

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 2835 of 2016

Charan Naskar
Vs.
State of West Bengal & Ors.

For the Petitioner : Mr. Pawan Kumar Gupta
Mr. Ashok Das
Ms. Sofia Nesar
Mr. Santanu Sett

For the State : Mr. Imran Ali
Mr. M.F.A. Begg

Heard on: : 05th January 2021

Judgment on : : 05th January 2021

The Court:

This is an application for quashing of a proceeding in which a charge-sheet was submitted under Sections 14 and 14A of the Foreigners Act.

Learned counsel appearing on behalf of the petitioner submits as follows. The accused/petitioner was an Indian national against whom the prime allegation was that he had harboured a foreign

national. The co-accused foreign national, after obtaining bail, absconded. The prime accused was arrested from a road. In fact, the police received an information that a Bangladeshi national was moving around aimlessly and that is why they conducted a raid. After being arrested, the said co-accused stated to the police that he was staying in the house of the present petitioner. First, the statement of a co-accused made to a police officer is not admissible in evidence. Besides, there is no tenancy agreement or rent receipt whatsoever that could be seized in this case. Even the statements of witnesses indicating the stay of the Bangladeshi national at the petitioner's place are hearsay in nature. Any abetment for commission of an offence under the Foreigners Act has to be a conscious act, as per Section 13(2) of the said Act. In any event, no charge is made out against the present petitioner under Sections 14 and 14A of the Foreigners Act.

Learned counsel appearing on behalf of the State submits as follows. After rejection of the petitioner's application for anticipatory bail by the learned Sessions Court and then by the Hon'ble High Court, the petitioner never surrender before the learned trial court. He became absconding and a proclamation and attachment had to be issued against him. Therefore, the petitioner is not coming with clean hands. Referring to the statements of the police personnel recorded under section 161 of the Code as available at pages 6, 7 and 8 and of independent witnesses contained at pages 9 and 10 of the case diary,

it is submitted that a prima facie case is made out against the present petitioner under Section 14-C of the Foreigners Act. It will be for the learned trial court to decide which of the charges would finally apply to the present petitioner.

I have heard the submissions of the learned advocates for the parties and have perused the revision petition, the case diary and the report filed by the State regarding issuance of proclamation and attachment against the present petitioner.

First, it is apparent that a wrong charge has been imputed in the charge sheet so far as the present petitioner is concerned. If at all, the present petitioner can be proceeded only under section 14-C of the Foreigners Act and not under Sections 14 and 14A of the said Act.

From a careful perusal of the statements of two independent witnesses, especially the one recorded at page 10 of the case diary it appears that the witness was a neighbour of the petitioner in whose place the Bangladeshi national was staying. The prefatory part of the statement that "he later learnt" merely qualifies his subsequent knowledge that the co-accused was a Bangladeshi national and does not qualify the latter part of the statement that the present petitioner had given shelter to the said Bangladeshi national. As such, this statement of the said local witness cannot be treated as having given out a hearsay amount.

Whether the petitioner knowingly gave shelter to the alleged Bangladeshi national is a question of fact that can be decided only during trial.

In view of the above, I do not find any merit in the application for quashing of the proceeding and the same is, accordingly, dismissed.

However, the learned trial court shall not be swayed by the observations made herein and conclude the proceeding at the earliest after taking necessary measures to ensure the attendance of the accused.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta,J.)

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