



2026:KER:74369

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

SATURDAY, THE 26TH DAY OF SEPTEMBER 2026 / 4TH ASWINA, 1948

CRL.MC NO. 7673 OF 2024

CRIME NO.26/2022 OF KAVARATHI POLICE STATION, Lakshadweep

CC NO.18 OF 2023 OF JUDICIAL MAGISTRATE OF 1ST CLASS, ANDROTH

PETITIONER/ACCUSED:

MOHAMMED KASIM H.K,

AGED 54 YEARS

S/O.SYED MOHAMMED, THAZHAPPURA TT HOUSE, ANDROTH ISLAND,
UNION TERRITORY OF LAKSHADWEEP-682551; RESIDING AT LAKE
VIEW APARTMENTS, ST VINCENT COLONY ROAD, KARIMPANA PALAM,
CALICUT, PIN - 673006

BY ADVS.

SHRI.AJIT G ANJARLEKAR

SRI.G.P.SHINOD

SRI.GOVIND PADMANAABHAN

SHRI.ATUL MATHEWS

SMT.GAYATHRI S.B.

RESPONDENTS/INVESTIGATING OFFICER:

1 UNION TERRITORY OF LAKSHADWEEP,
REPRESENTED BY STANDING COUNSEL OF LAKSHADWEEP, HIGH
COURT OF KERALA, ERNAKULAM, PIN - 682031

2 THE STATION HOUSE OFFICER,
KAVARATTI POLICE STATION, KAVARATTI ISLAND, UNION
TERRITORY OF LAKSHADWEEP, PIN - 682555
BY ADV.SHRI.R.V.SREEJITH, SC, U.T.ADMINISTRATION OF
LAKSHADWEEP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
09.09.2026, THE COURT ON 26.09.2026, PASSED THE FOLLOWING:



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CR

ORDER

Dated this the 26th day of September, 2026

Sole accused in C.C.No.18/2023 on the files of the Judicial First Class Magistrate Court, Androth, Union Territory of Lakshadweep, has filed this Criminal Miscellaneous Case under Section 482 of the Code of Criminal Procedure, 1973 (for short, ‘the Cr.P.C.’ hereinafter). The prayer is as under:

“To quash all proceedings pursuant to CC No:18/2023 of the Judicial First Class Magistrate, Androth, Union Territory of Lakshadweep, arising from Crime No.26 of 2022 of Kavaratti Police Station, Union Territory of Lakshadweep.”

2. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the Union Territory of Lakshadweep. Also gone through the prosecution records and the decisions placed.

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3. In this matter, FIR was registered on 14.08.2022 by the Inspector of Police, Kavarathi Police Station, *suo motu*, upon receiving information through his WhatsApp group under the caption “M.G.College”, sent by one Ameen along with a picture showing the accused holding the Indian National Flag with the saffron colour facing downward, on satisfying that the accused had committed offence punishable under Section 2 of the Prevention of Insults to National Honour Act, 1971 (for short, ‘the Act, 1971’ hereinafter). Thereafter, investigation was conducted and the statements of Witness Nos.1 to 8 were recorded. They stated that they had also seen the photograph of the accused holding the Indian National Flag with the saffron colour facing downward. Thereafter, the final report was filed alleging commission of the said offence.

4. While pressing for quashment of the FIR, it is submitted by the learned counsel for the petitioner that the petitioner participated in “Har Ghar Tiranga” programme to honour the Indian National Flag, and as part of the same, the accused along with his



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wife taken a photo at his residence in Kozhikode and forwarded the same in a private WhatsApp group consisting of BJP members from Lakshadweep. According to the learned counsel for the petitioner, participation of the petitioner in the “Har Ghar Tiranga” programme would indicate the fact that the petitioner has due respect to the Indian National Flag. However, at the time of taking the photograph, the Indian National Flag was inadvertently depicted with the saffron colour facing downward, and the same was neither intentional nor deliberate. So, the first point argued by the learned counsel for the petitioner is that even though the photograph posted to be published in that way in the WhatsApp group, the same was not intentional. According to him, in order to attract an offence under Section 2(l) of the Act, 1971, intention to do so is very much essential. Here, intention could not be found *prima facie*. The second point argued is that, as provided under Section 2 of the Act, 1971, the acts of disrespect defined therein should be done in any public place or in any other place within public view. It is submitted by the learned counsel for the petitioner that



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private WhatsApp group could not be held either as a public place or a place within public view and in such view of the matter also, the offence alleged against the petitioner is not made out *prima facie*.

5. In support of the contentions, the learned counsel for the petitioner has placed decision of this Court in **Mammen Varghese v. State of Kerala** reported in [2024 KHC OnLine 705] where this Court quashed an FIR registered alleging commission of offence punishable under Section 2 of the Act, 1971, holding that there was no absolute insult to the national honour in the said case. Similarly, the learned counsel also has placed a decision of the Bombay High Court in **V.K.Narayanan v. The State of Maharashtra** (Crl.Application No.7 of 2026) where also a case of this nature was quashed.

6. The learned Standing Counsel for the Lakshadweep Administration strongly opposed the contentions advanced by the learned counsel for the petitioner and submitted that merely because the WhatsApp group is private, the same would not, by itself, take the alleged act



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outside the purview of the Act, 1971. According to him, even though, the word ‘intention’ is not used, in the FIR or in the final report, insult to Indian National Flag has been specifically alleged against the petitioner and therein, the intention necessary to attract the offence under Section 2 of the Act, 1971, is implied. Thus, the prayer to quash the proceedings is liable to fail.

7. In view of the rival submissions, reference to Section 2 of the Act, 1971, is necessary, which 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.

8. On scanning Section 2 of the Act, 1971, it could be



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gathered that explanation 3 to Section 2 of the Act, 1971 provides that the expression ‘public place’ means any place intended for use by, or accessible to, the public and includes any public conveyance.

9. Explanation 4 to Section 2 of the Act, 1971 defines what constitutes disrespect to the Indian National Flag. Clauses (a) to (l) enumerate the various acts which constitute such disrespect, out of which, clause (l) is important for deciding the matter in issue and it has been provided therein that intentionally displaying the Indian National Flag with the “saffron down” is an act of disrespect to the Indian National Flag.

10. Here, the prosecution case is that, when the Sub Inspector of Police, Kavarathy Police Station verified his WhatsApp group under the caption “M.G.College” where he also was a member, one Ameen forwarded a message from mobile No.9447611358 showing the picture of the accused holding the Indian National Flag with saffron down. According to him, a person, by name “Inka Kalpeni” also forwarded the same from a number 9446412805. Thus, crime



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was registered alleging commission of offence under Section 2 of the Act, 1971, by the accused.

11. While addressing the first question raised by the learned counsel for the petitioner, contending that a private WhatsApp group is either a public place or a place within public view, it is relevant to note that, as already extracted in Explanation 3, the expression ‘public place’ means any place intended for use by, or accessible to, the public and includes any public conveyance. However, a place within public view is not defined or explained in the Act, 1971. By Explanation 3, any place intended for use by, or accessible to, the public, including any public conveyance, is a public place for the purpose of this Section. There is a subtle difference between the expressions “public place” and “in any other place within public view”. In this connection, it is relevant to note that a public place may be understood as stated in Explanation 3, whereas a place within public view can be any other place, including a private place, where the presence of, or access by, the public to watch the



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proceedings is possible. In such circumstances, even a private WhatsApp group involving many members could not be held as a place not within public view as defined under Section 2 of the Act, 1971. Thus, it is held that even a private WhatsApp group involving many persons/members would qualify a place within public view for the purpose of the Act, 1971. This view has been taken by this Court in **Binoy Balakrishnan v. State of Kerala** reported in [**2026 KHC 1507 : 2026 (1) KLT 291**], as pointed out by the learned Public Prosecutor appearing for the State of Kerala.

12. While addressing the intention required to complete an offence as stated in Section 2(l) of the Act, 1971, in **Mammen Varghese's** case (supra), the allegation as to commission of offence under Section 2 of the Act, 1971 arose when top side of saffron portion of the National Flag was outlined with a black line along with the picture of the father of the Nation. In the said case, this Court quashed the criminal case on finding that the above act would not attract an offence under Section 2 of the Act, 1971. Similarly, in

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V.K.Narayanan's case (supra), when commission of offence under Section 2(l) of the Act, 1971 was challenged before the Bombay High Court in the facts, where a National Flag was hoisted by showing saffron down, the Bombay High Court taken the view that the accused therein was merely a participant of the flag hoisting ceremony and the prosecution records did not show, in any manner that the accused therein hoisted or destroyed the Indian National Flag. In such facts and circumstances of the case, it was held that the prosecution materials did not disclose the commission of an offence under Section 2(l) of the Act, 1971, in the said case.

13. In the instant case, the prosecution recorded the statements of Abdul Kayoom, Ameenullah, Badarul Muneer, Syed Ali, Rasheed Khan, Syed Muhammed Saval and Nabeel K.M., including the statement of the accused produced as Annexure B. The statements of the witnesses would indicate that they felt insulted when they had seen the photograph of the accused along with the Indian National Flag showing the saffron colour down.



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14. Here, the prosecution allegation, right from the very beginning, i.e. from the date of registration of the FIR, during the filing of the final report, and as of now, is that the accused insulted the Indian National Flag showing the saffron colour facing downward. It was so stated by the witnesses who had given statements to the police after seeing the picture. In fact, as pointed out by the learned counsel for the petitioner, the prosecution has no case that the accused intentionally insulted the Indian National Flag by displaying the saffron colour facing downward, though it is submitted by the learned Standing Counsel appearing for the Union Territory of Lakshadweep that the intention is to be implied from the circumstances. It is true that, as pointed out by the learned counsel for the petitioner, clause (l) of Explanation 4 to Section 2 of the Act, 1971, provides that the disrespect to the Indian National Flag includes intentionally displaying the Indian National Flag with the “saffron down”. Thus, when the prosecution alleges that the accused



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insulted the Indian National Flag by intentionally displaying the saffron colour down and the prosecution materials would show the said aspects, the offence under Section 2 of the Act, 1971, would attract, *prima facie*. It is not in dispute that 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, as stated in Explanation 2 to Section 2 of the Act, 1971. On analysis of the prosecution materials, the prosecution has no case that the accused intentionally displayed the Indian National Flag with the saffron colour down, though the allegation is that he had insulted the Indian National Flag.

15. In the instant case, it could be gathered that the accused displayed the photograph of the Indian National Flag as part of “Har Ghar Tiranga” programme, which was intended to honour the Indian National Flag. Thus, it is held that intentionally displaying the Indian

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National Flag with the saffron colour down with a view to insult the Indian National Flag and the Constitution of India is an offence punishable under Section 2 of the Act, 1971. At the same time, non-intentional, accidental or mistaken acts of doing the same, without any intention or *mens rea* to insult the Indian National Flag and the Constitution of India, would not attract the offence. In the instant case, from the prosecution materials discussed, this Court is of the view that the accused never intended to display the Indian National Flag with the saffron colour down and it was a mistake from his side while displaying the same. In such view of the matter, the allegation that the accused committed offence punishable under Section 2 of the Act, 1971, could not be found, *prima facie*, and, in such a case, the prosecution as against the petitioner on the said premise is liable to be quashed by exercising the power of this Court under Section 482 of the Cr.P.C.

In the result, this petition is allowed. Accordingly, all further



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proceedings in Crime No.26/2022 of Kavaratti Police Station, Union Territory of Lakshadweep, and all further proceedings in C.C.No.18/2023 on the files of the Judicial First Class Magistrate Court, Androth, Union Territory of Lakshadweep, against the petitioner, stand quashed.

Sd/-
A. BADHARUDEEN
JUDGE

Bb

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CNR : KLHC011384722024



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APPENDIX OF CRL.MC NO. 7673 OF 2024

PETITIONER'S ANNEXURES

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| Annexure A | A CERTIFIED COPY OF THE F.I.R DATED 14/08/2022 IN CRIME NO:26 OF 2022 OF KAVARATTI POLICE STATION |
| Annexure B | A CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO:26 OF 2022 OF KAVARATTI POLICE STATION |
| Annexure C | COLOUR PHOTOGRAPH OF THE PETITIONER AND HIS WIFE WITH SAFFRON UPSIDE DOWN |
| Annexure D | COLOUR PHOTOGRAPH OF THE PETITIONER AND HIS WIFE WITH SAFFRON ON TOPSIDE OF THE FLAG |
| Annexure E | A TRUE COPY OF THE REPORT DATED 14/08/2022 THAT APPEARED IN 'DWEET MALAYALI' ONLINE NEWS PORTAL |
| Annexure F | A TRUE COPY OF THE REPORT DATED 17/08/2022 THAT APPEARED IN 'DWEET MALAYALI' ONLINE NEWS PORTAL |
| Annexure G | A TRUE COPY OF THE REPRESENTATION DATED 26/04/2021 SUBMITTED BY THE PETITIONER BEFORE THE HONOURABLE PRIME MINISTER OF INDIA |
| Annexure H | A TRUE COPY OF THE RELEVANT PART OF THE ONLINE NEWS DATED 25/05/2021 PUBLISHED BY ETV BHARAT |

RESPONDENTS' ANNEXURES : NIL