

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.3877 OF 2016

Shamshudhwaha Ulliulaha Buaiya ... **Petitioner**
V/s.
The State of Maharashtra ... **Respondent**
.....
None for the Appellant.
Mr.H.J.Dedia, APP for the Respondent/State.
....

**CORAM : SMT.V.K.TAHILRAMANI &
A. M. BADAR JJ.**

DATED : 15th DECEMBER 2016.

ORAL JUDGMENT : (PER V.K.TAHILRAMAJI J.)

1 It is the case of the petitioner that he is a citizen of Bangladesh. The petitioner by Judgment and Order dated 05/12/2015 has been convicted by the Additional Chief Metropolitan Magistrate, 22nd Court, Andheri, Mumbai in C.C.No.1108/PW/2015. By the said Judgment and Order, he has been convicted under section 14(a) of the Foreigners Act, 1946 and sentenced to suffer three years imprisonment and to pay fine of Rs.3,000/- in default to suffer imprisonment of six months. The prayer of the petitioner is that the sentence be reduced and he be sent back to Bangladesh.

2 The Constitution Bench of the Supreme Court in *Thansingh Nathmal Vs. Superintendent of Taxes, Dhubri* AIR 1964 SC 1419, has held that when alternate efficacious remedy is available, a writ petition should not be entertained. Against the Judgment and Order of conviction and sentence, the petitioner has remedy of preferring an appeal before the Sessions Court, hence we are not inclined to directly consider the prayer of the petitioner.

3 In this view of the matter, office to send these papers to the concerned Sessions Court. The Sessions Court to treat this petition as an appeal and dispose of the same as expeditiously as possible after appointing an advocate from the legal aid panel who will represent the petitioner/appellant in his appeal.

4. Office to communicate this order to the petitioner who is in Nashik Road Central Prison, Nashik.

(A. M. BADAR J.) (SMT. V. K. TAHILRAMANI J.)