



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.5398 of 2022

and

Crl.M.P.No.2930 of 2022

Balasubramaniyan

...Petitioner

-Vs-

State

Rep by the Inspector of Police,

E-3, Minjur Police Station,

Minjur, Tiruvallur District.

Crime No.600 of 2021.

..Respondent

Prayer : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to call for the records pertaining to Charge Sheet in respect of the Petitioner/A-3 in P.R.C.No.18 of 2021 pending Committal on the file of the Judicial Magistrate Court - II at Ponneri and quash the same.

For Petitioner : Mr.S.Vasudevan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

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 Court - II at Ponneri.

2. The petitioner is A3 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 Court - II at Ponneri.

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



WEB COPY

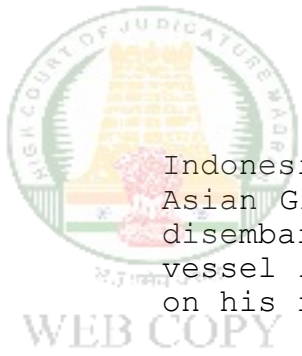
That the witness Tmt.Daisen Murali is working as the Assistant Director, Bureau of Immigration, Chennai-Ennore Seaport, Chennai. The A1 is a citizen of Indonesia and is working as the 2nd Engineer in the vessel MT Asian Grace, flag South Korea. The A2 is a citizen of South Korea and working as the Captain 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.S.Vasudevan, learned counsel for the petitioner would submit that the petitioner is arrayed as A3 in this case. He would further submit that the petitioner is an Indian National, working as Manager, Samudra Marine Services Pvt Limited, Chennai who are the local Shipping Agents 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 in the vessel MT Asian Grace, requiring medical attention during Covid period had disembarked from the ship without informing the captain of the vessel A2 and the petitioner and he was apprehended by the CISF on his return from treatment.

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. Other than the averment that the petitioner is the Manager of the Company which is the local Shipping Agent of the vessel, there is no material to show that the petitioner abetted A1 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.

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''. The learned counsel for the petitioner would submit that this Court in Crl.O.P.No.2701 of 2022 dated 02.03.2022 quashed the proceedings in respect of A2/who is also similarly placed as that of the petitioner.

8. Mr.A.Gokulakrishnan, learned Additional Public Prosecutor would submit that the petitioner is arrayed as A3 in this case. The petitioner is a Indian National and Manager of M/s.Samudra Marine Services Pvt Ltd which is the local Shipping Agent 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. Scanning the entire material on record 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:-



WEB COPY

'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. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

jas/tsh

To

1. The Judicial Magistrate - II,
Ponneri.



2. The Inspector of Police,
E-3, Minjur Police Station,
Minjur, Tiruvallur District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.S.Vasudevan, Advocate, S.R.No.16135

Cr1.O.P.No.5398 of 2022
and
Cr1.M.P.No.2930 of 2022

AJS (CO)
SU(22/03/2022)