

REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. _____ OF 2008
(Arising out of SLP(Crl) No. 4136 of 2008)

Habib Ibrahim

...Appellant

Versus

State of Rajasthan

...Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Learned Single Judge of the Rajasthan High Court, Jaipur Bench, upholding the conviction of the appellant for offence punishable under Section 3 read with Section 14 of the Foreigners Act, 1946 (in short the 'Act') and sentence to five years rigorous imprisonment with fine of Rs.25,000/- with default stipulation. Two other persons faced trial alongwith the appellant for offences punishable under Section 13 read with Section 14 of the Act. While co-accused Bagwan Sahai Sain acquitted, the other accused Smt. Sunita alias Sonu alias Nagma convicted and sentenced to undergo simple imprisonment for three years and to pay fine of Rs.5,000/- with default stipulation.

3. Background facts in a nutshell are as follows:

SHO Vidhadhar Nagar, Jaipur acting upon the information of informant on 13.1.2004, the then SHO Richpal Singh alongwith Superintendent of Police reached at Vidhyadhar Nagar bus stand No. 15 and verified the information given that

the persons accompanying with Bhagwan Sahai Sain R/o Village Aakedadugar is a Pakistani resident who is living in India illegally. Thereafter at about 8.15 am he reached at Bus stand No. 1t alongwith two witnesses. He found one person with Bhagwan Sahai. Upon inquiry, he told his name to be Habib Ibrahim, son of Ibrahim Rahamtullah R/o Gali No. 3 Mullah Allah Dadlen Gobol Road, Liyari, Karachi, Pakistan. The documents authorizing stay in India were demanded from Habib Ibrahim and he was asked the reasons for coming to India. He did not give any satisfactory answer. On the basis of suspicion he was searched in the presence of witnesses and a Pakistani passport was recovered from his pocket and tourist visa for six months for Nepal, telephone bills were recovered from him. Bhagwan Sahai and Smt. Sunita @Sonu@Nagma were also arrested as they were helping Habib Ibrahim who was living in Indian illegally. FIR No. 14/2004 was registered and investigation started. During investigation a spot map was prepared and the statement of accused were recorded and they were arrested. On the information of accused Habib Ibrahim, Nepalese currency, a reliance mobile

of Nokia company and tickets of airlines, documents and cash relating to Bangladesh and Indian currency were recovered from his house at 8/37 Vidhyadhar Nagar which were seized and produced before the court. After complication of investigation, charge sheet was filed.

4. The learned Chief Judicial Magistrate, Jaipur found that the accusations against the accused appellants were fully established. Accordingly conviction was recorded and sentence was imposed. In the Criminal revision filed before the High Court, stand taken was that he had come to meet his wife and children who were residing at Jaipur. It was further submitted that since the accused had suffered custody for more than three years and nine months, a liberal view has to be taken. The State opposed the stand contending that the appellant knowingly and willfully came and stayed in India without any passport. Whether he is resident of Pakistan or Onam as claimed, the appellant had only a tourist visa to visit Nepal and that too the currency period of visa was only six

months. Long thereafter the appellant was found in India without a passport.

5. The High Court found that the conviction was well founded and there was no scope for reducing the sentence.

6. The stand taken by the parties before the High Court was reiterated. It is submitted by learned counsel for the appellant that he has already suffered custody for more than four years and six months and the sentence should be reduced Sections 3, 13 and 14 of the Act reads as follows:

“Section 3: Power to make orders (1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect of any particular foreigner or any prescribed class or description of foreigner, for prohibiting regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this Section may provide that the foreigner-

(a) shall not enter India or shall enter India only at such

times and by such route
and at such port or place
and subject to the
observance of such
conditions on arrival as may
be prescribed;

- (b) shall not depart from India or
shall depart only at such
times and by such route and
from such port or place and
subject to the observance of
such conditions on departure
as may be prescribed;
- (c) shall not remain in India or in
any prescribed area therein;
- (cc) shall, if he has been required by
order under this Section not
remain in India, meet from any
resources at his disposal the cost
of his removal from India and of his
maintenance therein pending such
removal.
- (d) shall remove himself to, and remain in,
such area in India as may be prescribed;
- (e) shall comply with such conditions as
may be prescribed or specified-
 - i. requiring him to reside in a particular
place;
 - ii. imposing any restrictions on his
movements;

- iii. requiring him to furnish such proof of his identify and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;
- iv. requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified’
- v. requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;
- vi. prohibiting him from association with persons of a prescribed or specified description;
- vii. prohibiting him from engaging in activities of a prescribed or specified description;
- viii. prohibiting him from using or possessing prescribed or specified articles;
- ix. otherwise regulating his conduct in any such particular as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;

(g) shall be arrested and detained or confined;

and may make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect of this Act.

3. Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) [for class (f) of sub section (2)]

Section 13. Attempts etc., to contravene the provisions of this Act, etc. – (1) Any person who attempts to contravene or abets or attempts to abet or does any act preparatory to a contravention of the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of that Act or of any order made or direction given thereunder, gives

that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that contravention.

- (3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves India in contravention of any order made under or direction given in pursuance of, Section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

14. Penalties – If any persons contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if such person 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.”

7. Prosecution evidence clearly establishes that the appellant did not have passport to stay in India. This fact is not disputed by the appellant. The only plea to justify his presence was that he had come to visit his wife and children.

As rightly noted by the courts below, the appellant had been issued a transit visa that too for Nepal for a period of six months. There was no valid document in possession of the appellant to stay in India. The only plea to justify his presence was that he had come to visit his wife and children. That does not give any right to him to stay illegally in India. As rightly noted by the courts below, the appellant had been issued a transit visa that too for Nepal for a period of six months. There was no valid document in possession of the appellant to stay in India. Therefore Section 3 read with Section 14 of the Act have been rightly applied. The conviction therefore cannot be faulted. So far as the sentence is concerned, considering the large number of infiltrators come to India without valid document, there is need for imposing stricter sentence. The reasons given by the appellant to justify his presence in India have hardly any substance. Appellant's feeble plea that he did not know that he is required to be in possession of valid document is without substance. Otherwise, he would not have obtained any transit visa for Nepal.

8. Above being the position there is no scope for interference in the appeal.

9. The appeal is accordingly dismissed.

.....J.

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(Dr. ARIJIT PASAYAT)

....J.

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(P.P. NAOLEKAR)

New Delhi,
June 13, 2008

