

Court No. - 50**Reserved on:- 25.07.2023****Delivered on:-12.10.2023****Case :- CRIMINAL REVISION No. - 3412 of 2023****Revisionist :- Rasel Ahmad @ Jamal****Opposite Party :- State Of U.P. Through Its Secretary (Home) At Lkw****Counsel for Revisionist :- Alauddin, Malik Aalmeen****Counsel for Opposite Party :- G.A.****Hon'ble Ram Manohar Narayan Mishra, J.**

1. Instant criminal revision has been filed in E-court against judgment and order dated 29.05.2023 passed by learned Additional District and Sessions Judge Room No. 1 Siddharth Nagar in Criminal Appeal No. 67 of 2022 (Rasel Ahmad @ Jamal and others Vs. State of U.P. and others), whereby the appeal preferred against the order of conviction and sentencing passed against the revisionist has been dismissed and the judgment of the trial court sentencing the revisionist and co-accused for three years simple imprisonment and Rs. 5,000/- fine with default stipulation, has been affirmed.

2. Heard the submissions of learned counsel for the revisionist Sri Devendra Kumar, who appeared on behalf of Bangladesh Embassy to provide legal aid to the revisionist, assisted by Sri Alauddin Khan, Advocate, as well as learned A.G.A. for the State, Sri Deepak Kapoor.

3. The prosecution case in brief is that on 15.05.2022, Kakrahwa out post in-charge and S.S.B. Company Commandant, Kakrahwa were conversing jointly in respect of security arrangements of Hon'ble Prime

Minister of India's Lumbini (Nepal) visit and other important matters. They received an information to the effect that four Bangladeshi Nationals were trying to migrate to Nepal in illegal manner and they may be arrested on laying on a check. The extensive checking was carried out by S.S.B. placing reliance on this information and four suspects were intercepted, who tried to move hither and thither noticing police team. On being interrogated, they confessed that they were moving towards Nepal in the search of better job. They disclosed their name as Rasel Ahmad @ Jamal resident of District- Silhat, Bangladesh and from his personal search a sum of \$3110 and Rs. 2,500/- and 1 Bangladeshi Passport issued by Bangladesh No. A00551458 and a blue coloured Samsung A12 was recovered. The other three persons disclosed their name as Siam Bhuian @ Mahi, Shakeeb Ahmad and Mohd. Nazmul Hussain. They were also Bangladeshi Nationals and from their personal search different sum of U.S. dollars, Indian currency and mobile phones were recovered. Shakeeb Ahmad and Nazmul Hussain told S.S.B. team that they had got their immigration from Delhi but their immigration was cancelled and thereafter they were moving to Nepal in illegal manner. All the arrested persons were found to have violated the terms of visa. An F.I.R. was lodged against four arrested persons on written report of S.S.B. company Inspector In-charge Laxmi Shankarmani Meena at P.S. Mohana, District- Siddharth Nagar, vide Crime No. 108 of 2022, under Section 14(B), Foreigners Act, 1946. The police investigated the case and filed charge-sheet against accused persons before the Court of Magistrate. The learned Magistrate took cognizance of the offence and framed charges against the accused persons including present revisionist. The prosecution examined P.W.1-Out-post In-charge Kakrahwa, Ajay Nath Kannaujia, P.W.2- Constable Om Prakash Yadav, P.W.-3 Investigation Officer Inspector Ram Darath Yadav and P.W.4-S.S.B. Company Inspector In-charge Laxmi Shankar Meena. The statements of the accused were recorded under

Section 313 Cr.P.C., the accused had not laid any defence evidence. The learned trial court after hearing the submissions advanced by learned counsel for the parties and on appreciation of evidence on record, convicted and sentenced accused persons in aforesaid manner.

4. Feeling aggrieved by the judgment and order passed by learned trial court all four convict persons preferred criminal appeal before court of Sessions which was decided by impugned judgment and order dated 29.05.2023 passed by learned Additional Sessions Judge, Room No. 1, Siddharth Nagar and judgment and order passed by learned trial court was affirmed. The instant criminal revision has been preferred before this Court by one of the convicts, namely, Rasel Ahmad @ Jamal wherein the revisionist has prayed for setting aside the judgments of both the courts below and has paid for his acquittal from said charge. Learned counsel for the revisionist submitted that no independent witness has been examined by prosecution in support of its case against the revisionist and co-accused persons. All the witnesses are members of police or S.S.B. force. No public witness has been enjoined in alleged arrest of the accused persons and recovery of articles and cash made there from. The revisionist has been falsely implicated in the present case. Both the courts below have passed the impugned judgment and order without pursuing the evidence on record in fact, no offence is made out against the revisionist under Section 14B Foreigners Act, 1946. He has committed no offence. The allegations made against him are false and concocted. The revisionist is held in jail custody since 15.05.2022 i.e. for around one and half year. His family members are residing in Bangladesh. There is nobody to take care of the revisionist and the counsel has been engaged by Bangladesh embassy to provide legal aid to the revisionist, who is Bangladeshi National. The sentence imposed by learned trial court is also exorbitant, the revisionist is young man, no objectionable material has been recovered from his possession during alleged search and recovery.

Learned trial court below has mentioned in its judgment that the place of the arrest of the revisionist was right side in the middle of custom check and S.S.B. Check post which is not a prohibited area. P.W. 1 has stated that the purpose of his immigration is to obtain clearance from one country to another country. He has admitted that accused/revisionist hails from Bangladesh, which is a S.A.R.C. country and comes within category of India's friendly country. Therefore, any citizen who belongs to Bangladesh, subject to the instructions regarding the visa is legally entitled to enter Nepal by air or by road at border immigration point to Nepal. He visited India by a valid passport there was no question of his running away from India to Nepal. He was fully capable to obtain Nepali Visa, the rest of the accused is stated to have been arrested 500 m away from the statutorily established exit point on the border of the nation of Nepal, which clearly shows that the accused were proceeding to obtain immigration by filing legal route which they were entitled to and it comes within statutory rights of movement. The findings recorded by both the courts below are perverse with regard to charge under Section 14B of Foreigners Act. The incident is said to have taken place on 15.05.2022 at 18:10 hours and F.I.R. has been lodged on same day at 21:20 hours which is delayed by three hours.

5. *Per contra*, learned A.G.A. filed a detail counter affidavit on behalf of the State-respondent. The appellant and the co-accused were trying to enter into Nepal through this country in illegal manner prompted by ulterior motives and therefore, they were arrested by S.S.B. personnel and case was registered against them due to violation of Section 3(2)(b) of Foreigners Act. They had violated the terms of their Visa which is punishable offence. They were rightly convicted by trial court and their conviction and sentence was upheld in criminal appeal No.67 of 2022. There is no legal or factual error in concurrent findings of both the courts below and it needs no interference in present revision. The revisionist and

co-accused were arrested on 15.05.2022 by joint operation of S.S.B. and local police and certain recoveries were also made from the personal search, there is no unexplained delay in lodging of F.I.R. and same was lodged within three hours of the incident. The learned trial court has found that the revisionist along with other co-accused has entered Siddharth Nagar and were going to Nepal in violation of terms and conditions of their visa. The sentence awarded to revisionist and co-accused is proper and in consonance with the nature of offence. The revisionist was legally competent to go to Nepal via Indian border and infact violated terms and conditions of his visa. This is stated in recovery memo that at the time of arrest of the revisionist and co-accused many public witnesses had gathered, however none of them came forward to be witness, therefore, non joining of public witnesses would make no effect on authenticity of prosecution's case. The prosecution and the witnesses of fact, although official witnesses but they arrested and carried out search of the revisionist and accused in discharge of their official duties and there is nothing to disbelieve their sworn testimony before the Court. The revisionist and accused are named in F.I.R., there was no occasion to falsely implicate them in the case. The judgment of trial court and first appellate court is well reasoned and every aspect of the case are duly addressed therein. The impugned judgment and orders are passed on cogent evidence and revision is liable to be dismissed.

6. The relevant provisions of Foreigners Act are liable to be reproduced here:

" The object and reasons clause provides that this act confers upon the Central Government certain powers in respect of foreigners whereas it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into [India], their presence therein and their departure therefrom." Section 3 of Sub-section 2 of the Act provides that the foreigners shall not enter [India] or

shall enter [India] only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed; he shall not depart from [India], or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed ;

Section 14 provides as under:-

"Section 14 in The Foreigners Act, 1946

1[14. Penalty for contravention of provisions of the Act, etc.—Whoever

(a) remains in any area in India for a period exceeding the period for which the visa was issued to him; tc" (a) remains in any area in India for a period exceeding the period for which the visa was issued to him;"

(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder; tc" (b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;"

(c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act, tc"

(c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act,"

shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him. Explanation.—For the purposes of this section, the expression "visa" shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920).J"

7. In the present case, learned trial court on basis of evidence on record has given a finding that the alleged act of the accused persons was in violation of Section 3(2)(b) of Foreigners Act, 1946 which is

punishable under Section 14(b) Foreigners Act and the accused are held to have violated terms of visa. The prosecution has successfully proved its case against accused persons beyond reasonable doubt. The place of arrest was not prohibited, restricted, or cantonment area, the accused persons had attempted to enter into Nepal which is a foreign country, from the border of District- Siddharth Nagar (India). P.W. 4 has stated that when the accused persons were arrested, they were having valid passport and visa, they are not trying to run away and they come to him when he called them. The accused were arrested on National Highway which is 500 m away from Nepal border. P.W. 1 has stated that when accused persons were asked to stop, they tried to go here and there. The accused were trying to visit a third country whereas they had visited India from their native country Bangladesh. The I.O. has approved the site plan as exhibit K-1. The accused Rasel Ahmad @ Jamal and Nazmul Hussain came to Delhi from Agartala by flight on 16.04.2022 and got their air ticket booked through a travel agent of Tripura. They stayed in Delhi from 16.04.2022 to 13.05.2022 at Lal Haveli Hotel, Paharganj for which they paid tariff at the rate of Rs. 1,000/- per day. They visited the places of interest in Delhi. They left Delhi for Sanauli bypass and where they met co-accused Siam Bhuian @ Mahi and Nazmul Hussain and they got themselves introduced together and were trying to enter into Nepal from Khakrahwa border and were arrested near custom check post. Their travel route was already prescribed in terms of visa and according to that their return journey was through air route Hardaspur to Agartala but they deviated from their prescribed route and were trying to enter into Nepal from different route and were arrested by competent authorities. There was special endorsement of entry and exit on their visa and there was no occasion for them to enter into Nepal through Indian border. Their act was violative of Section 3(2)(b) read with Section 14(b) of Foreigners Act.

8. In the present case, it is admitted fact that accused revisionist was having valid passport and visa, no evidence has been collected against the revisionist that he was trying to enter into Nepal through Indian border with some criminal intent. However, the act of the revisionist is violative of Section 3 sub-Section 2 of Foreigners Act, 1946, which provides that a foreigner shall not depart from India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed. Thus, learned trial court has rightly convicted the revisionist for charge under Section 14(b) of the said Act on contravention of the conditions of his valid visa issued for him for his entry and stay in India or any part thereunder. The offence is punishable with maximum term of five years imprisonment and fine. Nothing incriminating has been recovered from the possession of the revisionist at the time of search and his arrest. This is the prosecution's case that the revisionist and co-accused had told members of arresting team of S.S.B. and police force that they intended to visit Nepal in quest for better job opportunities. The immigration of the accused persons was entered in Delhi, but subsequently the same was cancelled and thereafter they tried to enter into Nepal. The accused persons entered this country by tourist visa. The revisionist is held in jail custody since 15.05.2022 since his arrest in present case. Therefore, keeping in view the totality of facts and circumstances of the case, this Court is of considered opinion that judgment of conviction of the revisionist is affirmed and revision is liable to be dismissed in respect of conviction of the revisionist recorded by trial court and already affirmed by first appellate court, however, the sentence of 3 years imprisonment is liable to be modified to two years keeping in view the totality of facts and circumstances of the case. However, amount of fine imposed in impugned judgment is kept intact.

9. The revision stands partly **allowed**, hereby. The conviction of the revisionist Rasel Ahmad @ Jamal for charge under Section 14(b) Foreigners Act, 1946 is affirmed, however, the sentence is reduced from three years simple imprisonment to 2 years imprisonment. The period undergone by the revisionist will be subject to setoff in accordance with Section 428 Cr.P.C.

10. The appropriate Government is at liberty to carry out repatriation proceedings in respect of the revisionist after his release, after serving out this modified sentence and order.

11. Let a copy of this order be forwarded to court below and Superintendent of Jail concerned for information and necessary action.

Order date: 12.10.2023

Nitika Sri