

GAHC020001502021



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : Cri.L.P. 2/2021

1:MRS. BARBARA MARISA GONCALVES NUNES
W/O SHRI. THEJANGULIE, R/O H/NO. 77, WARD NO.8,
MEDZIPHEMA TOWN, DIMAPUR, NAGALAND

VERSUS

1:THE STATE OF NAGALAND
NAGALAND, KOHIMA

Advocate for the Petitioner : SENTIYANGER

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA**

ORDER

Date : 23-02-2023

Heard Mrs. Barbara Marisa Goncalves Nunes, the petitioner/accused in person. Also heard Mr. K. Angami, the learned P.P. and Mr. N. Mozhui, the learned assisting counsel.

2. The present petition has been filed under Section 482 of the Criminal Procedure Code, 1973 for quashing the FIR dated 20.04.2020 registered as Medziphema Police Station case No.

09/2020 under Section 14 (a) of The Foreigners Act, 1946, corresponding to GR 353/2020, which is pending disposal before the learned Judicial Magistrate First Class, Dimapur, Nagaland. The case of the petitioner/accused in brief are as follows:

- i) That the petitioner/accused is a Portuguese national married to Shri Thejangulie, an Indian citizen. The petitioner/accused resides in H/No.- 77, Ward No. 8, Medziphema Town, Dimapur Nagaland with her husband and family. The petitioner/accused is a holder of X-2 Visa which is extended only to foreign spouses of Indian nationals.
- ii) On 08.05.2020, the petitioner/accused filed an FIR to the Officer-in-Charge, Medziphema Police Station, Dimapur, Nagaland stating that the petitioner/accused had lost her Foreign Registration Certificate No. NL1200004318 issued by the Foreigners Regional Registration Office (FRRO) during her travel to Kohima in the month of March, 2019. Consequent to the FIR lodged by the petitioner/accused the Officer-in-Charge, Medziphema Police Station, Dimapur, issued the Certificate dated 08.05.2020 to the petitioner/accused stating that the FIR lodged by the petitioner/accused was verified to be true and genuine. Subsequently on 15.05.2020, both the petitioner/accused and her husband jointly submitted an application to the Foreign Registration Office, Dimapur, Nagaland requesting for renewing the X-Visa issued to the petitioner/accused without the attestation from the Special Secretary (Home), Kohima in view of the lockdown imposed due to

the pandemic.

- iii) It is further the case of the petitioner/accused that she and her husband made all efforts to renew/extend the Visa and for which necessary documents were also submitted to a person namely Mr. Shuya for submitting the same to the Office of the Foreigners Regional Registration Office, Dimapur, Government of India and made regular communications with the said person. The petitioner/accused and her husband also personally approached the Commissioner of Police and the Foreigners Regional Registration Officer (FRRO), Dimapur on numerous occasions to expedite the renewal of the passport of the petitioner/accused. However, on 20.04.2020 an FIR was lodged by the In-charge Special Branch, Office of the Commissioner of Police, Dimapur before the Officer-in-Charge, Medziphema Police Station, Dimapur, Nagaland to the effect that the petitioner/accused, holder of Passport No. N578170 and Visa No. VNL1200000218 has been overstaying since the 30th of May, 2019 and immediate to which the Medziphema Police Station Case No. 0009/2020 under Section 14 (a) of The Foreigners Act, 1946 was registered against the petitioner/accused. Consequent thereto, the petitioner/accused was arrested by the police on 23.04.2020 but enlarged on bail on 04.05.2020 by the court of the learned Judicial Magistrate First Class, Dimapur, Nagaland. Thereafter, on 06.08.2020 the Investigating Officer of the case has submitted the

Charge-sheet against the accused/petitioner/accused in the case under Section 14 (a) of The Foreigners Act, 1946.

3. The present case has accordingly been filed to quash and set aside the FIR dated 20.04.2020 registered as Medziphema Police Station Case No. 0009/2020 under Section 14 (a) of The Foreigners Act, 1946 (corresponding to GR 353/2020), the Charge-sheet dated 06.08.2020, and the criminal proceedings which is pending against the petitioner/accused in the said case in the court of the learned Judicial Magistrate First Class, Dimapur, Nagaland.

4. Today when the case is listed the petitioner/accused has furnished the certificate dated 20.02.2023, issued by the Foreigners Registration Office, Office of the Commissioner of Police, Dimapur, Nagaland stating therein that the RP/RC/Visa of the petitioner/accused has been extended from 30.05.2019 to 29.05.2023. The Certificate further shows that the previous registration details has been valid from 30.05.2018 to 29.05.2019. The Certificate dated 20.02.2023, accordingly shows that the Visa of the petitioner/accused has been extended retrospectively from 30.05.2019 till 29.05.2023.

5. Mr. N. Mozhui, the learned assisting counsel relying on the Certificate dated 20.02.2023 submits that since the Visa of the petitioner/accused has been retrospectively extended from 30.05.2019 till 29.05.2023, this by itself would imply that her overstay in the Country without a valid Visa from 29.05.2019 has been ratified and therefore the petitioner/accused cannot now be charged under the provisions of Section 14 (a) of The Foreigners

Act, 1946.

6. This Court has perused the contents of the Certificate dated 20.02.2023 as well as the provisions of Section 14 (a) of The Foreigners Act, 1946. The said section provides for penalty for contravention of the provisions of the Act, *etc*, and states that whoever remains in any area in India for a period exceeding the period for which the Visa was issued to him shall be punished with imprisonment for a term which may extend to 5 years and shall also be liable to fine. A perusal of the Certificate dated 20.02.2023 also shows that the Visa of the petitioner/accused has been extended from 30.05.2019 to 29.05.2023, which in the considered opinion of this Court would mean that the overstay of the petitioner/accused in India with effect from 30.05.2019 up to 20.02.2023, *i.e.* the date of issue of the Certificate has been ratified and legalized by the authorities themselves. This Court is accordingly inclined to accept the submission made by the learned assisting counsel that the overstay of the petitioner/accused in the Country for the period effective from 30.05.2019 till the issuance of the Certificate on 20.02.2023 has been regularized. Mr. K. Angami, the learned P.P has also fairly submitted that as the authorities have extended the Visa granted to the petitioner/accused retrospectively from 30.05.2019 till 29.05.2023, continuing the case against the petitioner/accused for violation of Section 14 (a) of The Foreigners Act, 1946 may not bring any fruitful results. In that view of the matter the relief sought for by the petitioner/accused in the present case may be decided as per the discretion of this Hon'ble Court.

7. After hearing the petitioner/accused in person and Mr. K. Angami, the learned PP, and also Mr. N. Mozhui, the assisting

counsel, this Court considers that in view of the Certificate dated 20.02.2023 issued by the competent Authority extending the Visa of the petitioner/accused from 30.05.2019 to 29.05.2023, thus ratifying the overstay of the petitioner in India; continuation of the criminal proceedings against the petitioner/accused under Section 14 (a) of The Foreigners Act, 1946 may not result in successful prosecution of the petitioner/accused in the case; therefore, it may be a futile exercise for the Court below to continue with the proceedings of the case. In that view of the matter, the FIR dated 20.04.2020 registered as Medziphema Police Station Case No. 0009/2020 under Section 14 (a) of The Foreigners Act, 1946 (corresponding to GR 353/2020) the Charge-sheet dated 06.08.2020 filed by the police in the case and further the criminal proceedings against the petitioner/accused, which is pending in the court of the learned Judicial Magistrate First Class, Dimapur, is quashed and set aside by invoking the discretionary power of this Court under Section 482 of the Criminal Procedure Code, 1973.

8. The petition is allowed. No cost.

Before parting with the case this Court expresses gratitude to Mr. N. Mozhui, the learned counsel for ably assisting the Court.

Send back the LCR forthwith.

Sd/-
JUDGE

Comparing Assistant