕಾರಣವಾಗಿರುತ್ತದೆ ನಿಮ್ಮ ಅನುಮತಿ ಇಲ್ಲದೆ ನಿಮ್ಮ ಮೊಬೈಲ್ ನಲ್ಲಿ ಉಪಯೋಗಿಸಿದ್ದು ಹಾಗೂ ಸ್ಟೇಟಸ್ ಫೋಟೋಗಳನ್ನು ಹಾಕಿದ್ದು ನನ್ನ ಅಪರಾಧವಾಗಿರುತ್ತದೆ ಮತ್ತೊಮ್ಮೆ ಇಂತಹ ತಪ್ಪನ್ನು ಮಾಡುವುದಿಲ್ಲ ಎಂದು ತಮ್ಮಲ್ಲಿ ಮನಪೂರ್ವಕವಾಗಿ ಕ್ಷಮೆಯನ್ನು ಯೋಚಿಸುತ್ತಿದ್ದೇನೆ.

ಗೌರವ ಪೂರ್ವಕ ವಂದನೆಗಳೊಂದಿಗೆ

ದಿನಾಂಕ: 12/10/2024

ಬಾಗಲಗುಂಟೆ,

(ಯಶವಂತ್ ಗೌಡ)

ವಿದ್ಯಾರ್ಥಿ

ತಂದೆಯತ್ತ ತಾಯಿ ಕಡೆಯಿಂದ

ನಮ್ಮ ಮಗ ತಿಳಿಯದೆ ತಪ್ಪು ಮಾಡಿರುತ್ತಾನೆ ದಯವಿಟ್ಟು ಕ್ಷಮಿಸಿ.

ತಂದೆ  
SD/-

ತಾಯಿ  
SD/-

(sic)

A show cause notice comes to be issued to the petitioner on 07-10-2024. The show cause notice is replied to by the petitioner which becomes necessary to be noticed. It reads as follows:

“ಗೆ,  
ಕ್ಷೇತ್ರ ಶಿಕ್ಷಣಾಧಿಕಾರಿಗಳು,  
ಶಾಲಾ ಶಿಕ್ಷಣ ಇಲಾಖೆ,  
ಬೆಂಗಳೂರು ಉತ್ತರ ವಲಯ-04.

ಇಂದ,

ವೇಣುಗೋಪಾಲ್ ಬಿ.ಸಿ.  
ಮುಖ್ಯ ಶಿಕ್ಷಕರು, ಸರ್ಕಾರಿ ಪ್ರೌಢಶಾಲೆ,  
ಬಾಗಲಗುಂಟೆ, ಬೆಂಗಳೂರು ಉತ್ತರ ವಲಯ-04

ಮಾನ್ಯರೇ,

ವಿಷಯ:- "ಕಾರಣ ಕೇಳಿ ನೋಟಿಸ್‌ಗೆ ಲಿಖಿತ ರೂಪದ ವಿವರಣೆಯನ್ನು ನೀಡುವ ಬಗ್ಗೆ".

ಉಲ್ಲೇಖ:- ಪತ್ರ ಸಂಖ್ಯೆ : ಸಿ2.ಸ.ಪ್ರೌ.ಶಾ.ಮು.ಕಾ.ಕೇ.ನೋ 36/2024-25 ದಿನಾಂಕ:

03/10/2024 ಕ್ಷೇತ್ರ ಶಿಕ್ಷಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿ, ಉ.ವ-04

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ಮೇಲ್ಕಂಡ ವಿಷಯ ಮತ್ತು ಉಲ್ಲೇಖಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ನಾನು ಸರ್ಕಾರಿ ಪ್ರೌಢಶಾಲೆ ಬಾಗಲಗುಂಟೆ ಶಾಲೆಯಲ್ಲಿ ದಿನಾಂಕ:- 01/10/2018 ರಿಂದ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿದ್ದು, ಇಲಾಖೆಯ ನಿಯಮಗಳಿಗೆ ಅನುಸಾರವಾಗಿ ಕೆಲಸ ನಿರ್ವಹಿಸಿ ಶಾಲೆಯನ್ನು ಸರ್ವಾಂಗೀಣವಾಗಿ ಅಭಿವೃದ್ಧಿಗೊಳಿಸುವ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದು, ಮಕ್ಕಳಿಗೆ ಗುಣಾತ್ಮಕವಾದ ಶಿಕ್ಷಣವನ್ನು ನೀಡುವುದರೊಂದಿಗೆ 458 ಇದ್ದ ವಿದ್ಯಾರ್ಥಿಗಳ

ಸಂಖ್ಯೆಯನ್ನು 1186 ಕ್ಕೆ ಹೆಚ್ಚಿಸುವುದರೊಂದಿಗೆ 10 ವಿಭಾಗಗಳಿಂದ 20 ವಿಭಾಗಗಳಿಗೆ ಹೆಚ್ಚಿಸಿರುತ್ತೇವೆ. ಎಸ್.ಎಸ್.ಎಲ್.ಸಿ ಪರೀಕ್ಷೆಯಲ್ಲಿ ಉತ್ತಮ ಫಲಿತಾಂಶವನ್ನು ನೀಡುವುದರೊಂದಿಗೆ ಕಳೆದ 5 ವರ್ಷಗಳಲ್ಲಿ ಉತ್ತಮ ಫಲಿತಾಂಶ ಪಡೆದ 15 ವಿದ್ಯಾರ್ಥಿಗಳಿಗೆ ಸರ್ಕಾರದ ವತಿಯಿಂದ ಲ್ಯಾಪ್‌ಟಾಪ್ ಪುರಸ್ಕಾರ ಪಡೆಯಲು ಶ್ರಮಿಸಿದ್ದೇನೆ. ಎನ್.ಎಂ.ಎಂ.ಎಸ್ ಪರೀಕ್ಷೆಯಲ್ಲಿ ಕಳೆದ 5 ವರ್ಷಗಳಲ್ಲೇ ತಾಲ್ಲೂಕಿನಲ್ಲಿಯೇ ಅತಿ ಹೆಚ್ಚು ವಿದ್ಯಾರ್ಥಿಗಳು ಉತ್ತೀರ್ಣವಾಗುವಂತೆ ಶ್ರಮಿಸಿರುತ್ತೇನೆ. ಕಳೆದ 12 ವರ್ಷಗಳಿಂದ ಯಾವುದೇ ಕಷ್ಟ ಚುಕ್ಕೆ ಇಲ್ಲದೆ ಇಲಾಖಾ ನಿಯಮಗಳಿಗೆ ಅನುಸಾರವಾಗಿ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸಿರುತ್ತೇನೆ ಎಂಬ ಅಂಶಗಳನ್ನು ಗೌರವಪೂರ್ವಕವಾಗಿ ತಮ್ಮ ಗಮನಕ್ಕೆ ತರಬಯಸುತ್ತೇನೆ.

ಮುಂದುವರಿದು ಮೇಲಿನ ಉಲ್ಲೇಖದ ಅನ್ವಯ ನಾನು ಗಾಂಧಿ ಜಯಂತಿಯ ದಿನದಂದು ನನ್ನ ವ್ಯಾಟ್ಸಪ್‌ನ ಸ್ಟೇಟಸ್‌ನಲ್ಲಿ 'ಹುಟ್ಟು ಹಬ್ಬದ ಶುಭಾಶಯಗಳು ಮಹಾತ್ಮ' ಎಂಬ ಶಿರೋನಾಮೆಯಡಿ ಗೌರವಾನ್ವಿತ ರಾಷ್ಟ್ರಧ್ವಜದ ಮೇಲೆ ಶೂ ಧರಿಸಿ ನಿಂತಿರುವ ಹಾಗೆ ಭಾವಚಿತ್ರವನ್ನು ಹಾಕಿಕೊಂಡು ರಾಷ್ಟ್ರಧ್ವಜಕ್ಕೆ ಅಗೌರವ ಹಾಗೂ ಅಪಮಾನ ಮಾಡಿರುತ್ತೀರ ಎಂದು ಶ್ರೀ ಬಿ.ಎಂ ಚಿಕ್ಕಣ್ಣ ರಾಜ್ಯಾಧ್ಯಕ್ಷರು, ಹೂಮನ್ ರೈಟ್ಸ್ ಪ್ರೋಟೆಕ್ಷನ್ ಕಮಿಟಿ, ಚಿಕ್ಕಬಾಣಾವಾರ, ಬೆಂಗಳೂರು ಅವರು ನನ್ನ ವಿರುದ್ಧ ದೂರು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ ಎಂದು ತಿಳಿಸಿ ಕಾರಣ ಕೇಳಿ ನೋಟಿಸ್‌ನ್ನು ಜಾರಿ ಮಾಡಿರುವುದು ಸರಿಯಷ್ಟೆ. ಅದಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ದಿನಾಂಕ 02/10/2024 ರಂದು ರಾಜ್ಯ ಸರ್ಕಾರದ ವತಿಯಿಂದ ನಡೆಸಲಾಗುತ್ತಿದ್ದ ಗಾಂಧೀ ಜಯಂತಿ ಆಚರಣೆಯ ನೇರ ಪ್ರಸಾರವನ್ನು ವೀಕ್ಷಣೆ ಮಾಡಲು ಬಿ.ಬಿ.ಎಂ.ಪಿ.ಯ ವತಿಯಿಂದ ನಮ್ಮ ಶಾಲೆಯ ರಂಗಮಂದಿರದಲ್ಲಿ ಎಲ್.ಇ.ಡಿ ವಾಲ್ ಅನ್ನು ಅಳವಡಿಸಿದ್ದು ಅದಕ್ಕೆ ಇಂಟರ್‌ನೆಟ್ ವ್ಯವಸ್ಥೆಯನ್ನು ನನ್ನ ಮೊಬೈಲ್ ಹಾಟ್ ಸ್ಪಾಟ್ ಅನ್ನು ಬಳಸಿಕೊಂಡು ಕಲ್ಪಿಸಿದ್ದು, ನನ್ನ ಮೊಬೈಲ್‌ನ್ನು ರಂಗಮಂದಿರದಲ್ಲಿಯೇ ಬೆಳಿಗ್ಗೆ 07:30 ಗಂಟೆಯಿಂದ ಇಟ್ಟಿರುತ್ತೇನೆ. ನಂತರದ ಸಮಯದಲ್ಲಿ ಶಾಲೆಗೆ ಆಗಮಿಸಿದ ಎಸ್.ಡಿ.ಎಂ.ಸಿ ಸಮಿತಿಯವರೊಂದಿಗೆ ಸೇರಿಕೊಂಡು ಗಾಂಧಿ ಜಯಂತಿಯ ಆಚರಣೆ ಹಾಗೂ ಸರ್ಕಾರದ ನೇರಪ್ರಸಾರವನ್ನು ವೀಕ್ಷಣೆ ಮಾಡುವುದರಲ್ಲಿ ತೊಡಗಿಕೊಂಡಿರುತ್ತೇನೆ.

ಈ ಸಂದರ್ಭದಲ್ಲಿ ನಮ್ಮ ಶಾಲೆಯಲ್ಲಿ 10ನೇ ತರಗತಿಯಲ್ಲಿ ವ್ಯಾಸಂಗ ಮಾಡುತ್ತಿದ್ದ ಯಶವಂತ್ ಗೌಡ ಹಾಗೂ ಅವನ ಸಂಗಡಿಗರು ನನ್ನ ಅನುಮತಿ ಇಲ್ಲದೆ ನನ್ನ ಮೊಬೈಲ್‌ನ್ನು ರಂಗಮಂದಿರದಲ್ಲಿಯೇ ಬಳಸಿಕೊಂಡು ಮುಖ್ಯ ಶಿಕ್ಷಕರ ಮೇಲಿನ ಪ್ರೀತಿ ಅಭಿಮಾನದಿಂದಾಗಿ ನನ್ನ ಒಂದು ಫೋಟೋವನ್ನು ಎಡಿಟ್ ಮಾಡಿ ಬ್ಯಾಗ್‌ಗೌಂಡ್‌ನಲ್ಲಿ ಗೌರವಾನ್ವಿತ ರಾಷ್ಟ್ರಧ್ವಜವನ್ನು ಇರಿಸಿ ಅದರ ಮುಂದೆ ನನ್ನ ಫೋಟೋವನ್ನು ಎಡಿಟ್ ಮಾಡಿ "ಹುಟ್ಟು ಹಬ್ಬದ ಶುಭಾಶಯಗಳು ಮಹಾತ್ಮ" ಎಂಬ ಶಿರೋನಾಮೆಯಡಿಯಲ್ಲಿ ನನ್ನ ವ್ಯಾಟ್ಸಪ್ ನ ಸ್ಟೇಟಸ್‌ಗೆ ಫೋಟೋವನ್ನು ಹಾಕಿರುತ್ತಾರೆ. ಈ ಯಾವುದೇ ವಿಷಯವು ನನ್ನ ಗಮನಕ್ಕೆ ಬಂದಿರುವುದಿಲ್ಲ. ನಾನು ಸರ್ಕಾರದ ನೇರ ಕಾರ್ಯಕ್ರಮವನ್ನು ವೀಕ್ಷಣೆ ಮಾಡುವಲ್ಲಿ ನಿರತರಾಗಿತ್ತೇನೆ. ಈ ಸಂದರ್ಭದಲ್ಲಿ ನಮ್ಮ ಶಾಲೆಗೆ ಬಂದಂತಹ ಸುವರ್ಣನ್ಯೂಸ್ ಹಾಗೂ ಕನ್ನಡಪ್ರಭ ವರದಿಗಾಗರರು ನನ್ನನ್ನು ಮುಖ್ಯ ಶಿಕ್ಷಕರ ಕೊಠಡಿಗೆ ಕರೆಸಿಕೊಂಡು ನಿಮ್ಮ ಮೊಬೈಲ್‌ನಲ್ಲಿ ಇದ್ದಂತಹ ಸ್ಟೇಟಸ್‌ನ ಬಗ್ಗೆ ತಿಳಿಸಿರುತ್ತಾರೆ. ಅಲ್ಲಿಯವರೆಗೂ ನನ್ನ ಮೊಬೈಲ್ ಅಲ್ಲಿ ಸ್ಟೇಟಸ್ ಹಾಕಿರುವುದು ನನ್ನ ಗಮನಕ್ಕೆ ಬಂದಿರುವುದಿಲ್ಲ. ನನಗೆ ನನ್ನ ಸ್ಟೇಟಸ್‌ನಲ್ಲಿ ಫೋಟೋ ಬಂದಿರುವುದನ್ನು ಸುದ್ದಿವಾಹಿನಿಯವರೇ ನನಗೆ ಮುಖ್ಯ ಶಿಕ್ಷಕರ ಕೊಠಡಿಯಲ್ಲಿ ತೋರಿಸಿರುತ್ತಾರೆ. ಆ ಕೂಡಲೇ

ಅದನ್ನು ಡಿಲೀಟ್ ಮಾಡಿ ಇದು ನನ್ನ ಗಮನಕ್ಕೆ ಬರದೇ ವಿದ್ಯಾರ್ಥಿಗಳಿಂದ ಆಗಿರುವ ತಪ್ಪೆಂದು ಸುದ್ದಿವಾಹಿನಿಯರಲ್ಲಿ ಕ್ಷಮೆಯನ್ನು ಸಹ ಕೋರಿರುತ್ತೇನೆ.

ನಂತರ ನನ್ನ ಮೊಬೈಲ್ ಅನ್ನು ನನ್ನ ಅನುಮತಿ ಇಲ್ಲದೆ ತೆಗೆದುಕೊಂಡ ವಿದ್ಯಾರ್ಥಿಗೆ ತಿಳಿವಳಿಕೆಯನ್ನು ನೀಡಿದ ನಂತರ ಆ ವಿದ್ಯಾರ್ಥಿಯು ಕ್ಷಮಾಪಣೆಯ ಪತ್ರವನ್ನು ನೀಡಿರುತ್ತಾನೆ. ಅದರ ಪ್ರತಿಯನ್ನು ತಮ್ಮ ಅವಗಾಹನೆಗೆ ಇದರೊಂದಿಗೆ ಲಗತ್ತಿಸಿದೆ. ನಂತರ ಸುಮಾರು ಬೆಳಿಗ್ಗೆ 11ಗಂಟೆ 15 ನಿಮಿಷ ಸುಮಾರಿನಲ್ಲಿ ದೂರುದಾರರಾದ ಶ್ರೀಯುತ ಬಿ.ಎಂ.ಚಿಕ್ಕಣ್ಣ ನವರು ನನಗೆ ವ್ಯಾಟ್ಸಪ್ ಸಂದೇಶವನ್ನು ಕಳುಹಿಸಿ ಈ ವಿಷಯದ ಬಗ್ಗೆ ಪ್ರಸ್ತಾಪಿಸಿರುತ್ತಾರೆ. ಅವರಿಗೂ ಸಹ ನಾನು ಇದು ನನ್ನ ಗಮನಕ್ಕೆ ಬಾರದೆ ಸಂಬಂಧಿಸಿರುವ ಘಟನೆಯಾಗಿದ್ದು, ಮತ್ತೊಮ್ಮೆ ಇಂತಹ ಘಟನೆಗಳು ಸಂಭವಿಸದಂತೆ ಎಚ್ಚರ ವಹಿಸುತ್ತೇನೆ ಎಂದು ಕ್ಷಮೆಯನ್ನು ಕೋರಿರುತ್ತೇನೆ. ಅದರ ಪ್ರತಿಯನ್ನು ಲಗತ್ತಿಸಿರುತ್ತೇನೆ ಎಂಬ ಅಂಶವನ್ನು ತಮ್ಮ ಗಮನಕ್ಕೆ ತರಬಯಸುತ್ತಾ ದೂರುದಾರರು ನೀಡಿರುವ ದೂರಿಗೂ ನನಗೂ ಯಾವುದೇ ಸಂಬಂಧವಿರುವುದಿಲ್ಲ ಎಂಬುದನ್ನು ವಿನಮ್ರತೆಯಿಂದ ತಮ್ಮ ಗಮನಕ್ಕೆ ತರಬಯಸುತ್ತಾ ಕಾರಣ ಕೇಳಿ ನೋಟಿಸ್‌ಗೆ ಲಿಖಿತರೂಪದ ವಿವರಣೆಯನ್ನು ಸಲ್ಲಿಸುತ್ತಿದ್ದೇನೆ.

ಗೌರವ ಪೂರಕ ವಂದನೆಗಳೊಂದಿಗೆ,

ತಮಾಮ ನಂಬುಗೆಯ

ಸಹಿ/-

ಮುಖ್ಯಶಿಕ್ಷಕರು

ಸರ್ಕಾರಿ ಪ್ರೌಢಶಾಲೆ ಬಾಗಲಗುಂಟೆ

ನಾಗಸಂದ್ರ ಅಂಚೆ, ಬೆಂಗಳೂರು ಉ.ವ-04

ಬೆಂಗಳೂರು ಉ, ಜಿಲ್ಲೆ-560 073.

ಸ್ಥಳ:- ಬಾಗಲಗುಂಟೆ

ದಿನಾಂಕ:-7/10/24

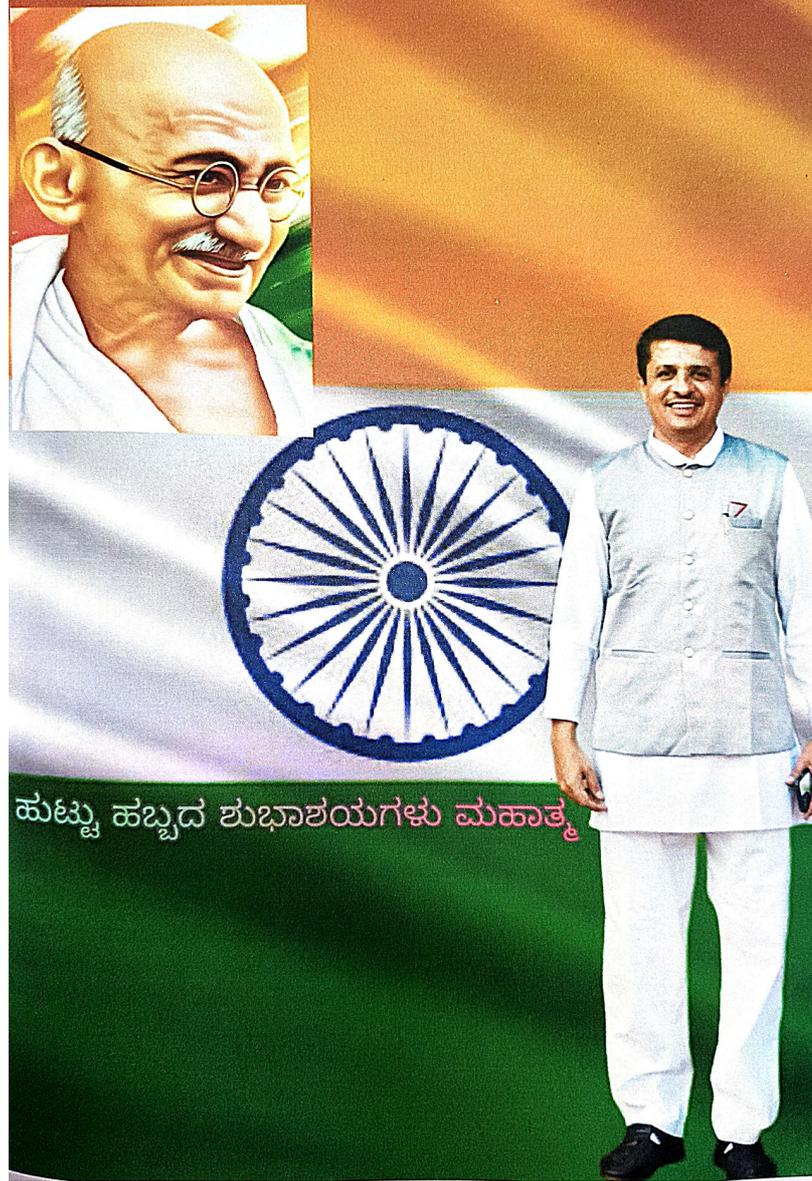
ಅಡಕಗಳು:-

1. ವಿದ್ಯಾರ್ಥಿಯು ಕ್ಷಮಾಪಣೆ ಪತ್ರ
2. ದೂರುದಾರರಿಗೆ ಕಳುಹಿಸಿರುವ ವ್ಯಾಟ್ಸಪ್ ಸಂದೇಶ.”

It now becomes necessary to notice how the picture is edited and placed on the National Flag. The original picture of the petitioner is as follows:



The picture of the National Flag with the petitioner is as follows:



If the two are seen in juxtaposition, it becomes clear that a picture of the petitioner taken elsewhere is edited and placed on the

National Flag. It ostensibly cannot be by the petitioner himself, but as admitted, by the student. The petitioner has also given plausible explanation for the students so doing. Even otherwise there are no antecedents of the petitioner that would entail investigation in the case at hand. He is a teacher who has been the Principal of the said institution for the last 7 to 8 years and not had an incident of the kind that is now projected.

10. Therefore, holding no *mens rea* and inherent improbability in doing the said act, as interpreted by various High Courts, I deem it appropriate to obliterate further investigation into the matter. The Apex Court in the case of **STATE OF HARYANA v. BHAJAN LAL**<sup>9</sup>, has held as follows:

".... ....

**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and

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<sup>9</sup> **1992 Supp (1) SCC 335**

sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.**
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.**
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(Emphasis supplied)

Every High Court noticed *supra* which have interpreted Section 2 of the Act have clearly held that lack of *mens rea* would necessarily lead to quashment of proceedings for an offence under Section 2 of the Act, as the word employed is 'intentional'. I do not find any deliberate act on the part of the petitioner in the alleged crime.

11. For the aforesaid reasons, the following:

**ORDER**

- (i) Criminal Petition is ***allowed***.
- (ii) FIR in Crime No.377 of 2024 pending before the XXXI Additional Chief Judicial Magistrate, Bangalore city stands quashed.

**Sd/-  
(M.NAGAPRASANNA)  
JUDGE**

Bkp/CT:MJ