
(2021) 03 RAJ CK 0062

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 749 Of 2018

Nikhil Mathur

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 18-03-2021

Acts Referred:

Foreigner Act, 1946 — Section 3, 7, 16
Code Of Criminal Procedure, 1973 — Section 482
Registration Of Foreigners Act, 1939 — Section 3, 5
Registration Of Foreigners Rules, 1992 — Rule 2, 14

Citation : (2021) 03 RAJ CK 0062

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : L.S. Udawat, D.S. Sodha, Mukesh Trivedi

Final Decision : Allowed

Judgement

The instant criminal misc. petition has been filed by the petitioner Nikhil Mathur for assailing all proceedings arising out of FIR No.101/2017, Police Station Sadar Kotwali, Jodhpur City East for offence under Section 7 of The Foreigner Act, 1946 (hereinafter referred to as "The Act of 1946" and Clause 14 of The Registration of Foreigners Rules, 1939 (hereinafter referred to as "The Rules of 1939").

At the relevant point of time, the petitioner herein used to operate a guest-house by the name of Krishna Prakash Heritage Haveli located at Naya Bas, Killikhana, Jodhpur. Two Korean citizens namely Hyeji Im and Wangseok Jang checked into the petitioner's guest house on 21.07.2017 at 11:30 hours. It is alleged that the mandatory form No.'C' of both these foreigners were not forwarded to the competent authority and came to be deposited as late as on 22.07.2017 at 21:47 and 21:50 hours, respectively. Accordingly, the impugned FIR came to be registered by the Police Inspector Mr. Ajim Khan at the Police Station Sadar Kotwali, Jodhpur City (East) with the allegation that the petitioner had failed to transmit copy of the mandatory form No. 'C' of these foreigners within twenty-

four hours of their arrival at the hotel and thus, he was liable for the offences under Clause 14 of the Rules of 1939 and Section 7 of the Act of 1946.

The petitioner has approached this Court through this Misc.

Petition under Section 482 Cr.P.C. for quashing of the aforesaid FIR on the premise that as both the foreigners checked in on 21.07.2017 at 11:30 pm and the petitioner had forwarded the mandatory Form No. 'C' of both the foreigners to the concerned authority within twenty-four hours of their arrival, i.e. on 22.07.2017 at 21.47 and 21.50 hours (9:47 pm and 9:50 pm) respectively, prima facie, no offence is made out against the petitioner.

Learned counsel Shri L.S. Udawat and Shri D.S. Sodha, representing the petitioner, submit that the controversy involved in the case at hand is squarely covered by the ratio of judgment rendered by this Court in the case of *Manish Lodha v. State of Rajasthan* (S.B. Criminal Misc. Petition No.429/2018) decided on 05.01.2021, wherein this Court held that violation of Clause 14 of the Rules of 1992, as alleged by the prosecution in the impugned FIR, would entail an offence under Section 5 of the Act of 1939, which carries punishment of one year or fine and thus, it would be non-cognizable as per Part II of Schedule I of the Criminal Procedure Code. They thus, urge that even if the allegations set out in the impugned FIR are accepted to be true, for the sake of argument, then also, the impugned FIR and all the proceedings sought to be undertaken pursuant thereto deserve to be quashed in light of the judgment referred to supra.

The judgment dated 05.01.2021 passed in the case of *Manish Lodha* (supra) is reproduced hereinbelow:-

"The instant criminal misc. petition has been filed by the petitioner Manish Lodha for assailing all proceedings arising out of FIR No.145/2017, Police Station Sadar Bazar, Police Commissionerate Jodhpur for the offences under Section 7 of "The Foreigner Act, 1946" (hereinafter referred to as "The Act of 1946" and Clause 14 of "The Registration of Foreigners Rules, 1939" (hereinafter referred to as "The Rules of 1939").

At the relevant point of time, the petitioner herein used to operate a guest-house by the name of 'Blue House' located at Dabgharo Ki Gali, Jodhpur. Two British citizens namely Isabel Beatrice and Jack Warman checked into the petitioner's guest house on 25.04.2017 at 14:41 hours. It is alleged that the mandatory form No.'C' of both these foreigners were not forwarded to the competent authority and came to be deposited as late as on 27.04.2017 at 17:02 and 17:12 pm respectively. Accordingly, the impugned FIR came to be registered by the Police Inspector Mr. Arvind Sirvi at the Police Station Sadar Bazar, Police Commissionerate Jodhpur with the allegation that the petitioner forwarded these mandatory forms after a delay of two days and two hours and thus, he was liable for the offences under Clause 14 of "The Registration of Foreigners Rules, 1939" (hereinafter referred to as "The Rules of 1939") and Section 7 of "The Foreigners Act, 1946" (hereinafter referred to as "The Act of 1946"). The

petitioner has approached this Court through this Misc.

Petition under Section 482 Cr.P.C. for quashing of the said FIR on the premise that the same does not disclose necessary ingredients of cognizable offences.

Shri Om Mehta, learned counsel representing the petitioner vehemently and fervently urged that no prima- facie offence is made out against the petitioner from a bare reading of the FIR. Shri Mehta contended that the FIR has been wrongly registered with reference to the violation of "The Registration of Foreigners Rules, 1939" whereas, no such Rules exist and rather, the statute applicable to the situation would be "The Registration of Foreigners Act, 1939" (hereinafter referred to as "The Act of 1939"). He points out that "The Registration of Foreigners Rules, 1992" (hereinafter referred to as "The Rules of 1992") were framed by the Central Government in the year 1992 in exercise of powers conferred upon it under Section 3 of "The Act of 1939". Rule 2 of "The Rules of 1992" defines "the Act" to mean "The Registration of Foreigners Act, 1939" and there is no reference to "The Act of 1946" in these Rules. No corresponding amendment has been made in "The Act of 1946" so as to make "The Rules of 1992" applicable thereto. He submits that as per Rule 14 of "the Registration of Foreigners Rules, 1992", every hotel or guesthouse keeper is required to transmit "Form No.C" to the 'Registration Officer' within 24 hours from the arrival of any foreigner. Breach of this Rule entails violation of Section 5 of "The Act of 1939" which is a non-cognizable offence punishable with one year's imprisonment or with fine. He thus urges that if at all, the petitioner was to be prosecuted for not forwarding the form No. 'C' on time, the offence, if any, attributable to the petitioner would be that under Section 5 of "The Registration of Foreigners Act, 1939" read with Clause 14 of the Rules of 1992 which is a non-cognizable offence and no FIR could have been registered for such offence. In support of his contentions, Shri Om Mehta relied upon following judgments:-

1. Ashok Kumar @ Ashok Prasad Vs. The State of Bihar : (2010) 87 AIC 589
2. Smt. Beena Arora Vs. State of Uttarakhand & Anr.: (2010) 1 NCC 175
3. Vijukumar Vs. State of Kerala : (2010) CriLJ 1822 Shri Mehta urged that registration of the impugned FIR against the petitioner is absolutely illegal and amounts to a gross abuse of process of law and hence, the same deserves to be quashed.

E converso, the learned Public Prosecutor, vehemently and fervently opposed the submissions advanced by the petitioner's counsel. However, he too could not dispute the fact that the requirement of forwarding the "Form No.C" to the registering authority is requirement of "The Rules of 1992". He also could not dispute the fact that no rules have been formulated under "The Act of 1946" and that "The Rules of 1992" were promulgated while exercising powers under Section 3 of "The Act of 1939".

I have heard and considered the submissions advanced at bar and have gone

through the impugned FIR and relevant rules.

Section 7 of "The Foreigners Act, 1946", for the violation whereof, the FIR came to be registered reads as below:-

"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."

Section 3 of "The Act of 1946" empowers the Central Government to make orders generally or with respect to all foreigners for prohibiting irregularities or restricting entry of foreigners into India or their departure therefrom or their continued presence therein. Neither, this provision empowers the Central Government to frame Rules nor any Rules have been framed under this Act so far. From a perusal of Section 7 of "The Act of 1946", it is clear that the hotelkeepers or the keeper of any premises where accommodation is provided to the foreigners, are under an obligation to furnish particulars regarding the foreigners accommodated for reward in such premises "to such person and in such manner as may be prescribed". However, neither any specific procedure for compliance with the mandate of the Section has been provided under the Act of 1946 nor any rules have been framed thereunder. Section 16 of "The Act of 1946" specifically stipulates that the provisions of this Act are in addition to and

are not in derogation of the provisions of "The Registration of Foreigners Act, 1939".

Section 5 of The Registration of Foreigners Act, 1939 would actually be the penal statute, clearly applicable to the situation at hand and it reads as below:-

"5. Penalties. - Any person who contravenes, or attempts to contravene or fails to comply with, any provision of any rule made under this Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both, or if not a foreigner, with fine which may extend to five hundred rupees."

Under this very Act, the Rules of 1992 have been framed, Clause 14 whereof reads as below:-

"14. Report to be made to and by hotel keepers:-

(1) Every keeper of a hotel shall require every visitor to the hotel to furnish the particulars necessary for recording, and sign, on his arrival at the hotel, his name and nationality in a register maintained for the purpose in Form F and, if any such visitor is a foreigner shall further require him;

(a) on his arrival at such a hotel to furnish the other particulars specified in Items 4 to 10 of the said register; and

(b) at the time of his departure from such a hotel to furnish the particulars necessary for recording in the said register, the date and time of his departure and the address to which he isproceeding.

(2) The register prescribed by sub-rule (1) shall at all time be made available for inspection, on the demand of any Registration Officer, any magistrate or any police officer not below the rank of head constable.

(3) Every visitor to any hotel shall, on being required so to do by the keeper of the hotel, furnish the particulars necessary for recording, and sign, his name and nationality, in the register referred to in sub-rule (1), and if such visitor is a foreigner, shall also:-

(a) on his arrival at such a hotel furnish the other particulars specified in Items 4 to 10 of the said register; and

(b) at the time of his departure from such hotel, furnish the particulars necessary for recording, in the said register, the date and time of his departure and the address to which he is proceeding.

(4) Every particulars, other than the signature of the keeper of a hotel or a visitor, which is required by this rule to be recorded in the said register shall be recorded by the keeper of the hotel and in the English language, if he is so able, or otherwise, in an Indian language.

(5) If a visitor does not understand the English language it shall be duty of the

keeper of the hotel, if so requested to explain to the visitor the requirements of this rule and Form F.

(6) The keeper of the hotel shall, as soon as may be but not more than twenty-four hours, after the arrival of any foreigner, transmit a copy of Form C, duly completed from the particulars furnished by such a foreigner, to the Registration Officer.

(7) For the purpose of this rule:-

(a) "hotel" includes any boarding- house, club, dak-banglow, rest house, paying guest house, sarai or other premises of like nature;

(b) "keeper of a hotel" means the person having the management of a hotel and includes any person authorised by him, and competent to perform the duties of the keeper of the hotel under this rule;

(c) "sign" includes, in respect of a visitor who is unable to write, the making of a thumb impression or other mark by means of which he is accustomed to attest a document; and

(d) "visitor" means a person for whom accommodation is provided at a hotel.

(8) Copies of Form C may be obtained, on application from any Registration Officer."

Thus, going by the highest allegation of the prosecution as set out in the FIR, the violation, if any committed by the petitioner would be of clause 14 of the Rules of 1992 and violation thereof would entail an offence under Section 5 of the Act of 1939. However, as is clear from the bare perusal of Section 5, the offence carries punishment of one year or fine and hence, the same would be non-cognizable as per Part II of Schedule I of Criminal Procedure Code. It cannot be disputed that CrPC does not allow for registration of an FIR for a non-cognizable offence. The controversy at hand is covered by the ratio of the judgments (supra) relied upon by Shri Om Mehta, learned counsel representing the petitioner.

As an upshot of the above discussion, I am of the view that registration of the impugned FIR and the continued investigation thereof is a gross abuse of process of law and hence the same cannot be sustained.

Thus, the misc. petition deserves to be and is hereby allowed. The impugned FIR No.145/2017 Police Station Sadar Bazar, Police Commissionerate, Jodhpur and all proceedings sought to be taken in furtherance thereof are hereby quashed."

Having heard and considered the submissions advanced by the petitioner's counsel and after going through the impugned FIR, I am of the opinion that the controversy at hand is squarely covered by the ratio of the judgment passed by this Court in the case of Manish Lodha (supra) and the registration of the impugned FIR and investigation thereof cannot be permitted as it does not disclose necessary ingredients of a cognizable offence.

Accordingly, the misc. petition is allowed in light of the said judgment. The impugned FIR No.101/2017 Police Station Sadar Kotwali, Jodhpur City (East) and all proceedings sought to be taken in furtherance thereof, are hereby quashed.