

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.705 of 2023

Arising Out of PS. Case No.-16 Year-2023 Thana- RAXAUL District- East Champaran

Kasperek Petr Son Of Eduard Kasperek R/O 97, Tenision Road, Cambridge,
United Kingdom

... .. Petitioner/s

Versus

1. The State of Bihar through The Chief Secretary Bihar
2. The Principal Secretary, Home Department, Govt. Of Bihar Bihar
3. The Principal Secretary, Ministry Of Law, Govt. Of Bihar Bihar
4. The Director General Of Police (DGP), Bihar, Patna Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. R.P. Luthra, Advocate, Mr. Rakesh Kumar Singh, Adv., Mr. Vibhuti Kumar, Adv.
For the U.O.I.	:	Mr. Amrendra Nath Verma, Sr. Panel Counsel Mr. Ram Anurag Singh, Adv.
For the State	:	Mr. Shantanu Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 21-06-2024

Heard learned Advocate for the petitioner as well as
learned Advocate for the Union of India and State.

2. The instant revision is directed against an order dated
11.09.2023, passed by the learned Sessions Judge, East
Champaran, Motihari in Cr. Appeal No. 22 of 2023, whereby and
whereunder the learned Judge dismissed the appeal filed by the
appellant/petitioner and affirmed the Judgment and order of
conviction and sentence under Section 14 (B) of the Foreigners



Act, passed against the petitioner by the learned Judicial Magistrate, Ist Class, Raxaul at Motihari in G.R. Case No. 15 of 2023 on 1st August, 2023.

3. The petitioner is a Foreign National being a citizen of Czech Republic. He is in incarceration after being convicted in the aforesaid case which was affirmed by the appellate court on the ground that while he was entering into the territory of Nepal from India Boarder, he was apprehended by the Police at Raxaul (Harraiya Out Post) on the ground that he had no valid Visa to enter into the territory of India and stay here.

4. As he illegally entered into the territory of India, a case was registered against the petitioner under Sections 14/14A/14B of the Foreigners Act and since the date of arrest he remains in custody.

5. Investigation of the aforesaid criminal case ended in filing charge-sheet. The case was registered as G.R. Case No. 15 of 2023. On conclusion of trial, the learned Judicial Magistrate, Raxaul passed an order of conviction and sentence of simple imprisonment of two years with fine of Rs. 10,000/- for the offence punishable under Section 14B of the Foreigners Act. He was also convicted and sentenced to undergone simple imprisonment for 10 days, in default of fine of Rs. 10,000/-.



6. The petitioner preferred criminal appeal against the said Judgment and order of conviction and sentence passed by the trial court. It is already stated that the said appeal was dismissed.

7. By filing the instant revision, it is contended on behalf of the petitioner that Section 14(B) has no manner of application in the instant case because the petitioner admittedly had valid Passport for entering into a Foreign Country without Visa. Section 14 (B) of the Foreigners Act is not attracted. It is also submitted on behalf of the petitioner that he ought to be repatriated to his own country when Police authority found that he entered into the territory of this country without valid Visa.

8. Second limb of argument advanced by the learned Advocate on behalf of the petitioner is that he entered into the territory of India on good faith because of the fact that a cyber crime had been committed against him. He entered into this Country in order to lodge an F.I.R. making the allegation of commission of fraud upon him through cyber crime.

9. Thus, it is submitted by the learned Advocate for the petitioner that since Section 14(B) is not applicable. The order of conviction and sentence passed against him was illegal, mala fide and without jurisdiction and the same is liable to be set aside.



10. The learned Advocate on behalf of the Union of India submits a written note of argument stating inter alia that it is within the scope of the learned Magistrate to pass an order of conviction because Sections 14, 14(A) and 14 (B) are Magistrate triable cases.

11. Immediately it was rectified by the learned Advocate for the petitioner stating inter alia that an offence under Section 14B of the Foreigners Act is not triable by the Court of Magistrate.

12. Learned Advocate on behalf of the Union of India submits that the contention of the Union of India is that since order of sentence was passed of imprisonment for a period of two years. It is within the jurisdiction of the learned Magistrate to pass an order of such conviction in view of Section 29 of the Cr.P.C. It is also submitted by the learned Advocate for the Union of India that lack of jurisdiction is a procedural error which was to be raised at the first instance of trial. The petitioner never raised jurisdictional issue to the effect that an offence under Section 14 (B) is not triable by the court of the learned Magistrate during trial or in appeal, he cannot raise such submission at this stage.

13. Learned Advocate on behalf of the opposite party further submits that even assuming for the sake of argument that the trial has vitiated for the want of jurisdiction, the Court



available in law would require remitting the matter back for retrial. Now after remaining in custody for 11 months in the case, the petitioner has been bailed out by this Court largely on the ground of custody. It is submitted by him that if the case is remitted back to the court of Sessions for fresh trial, it will cause unnecessary delay in the process of repatriation of a Foreign National and deportation of such Foreign National, who had entered into the territory of this Country is the most vital issue in the case under Foreigners Act and similar others Act like the Passport Act etc. Lastly, the learned Advocate for the opposite party submits that the petitioner cannot take the plea of good faith as provided in Section 15 of the Foreigners Act on the ground that he came to Nepal with proper Visa. From Nepal he illegally entered into the territory of this Country that he had no Visa was discovered, only he was detained in Raxaul Check Post. He pleaded that he went to India to lodge a complaint of cyber crime inflicted against him in the territory of India. That cannot be a ground for illegally entering into the Country and, therefore, there is no reason to interfere with the Judgment and order passed by the trial court and affirmed by the court of appeal.

14. Section 14 (B) of the Foreigners Act states as follows:-



“14(B) Penalty for using forge Passport:-

Whoever knowingly uses a forged passport for entering into India or remains therein without the authority of law for the time being in force shall be punishable 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.”

15. Plain reading of Section 14(B) clearly suggests that it is a penal provision for using of forge Passport for entering into India. Section 14 (B) does not attract in case of entering in the territory of India without valid Visa.

16. On the other hand Section 14 of the Foreigners Act states as follows:-

“14. Penalty for contravention of provisions of the Act, etc.

Whoever. —

(a) remains in any area in India for a period exceeding the period for which the visa was issued to him;

(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

(c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine;



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.”

17. Plain reading of Section 14 speaks about an offence when a person remains in any area in India for a period exceeding the period for which the visa was issued to him; and secondly does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder. Thus, Section 14 speaks about an offence when a valid Visa is granted to a Foreign National by the Home Department of the Government of India and he violates the conditions of the terms of Visa granted by the Indian Authority or does any Act in contravention of Visa. Therefore, pre-condition of Section 14 being attracted is grant of valid Visa to a Foreign National. When no Visa was granted by India, even Section 14 of the Foreigners Act does not attract. There is another Act governing this field. The Passport (entering into India) Act, 1920 was enacted with the object and reason to retain the power to continue with the Rules requiring Passport for egress from and ingress into India. The word “entry” stands defined under Section 2 of the said Act, which means entry by water, land or air.



Section 3 is the Rule making power wherein, the Central Government may make Rules requiring that persons entering into India to be in possession of Passport and all matters ancillary or incidental to that purpose. The Central Government has got the power to frame Rules and such Rules may prescribe the entry into India from any part thereof by any person who is not in his possession a Passport issued to him.

18. It is not the case of the petitioner that he did not have a valid Passport, he indeed have a valid Passport issued by the concerned authority of his Country.

19. Rule 13 of the Passport (entry to India) Rules, 1950 says that save as provided in Rule 4 no person proceeding from any place outside India shall enter or attempt to enter into India by water, land or air, unless he is in a possession of a valid Passport confirming the conditions prescribed in Rule 5. Rule 5 prescribed the condition of a valid Passport. Under Section 5 of the Act of 1920, the Central Government has power to direct by general or special order for removal of any person from India, who in contravention of any Rule made under Section 3, prohibiting entering into India without Passport, has entered therein and there upon any Officer of the Government shall have all reasonable powers necessary to enforce such direction. Thus, the petitioner is



not liable for committing an offence under Section 14(B) of the Foreigners Act because nowhere it is alleged by the prosecution that he was travelling with a forged Passport.

20. Under the Passport (entry into India) Act, 1920, the petitioner could have entered India and if she is found to have entered into India she would have been deported immediately. Thus, the prosecuting agency was not justified to prosecute the petitioner for his entry into the territory of India without valid Visa. As soon as it is found that he entered into India without valid Visa, but his Passport was valid, the concerned authority should have taken step for his deportation immediately.

21. In view of such circumstances, the order of conviction and sentence passed by the learned Judicial Magistrate, Ist Class, Raxaul and affirmed by the learned Sessions Judge, Motihari are set aside.

22. At this stage, I have given an anxious thought over the matter that as the accused/petitioner was granted bail, his stay in this Country even on the basis of the order of bail is illegal as he is staying without Visa.

23. Therefore, the Embassy of the Czech Republic in New Delhi is directed to take charge of the petitioner immediately within 7 days from the date of communication of this order to the



petitioner and the petitioner shall be deported to his Country with the help of the Embassy of his Country within 15 days thereafter. During this period the petitioner will not be allowed to roam around outside the Embassy of the Czech Republic.

24. Let a server copy of this order be sent to the Embassy of the Czech Republic through the learned Advocate for the petitioner for information and necessary action at the earliest.

25. Accordingly, the instant Criminal Revision is disposed of.

(Bibek Chaudhuri, J)

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Uploading Date	
Transmission Date	

