
(2015) 03 BOM CK 0069

In the Bombay High Court

Case No : Criminal Revision Application No. 17 of 2015

Oformata Chukwudi

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Foreigners Act, 1946 — Section 14, 14(a), 3

Citation : (2015) ALLMR(Cri) 4272 : (2015) 2 BomCR(Cri) 511

Hon'ble Judges : C.V. Bhadang, J.

Bench : Single Bench

Advocate : Maria Silvia Palha, for the Appellant; Mahesh Amonkar, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

C.V. Bhadang, J.—Admit.

2. Shri. Amonkar, learned Additional Public Prosecutor waives notice for the respondents. Heard finally with the consent of the parties.

3. The petitioner who is a foreign national had come to India on a visa which was valid upto 07.07.2014. The petitioner was prosecuted before the learned Judicial Magistrate First Class, Pernem, Goa for the offence punishable under Section 14(a) of the Foreigners Act, 1946 on the allegation that the petitioner had overstayed after expiry of the visa, inasmuch as the petitioner was arrested on 08.08.2014.

4. By a judgment and order dated 14.11.2014, the petitioner came to be convicted for the offence as charged and by a subsequent order dated 26.11.2014, he was sentenced to undergo imprisonment for one year and to pay a fine of Rs. 10,000/- and in default to undergo further imprisonment for six months. The learned Magistrate had allowed the set off towards the imprisonment already undergone which was then three months and eighteen days.

5. Feeling aggrieved, the petitioner challenged the judgment and order dated 14.11.2014 before the learned Additional Sessions Judge, Mapusa in Criminal Appeal No. 165/2014, which has been dismissed on 07.02.2015. In such circumstances, the petitioner has approached this Court, in the present criminal revision application.

6. I have heard Ms. Palha, learned Counsel for the petitioner and Shri. Amonkar, learned Additional Public Prosecutor for the respondents. With the assistance of the learned Counsel I have perused the record and the impugned judgments.

7. The learned Counsel for the petitioner has advanced a solitary contention based on two decisions, namely The State Vs. Ibrahim Adam, and Habibur Rahman Khan Vs. The State, . It is submitted that overstay in India would not be a contravention, punishable under the provisions of the Act and Rules framed thereunder. It is submitted that thus, the petitioner could not have been convicted.

8. The learned Additional Public Prosecutor has submitted that the relevant section has been introduced by way of amendment by Act No. 16 of 2004 and section 14(a) specifically provides for the offence of overstay on the expiry of the visa. He therefore, submitted that the judgments relied upon by the petitioner would not be applicable.

9. On hearing the learned Counsel for the parties and on perusal of the impugned judgments, I find that no case is made out for interference in exercise of the revisional jurisdiction of this Court.

10. Section 14 of the Foreigner's Act as introduced by amending Act No. 16 of 2004 reads as under:

"14. Penalty for contravention of provisions of the Act, etc.-Whoever-

(a) remains in any area in India for a period exceeding the period for which the visa was issued to him;

(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

(c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act,

shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him."

11. A bare perusal would show that Section 14(a) provides for the offence in case the person remains in any area in India after the period for which the visa

was issued to him.

12. Thus, the submission on behalf of the applicant cannot obviously be accepted. None of the judgments relied upon by the learned Counsel for the petitioner would come to the rescue of the petitioner for obvious reasons. Both these judgments are rendered much prior to the amendment as it stands today was introduced. In both these cases, the Court was concerned with Rules 3 and 6 of the Indian Passport Rules, 1950 and in the face of the provisions contained in these Rules, it was held that overstay after the period prescribed in the visa, does not contravene Rule 6 of the Indian Passport Rules, 1950.

13. In such circumstances, no case for interference is made out. In the result, the revision application is hereby dismissed.