

(2009) 11 PAT CK 0064

In the Patna High Court

Case No : Criminal Revision No. 597 of 2001

Ashok Kumar @ Ashok Prasad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Foreigners Act, 1946 — Section 14, 2, 3, 7
Registration of Foreigners Act, 1939 — Section 5

Citation : (2010) 2 Crimes 853 : (2011) 7 RCR(Criminal) 1227

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Advocate : Ashok Kumar, No. 3, for the Appellant; Jharkhandi Upadhyay, Assistant Public Prosecutor, for the Respondent

Judgement

Mandhata Singh, J.—This revision application has been filed against order dated 5th September, 1995 passed by the Sub-Divisional Judicial Magistrate, Patna in Kotwali P.S. Case No. 55 of 1992, by which he has dismissed the petition for discharge of the petitioner from the said case.

2. Petitioner has been made accused for the offence u/s 14 of the Foreigners Act. Petitioner's capacity is of Assistant Manager of Hotel Sheohar Sadan situated at Fraser Road, Patna. Real fact was that two Lankan foreigners had come to petitioner's hotel on 07.5.1991 and left on 08.5.1991. Similarly another Jarman foreigner had come to his hotel on 14.7.1991 and left on 16.7.1991. Submission of the learned Counsel for the petitioner is that petitioner was found guilty for not furnishing Form-C which is requirement of Registration of Foreigners Act. Further according to the learned Counsel that Section 14 of the Foreigners Act applies for violation of any of the terms or provision of Foreigners Act. Section 7 of the same imposing obligation on hotel-keepers and others to furnish particular, which runs as follows:

7. Obligation of hotel-keepers and others to furnish particulars.- (1) It shall be the duty of the keeper of any premises whether furnished or unfurnished where

lodging or sleeping accommodation is provided for reward to submit to such person and in such manner such information in respect of foreigners accommodated in such premises, as may be prescribed.

Explanation.- The information referred to in this Sub-section may relate to all or any of the foreigners accommodated at such premises and may be required to be submitted periodically or at any specific time or occasion.

(2) Every person accommodated in any such premises shall furnish to the keeper thereof a statement containing such particulars as may be required by the keeper for the purpose of furnishing the information referred to in Sub-section (1).

(3) The keeper of every such premises shall maintain a record of the information furnished by him under Sub-section (1) and of the information obtained by him under Sub-section (2) and such record shall be maintained in such manner and preserved for such period as may be prescribed, and shall, at all times, be open to inspection by any police officer or by a person authorised in this behalf by the District Magistrate.

(4) If in any area prescribed in this behalf the prescribed authority by notice published in such manner as may in the opinion of the authority, be best adapted for informing the persons concerned so directs, it shall be the duty of every person occupying or having under his control any residential premises to submit to such person and in such manner such information in respect of foreigners accommodated in such premises as may be specified; and the provisions of Sub-section (2) shall apply to every person accommodated in any such premises.

3. Emphasis has been made on behalf of the learned Counsel for the petitioner that information was or is to be submitted to person in the manner in respect of the foreigners accommodated in his premises as may be prescribed.

4. Sections 2(b) and 3(1) of the Foreigners Act define "prescribed" and power to make orders which are as follows:

2. Definitions.- In this Act-

(b) "prescribed" means prescribed by orders made under this Act.

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

5. So, that can be regulated only by order made by the Central Government and according to the learned Counsel at no point of time such order was ever passed.

6. After going through the discussed provisions, I am also of the view that Section 7 can be made applicable only when some order is passed in that regard

as prescribed under Sections 2 and 3 of the Foreigners Act. It appears as submitted that this provision is made to face any contingency whenever it arises otherwise some hardship is possible due to non-existence of any law on the point not required at present as it would take time to bring legislation on the point to come out from the contingency.

7. In the case admittedly information in Form-C was required and found not complied i.e. requirement of Section 5 of the Registration of Foreigners Act. Thus, it is made clear that no offence u/s 14 of the Foreigners Act is made out against the petitioner that never mean to say that no offence at all is made out against him. It is made more specific that offence u/s 5 of the Registration of Foreigners Act is made against the petitioner for which maximum punishment is Rs. 500/- (five hundred), which shall be considered by the trial court only. Petitioner is at liberty to confess his guilt about not furnishing Form-C in time whenever such intention is brought in the knowledge of the Court his confession shall be recorded and if he is ready to deposit the maximum amount he shall be allowed on the same day.

8. Accordingly, this revision application is partly allowed and to that extent order impugned is set aside.