

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRA-S-1842-SB-2013

Date of decision : 06.02.2015

State of Punjab

... Appellant

Versus

Fahim Sadiq @ Ahmed Ali

... Respondent

***CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL***

Present: Mr.Gazi Mohammad, DAG, Punjab.

Mr.Rohan Mittal, Advocate  
for the respondent.

Mr. Vivek Singla, Advocate  
for the Union of India.

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**REKHA MITTAL, J.**

The present appeal has been directed against the judgment dated 07.11.2012 passed by the Additional Sessions Judge, Ludhiana for enhancement of sentence awarded to the respondent for offence punishable under Section 3, 4 and 9 of the Official Secrets Act 1923, Section 12 of the Indian Passport Act 1967 and Section 14 of the Foreigners Act, 1946.

The facts relevant for disposal of present appeal are that on 06.12.2010 SI Mohan Lal along with police party was present at Sherpur Chowk, Ludhiana and he received secret information that Fahim Sadiq, a Pakistani informer and spy of Pakistani Secret Agency, ISI and other Pakistani Military officer was going on three wheeler from Dhandri Kalan to Ludhiana City. He is also carrying secret documents concerning Indian

Military in an envelop and those documents can be helpful to the enemies of

India and cause damage to integrity and security of India. The documents can also affect cordial relations of India with other foreign countries and he is preparing to send the documents through parcel to somebody else. Taking the secret information to be reliable, ruqa was sent to the Police Station for registration of the case. A naka was laid and Dharampal Singh @ Kaki was joined in the police party. During checking, a three wheeler carrying the accused was intercepted and the accused was apprehended. He disclosed his name and particulars of Pakistan as well as of Ludhiana. On his personal search, one mobile phone of fashion company, 4 sim cards out of which one was Air Tel, one book related to Indian Military titled AIR Defence Artillery, one hand written paper on which Web Site address and phone numbers were written, another plain paper having some writing on it and one paper having the father's name, date of birth, passport number, Visa number, date of arrival and date of departure were recovered. Pages No.19 to 29 of the restricted book were concerning the Indian Military and 11 photostat copies of these pages were also recovered. The recovered documents were converted into a sealed parcel bearing impression 'SK'.

During police remand, the accused disclosed his other names such as Nana @ Mohd. Ahmand Ali @ Raju. The secret documents were got inspected from Inspector Sandeep Singh Kanjla, Commanding Officer, Military Intelligence Head Quarter, Dholewal Army Complex Ludhiana and he informed that the concerned documents, book, maps, uniform of Military, sign board of vehicles were restricted and no common man can keep such documents with him and possession of such documents by a common man can pose danger to integrity and security of the country. Intimation

regarding arrest of the accused was sent to the Director, Pakistan Division Ministry of External Affairs South Block, New Delhi through the Commissioner of Police, Ludhiana vide letter dated 15.10.2010. On completion of investigation, challan was presented in the Court.

Copies of the documents were supplied to the accused before framing of charge, the accused suffered a statement that his case may be sent to the Court of Sessions. Accordingly vide order dated 15.07.2011, the case was committed to the Court of Sessions.

The accused was charged for committing offence punishable under Section 3, 4, 9 of the Official Secrets Act, 12 of the Indian Passports Act, 1967 and 14 of the Foreigners Act to which he pleaded not guilty and claimed trial.

The prosecution examined Dharampal @ Kaku PW1, Mohan Lal PW2, Inspector Sandeep Kumar Wadhera PW3. The accused moved an application for confessing his guilt. His confessional statement was recorded in the Court.

In view of the confessional statement recorded by the accused as well evidence adduced by the prosecution, the learned trial Court convicted and sentenced the respondent detailed hereinbelow:-

| Name of Convict         | Under Section                             | Sentence (R.I.)                     | Fine(in Rs.) | In Default |
|-------------------------|-------------------------------------------|-------------------------------------|--------------|------------|
| Fahim Sadiq @ Ahmed Ali | 3, 4 & 9 of the Official Secrets Act 1923 | 2 years 6 months                    |              |            |
|                         | 12 of the Passports Act, 1967             | The period already undergone by him |              |            |

| Name of Convict | Under Section                  | Sentence (R.I.)      | Fine(in Rs.) | In Default |
|-----------------|--------------------------------|----------------------|--------------|------------|
|                 | 14 of the Foreigners Act, 1946 | 2 years and 6 months |              |            |

Feeling aggrieved by inadequacy of sentence awarded by the trial Court, the present appeal has been preferred by the State for enhancement of sentence.

Counsel for the appellant has submitted that keeping in view gravity of offence punishable under Section 3 of the Official Secrets Act, 1923, the sentence awarded to the respondent for the said offence is liable to be enhanced. It is further submitted that the learned trial Court has not noticed any mitigating circumstances in favour of the respondent to award him rigorous imprisonment for a period of two and a half years for offence punishable under Section 3 of the Officials Act. It is further submitted that inadequacy of sentence has resulted in miscarriage of justice, hence liable to be enhanced.

Counsel for the respondent, on the contrary, has submitted that there is no justifiable ground to interfere in the judgment passed by the trial Court which is based upon appreciation of the matter in right perspective.

I have heard counsel for the parties and perused the records.

Section 3 of the Officials Act 1923 provides for penalty for spy and the offence is punishable with imprisonment for a term which may extend to 14 years where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of or in relation to any secret

official code but in other cases, it would be three years. Keeping in view the allegations against the respondent on the basis of materials recovered from his custody, the offence committed by him is punishable with imprisonment for a term which may extend to 14 years. Perusal of the judgment passed by the trial Court makes it evident that the trial Court has not noticed any mitigating circumstances in favour of the respondent. The usual plea raised by the respondent that he is a poor person and only bread winner of his family consisting of small children, in my considered opinion is not sufficient to take a lenient view in the matter.

Keeping in view gravity of offence, in my considered opinion, ends of justice would be served if the petitioner is sentenced to rigorous imprisonment for a period of 5 years for committing offence punishable under Section 3 of the Official Secrets Act, 1923. However, sentence awarded to him for the other offences does not justify any intervention.

In view of what has been discussed hereinabove, the appeal is partly allowed in the aforesaid terms.

**(REKHA MITTAL)**  
**JUDGE**

**February 06, 2015.**

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