

24.05.2024

Sl. No.7
akd

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

C. R. A. (SB) 25 of 2024

In Re: ***Md. Kashim Ali @ Kashem Ali & Ors.***

... .. Appellants

Mr. Arjun Chowdhury

... .. for the appellants

Mr. Biswarup Roy

... .. for the State

1. Delay is condoned.
2. Appellants are Bangladesi nationals. They pleaded guilty. Accordingly, learned trial Judge by judgment and order dated 04.01.2023 convicted them under Section 14A of the Foreigners Act and sentenced them to suffer rigorous imprisonment for two years and to pay a fine of Rs.10,000/- only, in default, to suffer simple imprisonment for one month more.
3. Learned Advocate for the appellants contends that appellants are poor persons. They have 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 appellants. Appellants had pleaded guilty. Hence the appeal is entertainable only on the point of sentence. It is argued appellants are poor persons 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 appellants.
8. I clarify in the event appellants have served out the default sentence in addition to substantive sentence imposed on them and as they do 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 them to their homeland in accordance with law.
9. With these observations, CRA (SB) 25 of 2024 is dismissed.

(Joymalya Bagchi, J.)

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

