

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48897-2017 (O&M)

Date of decision: 09.05.2019

Choi Mikieong

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Pankaj Gupta, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of FIR No.0036 dated 24.01.2017 under Sections 3/14 of the Foreigners Act, 1946 (for short 'the Act'), registered at Police Station DLF, Phase-1, Gurgaon and the order dated 09.06.2017, vide which the charges were framed against the petitioner as well as all the subsequent proceedings arising out of the FIR.

Brief facts of the case are that the petitioner is a citizen of South Korea and is presently residing in India on business visa, as she is one of the Directors/partner of Greenarae Hospitality Pvt. Ltd. The petitioner is lessee of a premises in Gurugram, where a guest house under the name and style 'Golden Eyes' is running, though, the petitioner's ordinary place of business is in Kancheepuram, Tamil Nadu. The petitioner has also acquired Aadhar Card at her address of Appur, Kancheepuram, Tamil Nadu. She has employed

staff for proper running and maintenance of the aforesaid guest house at Gurugram and day to day management is maintained by the staff employed by her.

As per allegations in the FIR, on 24.01.2017, the police party headed by ASI Rishi Pal inspected the aforesaid guest house and on asking by him, the person, who was sitting on reception of the guest house, told his name as Manish and produced the register of guest house, in which it was found that there was an entry at Sr. No.1 dated 17.12.2016 at page No.1, in the name of PARK YONGSEOK (KORIA), Passport No.MO7686505 KORIA. When ASI Rishi Pal asked aforesaid Manish about the Form 'C', he told that he used to look after only the maintenance work and further said that he could tell about the same after asking from owner of the guest house i.e. the petitioner and after asking from the petitioner, aforesaid Manish said that no Form 'C' of the foreigner was filled up. Thus, the petitioner has committed the offence under Sections 3/14 of the Act.

For ready reference, Section 3 of the Act reads as under: -

“3. Power to make orders.— (1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or, their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the

foregoing power, orders made under this section may provide that the foreigner—

(a) shall not enter or shall enter only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in India, or in any prescribed area therein;

(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal, the cost of his removal from India and of his maintenance therein pending such removal;

(d) shall remove himself to, and remain in, such area in 2[India] as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified—

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such

authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;

(v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;

(vi) prohibiting him from association with persons of a prescribed or specified description;

(vii) prohibiting him from engaging in activities of a prescribed or specified description;

(viii) prohibiting him from using or possessing prescribed or specified articles;

(ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;

(g) shall be arrested and detained or confined;] and may make provision for any matter which is to be or may be

prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) or clause (f) of sub-section (2).

Similarly, Section 14 of the Act, which provides for penalty for contravention of provisions of the Act, reads as under: -

“14. Penalty for contravention of provisions of the Act, etc.—

Whoever—

(a) remains in any area in India for a period exceeding the period for which the visa was issued to him;

(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

(c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act,

shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the

satisfaction of the convicting Court why such penalty should not be paid by him.

Explanation.—For the purposes of this section, the expression “visa” shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920).”

Order 16 of the Foreigners Order, 1948 prescribes about the keeper of a hotel to transmit copy of Form ‘C’ to the registration officer as soon as but not more than 24 hours after arrival of a foreigner and the relevant provision of Order 16 is reproduced as under: -

“16. Report to be made to and by hotel keepers- (1) Every keeper of a hotel shall require every visitor to the hotel to furnish the particulars necessary for recording, and sign, on his arrival at the hotel, his name and nationality in a register maintained for the purpose in Form B and, if such visitor is a foreigner shall further require him-

- | | | | |
|-------------------|------------|------------|------------|
| <i>(a)</i> | <i>xxx</i> | <i>xxx</i> | <i>xxx</i> |
| <i>(b)</i> | <i>xxx</i> | <i>xxx</i> | <i>xxx</i> |
| <i>(2) to (5)</i> | <i>xxx</i> | <i>xxx</i> | <i>xxx</i> |

(6) The keeper of the hotel shall, as soon as may be but not more than twenty four hours, after the arrival of a foreigner, transmit a copy of Form C, duly completed from the particulars furnished by the foreigner, to the Registration Officer.”

Clause (7)(b) of Order 16 Foreigners Order, 1948, which defines

the term 'keeper of a hotel, reads as under: -

“(7) For the purpose of this paragraph,

(a) xxx xxx xxx

(b) “Keeper of a hotel” means the person having the management of a hotel and includes any person authorized by him, and competent to perform the duties of the Keeper of the hotel under this paragraph.”

Learned counsel for the petitioner has relied upon **Smt. Beena Arora Vs. State of Uttarakhand and another, 2009 (25) RCR (Crl.) 281**, wherein the Uttarakhand High Court, while interpreting the definition of Keeper of the hotel, as per sub Rule 14 (7) Clause (B) of the Registration of Foreigners Rules, 1992, has held as under: -

“Under Sub-rule (7) of Rule 14 (supra), ‘keeper of a hotel’ has been defined in Clause (b) as under:

“(b) “keeper of a hotel” means the person having the management of a hotel and includes any person authorized by him, and competent to perform the duties of the Keeper of the hotel under this rule.”

It is the undisputed case of the parties, especially of the Prosecution, that Man Singh-accused was the keeper of the Hotel at the relevant time in his capacity as its Manager. If Man Singh was the keeper of the hotel in his capacity as the Manager at the relevant time, law did not permit the owner thereafter to be prosecuted along with Man Singh. Section 14 of 1946 Act

read with Rule 14(6) (supra) along with the definition of the 'keeper of a hotel' leaves no one in any doubt that only a keeper of the hotel has to be prosecuted and if the keeper is being prosecuted, there is no scope for the owner to be prosecuted along with the accused. The petitioner, undoubtedly, is the owner of the hotel. Prosecution against her, therefore, was not maintainable and the same was in violation of the aforesaid statutory provisions."

It is thus submitted by learned counsel for the petitioner that the petitioner, who is lessee of the premises, is not keeper of the guest house, as she was not present at the spot and as per the averments in the FIR itself, the police met with Manish, an employee of guest house and acquired the information from him regarding Form C, therefore, the petitioner cannot be held to be keeper of the hotel.

Learned counsel for the petitioner has further relied upon a judgment of the Patna High Court in **Ashok Kumar @ Ashok Prasad Vs. State of Bihar, 2011 (7) RCR (Crl.) 1227**, wherein it has been held that on account of non-furnishing of information in 'Form C', no offence under Section 14 of the Act is made out, as it could only be held that offence under Section 5 of the Act is made out, for which maximum punishment is Rs.500/-. The operative part of the judgment reads as under: -

"Sections 2 (b) and 3(1) of the Foreigners Act define "prescribed" and power to make orders which are as follows:

"2. Definitions.- In this Act-

(b) “prescribed” means prescribed by orders made under this Act.

“3(1) Power to make orders.- (1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigners, for prohibiting, regulating or restricting the entry of foreigners into [India] or, their departure therefrom or their presence or continued presence therein.”

So, that can be regulated only by order made by the Central Government and according to the learned counsel at no point of time such order was ever passed.

After going through the discussed provisions, I am also of the view that Section 7 can be made applicable only when some order is passed in that regard as prescribed under Sections 2 and 3 of the Foreigners Act. It appears as submitted that this provision is made to face any contingency whenever it arises otherwise some hardship is possible due to non-existence of any law on the point not required at present as it would take time to bring legislation on the point to come out from the contingency.

In the case admittedly information in Form-C was required and found not complied i.e. requirement of Section 5 of the Registration of Foreigners Act. Thus, it is made clear that no

offence under Section 14 of the Foreigners Act is made out against the petitioner that never mean to say that no offence at all is made out against him. It is made more specific that offence under Section 5 of the Registration of Foreigners Act is made against the petitioner for which maximum punishment is Rs.500/- (five hundred), which shall be considered by the trial court only. Petitioner is at liberty to confess his guilt about not furnishing Form-C in time whenever such intention is brought in the knowledge of the Court his confession shall be recorded and if he is ready to deposit the maximum amount he shall be allowed on the same day.

Accordingly, this revision petition is partly allowed and to that extent order impugned is set aside.”

In reply, learned State counsel, on instructions from ASI Gianender Singh and on the basis of reply filed by way of affidavit of Assistant Commissioner of Police, DLF, Gurugram, has submitted that since the petitioner being owner of the guest house ‘Golden Eye’ failed to fill up Form ‘C’ with regard to one Korian national namely Park Yong Scok, who checked into on 17.12.2016 and did not furnish the information within 24 hours of his arrival in India, therefore, the trial Court has rightly framed the charge under Section 3/14 of the Act. It is further submitted that the case is now fixed for recording the prosecution evidence, however, no evidence has been adduced.

After hearing learned counsel for the parties, I find merit in the

present petition.

- (a) A bare perusal of the FIR shows that the petitioner was not present at the spot and it was one Manish, who was keeper of the guest house, who met the police and informed that though Form 'B' has been filled up but Form 'C' was not filled up and therefore, in view of judgment of the Uttarakhand High Court in **Smt. Beena Arora's** case (supra), the petitioner was not keeper of the hotel i.e. guest house, as the Manager was one Manish and the police has not arrayed him as accused.
- (b) In view of judgment of Patna High Court in **Ashok Kumar @ Ashok Prasad's** case (supra), wherein it is held that non-filling up of Form 'C', which is the requirement of Section 5 of Registration of Foreigners Act, lays down the maximum punishment of Rs.500/-, no offence is made out under Section 14 of the Act.
- (c) In view of the aforesaid position, Order 16 (6) of the Foreigners Order, 1948 also provides that it is mandatory for the keeper of the hotel to transmit Form 'C' within 24 hours of arrival of a foreigner, to the Registration Officer, an officer appointed under the Registration of Foreigners Act, by the keeper of hotel.
- (d) It is also held in **Ashok Kumar @ Ashok Prasad's** case (supra) that non-filling up of Form 'C' do not attract the offence under Section 14 of the Foreigners Act, as it would be an offence under Section 5 of the Registration of Foreigners Act, which only

provides maximum punishment in terms of fine.

In view of the above, present petition is allowed and FIR No.0036 dated 24.01.2017 under Sections 3/14 of the Act, registered at Police Station DLF, Phase-1, Gurgaon and the order dated 09.06.2017, vide which the charges were framed against the petitioner as well as all the subsequent proceedings arising out of the FIR, are ordered to be quashed, however, this will be subject to payment of costs of Rs.1.00 lacs to be deposited in the Govt. Treasury under a head to be nominated by the trial Court within a period of 30 days from the date of receipt of certified copy of this order, failing which this petition will be deemed to be dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

09.05.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No