

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.213 of 2020**

Arising Out of PS. Case No.-103 Year-2019 Thana- RUNISAIDPUR District- Sitamarhi

1. Ugwumsinachi Oniya, Son of Gabriel Oniya, Permanent resident of 20, Chalons Close Enugu NGWO, Enugu State, Nigeria.
2. Solomon Aliagwu, Son of Richard Aliagwu, Permanent resident 15 Ogbeini Street, Agbor, OB I Delta State, Nigeria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Abu Nasar, Advocate
For the Respondent/s : Mr.B.N. Pandey, APP

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT**

Date : 08-10-2021

Re: I.A.No.1 of 2020

Limitation petition, bearing I.A. No.1 of 2020, has been filed for condoning the delay of 33 days in filing the instant revision application.

2. In view of cause being shown in the interlocutory application praying for condonation and there being no opposition from the learned A.P.P., I.A. No.1 of 2020 stands allowed. The revision application is deemed to have been filed within time.

Re: Criminal Revision No.213 of 2020

This revision application is limited to the question of legality of the sentence awarded by the court of A.C.J.M.-V, Sitamarhi under the judgment and order dated 18.10.2019 in G.R.



No.1109 of 2019 arising out of Runnisaipur P.S. Case No.103 of 2019. The learned court has convicted the petitioners for the offence punishable under Section 14 of the Foreigners (Amendment) Act, 2004 (hereinafter referred to as “the Act”) and sentenced to undergo simple imprisonment for three years, setting off the period undergone by them prior to passing of the sentence in judicial custody.

2. Since the petitioners have pleaded guilty, they have not questioned or raised any issue in respect of the conviction.

3. According to the prosecution case, it is stated that the informant was deputed as Executive Magistrate during the election. On 14.03.2019 at 6:30 A.M., one Amar Jyoti Bus, bearing registration No.BR 06PA7167, on way from Sitamarhi to Patna was stopped at Runnisaipur Police Station by the Driver of the bus along with the passengers. The Driver intimated that two foreign nationals (these petitioners) have boarded the bus for going to Patna and he found their activities to be doubtful. Petitioners were thus questioned by the informant along with police officials. They have admitted to reach Sitamarhi through Siliguri in India from Kakarbhitha (Nepal). They have stated that they were going to Patna. On search, they were found to be in possession of passport issued on 13.11.2018 and valid up till 12.11.2023. In respect of



Petitioner Nos.1 and 2, a tourist visa for 15 and 30 days respectively, was stamped on their passports. Petitioner Nos.1 and 2 have arrived in Nepal on 08.03.2019 and 11.03.2019 respectively. Their visa was to expire on 22.03.2019. It is further the prosecution case that Indian, Nigerian, Canadian and American currency was recovered from the petitioners. Five mobile sets with SIM cards, voter card of the Federal Republic of Nigeria, clothes, other articles of daily use, some CDs, tablet, including old passport were found in their possession.

4. A seizure list was also prepared in presence of independent witnesses. Chargesheet was submitted for the offence under Section 14 of the Foreigners (Amendment) Act, 2004 and investigation was kept pending for examination of the seized articles and documents.

5. The Court of C.J.M., Sitamarhi took cognizance of the offences under Sections 341, 323, 504 of the I.P.C. and Section 14 of the Foreigner (Amendment) Act, 2004 against the instant petitioners.

6. The two petitioners on the same date filed an application in the court of C.J.M., Sitamarhi pleading guilty to contravention of Section 14 of the Act and confessing their crime. They prayed that they want to go back to their country. The



petition was kept on record and was transferred to the court of A.C.J.M. The record thereafter shuttled between the court of Additional Chief Judicial Magistrate and Chief Judicial Magistrate and when it was sent twice to the court of A.C.J.M., considering the fact that the accused are languishing in jail and have pleaded guilty, the A.C.J.M. passed the order on sentence. The court has found the petitioners to be guilty of having contravened Section 14 of the Act knowingly and have been sentenced to undergo simple imprisonment for three years, setting off the period already undergone by them in judicial custody.

7. Learned counsel for the petitioners submits that the revision is limited to the question of the correctness and legality of the sentence. The court while awarding the sentence has taken into consideration irrelevant factors as being aggravating factors to award sentence of three years out of a maximum sentence of five years prescribed, wherein no minimum sentence has been prescribed. The petitioners have already undergone two years six months in custody out of three years awarded by the trial court.

8. Learned counsel submits that the *bona fides* of the petitioners is evident, and identity established from the fact that they were carrying their passports and voter cards issued by the Federal Republic of Nigeria. It is further submitted that no



dangerous article has been recovered from the petitioners. Possession of the currency, mobile phones, clothes and articles of use cannot be considered to be in any way offensive. The court while passing order on the sentence has taken into consideration the fact that the petitioners have contravened Section 14 of the Act during election period. This fact, as per counsel for the petitioners, is hardly relevant. The offence to which the petitioners have admitted their guilt and for which they have been punished is violation of Section 14 of the Act. The fact that they were illegally within the Indian territory during election is not a relevant factor while granting sentence under Section 14 of the Act and therefore consideration of the same is wholly unwarranted.

9. Mr. B.N. Pandey, learned APP has appeared on behalf of the State. He has submitted that for contravention of Section 14 of the Act, the prescribed punishment is upto five years. For violation of the said provision, the petitioners have been convicted, based on their own confession. The sentence of three years' imprisonment as has been awarded by the trial court based on their confession and admission of guilt, therefore the same does not require any interference. However, the fact that the petitioners have neither been proceeded against or found guilty of any offence under the Representation of the People Act or on account of



possessing of any foreign currency, cannot be denied based on the records.

10. On these points, there is also no confession of the petitioners, as is apparent from the order of the trial court.

11. This Court would find force in the submission of the petitioners' counsel. Sentence has been awarded only under Section 14 of the Act. Petitioners have not been alleged or found to be indulging in any offence under the Representation of the People Act or any other offence under any other Act. They have also not been alleged to be violating or tried for any offence in respect of possession of any illegal article whatsoever.

12. Purely based on confession of their guilt of having violated Section 14 of the Act, sentence has been awarded by the trial court. The judgment, however, manifests consideration of the fact that contravention is during election time and that they were having some Indian and foreign currency in their possession.

13. Conviction is based only on confession and admission of guilt is for contravention of Section 14 of the Foreigner Act. This Court is of the opinion that consideration of the other factors that offence was committed during election, or that they were in possession of currency, is not relevant. Also there



is also nothing on record to show that the petitioners are bearing any criminal antecedents.

14. From bare perusal of Section 14 of the Act, it is apparent that minimum sentence has not been prescribed and maximum five years with fine has been prescribed as punishment for violation of the said provisions. Fact that they were found within the territory of India during election and that they were possessing some currency cannot be considered to be an aggravating circumstance since the petitioners have neither been charged, or tried for any offence based on these two facts and circumstances. The sentence which has been passed based on consideration of these irrelevant facts therefore is illegal, incorrect and is unsustainable.

15. This Court is of the opinion that the period of sentence undergone is sufficient to meet the ends of justice for the offence of violation of Section 14 of the Act.

16. Affirming the judgment of conviction, the sentence awarded to the petitioners is reduced to the period already undergone.

17. With limited modification, as above, the revision application is allowed.



18. This Court would expect that the petitioners’ counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

PNM

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