

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 7 OF 2026**

1. V. K. Narayanan  
Age: 85 years, Occupation : retired  
Presently residing at Veemboor Mana,  
Mana Resort,  
Pazhayi P.O., Pudukkad,  
Trichur, Kerala – 680 301  
...Applicant
- Versus.*
1. The State of Maharashtra  
( Through the Senior Inspector of Police  
Of Tilak Nagar Police Station) ...Respondent

CORAM : ASHWIN D. BHOBE, J.  
DATED : 23<sup>rd</sup> FEBRUARY, 2026

**ORAL JUDGMENT :**

1. Heard Mr. Rajendra Sorankar, learned Advocate for the Applicant, and Ms. Pallavi Dabholkar, learned APP for the Respondent – State.
2. This Application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is preferred by the Applicant for the quashing of FIR No. 13 of 2017, dated 27.01.2017 (“impugned FIR”), registered by the Tilak

Nagar Police Station under Section 2 (4) (l) of the Prevention of Insults to National Honour Act, 1971, and the Charge Sheet registered as Criminal Case No. 460 / PS/ 2017, arising out of the impugned FIR.

3. The material facts of the case are that on Republic Day in 2017, members of “Shri Rajani Society” gathered at the building, and a flag-hoisting ceremony was held at approximately 9:15 a.m. in the presence of Society members and children. After the ceremony, the Society members dispersed to attend their work, leaving the terrace gate open. Around 4:00 p.m. on 26.01.2017, 4 to 5 Police Officers arrived at the Society and reported that the flag hoisted on the terrace was inverted. A Pachamama was conducted. The impugned FIR stands registered against the Applicant and 5 other persons who were then members of the residential society “Shri Rajani Society”.
4. Upon investigation, the Respondent filed a charge sheet, and the proceedings were registered as Case No. 460/PS/2017 and allotted to the Judicial Magistrate First Class, 34<sup>th</sup> Court, Vikhroli, Mumbai (“Magistrate”).

5. The charge in Case No. 460/PS/2017 was framed on 12.08.2024. However, the same was quashed and set aside by the Court of the Sessions for Greater Mumbai, Branch at Mazgaon, vide Order dated 25.07.2025, passed in Criminal Revision Application No. 861 of 2024, filed by the Applicant.
6. Mr Rajendra Sonwal, learned Advocate for the Applicant, submits that the Applicant is now a senior citizen (89 years of age), immobile and suffering from age-related ailments. He, therefore, on 22.01.2026, with the intent to prevent further distress to the Applicant and in view of the issue involving the National Flag, has placed on record an unconditional apology.
7. Mr Rajendra Sonwal submits that the FIR and the charge sheet do not contain the ingredients required to attract Section 2(4)(l) of the said Act. He submits that there is no material/evidence to indicate that the Applicant hoisted the flag, much less that he did so intentionally in an inverted position. He further submits that, apart from no case being made out against the Applicant, there are no independent witnesses to

indicate that the Applicant hoisted the flag in an inverted position and/or that the flag was hoisted at the Applicant's instance, on his instructions, or under his directions. He submits that the terrace of the society building does not fall within the domain of "public space". He therefore submits that this Application be allowed.

8. Ms. Pallavi Dabhokar, learned APP for the Respondent, submits that the offence against the Applicant is made out. She, by referring to the statement of Deepak Jaysingh, watchman of Shri Rajani Society, submits that the offence is made out against the Applicants.
9. Arguments heard. Perused the records with the assistance of the learned Advocates.
10. Section 2 of the Prevention of Insults to National Honour Act, 1971 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 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.”*

11. The question of whether the Flag Code is “law” came up for consideration before the Hon’ble Supreme Court in the case of Union of India v. Naveen Jindal & Anr.<sup>1</sup> The relevant paragraphs 28, 29, 78 and 90 are reproduced here:

*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*

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<sup>1</sup> 2004 (2) SCC 510.

*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 regards determination of the said question has arisen as Parliament has not chosen to enact a statute which would confer at least a statutory right upon a citizen of India to fly the 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 Articles 19(1)(a) to (e) and (g) a law must be made.*

*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.*

*90. For the aforesaid reason, we hold that: (i) 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. (ii) The fundamental right to fly the National Flag is not an absolute right but a qualified one being subject to reasonable restrictions under clause (2) of Article 19 of the Constitution of India. (iii) The Emblems and Names (Prevention of Improper Use) Act, 1950 and the Prevention of Insults to National Honour Act, 1971 regulate the use of the National Flag. (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. However, the Flag Code to the extent it provides for preserving respect and dignity of the National Flag, the same deserves to be followed. (v) For the purpose of interpretation of the constitutional scheme and for the purpose of maintaining a balance between the fundamental/legal rights of a citizen vis-à-vis, the regulatory measures/restrictions, both Parts IV and IV-A of the Constitution of India can be taken recourse to.*

12. In the case at hand, the offence charged is under Section 2(4) (1) of the Prevention of Insults to National Honour

Act, 1971. A person who, in any public place, intentionally displays the Indian National Flag with the “saffron” downwards is said to have committed the offence.

13. FIR merely alleges the Applicant's presence on 26.01.2017 at the time of the flag hoisting.
14. The statement of Deepak Jaysingh, the watchman of the society, relied upon by the prosecution to prove the offence and the charge against the Applicant, refers to the office-bearers of the Shri Rajani society, the society members, and children being present at the time of hoisting the flag on 26.01.2017. Neither the statement of Deepak Jaysingh nor any material collected by the prosecution on record indicates that the Applicant hoisted or displayed the Indian National Flag, or was involved in its display, on 26.01.2017. Similarly, there is no material on record to show that any act of the Applicant was intended to insult or show disrespect to the honour of the Indian National Flag. To constitute the offence under Section 2(4) (l), the display of the Indian National Flag in an inverted manner must be

intentional. Thus, mens rea to cause insult or disrespect, or to bring the Indian National Flag into contempt, would be required.

15. Even if the allegations in the FIR and the evidence collected are accepted as true and correct, it does not appear that the Applicant displayed the Indian National Flag with the saffron down, much less that the Applicant had any such intention. The Applicant's mere presence at the place of hoisting of the Flag, as alleged, would not amount to an offence under Section 2(4) (l) of the Prevention of Insults to National Honour Act, 1971.

16. The order dated 03.07.2017, by which the Magistrate took cognisance and issued process, is a "rubber-stamped cognisance". The same is reproduced below:

*"The Chargesheet has been filed today by  
Tilak Nagar Police Station. Cognizance taken*

*Issue process against the accused U/Sec २(४)  
(ळ) राष्ट्रीय सन्मानाच्या अप्रतिष्ठेस प्रतिबंध अधिनियम  
१९७१*

*Metropolitan Magistrate,  
72nd Court, Vikhroli, Mumbai.*

17. Perusal of the Order dated 03.07.2017 indicates that no reasons, even for the namesake, have been assigned by

the Magistrate. The said Order is non-speaking. Taking cognisance is a judicial act that requires the application of the mind. The Hon'ble Supreme Court in the case of Lalankumar Singh & Ors. v. The State of Maharashtra<sup>2</sup> in paragraphs 28 to 30, has observed as follows:

*"28. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus :*

*"51. On the other hand, section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under section 192), upon a consideration of the materials before him (i. e., the complaint,*

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<sup>2</sup>

(2023) 236 Comp Cas 741

*examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.*

*52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.*

*53. However, the words 'sufficient ground for proceeding' appearing in section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."*

*29. A similar view has been taken by this court in the case of Ashoke Mal Bafna v. Upper India Steel Manufacturing and Engineering Co. Ltd.*

*30. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned single judge of the High Court, that there was no such order passed at all. The learned single judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal therefore deserves to be allowed.”*

18. The order dated 03.07.2017 does not disclose that the Magistrate considered the material available on record. The order dated 03.07.2017 is illegal and warrants interference.
19. The present case squarely falls within the principles laid down by the Hon’ble Supreme Court in the case of State of Haryana vs. Bhajan Lal<sup>3</sup>, for the exercise of powers under Section 528 of the BNSS to prevent abuse of the process of law.
20. Accordingly, this Application is allowed in terms of the prayer clause (A) and (B-1). Consequently, the impugned FIR bearing No. 13 of 2017, registered at the Tilak Nagar Police Station, Chembur, Mumbai, the

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<sup>3</sup> 1992 Supp (1) SCC 335

Chargesheet registered as 460/PS/2017 on the file of the Judicial Magistrate First Class, 34th Court, Vikhroli, Mumbai, and the order dated 03.07.2017, taking cognisance, against the Applicant, are quashed.

21. Criminal Application No. 7 of 2026 is allowed. There shall be no orders as to cost.

**[ASHWIN D. BHOBE, J.]**

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