

CNR NO.MHMM120215962021

IN THE COURT OF METROPOLITAN MAGISTRATE
25TH COURT, MAZGAON, AT SEWREE, MUMBAI.

ORDER BELOW EXH. 1 IN C.C. No.3426/MISC/2021

The complainant has filed complaint against accused submitting that he is practicing Advocate, Social Activists and Secretary of Bharatiya Janta Party Mumbai. He alleged that the accused being Chief Minister of West Bengal was on two days visit to State of Maharashtra on 01/12/2020.

2) She was present in the public function at Yashwantrao Chavan Pratishthan Auditorium, Cuffe Parade, Mumbai. The convener of the public program was Javed Akhtar. The accused was the main speaker and she was addressing the public. Prominent people from various background attended said program. The accused was accompanied by Javed Akhtar and Pawan Verma on the Dais. At the end of program the accused started singing National Anthem in the sitting position and later on she stood up and further sung two verses of National Anthem and abruptly stopped singing it and left the venue. The said Video of the program got viral on social media. The said act of accused is an insult and disrespect to the National Anthem. Thus, she has committed an offence punishable under section 3 of The Prevention of Insults to National Honour Act,1971. The complainant has made complaint to Cuffe Parade Police Station and DCP Zone -I regarding offence committed by the accused but, no action is initiated against her by the police.

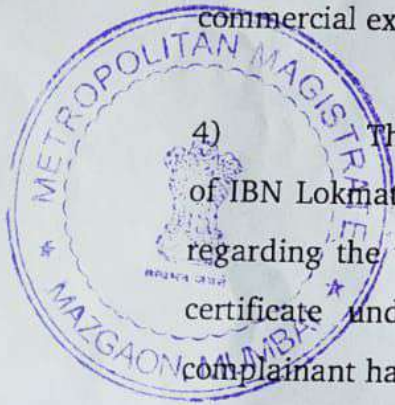
3) The complainant has filed order of Ministry of Home Affairs relating to National Anthem of India, He has relied on the case of



Piyush Subhashbhai Ranipa V/s The state of Maharashtra Anticipatory bail application No.336/2021 Bombay High Court decided on 26/02/2021., Ramrao Marotrao Budruk V/s The state of Maharashtra and anr. 1995 (2) BomCR 569., to show that, the Honourable High Court has considered in the case of *Sham Narayan Choksi V/s Union of India and ors., Writ Petition (Civil) No.855 of 2016* that, offence under section 3 of the Prevention of Insult of National Anthem Act., is cognizable and non Bailable. The complainant further relied on the directions given by the Honourable Supreme Court regarding restraining the use of National Anthem for any commercial exploitation or to gain financial advantage in any manner.

4) The complainant has filed DVD of the video clip of the new of IBN Lokmat telecasted on 01/12/2021 and Pen-drive having links regarding the video clips of accused. The complainant has also filed certificate under section 65B of the Indian Evidence Act. The complainant has also filed affidavit in support of his complaint.

5) Heard the complainant at length, peruse documents filed on record. The DVD is played on the laptop. The video clip in the DVD reveals that the accused had started to sing National Anthem in sitting position. Thereafter she stood up and continued and stopped abruptly in between and left from the Dias. On going through the links provided by the complainant in Para 15 of the complaint, the said video clip of accused is available on Youtube. As per the orders of Ministry of Home Affairs relating to the National Anthem of India it has been specifically stated above full version and short version of the National Anthem which can be sung. It is also evident from the said video clip that the function dated 01/12/2021 which was attended by the accused was not



a Government function or not her official function as no Government authorities or officials were present on the Dias.

6) Thereby though the accused is Chief Minister of West Bengal she was not discharging her official duties. Thereby this act of accused though she is the Chief Minister of West Bengal does not come under her official duty. Therefore, sanction is not required and there is no bar to proceed against accused. It is *prima-facie* evident from the complaint, verification statement of the complainant, video clip in the DVD and video clips on Youtube links that the accused had sung National Anthem and stopped abruptly and left the Dias which *prima-facie* prove that the accused has committed punishable U/sec.3 of the Prevention of Insults to National Honour Act, 1971. There is no reason as such to postpone process against accused under section 202 of The Code of Criminal Procedure though she is residing at a place beyond the area of jurisdiction. The *prima-facie* evidence brought on record by the complainant is sufficient to issue process against accused. Hence I pass following order:-

ORDER

Issue process against accused Mamata Banarjee for offence punishable under section 3 of the Prevention of Insults to National Honour Act, 1971 vide Sec. 204(b) of The Code of Criminal Procedure, returnable on 02/03/2022.

Date:- 01/02/2022

(P. I. Mokashi)

Metropolitan Magistrate,
25th Court, Mazgaon, at Sewree, Mumbai.

