
(1973) 04 GAU CK 0003
In the Gauhati High Court

Golam Haidar and Another

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 06-04-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439
Foreigners Act, 1946 — Section 14, 3

Citation : (1973) CriLJ 1519

Hon'ble Judges : Baharul Islam, J

Bench : Single Bench

Judgement

Baharul Islam, J.—This application u/s 439 of the Code of Criminal Procedure is directed against the order of conviction and sentence passed by the Magistrate convicting the two petitioners u/s 14 of the Foreigners Act and sentencing each of them to rigorous imprisonment for six months and to pay a fine of Rs. 500/- in default, to undergo rigorous imprisonment for three months more.

2. The prosecution case, in brief, is that the petitioners were Afgan nationals staying in India without any authority. They Were served with notices to quit India u/s 3(2)(c) of the Foreigners Act of 1946 read with Government of India, Ministry of Home Affairs Notification No. 4356-(I) F. I. dated 19-4-1958. Notices were served on the petitioners on 27-8-1969 and thereby they were directed to leave India within three months from the said date. But in spite of the notices served on them, they did not leave India. They were found at village Gariakhana under Sootea Police Station in the district of Darrang. An ejahar Was lodged. After investigation police submitted charge-sheet against them u/s 14 of the Foreigners Act, to which they pleaded not guilty.

3. The prosecution examined a number of witnesses and after trial the learned Magistrate convicted and sentenced the two petitioners as stated above. On appeal the conviction and sentence were upheld by the learned Sessions Judge, and hence this application.

4. The following facts are not denied by the petitioners:

(i) That they are Afgan Nationals, in other words, that they are not Indian citizens and are foreigners; and

(ii) that at the relevant time they had no authority to stay in India.

5. Shri T. N. Phukan, learned Counsel appearing for the petitioners, submits that overstay is not an offence and therefore the conviction and sentence u/s 14 of the Foreigners Act are bad in law and for this purpose he takes reliance on the case of Kala Mia v. The State, (Criminal Revn. No. 136 of 1970 disposed of by a Single Judge of this Court on 16-2-1972) (Gauhati). This case is distinguishable from the case in hand. In Kala Mia's case the charge was that on or about 11th day of September, 1970 the prisoner illegally "resided in India without any valid or other document and thereby committed an offence punishable u/s 14 of the Foreigners Act...". It does not appear whether any order was served on the prisoner in that case and that such an order was violated by him. learned Counsel appearing for the petitioners in that case submitted that the petitioner did not violate Clause (1) of paragraph 3 of the Foreigners Order 1948 and the learned Judge accepted the submission and held that no offence was committed.

The relevant portion of the charge in the instant case is as under:

That you on or about the 27-8-1969 at Gariakhana, Sootea, Police Station being Afgan National found staying at Gariakhana in spite of Government order to quit India within the stipulated time thereby committed an offence punishable u/s 14 the Foreigners Act

(underline is mine).

In this case the two petitioners admittedly violated the "Government order to quit India", namely, the quit India notices admittedly served on them on 27-8-1969. Section 14 of the Foreigners Act is a punishing section and the offence committed is the violation of the order u/s 3, Sub-section (2), Clause (c) of the Foreigners Act of 1946. The relevant portion of Section 3 may be quoted:?

3. Power to make orders.? 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 foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence thereon,

(underline is mine)

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

(a) ...

(b) ...

(c) shall not remain in India or in any prescribed area therein;

The material portion of Section 14 of the Foreigners Act is as follows:

14. Penalties.? If any person 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....

6. It has not been urged before me that the Government of India have no power to issue such order or that the quit India notices served on the petitioners are not orders within the meaning of Section 3(2)(c) of the Foreigners Act. When the petitioners violated that order, undoubtedly an offence u/s 14 of the said Act was committed.

7. Although the two petitioners did not prove any Passport, much less any Visa, the petitioners have filed with the petition annexures "C and "D", which are copies of the relevant entries of the Passports alleged to have been held by the two petitioners. Assuming these two documents are true copies although not so proved, they do not give any authority to the petitioners to stay in India. The petitioners have not been able to prove any Visa or any other document giving permission to them to stay in India.

8. In the result this application has no substance and is rejected. But the ends of justice will be met if the sentence of each petitioner is reduced to the periods already undergone. (I am told by Shri Phukan, learned Counsel, that the petitioners have already undergone a period of sentence of about two months each.) The fine is reduced to Rs. 100/- each, in default, they shall undergo imprisonment for ten days each. With this modification in sentence the conviction is upheld.