

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.171 of 2022

Arising Out of PS. Case No.-115 Year-2021 Thana- RAXAUL District- East Champaran

Williams Rebecca @ William Rebecca @ Rebecca Williams D/o Christopher
Paul William Resident of 1680, Central Street Claremont Ontario, Canada.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Its Home Secretary, Patna Bihar
2. Union of India through the Secretary, Ministry of External Affairs, Bureau of Immigration. Office of Assistant Foreigner's Regional Registration Officer.
3. The Director General of Police, Bihar, Patna. Bihar
4. The Superintendent of Police, Motihari. Bihar
5. The Officer -in- Charge, Raxaul (Haraiya), Police Station. Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Shrishti Singh, Advocate
For the State	:	Mr. Md. Nadim Seraj, GP-5
For the Union of India	:	Mr. Awadhesh Kumar Pandey, Sr. Panel Counsel Mr. Radhika Raman, CGC

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 12-07-2022

Pursuant to the order dated 11.07.2022, the Oath Commissioner is present in person and has explained to this Court the circumstances under which he had put his seal and signature on the affidavit.

In view of the detail discussions which took place in the Court's proceeding, Mr. Awadhesh Kumar Pandey, learned Sr. Panel Counsel for the Union of India assisted by Mr. Radhika Raman, learned C.G.C. has given up his objections, hence, this issue needs no further consideration.



With the consent of learned counsel for the parties, this case has been taken up for final hearing and disposal.

In the present case, the petitioner is said to be a young girl aged about 26 years. She is a Canadian citizen and is said to be a well educated lady. She is an Interdisciplinary Artist and Educator from Toronto.

A First Information Report has been instituted against the petitioner on the basis of written report of the informant Ajay Kumar Pankaj (AFRRO, ICP, Raxaul) giving rise to Raxaul (Haraiya) P.S. Case No. 115/2021 under Section 447 of the India Penal Code (in short 'IPC'), Section 14(b) of the Foreigners Act, 1946 (hereinafter 'the Act of 1946') and Section 52 of the Disaster Management Act, 2005 (hereinafter 'the Act of 2005').

The prosecution story as alleged is that the petitioner being a Canadian citizen entered into the country without an Indian visa. It is alleged that even though the petitioner was stopped by the immigration officer, she boarded a bus that was headed to Bettiah. The immigration officer communicated this incident to the Ramgarvah Police Station from where the petitioner was arrested and subsequently, brought to the immigration office, Raxaul. During the enquiry



and verification, it was revealed that she did not possess an Indian visa.

It is stated that after investigation a charge-sheet has been filed against the petitioner for the alleged offences and after taking cognizance charges have been framed against her. Pursuant to the adjournment granted by a learned coordinate Bench of this Court on 05.05.2022 the petitioner has challenged the order taking cognizance as well as the order framing charge by the learned trial court vide I.A. No.1 of 2022 and I.A. No.2 of 2022 respectively. Both the interlocutory applications are under consideration with the present writ petition.

Learned counsel for the petitioner submits that the petitioner was travelling from Canada to Nepal on a valid visa and inadvertently crossed into the Indian border. On realizing that she had inadvertently traveled in the Indian Territory, the petitioner was taking steps to travel back into Nepal, but she was detained by the AFRRO on 31.03.2021 itself and thereafter she was arrested by the Raxaul police. Learned counsel submits that the allegations in the FIR are absurd and inherently improbable and no reasonable person can believe the same.

It is further submitted that Section 441 of the IPC defines criminal trespass. It is submitted that every trespass does



not amount to a trespass within the meaning of Section 441. There is no allegation that the petitioner entered into the Indian territory with an intention to commit an offence. There is no allegation at all in the complaint that the petitioner had any intention to trespass into India.

It is further submitted that Section 14(b) of the Act of 1946 gets attracted when there is any violation of VISA conditions granted by the Indian authority. Since the records reflects that the petitioner was not issued a VISA by Indian authority, hence the question of violating any VISA conditions does not arise.

It is further submitted that the contents of the FIR prima-facie does not disclose any offence under Section 52 of the Act of 2005. Learned counsel submits that to make out a case under the Act of 2005 it is necessary to show that there is firstly a false claim and secondly the purpose of the false claim is to obtain a benefit. It is submitted that by no stretch of imagination Section 52 of the Act of 2005 would get attracted.

Learned counsel submits that in the case of **Fadi Fadel v. The State of Bihar & Ors., (2018) 2 PLJR 400**, this Court vide its judgment dated 17.01.2018 not only quashed the FIR but also quashed the subsequent orders taking cognizance



as well as framing of charge and the whole proceeding. It is submitted that in the said case this Court ordered for deportation of the petitioner after holding that the offences alleged in the FIR were not attracted. A copy of the said judgment has been brought on record as Annexure- '6' to the writ application.

Learned counsel submits that in the facts of the present case at best it is a case of unlawful entry into the territory of India, for that reason the petitioner should have been deported in terms of Section 5 of the Passport (Entry into India) Act, 1920 (hereinafter referred to as the 'Act of 1920') instead of charging her for criminal trespass and inapplicable provisions of the IPC, the Act of 1946 and the Act of 2005.

It is submitted that the petitioner is suffering from several serious mental health problems as well as eating disorders and her further stay in the country in the facts of the present case is not in the interest of justice. True copy of the medical records of the petitioner have been annexed as Annexure-7 to the writ application. It is submitted that the petitioner has though been released on bail by the order of this Hon'ble Court, till date she has not been returned her cellphone, identity proofs such as driving license and her passport. She has no relatives in this country and the interest of justice requires



that the FIR, the order taking cognizance and the order framing charge against the petitioner be quashed and a direction be issued to the Union of India to deport her to Canada after handing over her passport, driving license and the cellphone etc. as per the seizure list.

In I.A. No.1 of 2022 the petitioner has challenged the order taking cognizance. It is submitted that the learned court below has taken cognizance of the offences alleged in a routine and mechanical manner. The learned trial court could not appreciate that this case would be covered by the Special law relating to deportation and Section 5 of the Act of 1920 will be applicable in the present case. It is submitted that the order taking cognizance is being challenged with a prayer to quash the same.

By filing I.A. No.2 of 2022 the petitioner has challenged the chargesheet as well as the order dated 17.09.2021 by which charge has been framed against her by the learned Judicial Magistrate-1st Class, Raxaul at Motihari in East Champaran. It is submitted that the charge has also been framed without appreciating the materials on the record and the law on the subject.

It appears that copy of the interlocutory



applications were duly served in the office of the learned Central Government counsel but no affidavit in opposition has been filed against these interlocutory applications. This Court, therefore, finds it just and proper to allow I.A. No.1 of 2022 and 2 of 2022. The prayers made in these two interlocutory applications shall form part of the reliefs prayed in the writ application and the statements made therein shall form part of the pleadings.

In this case a counter affidavit has been filed on behalf of the respondent no.4 who is S.D.P.O., Chakiya, Motihari to oppose the main writ petition. A perusal thereof would show that according to the deponent the facts stated in paragraph '10' to '17' of the writ petition and the grounds set forth by the writ petitioner are inconsistent with the outcome of the investigation in this case. The respondent no.4 has defended the action in registering of the F.I.R.

Having regard to the submissions and the materials available on the record, this Court would first proceed to have a glance over the respective provisions under which cognizance has been taken and the charges have been framed against the petitioner. Section 447 of the IPC provides punishment for criminal trespass. The criminal trespass has been defined under



Section 441 IPC, therefore, this Court would reproduce Section 441 and 447 IPC as hereunder:-

“441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

447. Punishment for criminal trespass.—Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

A bare reading of the definition of the criminal trespass it would appear that it talks of entry into or upon property in the possession of another with a intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence.

On a reading of the FIR without adding or



subtracting anything out of it, it is crystal clear that in this case there is no allegation at all that the petitioner who is a foreign national entered into or upon the property of any person in possession of that. By no stretch of imagination she had allegedly any intention to commit offence or to intimidate anybody, insult or annoy any such person. In course of investigation also nothing could be brought on the record by the investigating agency to proceed against the petitioner for the offence under Section 447 of the IPC, still the learned Judicial Magistrate-1st Class has taken cognizance of the said offence and decided to proceed against the petitioner. The learned court while passing an order framing charge did not even look into the ingredients of the offence alleged and the materials which could have even raised to any extent a suspicion that the petitioner is liable to be charged for the offence under Section 447 of the IPC.

Section 14(b) of the Act of 1946 reads as under:-

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

(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; 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.”

Again this provision gets attracted only when there is an allegation of violation of the conditions of a valid visa issued to a person for his entry and stay in India or any part thereunder. On the face of it this provision is not attracted and none of the ingredients of this Section would be satisfied for purpose of framing of charge.

Section 52 of the Act of 2005 reads as under:-

“52. Punishment for false claim.—

Whoever knowingly makes a claim which he knows or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the Central Government, the State Government, the National Authority, the State Authority or the District Authority, shall, on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.”

This Court having gone through Section 52 of the Act of 2005 finds that the informant as well as the learned



Magistrate taking cognizance and framing charge against the petitioner acted without application of any judicious mind and proceeded to register the FIR and thereafter to take cognizance and framing of charge for the offence punishable under Section 52 of the Act of 2005 even though by no stretch of imagination any of the ingredients of that Section is available against the petitioner.

The contention of learned counsel for the petitioner that her case would be covered by Section 5 of the Act of 1920 and the rules framed thereunder is persuasive one. The Act of 1920 was enacted with object and reasons to retain the power to continue with the rules requiring passports for egress from and ingress into India. The word “entry” has been defined under Section 2 which means entry by water, land or air. Section 3 is the rule making power whereunder the Central Government may make rules requiring that person entering India to be in possession of passports and all matters ancillary or incidental to that purpose. The Central government has got power to frame rules and such rules may prohibit the entry into India or any part thereof of any person who has not in his possession a passport issued to him.

Rule 3 of the Passport (Entry Into India) Rules,



1950 (hereinafter referred to as the 'Act of 1950') says that save as provided in rule 4, no person proceeding from any place outside India shall enter, or attempt to enter, India by water, land or air – (a) unless he is in possession of a valid passport conforming to the conditions prescribed in rule 5. Rule 5 prescribes the conditions of a valid passport. Under Section 5 of the Act of 1920, the Central Government has power to direct by general or special order for removal of any person from India who, in contravention of any rule made under section 3 prohibiting entry into India without passport, has entered therein, and thereupon any officer of the Government shall have all reasonable powers necessary to enforce such direction.

On perusal of the Hon'ble Division Bench judgment of this Court in the case of Fadi Fadel (supra), this Court finds that Fadi Fadel a Lebanese citizen had been volunteering in Nepal during the earth-quack period. He bought a motorcycle in Katmandu, Nepal from a tourist and was driving to Pokhara and lost his way and reached Hetauda where he slept in the night at guesthouse. He decided to ask if Tanakpur border is near, he somehow entered into India. He came in contact with an IB person who interrogated him and later on passed the information to the local police station. He was brought to the



police station by the police personnel and a case was lodged against him. The Hon'ble Division Bench in the said case considered the provisions of the Act of 1950 and the rules framed thereunder. The Hon'ble Division Bench found that the only reason for which the petitioner could not be deported to his native country was on account of pendency of the criminal case. The Hon'ble Division Bench of this Court quashed the entire criminal proceeding against the petitioner and directed the Central Government/State Government to take immediate steps to pass necessary orders for deportation of petitioner to his native country in consultation with the Embassy of Lebanon at New Delhi forthwith preferably within four weeks from the date of receipt/production of a copy of the order. The Hon'ble Division Bench also directed the Court/authority in whose possession seized articles of the petitioner is kept to release the same immediately.

In course of hearing of this case Mr. Awadhesh Kumar Pandey, learned Senior Panel Counsel for the Central Government has, though, opposed the writ application and the interlocutory applications but having understood the legal position as appearing from the provisions of the Acts and the judgment of the Hon'ble Division Bench of this Court



requested this Court to pass an appropriate order as may be deemed just and proper in the facts of the case.

This Court has already held hereinabove that in this case the investigating agency as well as the learned Judicial Magistrate-1st Class, Raxaul have completely erred in lodging of the FIR and passing of the order taking cognizance and framing of charge against the petitioner under Section 447 IPC, Section 14(b) of the Act of 1946 and Section 52 of the Act of 2005. Since none of the ingredients of those provisions are available against the petitioner, this Court finds it a fit case in which the extraordinary writ jurisdiction of this Court be exercised to quash the FIR, the order taking cognizance as well as the order framing charge against the petitioner. Those are accordingly quashed and the impugned orders are set aside.

The Central Government as well as the Government of Bihar are hereby directed to take immediate steps for deportation of the petitioner to her native country in consultation with the Embassy of Canada if the petitioner is not wanted in any other case in India. The competent authority shall pass an appropriate order forthwith preferably within a period of two weeks from the date of receipt/production of a copy of this order. The learned court below as well as the authorities in



whose possession the seized articles of the petitioner are lying
are directed to release the same in favour of the petitioner
immediately preferably within one week from today.

The writ application stands allowed.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.07.2022
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