

Form No. J(1).
Item No.10

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(APPELLATE SIDE)**

PRESENT:
THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA(SB) 138 of 2022

Kallol Barua & Ors.

VERSUS

The State of West Bengal

Appearance:-

Mr. Dipanjan Dutt
Mr. Surojit Saha

.... For the Appellants

Mr. Imran Ali
Mrs. Debjani Sahu

..... For the State

Heard On : 28.09.2022, 10.11.2022, 21.11.2022, 13.12.2022,
10.01.2023, 23.02.2023.

Judgment On : 24.02.2023

TIRTHANKAR GHOSH, J.:-

The present appeal has been preferred challenging the judgment and order of conviction and sentence dated 17.08.2022 passed by the learned Additional District & Sessions Judge, Fast Track, 4th Court, Barasat, North 24 Parganas in Sessions Case No.294 of 2022 wherein the appellants on pleading guilty in respect of the offences/charges under Section 14A(b) of the Foreigners Act, 1946 were convicted and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for two months.

The present case being Madhyamgram Police Station Case No.148/22 dated 22.03.2022 was registered for investigation on the basis of a complaint filed by Dipankar Singha Roy, Sub-Inspector of Police, Madhyamgram Police Station. The complainant on receipt of such information lodged Madhyamgram P.S. GDE No.2976 dated 22.03.2022 and left with force to work out on the said information, that some nationals of Bangladesh infiltrated in India without any valid passport and visa and took shelter at a house in Digberia, Mollapara with ulterior motive. The six accused persons were apprehended at about 20.55 hours at a house named "ABASAN". The accused persons who were apprehended being (i) Kallol Barua (38 years) s/o Amiya Barua of Vill – Noapara Rawjan, PS – Rawjan, Dist – Chattagram, Bangladesh, (ii) Rigen Barua (20 yrs) S/o Rupen Barua of Vill – Adharmanik, Rawjan, PS- Rawjan, Dist- Chattagram, Bangladesh, (iii) Bikash Barua (22 Yrs) S/o Arun Barua of Vill - Ukia Shailer Doba, PS – Ukia, Dist – Cux Bazar, Chattagram, Bangladesh, (iv) Amal Barua (32 yrs) S/o Sanjit Barua of Vil- Ukia Pata Bari, PS- Ukia, Dist. – Cux Bazar, Chattagram, Bangladesh, (v) Litan Barua (26yrs) S/o Sri Kanu Barua of Vill – Ukia Shailer Doba, PS- Ukia, Dist – Cux Bazar, Bangladesh, (vi) Joy Barua (26 Years) S/o Dipak Barua of Vill – Noapara, Rawjan, PS – Rawjan, District – Chattagram, Bangladesh disclosed their identities as Bangladesh Nationals and accepted that they entered Indo Bangladesh Border illegally without having any passport and visa with the aid of touts. Accordingly, they were arrested and the case was registered for investigation.

The accused persons/appellants were charge-sheeted under Section 14A(b) of the Foreigners Act. The appellants thereafter filed an application on 17.08.2022 expressing their

intention before the learned Court for pleading guilty in respect of the charges levelled against them. The learned Trial Court being the learned Additional District & Sessions Judge, Fast Track, 4th Court, Barasat, on perusal of the charge-sheet and the documents relied upon by the Investigating Officer of the case to prove the charges was of the opinion that a case under Section 14A(b) of the Foreigners Act were made out against them and, accordingly, read out the contents of the charges in Bengali when the accused persons/appellants pleaded guilty by saying that “Ami Doshi”. The learned Trial Court accepted such plea of guilt and sentenced them as referred to above.

Mr. Dutt, learned advocate appearing for the appellants submitted that the sentence so imposed upon the appellants may be considered in view of the conduct before the learned Trial Court. Accepting such position of law with regard to the relevant provisions and the limited scope of appeal in cases where the accused persons/appellants pleaded guilty, learned advocate made an attempt by referring to Section 265A of the Code of Criminal Procedure.

Mr. Ali, learned advocate appearing for the State supported the judgment and order of conviction and sentence so imposed by the learned Trial Court and submitted that the accused persons/appellants were made to understand the charges in the language, they could follow and after understanding the same they only pleaded guilty. Having regard to the nature and gravity of the offence where the accused persons/appellants were able to cross the Indo Bangladesh Border without any valid documents according to him no unnecessary leniency should be favoured to them. It was submitted that there is no scope

for interference in the judgment and order of conviction and sentence so far as the contentions raised by the learned advocate appearing for the appellants both the Sub-Sections 'a' and 'b' of Section 265A are not applicable to the present case in view of the fact that Section 14A(b) do prescribe punishment which may extend to a period of eight years.

Having considered the submissions of the learned advocate appearing for the appellants and the facts of the case particularly, the place from where all the six appellants were apprehended and subsequently arrested, I am of the view that Section 14A(b) which prescribes:-

"Whoever-

(a)

(b) enters into or stays in any area in India without the valid documents required for such entry or for such stay, as the case may be, under the provisions of any order made under this Act or any direction given in pursuance thereof, shall be punished with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees; 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."

The sentence so imposed by the learned Trial Court are minimum in both respects that is two years which is the minimum sentence and Rs.10,000/- which is the minimum amount of fine. As such, there is no scope for interference with the judgment and order of conviction and sentence so passed by the learned Trial Court.

Accordingly, no interference is called for both in respect of the fine and sentence so imposed by the learned Trial Court.

Thus, CRA (SB) 138 of 2022 is dismissed.

Pending applications, if any, are consequently disposed of.

Department is directed to send back the Lower Court Records to the respective Courts below.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(TIRTHANKAR GHOSH, J.)

K.S., Bpg A.R. (Ct.)