IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25589 of 2025

Arising Out of PS. Case No.-321 Year-2025 Thana- BEGUSARAI COMPLAINT CASE District- Begusarai

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Nitish Kumar S/o Late Ram Lakhan Singh At present R/o 1, Aney Marg, P.S.- Sachivalaya, Distt.- Patna.

... ... Petitioner

Versus

1. The State of Bihar
2. Vikash Paswan S/o Late Mahesh Paswan R/o Bhagatpur, P.s.- Balia, Distt.- Begusarai.

.. ... Opposite Party

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Appearance :

For the Petitioner/s : Mr.P.K. Shahi, Sr. Advocate (AG)
Mr.Amish Kumar, Advocate
Mr.Sanjiv Kumar, Advocate
Ms.Nausheen Fatma, Advocate
Mr.Atul Anjan, Advocate

For the Opposite Party/s : Mr.Bhanu Pratap Singh, APP
Mr.Akash Shankar, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
C.A.V. JUDGMENT

Date : 17-06-2025

Heard Mr. P.K. Shahi, learned Advocate General appearing for the petitioner and Mr. Bhanu Pratap Singh, learned A.P.P. for the State duly assisted by Mr. Akash Shankar, learned counsel for the respondent/opposite party No. 2.

2. The present quashing petition preferred under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (in short, the “B.N.S.S.”) by the petitioner for quashing the entire complaint case including order dated 25.03.2025

passed in Complaint Case No. 321(C)/2025 and consequential notice issued against petitioner as 'proposed accused', pending in the court of Sri Mayank Kumar Pandey, learned Judicial Magistrate - 1st Class, Begusarai.

3. The brief case of the prosecution as it appears from the complaint petition, as mentioned aforesaid, filed before the court of learned C.J.M., Begusrai, that on 20.03.2025, while the complainant was watching a broadcast on **Nav Bharat TV Channel at about 1:45 P.M., You Tube Channel and other social media**, he noticed that the petitioner while inaugurating the event of **'World Cup Sepak Takra,** during the singing of the **'National Anthem'** found talking with a person standing next to him, and he was continuously disturbing the said person and also found in the posture of '**Pranaam'.** It is alleged that the aforesaid conduct of the petitioner during the playing of the National Anthem is an offence punishable under section 3 of the Prevention of Insult to National Honour Act, 1971 and said act of the petitioner/proposed accused has deeply hurt the complainant.

4. The petitioner is presently holding the office of

Chief Minister of Bihar.

5. It is submitted by Mr. P.K. Shahi, learned Advocate General, while arguing on behalf of the petitioner, that the present complaint was filed under political motivation to tarnish the image of the petitioner, who is the Chief Minister of the State of Bihar since 2005.

6. It is submitted by Mr. Shahi that the complaint was filed on 22.03.2025, when regular C.J.M. was on special leave and Sri Mayank Kumar Pandey, Judicial Magistrate, was the In-charge C.J.M. After receipt of the complaint, the learned Magistrate put up the case on 25.03.2025 for further proceedings after exercising power under section 212 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (in short, the 'B.N.S.S.'). Being In-charge C.J.M., he recorded the requirement under section 218 of the B.N.S.S. is dispensed with at this stage, as *prima-facie,* on perusal of the complaint petition, the act of the proposed accused is distinct from his acting or purporting in discharge of his official duty, which is a perverse finding.

7. It is submitted that the learned Judicial

Magistrate, in a hurried manner, exercised the power under Section 212(2) of the B.N.S.S. and transferred the case into his own file for further inquiry, trial and disposal.

8. It is submitted by Mr. Shahi that in the same hurried manner, the learned Magistrate without recording the statement of the complainant on S.A., ordered the issuance of notice to the petitioner as **"proposed accused"** as per provisions available under section 223 of the B.N.S.S.

9. Mr. Shahi, learned Advocate General, while arguing the matter, submitted further that the complainant is a private person and, therefore, the issuance of notice to the petitioner as **"proposed accused"** without examination of complainant upon oath and the witnesses present, if any, and the issuance of notice as **"proposed accused"** in view of section 223(1) of the B.N.S.S. is illegal on its face.

10. It is also pointed out by Mr. Shahi that the petitioner was present at the alleged event in the capacity of Chief Minister of Bihar to inaugurate the event, and, therefore, his presence at the event cannot be distinguished from his official function. Any such observation is perverse on

its face, as if the petitioner was not the Chief Minister of State and had no occasion to present for inaugurating the World Cup event of **"Sepak Takra".** It is submitted that holding the petitioner not as a public servant for the alleged event is bad in the eyes of the law and, therefore, the issuance of notice as **"proposed accused"** to the petitioner is liable to be quashed and set aside.

11. In support of his submission, learned Advocate General relied upon the legal report of Hon'ble Supreme Court as available through **Bijoe Emmanuel and others Vs. State of Kerala and others [(1986) 3 SCC 615];** as well as the legal report of Hon'ble Kerala High Court at Ernakulam as available through **Suby Antony Vs. Judicial First-Class Magistrate-III [2025 SCC OnLine Ker 532].** As far as the requirement of the sanction being a public servant is concerned, Mr. Shahi also relied upon the legal report of the Hon'ble Supreme Court as available through **G.C. Manjunath & Others Vs. Seetaram** reported as **2025 INSC 439.**

12. Arguing further, Mr. Shahi, learned Advocate

General submitted that the complainant himself admitted through his complaint petition that the petitioner was in a standing position during the singing of the **'National Anthem'** and was doing "**Pranaam"** with a smiling face, which in itself does not constitute any offence on its face as far as the insult of the 'National Anthem' is concerned.

13. It is submitted that as far as the allegation *qua* disturbing the next standing person in the row is concerned, it appears politically motivated, which can be gathered from the complaint itself as the name of the person who was said to be disturbed by the petitioner during the national anthem in the alleged **video clips,** was not even named, who otherwise could be the best witness in support of allegation.

14. In the background of the aforesaid factual submission, Mr. Shahi submitted that under political motivation the complainant lodged the present baseless complaint against the petitioner just to tarnish his image, who has been holding the constitutional office of the Chief Minister of State of Bihar since 2005, with oblique and ulterior motives, as the election of the State Assembly is likely to be

held in a few months.

15. Notice, as issued by this Court, was duly served upon the complainant/opposite party no. 2 namely, Vikash Paswan, on 18.04.2025 at about 8:15 P.M. Complainant was duly represented by Mr. Akash Shankar, learned advocate.

16. Mr. Akash Shankar, learned counsel appearing for the complainant/opposite party No. 2, while arguing the matter, submitted that the inauguration of the event cannot be said to be an official duty of the Chief Minister. It is submitted that the petitioner may raise all such issues before the learned Magistrate through his advocate, however, he conceded that in terms of the complaint, the petitioner was said to be standing at the time of singing of the '**National Anthem'** and found doing **"Pranaam"** and also the name of the person, who was said to be disturbed by him, is not mentioned in the complaint petition.

17. At the outset, it would be apposite to reproduce the allegatory part of the complaint petition dated 22.03.2025, which is in para 3, 4 & 5 of the complaint petition, which reads as under:

3.यह कि दिनांक – 20.03.2025 को लगभग दिन के 01.45 बजे टाईम Now

Nav Bharat चैनल सहित अन्य विभिन्न **Youtube** चैनलों, सोशल मीडिया के द्वारा प्रसारित वीडियो क्लिप देखने का परिवादी को मौका मिला, जिसे देखकर परिवादी काफी हतप्रभ हुआ एवं परिवादी को अत्यन्त दुःख पहुँचा एवं बिहार राज्य के माननीय मुख्यमंत्री नीतिश कुमार के द्वारा देश के राष्ट्रगान को अपमानित होता, देखकर आत्म गलानी से भर गया एवं खुद को शर्मिंदा महसूस करने लगा।

4. यह कि उपरोक्त वीडियो क्लिप वगैरह को देखने से यह स्पष्ट हुआ है कि बिहार के माननीय मुख्यमंत्री नीतिश कुमार ने पटना स्थित पाटलिपुत्रा स्टेडियम में विश्व सेवक टकरा प्रतियोगिता के उद्घाटन समारोह के आयोजन में राष्ट्रगान के दौरान अपने पास खड़े व्यक्ति से बातचीत एवं उक्त व्यक्ति के शरीर को बार बार छुकर परेशान एवं हंसते हुए प्रणाम करने की मुद्रा में दिखाई पड़ रहे हैं।

5. यह कि श्री नीतिश कुमार माननीय मुख्यमंत्री बिहार सरकार के द्वारा राष्ट्रगान के सम्मान में सावधान की मुद्रा में खड़ा नहीं रहना, हँसना, बातचीत करना तथा अपने पास खड़े व्यक्ति को परेशान करते हुए राष्ट्रगान करने से रोकने का प्रयास करने का कृत्य स्पष्ट रूप से राष्ट्रीय गौरव अपमान निवारण अधिनियम'' 1971 की धारा – 3 के अन्तर्गत दण्डनीय अपराध है, चूँकि भारतीय संविधान के अनुच्छेद 51 (ए) के अनुसार राष्ट्रगान का सम्मान करना भारत के प्रत्येक नागरिक का मौलिक कर्तव्य है अर्थात् प्रत्येक नागरिक से यह उपेक्षा की जाती है कि वह राष्ट्रगान के प्रति अपना सम्मान दिखाएँ और उनका अपमान करने वाले किसी कार्य में शामिल न हो। इसलिए बिहार के माननीय मुख्यमंत्री नीतिश कुमार के उपरोक्त कृत्य से परिवादी एवं अन्य नागरिकों की भावनाओं को गहरी ठेस पहुँची है।

18. It would be apposite to reproduce Section 223 of the B.N.S.S. for ready reference:

"223. Examination of complainant - (1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

> (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
>
> (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:
>
> Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.
>
> (2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless—
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> (a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and
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> (b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received."

19. From a bare perusal of section 223 of the B.N.S.S., it appears that while taking cognizance of an offence complainant shall be examined upon oath and the witnesses present, if any, except when the complaint is made in writing by a public servant acting or purporting to act in discharge of his official duty or if a court has made the complainant or if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212 of the B.N.S.S. where a further provision was made that if the

Magistrate makes over the case to another Magistrate under Section 212 after examining the complainant and the witnesses, the later Magistrate need not have examined them. Having such a legal position, without examining the complainant on oath and prosecution witnesses, the finding of learned Magistrate as to proceed further and therefore to issue notice to the petitioner as "**proposed accused"** is totally unfounded and misconceived.

20. In aforesaid context, it would be relevant to reproduce paras 4, 5, 6 *&* 7 of **Suby Antony case (supra)**, which reads as under:

> "**4.** As the term cognizance is not defined in BNSS, it will be profitable to refer the following erudite exposition of the Supreme Court in *S.K. Sinha, Chief Enforcement Officer* v. *Videocon International Ltd.* [(2008) 2 SCC 492].
>
> > "19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.
> >
> > 20. "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to

commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.

"**5.** Thus, the taking of cognizance of an offence occurs when the Magistrate takes judicial notice of an offence with a view to initiate proceedings in respect of such offence alleged to have been committed by the accused. Once cognisance is taken, then the Magistrate has to decide whether to issue process to the accused or not. Section 225 confers power on the Magistrate to postpone the issue of process to the accused even after taking cognisance of the offence. At that stage the Magistrate can either inquire into the case himself, or direct investigation to be made by a police officer or such other person for the purpose of deciding whether there is sufficient ground for proceeding. The Apex Court in *Smt. Nagawwa* v. *Veeranna Shivalingappa Konjalgi* [(1976) 3 SCC 736], dilating on the limited scope of inquiry under Section 202 Cr. P.C., corresponding to Section 225 of BNSS, held as under;

"4. It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited — limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint— (i) on the materials placed by the complainant before the court : (ii) for the limited purpose of finding out whether a prima facie csse for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."

The above decision leaves no room for doubt that under the Code the accused had no *locus standi* even at the stage where the Magistrate decides whether or not to issue process to the accused.

6. While on this question, it will also be profitable to refer the decision of the Apex Court in *A.R. Antulay* v. *Ramdas Sriniwas Nayak* [(1984) 2 SCC 500], wherein the procedure to be followed by the Magistrate upon filing of a complaint is detailed as under;

> "When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 CrPC. After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issues process, it means the court has taken cognizance of the offence and has decided to initiate the proceeding and as a visible manifestation of taking cognizance, process is issued which means that the accused is called upon to appear before the court. This may either take the form of a summons or a warrant, as the case may be. It may be that after examining the complainant and his witnesses, the court in order to doubly assure itself may postpone the issue of process, and call upon the complainant to keep his witnesses present. The other option open to the court is to direct investigation to be made by a police officer.
>
> Upon a complaint being received and the court records the verification, it is open to the court to apply its mind to the facts disclosed and to judicially determine whether process should or should not be issued. It is not a condition precedent to the issue of process that the Court of necessity must hold the inquiry as envisaged by Section 202 or direct investigation as therein contemplated. The power to take cognizance without holding inquiry or directing investigation is implicit in Section 202 when it says that the Magistrate may "if he thinks fit, postpone the issue of process against the accused and either

> inquire into the case himself or direct an investigation to be made by a police officer…, for the purpose of deciding whether or not there is sufficient ground for proceeding". Therefore, the matter is left to the judicial discretion of the court whether on examining the complainant and the witnesses if any as contemplated by Section 200 to issue process or to postpone the issue of process. This discretion which the court enjoys cannot be circumscribed or denied by making it mandatory upon the court either to hold the inquiry or direct investigation. Such an approach would be contrary to the statutory provision. Therefore, there is no merit in the contention that by entertaining a private complaint, the purpose of speedy trial would be thwarted or that a pre-process safeguard would be denied."

7. Indeed, a radical change in procedure is brought about by the proviso to Section 223(1) of BNSS. Pertinently, in spite of the proviso to Section 223(1) making it mandatory to provide opportunity of hearing to the accused before taking cognisance, Section 226 does not reckon the accused's objection at the stage of taking cognisance as a relevant factor for dismissing the complaint. Being guided by the precedents on Sections 200 and 202 of the Code and the plain language of the proviso to Section 223(1) of the BNSS, this Court is of the opinion that, after the complaint is filed, the Magistrate should first examine the complainant and witnesses on oath and thereafter, if the Magistrate proceeds to take cognisance of the offence/s, opportunity of hearing should be afforded to the accused. I am also in complete agreement with the following procedural drill delineated by the High Court of Karnataka in *Basanagouda's case* (supra);

> "9. To steer clear the obfuscation, it is necessary to notice the language deployed therein. The Magistrate while taking cognizance of an offence should have with him the statement on oath of the complainant and if any witnesses are present, their statements. The taking of cognizance under Section 223 of the BNSS would come after the recording of the sworn statement, at that juncture a notice is

> required to be sent to the accused, as the proviso mandates grant of an opportunity of being heard.
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> 10. Therefore, the procedural drill would be this way : A complaint is presented before the Magistrate under Section 223 of the BNSS; on presentation of the complaint, it would be the duty of the Magistrate/concerned Court to examine the complainant on oath, which would be his sworn statement and examine the witnesses present if any, and the substance of such examination should be reduced into writing. The question of taking of cognizance would not arise at this juncture. The magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, take cognizance and regulate its procedure thereafter."

21. While issuing notice dated 04.04.2025 as "proposed accused" to the petitioner, the act of the petitioner was found distinguished from his officials and for said purpose, the petitioner was *prima facie* not treated as a public servant and, therefore, section 218 of the B.N.S.S. was not found applicable by learned trial court in the present case.

22. Admittedly, the petitioner has been the Chief Minister of State of Bihar since 2005. The duty hours of a Chief Minister or, for that purpose, any minister of the government cannot be limited to their official work time only, i.e. between 9:00 A.M. and 5:30 P.M. Ministers, particularly the head of the Cabinet not only leads the Cabinet but also

undertakes various additional responsibilities including attending public events, meetings and conferences, many of which may be scheduled beyond regular working hours. The petitioner was present at the inaugural function of the **"World Cup Sepak Takra"** at Patliputra Stadium, Patna, in the capacity of Chief Minister. If petitioner was not the Chief Minister, he had no occasion to inaugurate the event and, therefore, his presence at the inaugural event, as aforesaid, cannot be distinguished by saying that his participation was not in capacity of a public servant as to import the protection of section 218 of the B.N.S.S.

23. In the aforesaid context, It would be appropriate here to reproduce para 35 and 36 of the **G.C. Manjunath case (supra),** which reads as under:

> "**35.** Recently, this Court in **Gurmeet Kaur vs. Devender Gupta, 2024 SCC OnLine SC 3761** dealt with the object and purpose of Section 197 of the CrPC which reads as follows:
> "22. … the object and purpose of the said provision is to protect officers and officials of the State from unjustified criminal prosecution while they discharge their duties within the scope and ambit of their powers entrusted to them. A reading of Section 197 of the CrPC would indicate that there is a bar for a Court to take cognisance of such offences which are mentioned in the said provision except with the previous sanction

of the appropriate government when the allegations are made against, inter alia, a public servant. There is no doubt that in the instant case the appellant herein was a public servant but the question is, whether, while discharging her duty as a public servant on the relevant date, there was any excess in the discharge of the said duty which did not require the first respondent herein to take a prior sanction for prosecuting the appellant herein. In this regard, the salient words which are relevant under subsection (1) of Section 197 are "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognisance of such offence except with the previous sanction". Therefore, for the purpose of application of Section 197, a sine qua non is that the public servant is accused of any offence which had been committed by him in "discharge of his official duty". The said expression would clearly indicate that Section 197 of the CrPC would not apply to a case if a public servant is accused of any offence which is de hors or not connected to the discharge of his or her official duty."

36. In light of the aforesaid judgments, the guiding principle governing the necessity of prior sanction stands well crystallised. The pivotal inquiry is whether the impugned act is reasonably connected to the discharge of official duty. If the act is wholly unconnected or manifestly devoid of any nexus to the official functions of the public servant, the requirement of sanction is obviated. Conversely, where there exists even a reasonable link between the act complained of and the official duties of the public servant, the protective umbrella of Section197 of the CrPC and Section 170 of the Police Act is attracted. In such cases, prior sanction assumes the character of a sine qua non, regardless of whether the public servant exceeded the scope of authority or acted improperly while discharging his duty."

24. Hence, the observation of the learned Magistrate

is completely perverse on this issue that the presence of the petitioner in the inaugural event of "**World Cup Sepak Takra"** was not in the capacity of a public servant being Chief Minister of the State.

25. The complainant himself disclosed that at the time of singing of the national anthem, the petitioner was standing and was doing **"Pranaam"** with a smiling face. This admitted conduct of the petitioner shows only high respect for the national anthem having a smiling face at the time of singing of the national anthem, merely folding hand in 'Pranaam Mudra' in standing position and 'smiling face' cannot be construed by any prudent imagination that it was the insult of the **"National Anthem"**.

26. The other part of the allegation was that the petitioner was disturbing the person who was standing next to him in the row, who could be the best witness, but the name of such a person was not disclosed in the complaint petition, which made the allegation completely baseless and frivolous, just to gain cheap popularity in politics by tarnishing the image of the petitioner, who has been the Chief Minister of

the State since 2005.

27. In the aforesaid context, it would further be apposite to reproduce paras 21, 22, 23, 24 & 25 of **Bijoe Emmanuel case (supra),** which reads as under:

> **"21.** In *Minersville School District* v. *Gobitis* [84 Law Ed 1375 : 310 US 586 (1940)] the question arose whether the requirement of participation by the pupils and public schools in the ceremony of saluting the national flag did not infringe the liberty guaranteed by the 14th amendment, in the case of a pupil who refused to participate upon sincere religious grounds. Frankfurter, J., great exponent of the theory of judicial restraint that he was, speaking for the majority of the United States Supreme Court upheld the requirement regarding participation in the ceremony of flag salutation primarily on the ground : (L Ed p. 1381)
>
> > "The wisdom of training children in patriotic impulses by those compulsions which necessarily pervade so much of the educational process is not for our independent judgment.... For ourselves, we might be tempted to say that the deepest patriotism, is best engendered by giving unfettered scope to the most crochety beliefs.... But the courtroom is not the arena for debating issues of educational policy. It is not our province to choose among competing considerations in the subtle process of securing effective loyalty to the traditional ideals of democracy, while respecting at the same time individual idiosyncracies among a people so diversified in racial origins and religious allegiances. So to hold would in effect make us the school board for the country. That authority has not been given to this Court, nor should we assume it."
>
> Frankfurter, J.'s view, it is seen, was founded entirely upon his conception of judicial restraint. In that very case Justice Stone dissented and said : (L Ed p. 1383)
>
> > "It (the Government) may suppress religious practices dangerous to morals, and presumably those also which are inimical to public safety, health and good order. But it is a long step, and one which

> I am unable to take, to the position that government may, as a supposed, educational measure and as a means of disciplining young, compel affirmations which violate their religious conscience."

Stone, J. further observed : (L Ed p. 1384)

> "The very essence of the liberty which they [Ed. : Referring to the guarantees of civil liberty] guarantee is the freedom of the individual from compulsion as to what he shall think and what he shall say, at least where the compulsion is to bear false witness to his religion."

It was further added : (L Ed p. 1384)

> "History teaches us that there have been but few infringements of personal liberty by the State which have not been justified, as they are here, in the name of righteousness and the public good, and few which have not been directed, as they are now, at politically helpless minorities."

22. We do not think that it is necessary to consider the case of *Gobitis* [84 Law Ed 1375 : 310 US 586 (1940)] at greater length as the decision was overruled very shortly after it was pronounced by the same court in *West Virginia State Board of Education* v. *Barnette* [87 Law Ed 1628, 1633 : 319 US 624, 629 (1943)] . Justices Black and Douglas who had agreed with Justice Frankfurter in the *Gobitis case* retraced their steps and agreed with Justice Jackson who gave the opinion of the court in *West Virginia State Board of Education* v. *Barnett* [87 Law Ed 1628, 1633 : 319 US 624, 629 (1943)] . Justice Jackson in the course of his opinion observed flag:

> "It is also to be noted that the compulsory Flag salute and pledge requires affirmation of a belief and an attitude of mind. It is not clear whether the regulation contemplates the pupils forego any contrary convictions of their own and become unwilling converts to the prescribed ceremony or whether it will be acceptable if they simulate assent by words without belief and by a gesture barren of meaning. It is now a commonplace that censorship or suppression of expression of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a

> kind the State is empowered to prevent and punish. It would seem that involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence. But here the power of compulsion is invoked without any allegation that remaining passive during a flag salute ritual creates a clear present danger that would justify an effort even to muffle expression. To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind."

Justice Jackson referred to Lincoln's famous dilemma:"Must a government of necessity be too *strong* for the liberties of its people, or too *weak* to maintain its own existence?" and added:

> "It may be doubted whether Mr Lincoln would have thought that the strength of government to maintain itself would be impressively vindicated by our confirming power of the state to expel a handful of children from school. Such oversimplification, so handy in political debate, often lacks the precision necessary to postulates of judicial reasoning. If validly applied to this problem, the utterance cited would resolve every issue of power in favour of those in authority and would require us to override every liberty thought to weaken or delay execution of their policies.
>
> Government of limited power need not be anaemic government. Assurance that rights are secure tends to diminish fear and jealousy of strong government, and by making us feel safe to live under it makes for its better support. Without promise of a limiting Bill of Rights it is doubtful if our Constitution could have mustered enough strength to enable its ratification. To enforce those rights today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end."

Dealing with the argument that any interference with the authority of the School Board would in effect make

the court the School Board for the country as suggested by Justice Frankfurter, Justice Jackson said:

> "There are village tyrants as well as village Hampdens, but none who acts under colour of law is beyond reach of the Constitution.... We cannot, because of modest estimates of our competence in such specialities as public education, withhold the judgment that history authenticates as the function of this Court when liberty is infringed."

Justice Jackson ended his opinion with the statement

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.
>
> We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."

23. *Sheldon* v. *Fannin* [221 F Supp 766 (1963)] was a case where the pupils refused even to stand when the National Anthem was sung. We do not have to consider that situation in the present case since it is the case of the appellants and it is not disputed that they have always stood up and they will always stand up respectfully when the National Anthem is sung.

24. *Donald* v. *Board of Education for the City Hamilton* was again a case of objection by Jehovah's Witnesses to flag salutation and singing the National Anthem. Gillanders, J.A., said:

> "There is no doubt that the teachers and the school board, in the case now being considered, in good faith prescribed the ceremony of the flag salute only with the thought of inculcating respect for the flag and the Empire or Commonwealth of Nations which events of recent years have given more abundant reason than ever before to love and respect. If I were permitted to be guided by my personal views, I would find it difficult to understand how any well disposed person could offer objection to joining in such a salute on

> religious or other grounds. To me, a command to join the flag salute or the singing of the National Anthem would be a command not to join in any enforced religious exercise, but, viewed in proper perspective, to join in an act of respect for a contrary principle, that is, to pay respect to a nation and country which stands for religious freedom, and the principle that people may worship as they please, or not at all.
>
> But, in considering whether or not such exercises may or should, in this case, be considered as having devotional or religious significance, it would be misleading to proceed on any personal views on what such exercises might include or exclude."

After referring to Jackson, J's opinion in *West Virginia State Board of Education* v. *Barnette* [87 Law Ed 1628, 1633 : 319 US 624, 629 (1943)] and some other cases, it was further observed:

> "For the court to take to itself the right to say that the exercises here in question had no religious or devotional significance might well be for the court to deny that very religious freedom which the statute is intended to provide.
>
> It is urged that the refusal of the infant appellants to join in the exercises in question is disturbing and constitutes conduct injurious to the moral tone of the school. It is not claimed that the appellants themselves engaged in any alleged religious ceremonies or observations, but only that they refrained from joining in the exercises in question. . . . To do just that could not, I think be viewed as conduct injurious to the moral tone of the school or class."

25. We are satisfied, in the present case, that the expulsion of the three children from the school for the reason that because of their conscientiously held religious faith, they do not join the singing of the National Anthem in the morning assembly though they do stand up respectfully when the anthem is sung, is a violation of their fundamental right "to freedom of conscience and freely to profess, practise and propagate religion".

28. In view of the aforesaid factual and legal discussion, the entire complaint, along with notice dated

04.04.2025 issued to **"proposed accused"** i.e. petitioner appears contrary to established principles of law, by ignoring legal provisions as available under sections 223 & 226 of the B.N.S.S., which *prima-facie* not appear to be taken care of by the learned Judicial Magistrate, accordingly, the entire complaint with notice to the petitioner as **"proposed accused"** with consequential proceedings, if any, is hereby set-aside/quashed.

29. This quashing petition stands allowed.

30. Let a copy of this judgment be sent to the court concerned/learned trial court forthwith.

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	**AFR**
CAV DATE	**13.05.2025**
Uploading Date	**17.06.2025**
Transmission Date	**17.06.2025**