

(1980) 02 AHC CK 0004
In the Allahabad High Court
Case No : Criminal Revision No. 157 of 1980

Richard Allen Mende

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-02-1980

Acts Referred:

Foreigners Act, 1946 — Section 14, 3

Citation : (1980) ACR 158

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Judgement

P.N. Bakshi, J.—The applicant has been convicted by the Special Judicial Magistrate u/s 14 of the Foreigners Act, 1946 and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 500/-. In default of payment of fine he was to undergo further simple imprisonment for two months. The appeal filed by the applicant was dismissed with the modification that the sentence of imprisonment was reduced to the period already undergone. The sentence of fine was, however, maintained. The fine has already been deposited. Aggrieved by the order of the Sessions Judge dated 19th November, 1979 the applicant has come up to revision to the Court.

2. I have heard counsel for the applicant and have also perused the impugned order. Learned Counsel has contended that the Sessions Judge has acted illegally in passing on order directing him to leave this country after the expiry of the period of three months within which he was permitted to obtain suitable orders from the Government of India. Learned Counsel has placed reliance upon Section 14 of the Foreigners Act, 1946 which runs as follows:-

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 for a term which may extend to five years and shall also be liable to fine, and such person 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.

It has been argued that this penal section does not make any provision authorising the Magistrate to pass an order of the nature which has been passed in the instant case.

3. The applicant is admittedly a foreign national. He entered India on 16th October, 1973 on a visa granted by the Government of India. Visa was extended upto 2nd March, 1975. The applicant did not leave the country after that date, with the result that he was served with a notice on behalf of the State by the Secretary to the Government of Uttar Pradesh on 25th May, 1975 to quit India within 14 days from the receipt of this notice. He failed to comply with the notice and as such he was prosecuted and convicted u/s 14 of the Foreigners Act, as mentioned above.

4. There can be no doubt that u/s 3(2)(c) of the Foreigner's Act, 1946 the Government is authorised to issue notice to a foreigner directing him not to remain in India. This power can be exercised even after conviction of a foreigner u/s 14 of the Foreigners Act. Assuming for an instance that a foreigner is sentenced for a certain term of imprisonment and he undergoes the sentence. As soon as he comes out of the jail he can again be served with a quit India notice u/s 3(2)(c) of the Foreigners Act and in the event of breach of the direction contained in the notice he can be deported by the authorities concerned. In the instant case the applicant was found guilty and was convicted. He had served out his sentence of imprisonment and had also deposited a fine of Rs. 500/- as ordered by the court. He is now at large. He can be deported any day by the Government under the Foreigners Act, as indicated above. In these circumstances, it would be futile for me to interfere with the impugned order passed by the Sessions Judge in so far as it relates to the deportation of the applicant. Order or no order deportation can be done by the Government on any date. As a matter of fact, the order has injuncted the Government of India from deporting the applicant for a period of three months i.e., the order is in a way beneficial to the applicant for it restrains his deportation for a period of three months within which he has been alleged to obtain suitable orders from the Government.

5. In this view of the matter, I find no reason to interfere in revision with the impugned order passed by the Sessions Judge. Far from causing any prejudice to the applicant it has given a long rope to the applicant to stay in this country unauthorisedly for a period of three months.

6. Counsel for the applicant has submitted that he may now be granted one month's time to leave this country or to have his visa extended. It would not be proper for me to pass any order in this connection for that is solely the jurisdiction of the Government concerned, for which adequate provision has already been made under the law.

7. For the reasons given above this revision is dismissed.