

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 4540 of 2022

Josses Cedric Julien Roger Georges

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Sandipan Ganguly, Sr. Adv.,
 Mr. Somopriyo Chowdhury, Adv.,
 Mr. Kausik De, Adv.,
 Ms. Mohini Majumder, Adv.,
 Mr. Raghav Munshi, Adv.,
 Mr. Saptarshi Mal. Adv.,

For the State: Mr. Rudradipta Nandy, Adv.,
 Ms. Somali Das, Adv.

Heard on: 20 January, 2023.

Judgment on: 20 January, 2023.

BIBEK CHAUDHURI, J. : –

1. Petitioner's application under Section 239 of the Code of Criminal Procedure was rejected by the learned Chief Judicial Magistrate at Alipore in CGR Case No.3238 of 2021 on 9th November, 2022. The petitioner has assailed the said order in the instant revision.

2. Facts necessary for the disposal of the instant revision are as follows:-

3. The petitioner is a French national. He came to India with E-Tourist VISA on 26th April, 2019 to meet his fiancé Anita Oraon and her family

members for settlement of their marriage. Tourist VISA was valid for 12 months. In the mean time, Covid-19 pandemic engulf the whole world. Therefore, he could not go back to his own country. In the mean time, his VISA was about to expire on 31st October, 2021. The petitioner applied for extension of his VISA before expiry of VISA period but his prayer was not acted upon by the concern office. In the mean time, on 22nd November, 2021 he was arrested by police.

4. On the basis of a written complaint submitted by the opposite party No.2 in his official capacity as Sub-Inspector, Illegal Migrant Cell, Security Control Organization a criminal case under Section 14(b) of the Foreigners Act was initiated against the accused. It was alleged that the petitioner along with his fiancé Anita Oraon are directors of a company, named, Ohlala-Spa & Wellness Beauty Lounge Private Limited which was incorporated on 15th May, 2019. The petitioner allegedly came to India for business purpose to promote the above named company. He ought to have travelled this country with business VISA but he conducted business as the director of the above named company coming to India in tourist VISA.

5. The said complaint gave rise to Rabindra Sarobar Police Station FIR Being No.183 of 2021 under Section 14(b) of the Foreigners Amendment Act, 2004. Police submitted charge-sheet against the accused on 12th December, 2021. After filing of the charge-sheet the petitioner was released on bail on 23rd December, 2021 and thereafter filed an application under Section 239 of the Code of Criminal Procedure.

However, the learned Chief Judicial Magistrate at Alipore rejected the said application on 9th November, 2022.

6. It is not disputed by Mr. Sandipan Ganguly, learned Senior Counsel on behalf of the petitioner that the petitioner is one of the directors of Ohlala-Spa & Wellness Beauty Lounge Private Limited. There is no statutory bar for the petitioner being a foreign national to act as a director of a company incorporated in India. In support of his contention, he refers to Section 149 of the Companies Act, 2013. Sub-Section (3) of Section 149 states:-

“Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year:

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.”

Thus, it is stipulated that at least one of the director of a company incorporated in India must be a director who is not a non resident India.

7. It is submitted by Mr. Ganguly that the petitioner came to India with E-tourist VISA in order to meet his fiancé to settle his marriage with her. There was no other purpose for his coming to this country in the year 2019. Only because he is a director of a private limited company

incorporated in India the petitioner was implicated in a case under Section 14(b) of the Foreigners Amendment Act. Learned Senior Counsel for the petitioner also submits that during investigation police failed to collect any evidence against the petitioner to show even prima facie that he was engaged in some business work of the said company or he was engaged in the management and day to day affairs of the company. Only because a person is a director of a company, there cannot be any rule that he cannot travel this country in tourist VISA.

8. Mr. Nandy, learned P.P-in-Charge, on the other hand has handed over a document containing “general policy guidelines relating to Indian VISA” appendix-1 of the said guideline contains categories and sub-categories of VISA under E-Tourist VISA, a foreign national may undertake recreation, sight seeing, casual visit to meet friends or relatives and attending a short term yoga programme. There are, on the other hand, different categories of business VISA depending upon the small, medium, large business concerns for the visitors who intend to come to India for business purpose. Since the petitioner is a director of a company he ought to have come to India with business VISA.

9. Having heard the learned Counsels for the petitioner and the State of West Bengal and on careful perusal of the case diary it is ascertained that the Investigating Officer did not collect any document to prove that the present petitioner was engaged in the management and day to day affairs of the company during his stay in India. Merely because the petitioner is a director of a company he cannot be said to be visit India for

business purpose only. He may visit the country on tourist VISA solely to meet his friends and relatives. It is the case of the petitioner that he came to India to meet his fiancé to settle his marriage.

10. The learned Magistrate failed to consider as to whether case diary contains any document to prove that the petitioner was engaged in day to day affairs or the management of the company of which he is the director. In the absence of such evidence the claim of the prosecution that he required to come to India by business VISA cannot stand.

11. In view of the above discussion I have no other alternative but to set aside the impugned order dated 9th November, 2022 passed by the learned Chief Judicial Magistrate at Alipore, south 24 Parganas.

12. The learned Chief Judicial Magistrate, Alipore is directed rehear the application under Section 239 of the Cr.P.C in the light of the observation made hereinabove and passed a reasoned order within three weeks from the date.

13. The instant revision is accordingly disposed of.

(Bibek Chaudhuri, J.)