



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 29TH DAY OF JULY 2025 / 7TH SRAVANA, 1947

CRL.MC NO. 9251 OF 2019

CRIME NO.1529/2015 OF Angamali Police Station, Ernakulam
CC NO.410 OF 2016 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, ANGAMALY

PETITIONER/ACCUSED:

VINU C KUNJAPPAN, AGED 40 YEARS, S/O. KUNJAPPAN,
CHINIKUZHIYIL HOUSE, ASHOKAPURAM P.O. ROSE GUARDAN
FIRST LINE, ALUVA EAST VILLAGE, ERNAKULAM.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY
SRI.D.FEROZE
SHRI.ANAND KALYANAKRISHNAN

RESPONDENT/STATE/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM 682 031, (CRIME NO. 1529/2015 OF
ANGAMALY POLICE STATION, ERNAKULAM DISTRICT).

SRI.SANGEETHA RAJ.N.R-PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29.07.2025, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

**"CR"****ORDER**

The petitioner is the sole accused in C.C.No.410/2016 on the files of the Judicial Magistrate of First Class, Angamaly (for short, the trial court). The offences alleged against him are punishable under Section 2(a) of the Prevention of Insults to National Honour Act, 1971 (for short, the Act of 1971), read with Part-III, Section III, Rule 3.6 of the Flag Code of India, 2002 (for short, the Flag Code, 2002).

2. The petitioner was working as the Secretary of Angamaly Municipality. The prosecution allegation is that on Independence Day in the year 2015, the National Flag was hoisted in the compound of the Angamaly Municipality in the presence of the petitioner, and it was not lowered till noon of 17.8.2015. The Station House Officer, Angamaly Police Station, registered a suo motu FIR. Annexure I is the FIR. After the investigation, Annexure II final report was filed before the trial court. The trial court received the final report on file, took cognizance of the offence and numbered the case C.C.No.410/2016. The petitioner has approached this Court to



quash the proceedings on the ground that the allegations in the final report, even if taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against him.

3. I have heard Sri. S. Rajeev, the learned counsel for the petitioner and Sri. Sangeetha Raj N.R., the learned Public Prosecutor.

4. It is not in dispute that on 15.8.2015 in the morning, in connection with Independence Day, the National Flag was hoisted in the compound of the Angamaly Municipality in the presence and knowledge of the petitioner, and it was not lowered till noon of 17.8.2015. According to the prosecution, the National Flag can remain hoisted from sunrise to sunset only, and the petitioner, being the Secretary and head of the Municipality, is responsible for not lowering the flown National Flag at sunset on 15.8.2015. The crucial question is whether offences under Section 2(a) of the Act, 1971, read with Part-III, Section III, Rule 3.6 of the Flag Code, 2002, are attracted for the said inaction on the part of the petitioner.

5. Right to fly the National Flag freely with respect and dignity is a fundamental right of a citizen within the meaning of Article 19(1) (a) of the Constitution of India, being an expression



and manifestation of his allegiance and feelings and sentiments of pride for the nation. However, the fundamental right to fly the National Flag is not absolute but a qualified one, being subject to reasonable restrictions under Clause (2) of Article 19 of the Constitution of India. The Emblems and Names (Prevention of Improper Use) Act, 1950 and the Act of 1971 regulate the use of the National Flag [**Union of India v. Naveen Jindal & Another** (2004) 2 SCC 510]. Section 2 of the Act of 1971 deals with the insults to the Indian National Flag and Constitution of India. It reads as follows:

"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."

6. To attract the offence under Section 2 of the Act of 1971, a person should burn, mutilate, deface, defile, disfigure, destroy, trample upon or otherwise show disrespect to or bring into contempt, the Indian National Flag or the Constitution of India or any part thereof, in any public place or in any other place within public view. Explanation 4 gives various instances of disrespect to the National Flag. The act of not lowering the National Flag after sunset does not fall within any of the acts mentioned in Section 2 or various instances mentioned in Explanation 4 . Sub-clause (a) of Explanation 4 gets attracted in a case where a gross affront or indignity is offered to the Indian National Flag. The prosecution has no case that by not lowering the National Flag, the petitioner had offered a gross affront or indignity to the Indian National Flag. Mere lapse or inaction on the part of a person in not lowering the flown National Flag after



sunset cannot be said to be an act of gross affront or indignity, or insult to the National Flag. Unless there is a deliberate action with an intention to insult the national honour or show disrespect to the National Flag, the provisions of the Act of 1971 cannot be attracted. In the absence of any intention on the part of the petitioner in deliberately not lowering the National Flag after sunset, the said act cannot be said to be one showing insult or disrespect to the National Flag. There is no material to show *mens rea* on the part of the petitioner to show disrespect to the National Flag and thereby to undermine sovereignty of the nation. Flag Code, 2002 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. Penal consequences cannot be invoked unless there is a statutory provision for the same [see **Satheesh Babu P.K. v. State of Kerala** (2016 (2) KHC 266)]

The upshot of the above discussion is that, even if the entire allegations in Annexure II final report together with the materials collected during investigation which forms part of the final report are believed in its entirety, no offence under Section 2(a) of Act of 1971 read with Part-III, Section III, Rule 3.6 of the Flag Code,



2002 is made out against the petitioner. Hence, no useful purpose will be served by allowing criminal prosecution against the petitioner to continue. Accordingly, Annexure II final report and all further proceedings in C.C.No.410/2016 on the files of the trial court hereby stand quashed. The Crl.M.C is allowed.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

kp



APPENDIX OF CRL.MC 9251/2019

PETITIONER ANNEXURES

ANNEXURE 1	TRUE COPY OF THE FIR IN CRIME NO. 1529/2015 IS OF ANGAMALY POLICE STATION.
ANNEXURE II	CERTIFIED COPY OF THE FINAL REPORT IN CC NO. 410/2016 IN CRIME NO. 1529/2015 OF ANGAMALY POLICE STATION.
ANNEXURE III	TRUE COPY OF THE COMPLAINT DATED 7.08.2015 SUBMITTED BY THE CHAIRMAN, OF THE MUNICIPALITY.
ANNEXURE IV	TRUE COPY OF THE REPORT SUBMITTED BY THE MUNICIPALITY DATED 17.08.2015.