
(2004) 09 KAR CK 0027
In the Karnataka High Court
Case No : Cr.P. No. 2891 of 2004

EL Mustafa EL Fathi

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Foreigners Act, 1946 — Section 14, 14 C

Citation : (2004) CriLJ 4796 : (2004) ILR (Kar) 4603 : (2004) 7 KarLJ 495 :
(2004) 4 KCCR 2756 : (2005) 1 RCR(Criminal) 564

Hon'ble Judges : A.C. Kabbin, J

Bench : Single Bench

Advocate : C.R. Abdul Rasheed and Associates, for the Appellant; B.A. Belliappa, HCGP, for the Respondent

Judgement

A.C. Kabbin, J.—This petition has been filed u/s 482 of the Cr.P.C, challenging the following portion of the order dated 5.8.04 passed by the learned Metropolitan Magistrate (Traffic Court-I), Bangalore, in C.C.No. 407/04":

" The State is directed to take steps to deport the accused after the period of sentence".

2. The petitioner is a Sudan Nationalist, aged about 23 years. It is stated that he has been admitted to Brindavan College (Formerly National First Grade College), 2nd cross, Bhoopasandra, R.M.V. Extension II Stage, Bangalore, and the Bangalore University has permitted his admission for first semester in B.C.A., for the academic year 2004-05. He was arrested on the ground that he did not possess valid permit and visa. It was claimed by the petitioner that his passport No. 908324 dated 11.2.02 valid till 10.2.2005 and a valid visa had been lost. He further claimed that in respect of that the lodged a complaint in Ramamurthy Nagar Police station, Bangalore. To the charge, he pleaded guilty, and the learned Metropolitan Magistrate while convicting him for violation of the provisions of paragraph 7(1)(2) of the Foreigners Order, 1948 punishable u/s 14 of the

Foreigners Act, took a lenient view considering that the petitioner is a student and sentenced him to undergo S.I. for 15 days and to pay a fine of Rs. 500/- in default to undergo S.I. for 10 days.

3. Taking into consideration the period of detention in judicial custody for 4 days, the petitioner was directed to undergo the remaining period of 11 days sentence. There was a further direction by the learned Magistrate to the State to take steps to deport the accused after the period of sentence, which portion of the order has been challenged by the petitioner in the present petition.

4. Sri C.R. Abdul Rasheed, the learned Counsel for the petitioner argues that the learned Magistrate had no jurisdiction to direct the state to deport the petitioner after the period of his sentence and that therefore that portion of the order needs to be set aside. He reads out different provisions of the Foreigners Act, 1946 and the Foreigners Order, 1948 and submits that no where such a power has been given to the learned Magistrate to deport the accused after conviction.

5. The learned High Court Govt. Pleader, who has taken notice on behalf of the respondent, submits that the order does not direct the deportation of the petitioner from India, but only directs the State to take steps in that regard.

6. On a perusal of Paragraph 7(3)(iii) of the Foreigners Order, 1948, it is clear that every foreigners to whom a permit is issued under sub-paragraph (1) or sub-paragraph (2), shall unless the period indicated in the permit is extended by the Central Government, depart from India before the expiry of the said period. The learned Magistrate has recorded that the visa which had been issued in favour of the petitioner was valid only up to 20.6.04 and therefore the petitioner had no right to remain in India after the said period unless that period is extended by the competent Authority. Therefore, the direction by the learned Magistrate to the State Government to take steps to deport the petitioner cannot be termed as opposed to law.

7. Every country, in its laws, provides for restrictions on entry of foreigners into such country and rules regulating their stay in the country for the period permitted. Measures governing the foreigners are found in the Foreigners Act, 1946 and the Foreigners Order, 1948. Among other things, they provide for expulsion of foreigners, whose entry into India is unauthorized or whose permit for stay in India has expired. They also provide for the detention of such persons pending removal and ban on their re-entry after removal. A Court convicting a foreigner for his illegal entry or his over stay in India has a duty to direct for requisite steps for deportation of such foreigner, unless requisite permit to stay in India is granted by the competent Authority. It cannot therefore be said that the Court convicting a foreigner for an offence u/s 14C of the Foreigner Act committed an illegality in directing for requisite steps for deportation of such person from India.

8. However, it is submitted by the learned Counsel for the petitioner that there is likelihood of this direction of the learned Magistrate being interpreted by the

Central Government as an injunction not to extend the period of visa or not to grant permit for further stay. Taking into consideration the fact that the petitioner is a student, who claims to have lost his passport and visa, it is made clear that the order of the learned Magistrate directing steps for deportation of the petitioner does not come in the way of he seeking fresh permit or extension of visa and if requisite application is made in this regard, the appropriate authority is at liberty to consider the same sympathetically and in accordance with law.

9. With the above observations, the petition is disposed of confirming the order of the learned Magistrate (Traffic Court-I), Bangalore, dated 5.8.04.