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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL REVISION APPLICATION NO. 143 OF 2016
WITH
CRIMINAL APPLICATION NO. 3085 OF 2016
IN
CRIMINAL REVISION APPLICATION NO. 143 OF 2016**

Ayugi John Michael Odhiambo,
Age: 31 years, Occupation: Education,
Residing at A-90, S.T. Colony, Katkat Gate,
Tq. & District Aurangabad

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

Mr A. S. Shejwal, Advocate for applicant;
Mr C. V. Dharurkar, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 7th September, 2016

ORAL ORDER :

The applicant, claiming to be a Kenian citizen, holder of the passport issued from Nairobi on 17th July, 1997 and valid up to 17th July, 2002, was on student visa issued from Nairobi for the period from 27th July, 1997 to 20th October, 1997. He was granted residence permit by Foreigners Registration Office, Aurangabad up to 20th November, 2000.

2. As the applicant over-stayed, without any residence permit and same was against expired passport, based on the above referred violation, offence bearing C.R. No.II-3022 of 2010, punishable under section 14 of the Foreigners Act and was accordingly charge-sheeted. Charge came to be framed at Exh.9.

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3. In support of the prosecution case, P.S.I. Neeta came to be examined as P.W.1 at Exh.12, Radhakrishna Banduji Lihinar, from the office of Foreigners Registration Branch was examined as P.W.2 at Exh.16 and Mohd. Osman Mohd. Basheer, A.S.I., examined as P.W.3 at Exh.21 is Investigating Officer. Statement of the accused under section 313 of the Code of Criminal Procedure was recorded at Exh.23.

4. The learned Judicial Magistrate First Class, Aurangabad, vide judgment and order dated 10th May, 2011, convicted the applicant for an offence punishable under section 14 of the Foreigners Act, 1946 ordering him to suffer simple imprisonment for three months and pay fine of Rs. 5,000/-, which is claimed to be already deposited. The applicant has also undergone the sentence awarded.

5. Criminal Appeal No.234 of 2012 preferred by the applicant came to be dismissed by learned Additional Sessions Judge, Aurangabad, vide judgment and order dated 3rd June, 2016. As such, present revision.

6. Learned Counsel appearing on behalf of the applicant submits that the purpose for which the applicant over-stayed in the receiving country, i.e. India is required to be appreciated. According to him, ignorance of the procedure for renewal of passport so also student's visa has resulted into commission of offence for which there was no criminal motive. The applicant is not involved in any other crime. He would then submit that the testimonies of the witnesses are required to be re-appreciated as apart from public servant, there are no independent witnesses to the crime in question.

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7. Learned Addl Public Prosecutor supports the orders passed by the learned Magistrate and Sessions Judge. According to him, no case for interference is made out and revision be dismissed.

8. At the outset, this Court must take note of the fact that admittedly the applicant has over-stayed in India without any valid residence permit, visa and passport. The same was duly established by the testimonies of the witnesses, i.e. P.W. 1- Neeta, P.W.2 - Radhakrishna Lihinar and P.W.3- Mohd. Osman. Though a plea is sought to be raised on behalf of the applicant that in case if a student fails to apply for extension or fails in an academic examination, or if he does not have sufficient money, then upon imposing penalty of 30 Dollars, the stay in receiving country can be extended for a period of one year.

9. It is required to be noted that the applicant-accused over-stayed in the receiving country for more than one year in the present case and till date, more than ten years. Though the applicant has not indulged into criminal activity, still the very object with which he had entered the receiving country is required to be appreciated. The applicant had entered the receiving country i.e. India, based on student's visa and has not completed his education. Apart therefrom, he being a student, it was expected of him to be well-versed with the Rules and Regulations governing his passport, residence permit, etc. The ignorance of law by the applicant cannot be a ground for violating the provisions of the Foreigners Act, 1946.

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10. From the record, it was very much established that the applicant has stayed in the area of receiving country, i.e. India exceeding the period for which the visa was issued and as such, contravened the provisions of the Foreigners Act.

11. The above referred aspects of the matter are very much appreciated by the learned appellate Court. This being the position, in my opinion, there is hardly any material to conclude that the applicant is entitled to be acquitted.

12. It is brought to my notice that the applicant has already undergone the sentence and in such situation, he will be deported to his parent country, i.e. Keniya.

13. In view of above, no case for interference in exercise of revisional jurisdiction is made out. Criminal Revision fails and stands dismissed.

14. In view of dismissal of the revision, Criminal Application No.3085 of 2016 does not survive and stands disposed of.

(N.W. SAMBRE, J.)

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