

24.05.2024

Sl. No.3
akd

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

C. R. A. (SB) 21 of 2024

In Re: ***Rofeka***

... .. Appellant

Mr. Debajit Kundu

... .. for the appellant

Mr. Biswarup Roy

... .. for the State

1. Delay is condoned.
2. Appellant is a Bangladesi national. She pleaded guilty. Accordingly, learned trial Judge by judgment and order dated 04.01.2023 convicted her under Section 14A of the Foreigners Act and sentenced her to suffer rigorous imprisonment for two years and to pay a fine of Rs.10,000/- only, in default, to suffer simple imprisonment for three months more.
3. Learned Advocate for the appellant contends that appellant is a poor person. She has already suffered the substantive sentence. Fine amount may be reduced. He relies on the order of a coordinate Bench in CRA (SB) 9 of 2024.
4. I have considered the submissions on behalf of the appellant. Appellant had pleaded guilty. Hence the appeal is entertainable only on the point of sentence. It is argued appellant is a poor person and had served out the substantive sentence. Fine amount may be reduced. It is also contended in similar circumstances a coordinate Bench in CRA (SB) 9 of 2024 had waived the fine amount.

5. Howsoever emotionally swayed I may be to accede to such plea, the minimum sentence prescribed in law stands as an impediment to reduce the sentence. As per the law the minimum fine prescribed for the offence is Rs.10,000/- which had been awarded by the trial court. It is not within the domain of any court to award a sentence lesser than the minimum sentence prescribed in law. To do so the Court would rewrite the statute which is impermissible.
6. In CRA (SB) 9 of 2024 the coordinate Bench had not been apprised with regard to the minimum sentence embargo. A decision on a question which has not been argued cannot be treated as a precedent¹.
7. Accordingly, I am left with no alternative but to uphold the minimum sentence imposed on the appellant.
8. I clarify in the event appellant has served out the default sentence in addition to substantive sentence imposed on her and as she does not have movable or immovable properties for recovery of fine in terms of Section 421 of the Code of Criminal Procedure, appropriate authorities shall forthwith repatriate her to her homeland in accordance with law.
9. With these observations, CRA (SB) 21 of 2024 is dismissed.

(Joymalya Bagchi, J.)

¹ Goodyear India Ltd. & Ors. vs. State of Haryana & Anr., (1990) 2 SCC 71 (Para 33)

