
(1991) 09 KAR CK 0038

In the Karnataka High Court

Case No : Criminal Revision Petition No. 330 of 1989

Daiv James Wilson

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 13-09-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248 (2), 397, 428
Foreigners Act, 1946 — Section 14, 3

Citation : (1992) CriLJ 2223 : (1991) ILR (Kar) 3863

Hon'ble Judges : K. Ramachandriah, J

Bench : Single Bench

Advocate : P.M. Jalisatgi, for the Appellant; L. Srinivasa Reddy, S.P.P., for the Respondent

Judgement

1. The petitioner is admittedly a British National who had landed in Bombay on 2-6-1984 under a valid passport to remain in India up to 2-11-1988 and visa to reside in India up to 24-6-1988 for spiritual purposes. He admittedly got registered before the Superintendent of Police, Madurai, on 26-6-1984 and went to Karwar on 7-4-1986 and he was residing in a place called Kudle near Gokarna since then. He had residential permit issued by the Government of Karnataka which was due to expire on 24-6-1988. So, he made an application on 1-3-1988 to the Government of Karnataka through the Superintendent of Police, Karwar, for granting him extension of time to stay in India beyond 24-6-1988. However, his application was rejected and he was served with a notice by P.W. 3 as per Exhibit P-2 dated 10-4-1988 informing him that his application for extension of stay in India had been rejected by the Government as per order T.P.M. No. HD/156/PCL/87 dated 7-4-1988 of the Home Secretary, Bangalore, and, therefore, he was directed to leave India forthwith as otherwise he was liable for prosecution under the Foreigners Act, 1946 (for short "The Act"). The Government Order dated 7-4-1988 referred to in Exhibit P-2 was not even enclosed to Exhibit P-2. The petitioner was served with that notice on 10-4-88 and he was subsequently arrested on 12-4-1988 and a charge-sheet was placed

against him in the Court of the J.M.F.C., Kumta, for an offence punishable u/S. 14 of the Act for contravention of the provisions of S. 3 of the Act. The charge framed against the petitioner by the trial Court on 10-6-1988 in C.C. No. 727/88 reads that "the petitioner being a citizen of British country and having no permission to reside in India, in contravention of the Government Order No. HD/156. PCL/87 dated 22-3-1988 wherein it is ordered that he must leave India on 10-4-1988, was residing at Kudle of Gokarna and thereby he had committed an offence punishable u/S. 14 of the Act." The petitioner pleaded not guilty to the said charge. Thereupon the respondent State adduced evidence to substantiate the charge levelled against the petitioner by examining four witnesses, of whom P.W. 3, Vasantha, is the Circle Police Inspector of Hoovinahadegali Circle and P.W. 4, Mohanlal, Circle Police Inspector of Kumta. At the trial, the State had also produced the original Government Order along with a copy of the same and they were marked as Exhibit-P1 and Exhibit-P1(a) respectively, Police Notice Exhibit-P2, and the original complaint Exhibit P3. The petitioner-accused did not adduce any evidence by way of his defence. On appreciation of the said evidence, the learned trial Judge, by his Judgment dated 22-6-1989, convicted the petitioner u/S. 248(2) Cr.P.C. for the offence punishable u/S. 14 of the Act and sentenced him to undergo simple Imprisonment for 13 days and also to pay a fine of Rs. 2,000/- and, in default, to undergo simple Imprisonment for four months and further ordered that the period of imprisonment already undergone by the petitioner be given set off as contemplated u/S. 428, Cr.P.C. The petitioner was unsuccessful in the appeal he had filed in the Sessions Court, Karwar, against the said Judgment of conviction and sentence passed against him by the trial Court. Therefore, the petitioner has filed this revision petition u/S. 397, Cr.P.C. questioning the correctness and legality of the orders of conviction and sentence passed by the trial Court and affirmed by the Sessions Court.

2. The grievance of the petitioner, as could be gathered from the arguments submitted by his learned counsel Sri P. M. Jalisatgi, is that as per the order of the Government of Karnataka the petitioner was entitled to reside within Karnataka up to 24-6-1988 and, therefore, the Government Order rejecting his application for granting extension of his stay beyond 24-6-1988 and asking him to leave India forthwith, could not form the basis for contravention of the provisions of S. 3 of the Act punishable u/S. 14 of the Act and, therefore, the impugned orders are liable to be set aside. He also placed reliance, in support of the said contention, on a Division Bench decision of the Bombay High Court in State Vs. Ibrahim Nabiji, A Division Bench of the Bombay High Court presided over by Shah, J. (as his Lordship then was) has observed, under almost identical circumstances prevailing in the case, as under (para 9) :

"The respondent cannot be held otherwise guilty of the infringement of the provisions of S. 14 because there is no lawful direction issued against him requiring him u/S. 3, sub-section (2) Clause (c) of the Foreigners Act, 1946, to leave India even if the respondent is a foreigner under the Foreigners Act as

amended under the Foreigners" Laws (Amendment) Act, 1957."

3. On the other hand, Sri L. Srinivasa Reddy, learned State Public Prosecutor, argued in support of the impugned orders by contending that the petitioner was not entitled to remain in India and in particular in the State of Karnataka beyond 10-4-1988 as he was served with a notice on 10-4-1988 to go out of India forthwith and, therefore, the petitioner was rightly arrested on 12-4-1988 and as such his conviction is valid.

4. I find it difficult to accept the argument of the learned State Public Prosecutor. It is not the case of the respondent-State that the petitioner had conducted himself in any objectionable manner in order to call upon him to go out of India forthwith. P.W. 3 has admitted in cross-examination that the accused (petitioner herein) had valid residential permit to remain in India up to 24-6-1988 and he had only given an application for granting of extension of stay in India beyond 24-6-1988 and the passport possessed by the petitioner was valid up to 2-11-1988. That being so, the notice served on him, as per Exhibit-P2, asking him to go out of India forthwith, has no legal sanctity and as such he was entitled to remain in India till 24-6-1988. It, therefore, follows that the petitioner had not contravened the provisions of S. 3 of the Act in order to inflict on him the punishment provided u/S. 14 of the Act. Consequently, I hold that the impugned orders of conviction and sentence passed against him by the trial Court and affirmed by the Sessions Court are liable to be set aside in exercise of the revisional powers u/S. 397, Cr.P.C.

5. In the result, the revision petition is allowed and the impugned orders of conviction and sentence passed against the petitioner are set aside. Fine amount already deposited in the trial Court by the petitioner shall be refunded to him forthwith.

6. Petition allowed.