

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.637 OF 2014

Naju Humanyun Mulla,
Age. 30 years, Occu. : Labour work,
R/a. Near N.S.School, Mira Road,
originally Kadamtala, Post Pedoli,
Dist.Khulna, Bangladesh ... **Appellant**
V/s.
The State of Maharashtra ... **Respondent**

**WITH
CRIMINAL APPEAL NO.638 OF 2014**

Mukti Kamal Shaikh,
Age: 22 Years, Occu.: Labour,
R/o.Takipada, Nalasopara,
Originally from Bangladesh,
Dist.Nodiel ... **Appellant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Ashish Sawant, Advocate appointed for the Appellant in
Criminal Appeal No. 637 of 2014.
Ms.Chaitrali Deshmukh, Advocate appointed for the Appellant in
Criminal Appeal No. 638 of 2014.
Mr.Deepak Thakre, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 15TH JANUARY, 2015

ORAL JUDGMENT :

1. Both these appeals can be conveniently decided by this
common judgment, as the appellants in both the appeal have been

convicted in one and the same case i.e. Session Case No. 97 of 2014 decided by the Additional Sessions Judge, Thane.

2. In the peculiar facts and circumstances of the case, the appellants were directed to be produced before the Court at the time of hearing of the appeals. Accordingly, the appellants have been produced and I have heard them.

3. The appellants were accused of having committed offence punishable under section 14A of the Foreigners Act, 1946 and the offence punishable under Rule 6 of the Passport (Entry into India) Rules, 1950, as also of having committed an offence punishable under Section 224 of the Indian Penal Code. The learned Judge held that a case in respect of an offence punishable under Section 224 of the Indian Penal Code was not made out, and did not frame any charge with respect to the said offence.

4. The appellants pleaded guilty to the charge of offence punishable under Section 14A of the Foreigners Act, 1946 and an offence punishable under Rule 6 read with Rule 3A of the Passport (Entry into India) Rules, 1950. The learned Additional Sessions Judge accepted the plea of guilty and sentenced each of them to suffer Simple Imprisonment for two years and to pay a fine of Rs.10,000/-, in default to suffer Simple Imprisonment for three months.

5. Being aggrieved by their conviction, the appellants have filed these separate appeals from prison.

6. I have heard the learned counsel for the appellants Mr.Ashish Sawant (in Criminal Appeal No. 637 of 2014) and Ms.Chaitrali Deshmukh (in Criminal Appeal No. 638 of 2014) appointed to prosecute the appeals under the Free Legal Aid Scheme.

7. It is clear that the appellants have been convicted on their 'plea of guilty' as taken by them before the Additional Sessions Judge. The learned counsel for the appellants fairly do not raise any contention about the plea not being voluntary. As a matter of fact, the appellants admit to have committed an offence punishable under Section 14A of the Foreigners Act, 1946 and the charge of an offence punishable under Rule 6 read with Rule 3A of the Passport (Entry into India) Rules, 1950, before this Court also.

8. Since the appellants have been convicted on the basis of their pleading guilty, the present appeals cannot be entertained except for the limited question of the legality of the sentences.

9. The Additional Sessions Judge has imposed a sentence that has been prescribed as the 'minimum' by the relevant provisions. As such, it cannot be said that the sentences imposed

by him need any interference. The learned Additional Sessions Judge, however, has imposed default sentences of three months upon each of the appellants. The appellants are poor persons. It is evident that they are not in a position to pay the amount of fine. Since the fine that has been imposed is the 'minimum', as laid down by Section 14A of the Foreigners Act, 1946, it would not be possible to reduce the sentences of fine. It has already been observed that the substantive sentences that have been imposed are also minimum in terms of the said section and therefore, the question of reducing that also would not arise. In the circumstances, however, the default sentences as imposed by the Additional Sessions Judge can be reduced.

10. In the circumstances, the sentences of fine as imposed by the Additional Sessions Judge are being modified by modification in the default sentences, that would be undergone in the event of failure to pay the fine amount.

11. It is directed that in the event of default of payment of fine, each of the appellants shall undergo a sentence of Simple Imprisonment for a period of three days instead of three months as ordered by the learned Additional Sessions Judge.

12. Save and except this modification, no other order in these appeals, which stand dismissed.

13. The State of Maharashtra shall ensure that the appellants are deported after having served the sentences.

14. The fees of the learned counsel appearing for the appellants in each of the appeals are quantified at Rs.2000/- each.

(ABHAY M. THIPSAY J.)