

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.406 OF 2017

JUDGMENT:

This Criminal Appeal, under Section 374(2) of Cr.P.C., is filed by accused No.3 in Sessions Case No.365 of 2015 on the file of the I Additional Metropolitan Sessions Judge, Hyderabad (for short, 'the trial Court'), questioning the judgment dated 28.10.2016, whereby the trial Court convicted accused No.3 along with other accused under Section 235(2) Cr.P.C. for the offence punishable under Section 3(3) of the Passport Act (Entry into India) 1920, Sections 14(a) & (b) and 14-A(b) of the Foreigners Act, 1946, as amended in 2004, Section 4 r/w 5 of the Registration of the Foreigners Act, 1939, and sentenced to undergo rigorous imprisonment for a period of one year for the offence under Section 3(3) of the Passport (Entry into India) Act, 1920; to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month for the offence under Section 14(a) & (b) of the Foreigners Act, 1946; to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.10,000/-, in default, to undergo simple imprisonment for two months; and to undergo rigorous imprisonment for a period of six months for the offence under Section 4 r/w 5 of the Registration of the Foreigners Act, 1939. The trial Court directed that all the sentences shall run concurrently and set the accused at liberty to set off the period of remand.

2. Heard Smt. Naseeb Afshan, learned counsel for the appellant, and learned Additional Public Prosecutor appearing for the respondent-State, apart from perusing the material available on record.

3. Learned counsel for the appellant would submit that the findings of the trial Court are contrary to law and facts of the case; there is

no evidence to connect the accused No.3 to the alleged offences; there are no direct independent witnesses to substantiate the accusations; there is no evidence to believe that accused No.3 committed the offences willfully and knowingly; and ultimately, prayed to set aside the conviction and sentence recorded against accused No.3.

4. On the other hand, learned Additional Public Prosecutor appearing for the respondent-State would submit that the findings of the trial Court are based on the evidence on record; there is ample evidence to prove the accusations against accused No.3 and other accused; there are no circumstances to set aside the conviction and sentence recorded against accused No.3; and ultimately, prayed to dismiss the appeal.

5. In view of the rival submissions, the point for determination is, whether the conviction and sentence recorded against accused No.3 is sustainable or liable to be set aside?

6. **POINT**: The prosecution to prove the guilt of accused No.3 for the alleged offences, examined P.Ws.1 to 7 and got marked Ex.P.1-rental deed, Ex.P.2-confession-cum-seizure panchanama of Abdul Bariq Shaik, Ex.P.3-confession-cum-seizure panchanama of Anjumara @ Poonam, Ex.P.4-report dated 04.03.2015 and Ex.P.5-F.I.R. As per the evidence of P.Ws.1 to 7 and the documents Exs.P.1 to P.5, accused No.3 along with other accused staying in Hyderabad, without having any valid travel document or valid passport. Therefore, they are punishable for the offence under Section 3(3) of the Passport (Entry into India) Act, 1920, Sections 14(a) & (b) and 14-A(b) and of the Foreigners Act and Section 4 r/w 5 of the Registration of the Foreigners Act, 1939.

7. At this stage, learned counsel for the appellant-A.3 would submit that A.3 had undergone substantial sentence passed against the

offences charged, as she was arrested on 04.03.2015 at 8-00 p.m. at Amberpet, Hyderabad and kept in rescue home and since then, she has not been released, thus she completed two years of sentence of imprisonment recorded against her in this case and now she is undergoing default sentence. Learned counsel would further submit that the appellant-A.3 is very poor person and she has no capacity to pay the fine amount imposed and prayed to reduce the default sentence.

8. Under these circumstances, there is nothing to decide the innocence/guilty or otherwise of accused No.3. However, there is ample evidence on record to believe that accused No.3 had committed the offences alleged. The trial Court, after analyzing the entire prosecution evidence on record, rightly convicted and sentenced accused No.3 for the alleged offences. Therefore, the substantial sentence of imprisonment imposed against the appellant-A.3 for the aforesaid offences is confirmed. The default sentence recorded against the appellant-A.3 for the offence under Section 14(a) & (b) of the Foreigners Act, 1946, is reduced to 15 days from one month and the default sentence recorded for the offence under Section 14-A (b) of the Foreigners Act, 1946, is reduced to one month from two months. Accordingly, the default sentence is modified.

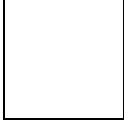
9. With the above modification, this Criminal Appeal is disposed of.

10. As a sequel, miscellaneous petitions, if any, pending in this Criminal Appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 03-11-2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER



Crl.A. No. 406 OF 2017

Date. 03-11-2017

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