

Court No. - 80

Case :- APPLICATION U/S 482 No. - 19697 of 2024

Applicant :- Gulamuddin And 5 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Amarjeet Chakrawarti, Ganesh Shanker Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Vinod Diwakar, J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State-respondent and perused material on record.
2. The instant application u/s 482 Cr.P.C. has been filed with the prayer to quash the entire proceeding arising out of charge-sheet dated 04.10.2023 and cognizance order dated 14.05.2024, passed in Criminal Case No. 749 of 2024, titled as State v. Mohd. Irshad Ansari and others, arising out of Case Crime No. 0344 of 2023, under Section 2 of Prevention of Insults of National Honour Act, 1971, registered at P.S. Jalaun, District Jalaun.
3. Learned counsel for the applicants submits that; (i) the entire criminal proceedings lodged by the informant is only colourable exercise against the applicants; (ii) investigation do not suggest whether the flag mentioned in the FIR is a Tiranga or any other flag, having three colours; (iii) police have not brought any evidence on record to suggest that there was any mischief caused to the national flag as specified in Section 2 and 3 of Prevention of Insults of National Honour Act, 1971; (iv) the statement of Eshanullah and Ramdas has been extracted by police under the coercion and duress; (v) the statement of constable Khursheed, recorded under Section 161 Cr.P.C. cannot be relied upon; (vi) FIR is registered by S.I. Anil Kumar Rana on the basis of the engineered facts, therefore, cannot be relied upon; (vii) on reading of the FIR it cannot be safely revealed the alleged Tiranga was

actually a national flag or not; (viii) the national flag was subsequently planted by the police after registration of the FIR; (ix) the applicants were falsely implicated in the instant case during investigation because of reasons known to the police.

4. *Per-contra*, learned A.G.A. has opposed the application and argued that FIR was registered against unknown persons. The applicants name figured in the statement of constable Khursheed Alam, Eshanullah and Ramdas-the police witnesses. He next submits that after taking the Tiranga in possession, it is revealed that certain verses (*ayat and kalma*) were written in Arabic on the Tiranga. After taking the Tiranga in possession the Sahar Qazi Maulana Shabir Ali translated the Arabic which is found scribes on the Tiranga, are outlined hereunder:

" शहर काजी मौलाना साबिर अली पुत्र मिहू शाह नि० मो० चिमनदुबे कस्बा व थाना जालौन जनपद जालौन को तलब कर पढ़वाया गया तो उन्होने बताया कि अरबी में ला इलाही इल्लिहाह मुहम्मद उल्लु रसुल्लुलाह जिसका अर्थ है अल्ला के सिवाय कोई इबादत के लायक नहीं है। लाफला इल्लालीय तासौद जुल्फकार जो हिन्दी में जवान कोई नहीं मगर अली तलवार कोई नहीं मगर जुल्फिकार दो धारी अंकित है।"

5. In the instant matter, the submissions raised by learned counsel for the applicants call for determination on questions of fact which may be adequately adjudicated upon only by the trial court. Adjudication of questions of facts and appreciation of evidence or examining the reliability and credibility of the version, does not fall within the arena of jurisdiction under Section 482 Cr.P.C. In view of the material on record it can also not be held that the impugned criminal proceeding are manifestly attended with *mala fide* and 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. Similarly no such illegality, perversity or any other substantial error could be pointed out in the impugned summoning order, so as to warrant any interference by this court in exercise of powers u/s 482 Cr.P.C.

6. On perusal of record and on examination of statement of witness, Tajuddin, Ramdas, constable Khursheed Alam and Eshanullah recorded by the police under Section 161 Cr.P.C, it's revealed that the applicants took part in the religious procession and were carrying Tiranga in their hands, on which Quranic verses (*ayat and kalma*) were inscribed adding insults to the national flag. This Court finds force in the argument of learned A.G.A. and *prima-facie* finds that the act of applicants is punishable under Flag Code of India, 2002 and there is violation of Section 2 of Prevention of Insults of National Honour Act, 1971 by the applicants.

7. The Tiranga, India's National Flag, symbolizes the unity and diversity of the nation, transcending religious ethic and cultural differences. It is a unifying emblem representing the collective identity and sovereignty of India. Act of disrespect towards the Tiranga can have far-reaching social cultural implications, particularly in a diverse society like India. Such incidents can be exploited by the elements seeking to create communal discord or fuel misunderstandings between different communities. It is crucial to recognize that the actions of a few individuals should not be used to stigmatize an entire community.

8. The observation made herein above are solely for the purpose of deciding instant case and shall have no bearing on the merits of the case.

9. The application u/s 482 Cr.P.C. is devoid of merit and it is accordingly **dismissed**.

Order Date :- 29.7.2024/A. Tripathi

Justice Vinod Diwakar