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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON : 16th FEBRUARY, 2017

+ **CRL.REV.P.834/2016 & CRL.M.B. 2282/2016**

MALACHI OGUAMA Petitioner

Through : Ms.Sushma Sharma, Advocate.

VERSUS

CBI Respondent

Through : Mr.Sanjeev Bhandari, SPP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (Oral)

1. Present Revision Petition has been preferred by the petitioner to challenge the judgment dated 23.09.2016 of learned District and Sessions Judge (South), Saket, in CIS-CA-8250-2016 whereby the judgment dated 30.05.2016 and order on sentence dated 24.06.2016 of learned CMM, South in RC No.221/2016/E/0004 were upheld. Status report is on record.

2. I have heard the learned counsel for the parties and have examined the file. Undisputedly, charges under Section 471 IPC and Section 14 of Foreigners Act were framed against the petitioner by the Trial Court and to prove it, the prosecution examined eight witnesses. In 313 Cr.P.C. statement, the petitioner denied his involvement in the crime and pleaded false implication. He stated that the premises on rent were taken on

the basis of valid travel documents. After considering the rival contentions of the parties and on appreciation of the evidence the Trial Court convicted the petitioner for commission of offence punishable under Section 471 IPC and Section 14 of Foreigners Act. He was sentenced to undergo SI for one year under Section 471 IPC and SI for one year with fine ₹1,000/- under Section 14 of Foreigners Act; default sentence being SI for three months. Both the sentences were to operate concurrently.

3. Crl.A.No.8250/2016 filed by the petitioner to challenge the conviction recorded by the Trial Court resulted in its dismissal.

4. During the course of arguments, learned counsel for the petitioner on instructions informed that the petitioner has opted to give up challenge to the findings recorded by the Trial Court on conviction. She prayed to modify the sentence as the petitioner has already undergone the substantial period of substantive sentence.

5. Since the petitioner has opted not to challenge the findings on conviction and there is overwhelming evidence on record to establish the petitioner's complicity in the crime, conviction recorded under Section 471 IPC and Section 14 of Foreigners Act is affirmed.

6. Nominal Roll dated 14.02.2017 reveals that the petitioner has already served out the substantive sentence awarded to him by the Trial Court. Presently, he is undergoing default sentence for non-payment of fine. The fine amount is only ₹1,000/- and the default sentence awarded by the Trial Court for its non-payment is three months which seems unreasonable. The petitioner is a foreigner and is not a previous convict. His overall jail conduct is satisfactory. Considering the mitigating circumstances, the period already undergone by the petitioner for non-payment of fine ₹1,000/-

is taken as the default sentence. Other terms and conditions of the sentence order are left undisturbed.

7. The petitioner shall be released forthwith if not required to be detained in any other case.

8. The revision petition stands disposed of in the above terms. Pending application also stands disposed of.

9. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

FEBRUARY 16, 2017 / tr

