

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Criminal Revisional Jurisdiction
Appellate Side**

Present:
The Hon'ble Justice Rai Chattopadhyay

CRR 219 of 2023

**Arif Hossain
Vs.
The State of West Bengal & Anr.**

For the Petitioner	:	Mr. Dhiraj Lakhotia,
	:	Ms. Radhika Agarwal,
	:	Ms. Meghna Joshi,
	:	Ms. Khusi Kundu.
For the State	:	Mr. Niloy Chakraborty,
		Ld. APP
	:	Mr. Ujjal Luksom.

Heard on : 02/09/2024
Judgment on: 02/09/2024

Rai Chattopadhyay, J.

1. The petitioner who has been working as the Assistant Manager at Sourenee Tea Resort situated in Sourenee Tea Estate in Mirik has been booked in the Mirik Police Station Case No. 37 of 2022 dated 1.11.2022 under Sections 176, 188 of the I.P.C. and Sections 14/14C of the Foreigners Act, 1946.
2. This revision is by the said person who seeks quashing of the criminal case against him.

3. Learned Advocate appearing for the petitioner submits that the FIR would lack the necessary sufficient ingredients against the petitioner in order to book him in the police case as mentioned above. He would refer to the relevant provisions of the Foreigners Act, to submit that the statutory period of 24 hours for uploading information by the authorities of the resort/ the petitioner, was not elapsed till the time the police case was initiated and seizure was made. He has taken this Court to the factual aspect of the case that after being checked in, in the resort, by the foreigners on 31.10.2022 at 4.43 pm, the investigation was started and seizure was made before lapse of 24 hours from the said time. Accordingly, the petitioner being the person in charge of compliance with the statutory provision as regards uploading necessary data of such foreigner guests, was not given the 24 hours statutory time to upload the same.
4. Secondly, it has been contended that the petitioner not having intentionally committed any offence under the said statute as alleged, would be entitled to protection under Section 15 of the Foreigners Act which provides as follows:

***“15. Protection to persons acting under this Act.
No suit prosecution or other legal proceeding shall lie
against any person for anything which is in good faith done
or intended to be done under this Act.”***
5. Thirdly, Mr. Lakhotia has argued for the petitioner that the F.I.R. against the petitioner would not suggest any prima facie case against

him so far as the alleged offences against him are concerned. In that event, according to Mr. Lakhotia, to proceed in the trial against the petitioner would be an abuse of the process of Court which is untenable in the eye of law. In support of his submission, learned Advocate for the petitioner would rely on the well celebrated case of ***State of Haryana & Ors. vs. Bhajan Lal & Ors.***, reported in ***1992 Supp (1) SCC 335: 1992 SCC (Cri) 426***, as well as that of the Supreme Court reported in ***(2023) SCC Online SC 947***.

6. He would also refer to a decision of the Hon'ble Co-ordinate Bench in support of his submission that, in absence of any intentional mischief on the part of the present petitioner, he would be eligible for the benefit under Section 15 of the Foreigners Act, to be granted to him.
7. Mr. Lakhotia would seek an appropriate relief for the petitioner in this case.
8. For the State, learned APP, Mr. Chakraborty would appear and submit that in view of the materials available in CD, it would transpire that there has been a lacunae in maintaining the records of the office including the registers, by the present petitioner. Apparently therefore, he would say that, there being a *prima facie* case established against the petitioner, he should be committed to trial and this revision would merit no success.

9. On perusal of the records, the Court is compelled to find that the statutory period of time for uploading the information regarding foreign national guests by the hotel has not been made available to the petitioner. It appears that within the period of 24 hours from the guests having checked into the hotel, the police case was started and seizure has been made. In that event, there would not be sufficient material to justify and support allegations against the petitioner, of not complying with the statutory provisions of uploading information as regards the foreign nationals.
10. It is further to be noted that there has not been any mala fide intention on the part of the present petitioner in ill-maintaining the records, as alleged, insofar as, though belatedly, all the legal formalities had been duly complied with by the hotel management. Therefore, considering the principles as laid down by the Supreme Court in the cases as referred to on behalf of the petitioner, the Court finds that the criminal proceeding against the present petitioner may not sustain or else that would result into abuse of the process of Court, in absence of any cogent, tangible and sufficient and strong *prima facie* material against the petitioner in the F.I.R. and other materials available on C.D., so far as the offences levelled against him, are concerned.
11. On the findings as above, this revision is allowed with the direction that the criminal proceeding pursuant to the F.I.R. being Mirik Police Station

Case No. 37 of 2022 dated 1.11.2022 read with Sections 14/14C of the Foreigners Act, 1946 be quashed and set aside.

- 12.** The urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)

sk/sg