

1. Learned counsel appearing for the appellant has prayed for not pressing the instant appeal.
2. Learned counsel for the State is represented.
3. The criminal appeal cannot be dismissed as not pressed merely on the prayer of the appellant.

4. For the sake of convenience and justice I would like to dispose of the instant appeal on merit.

5. The instant criminal appeal has been filed against the judgment and order dated 11-02-2022 passed by the Assistant Sessions Judge, Siliguri in Sessions Case No.102(08 of 2021 in connection with Naxalbari Police Station Case No.85 of 2021 dated 16-04-2021 thereby convicting the appellant under Section 14C of the Foreigners Act, 1946 and sentencing him to suffer rigorous imprisonment for a period of three years and further to pay a fine of Rs.10,000/- in default to suffer simple imprisonment for further a period of six months for the offence punishable under Section 14C of the Foreigners Act.

6. Learned counsel for the State has submitted that the learned Judge has rightly passed the impugned judgment and order and there is no material irregularity or illegality in passing the said judgment.

7. The brief facts of this case are that on 16-04-2021 at 20:25 hours the defacto complainant lodged a complaint to the Naxalbari Police Station to the effect at about 11:50 hours the on duty O.P./police posted at the relevant place observed that one person namely, Md. Ibrahim son of Md. Hanif was ferrying two other persons apparently of Chinese origin on his Motorcycle being vehicle no.WB 74 AF 4283 to Nepal. On challenge Md. Ibrahim told that they were coming from Panitanki and he showed his identity proof where as the other two persons had failed to show any valid documents in support of their identity. Thereafter the three accused

persons were apprehended and some articles were seized from them under proper seizure list. A case against the above named accused persons under Section 14A/13(2) of the Foreigners Act being Naxalbari Police Station Case No.85 of 2021 dated 16-04-2021 was registered and after investigation the accused were charge sheeted and the case was committed to the Court of learned Additional Sessions Judge, Fast Court, Siliguri and subsequently, transferred to the learned Court of Assistant Sessions Judge, Siliguri vide order dated 17-08-2021. The charge was framed on 23-11-2021 under Section 14C of the Foreigners Act against the accused persons to which two accused persons namely Chen Jifa and Ding Shou Sheng pleaded guilty whereas the accused Md. Ibrahim pleaded not guilty and claimed to be tried. The above two accused namely, Chen Jifa and Ding Shou Sheng were convicted under Section 229 of Cr.P.C. and the trial was commenced against the Md. Ibrahim under Section 14C of the Foreigners Act.

8. During trial five witnesses have been examined and several documents including USD Notes, Nepali currency and other materials have been exhibited.

9. Considering the materials on record the learned Assistant Sessions Judge, Siliguri convicted the accused Md. Ibrahim under Section 14C of the Foreigners Act and sentenced him to suffer rigorous imprisonment for a period of three years and further to pay a fine of Rs.10,000/- in default to suffer simple imprisonment for further a period of six months for the offence punishable under Section 14C of the Foreigners Act.

10. Learned counsel appearing for the appellant has submitted that all the five witnesses were Police personnel. Moreover, two other witnesses who were present at the spot were not examined during trial.

11. Learned counsel for the State has submitted that there are sufficient materials on record from which the learned Trial Judge has come to the conclusion that the accused Ibrahim is guilty of offence punishable under Section 14C of the Foreigners Act.

12. Learned counsel for the State has further submitted that out of five witnesses three witnesses were SSB personnel who deposed before the Court that the accused persons were initially apprehended by them and thereafter handed over to the jurisdictional police.

13. I have gone through the impugned judgment and order passed by the learned Assistant Sessions Judge, Siliguri and found that the learned Judge has rightly observed that the defect in the investigation by itself cannot be a ground for acquittal; further the learned Judge has also rightly observed that non-examination of material witness cannot be the ground for acquittal. The observation of the learned Assistant Sessions Judge that the place of occurrence was under a notified area and it is the obligation of the accused Ibrahim to disclose what he along with others was doing in such an area on the relevant date and time. The justification and the plea taken by the accused did not draw the confidence of the learned trial Judge.

14. After going through the entire judgment I do not find any irregularity or illegality or any impropriety in the impugned judgment and order which calls for interference from this Court.

15. The instant criminal appeal being CRA (SB) 5 of 2022 is, thus, dismissed.

16. The impugned judgment and order passed on 11-02-2022 by the Assistant Sessions Judge, Siliguri in Sessions Case No.102(08 of 2021 in connection with Naxalbari Police Station Case No.85 of 2021 dated 16-04-2021 is hereby affirmed.

17. In view of dismissal of the instant appeal, connected applications if any, also stand dismissed.

18. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(APURBA SINHA RAY, J.)