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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.2701 of 2022
and
Crl.M.P.Nos.1236 & 1237 of 2022

Lee Gwangmin

... Petitioner

Vs.

1. The State represented by,
The Inspector of Police,
E-3, Minjur Police Station,
Tiruvallur - 601 203.

2. Daisen Murali,
The Assistant Director,
Bureau of Immigration,
Chennai-Ennore Seaport,
Chennai-600 001.

... Respondents

PRAYER: This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to call for the records pertaining to PRC No.18 of 2021 pending on the file of the learned Judicial Magistrate-II, Ponneri and quash the same.

For Petitioner : Mr.Karthikeyan
for Mr. S.Joel

For R1 : Mr.A.Gokulakrishnan
Additional Public Prosecutor.

For R2 : No Appearance

O R D E R

The Criminal Original Petition has been filed to call for the records pertaining to PRC No.18 of 2021 pending on the file of the learned Judicial Magistrate-II, Ponneri and quash the same.

2. The petitioner is A2 in Crime No.600 of 2021



registered by the respondent. The respondent after completing investigation, filed the final report, which is pending in PRC No.18 of 2021 on the file of the learned Judicial Magistrate-II, Ponneri.

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3. The averments as per the final report are extracted hereunder:-

That the witness Tmt.Daisen Murali is working as the Assistant Director, Bureau of Immigration, Chennai-Ennore Seaport, Chennai. The A1 is a citizen of Indonesia and is working as the 2nd Engineer in the vessel MT Asian Grace, flag South Korea. The A2 is a citizen of South Korea and working as the Captain of the MT Asian Grace, flag South Korea. The A3 is a citizen of India and is the Manager of Samudra Marine Service Pvt. Ltd and was maintaining the above said vessel 'MT Asian Grace'.

That on 02.09.2021, the above said vessel 'MT Asian Grace' berthed at Kamarajar Port Ltd., Ennore and on 03.09.2021 early morning at about 04.00 hrs., the A1 disembarked from the above said vessel and entered into India without any valid permission or visa under the guise of taking treatment and went outside the main gate of the above said port and took treatment at National Hospital at No.12, Manali Express Highway, Eranavoor and was caught by the CISF, while he was entering into the port around 10.00 hrs., through the above said main gate and the A1 entered into the area in India without any valid documents required for such entry and committed an offence punishable under Section 14A(b) of the Foreigners (Amendment) Act, 2004 and the A2 and A3 abetted the A1 by facilitation him to go outside the vessel and port and thereby the A2 and A3 committed an offence punishable U/s 14-C of the Foreigners (Amendment) Act, 2004.

Thereby, the A1 appears to have committed an offence punishable U/s 14A(b) of the Foreigners (Amendment) Act, 2004. Hence the report.

4. Challenging the final report, the present petition has been filed.



5. Mr.Karthikeyan, learned counsel for the petitioner would submit that the petitioner is arrayed as A2 in this case. He would further submit that the petitioner is Korean National and Master of the vessel MT Asian Grace, which was berthed at Kamarajar Port Limited, Ennore on 02.09.2021. He would further submit that A1, who is an Indonesian National and the second engineer of the vessel MT Asian Grace, requiring medical attention during Covid period had disembarked from the ship without informing the petitioner and he was apprehended by the CISF on his return from treatment. Based on the complaint given by the second respondent, the case in Crime No.600 of 2021 was registered against the petitioner and two other persons for offence under Sections 14A(b) and 14-C of the Foreigners (Amendment) Act, 2004. The respondents after completion of investigation have filed the final report charging the petitioner for offence under Section 14-C of the Foreigners (Amendment) Act, 2004.

6. He would further submit that in order to sustain a charge for offence under Section 14-C of the Foreigners (Amendment) Act, 2004, there should be positive evidence to show that the petitioner abetted, aided or instigated the other accused to commit the offence. In this case, the first respondent has cited 14 witnesses and that there is nothing on record to show that the petitioner abetted A1 to commit the offence. The petitioner is a foreign National and he is unnecessarily detained in the special camp for Foreigners at Trichy.

7. In support of his contentions, learned counsel relied upon the judgment of the Hon'ble Apex Court in 'Abinash Dixit . v. the State of Madhya Pradesh in Criminal Appeal No.267 of 2022 (@ SLP (Crl.) No.2266 of 2020) dated 22.02.2022'.

8. Mr.A.Gokulakrishnan, learned Additional Public Prosecutor would submit that the petitioner is arrayed as A2 in this case. The petitioner is a Korean National and Master of the vessel 'MT Asian Grace'. A1, who is the Indonesian National and the second engineer of the vessel MT Asian Grace, had disembarked from the ship for treatment without informing anyone and he was apprehended by the CISF on his return from treatment. He would fairly submit that though the first respondent has cited 14 witnesses, there is no material to show that the petitioner abetted the A1 to commit the offence.

9. Heard the learned counsel and perused the materials available on record.

10. There is absolutely no materials to suggest that the



petitioner abetted, aided or instigated A1 to disembark from the vessel. It is useful to refer to the judgment of the Hon'ble Apex Court in 'Abinash Dixit .v. the State of Madhya Pradesh in Criminal Appeal No.267 of 2022 (@ SLP (Crl.) No.2266 of 2020) dated 22.02.2022' is extracted hereunder:-

'On the aspect of violation of Section 14-C, the requirement is that the accused should have abetted the offences under Sections 14, 14-A and 14-B of the Foreigners Act.

Section 14-C reads:

'14-C: Penalty for abetment. - Whoever abets any offence punishable under section 14 of section 14A or section 14B shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.'

The word 'abet' is an essential ingredient of Section 14-C, and has received judicial interpretation. 'Abet' means to aid, to encourage or countenance. An abetment of the offence occurs when a person instigates any person to do that offence or engages with another person(s) in doing that thing. Mere passivity and insouciance will not tantamount to offence of abetment.'

11. In view of the above, the quash petition stands allowed and the proceedings in PRC No.18 of 2021 pending on the file of the learned Judicial Magistrate-II, Ponneri, in so far as the petitioner is concerned, stands quashed.

12. At this juncture, learned counsel for the petitioner would submit that the petitioner has no other cases pending against him and the Passport of the petitioner is now in the custody of learned Judicial Magistrate-II, Ponneri. He would further pray that a direction may be issued to learned Judicial Magistrate-II, Ponneri to return the passport to the petitioner, so as to enable the petitioner to leave from India at the earliest.

13. Taking into consideration the facts and the further submissions of the learned counsel, the learned Judicial Magistrate-II, Ponneri is directed to return the passport of the petitioner to the first respondent, who in turn shall hand over the same to the petitioner, who now confined in the Special



Camp for foreigners at Trichy. The first respondent is directed to take expeditious steps to deport the petitioner within a period of three weeks from the date of receipt of a copy of the order.

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12. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rgi/ham

To

1. The Judicial Magistrate-II,
Ponneri.
2. The Inspector of Police,
E-3, Minjur Police Station,
Tiruvallur - 601 203.
3. The Public Prosecutor,
High Court of Madras.
4. The Special Camp for Foreigners
Trichy.

Copy to:

The Assistant Director,
Bureau of Immigration,
Chennai Ennore Seaport,
Chennai - 600 001.

+4ccs to M/s.S.Joel, Advocate, S.R.No.14030

Crl.O.P.No.2701 of 2022
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SMI (CO)
SU(03/03/2022)