(2014) 08 CAL CK 0057

In the Calcutta High Court

Case No : C.R.R. 725 of 2014

Samirul Mondal APPELLANT

Vs

State of West Bengal RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:
Foreigners Act, 1946 — Section 14, 14A, 14A(b), 3

Citation : (2015) 1 CHN 605

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Palash Chandra Majhi, Advocate for the Appellant; Suman De, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J.—Petitioner has assailed order dated 07.01.2014 whereby charge has been framed against him u/s 14A(b) of the Foreigners Act on the allegation that he, not being an Indian citizen, had entered and stayed in India without valid travel documents.

2. Learned counsel appearing for the petitioner argued that as the petitioner had not entered into any restricted area, he could not be booked u/s 14A of the Foreigners Act. He relied on Tarikul Islam Sardar Vs. State of West Bengal, in support of his submission.

3. Learned counsel appearing on behalf of the State submitted that Section 14A of the Foreigners Act applies not only to an unauthorised entry into any restricted area within the territory of India but also to an unauthorised entry and stay in India without valid documents as required under the law. It is the case of the prosecution that the petitioner, who was not Indian national, had entered into the country and remained here without valid documents and, therefore, there was strong suspicion against him as to commission of the offence u/s 14A(b) of the Foreigners Act warranting framing of charge. He relied on an unreported decision

of this Court dated 21.12.2012 in C.R.R. 4076 of 2012 in support of his contention.

4. Section 14A of the Foreigners Act reads as follows:

"14A. Penalty for entry in restricted areas, etc. Whoever-

(a) enters into any area in India, which is restricted for his entry under any order made under this Act, or any direction given in pursuance thereof, without obtaining a permit from the authority, notified by the Central Government in the Official Gazette, for this purpose or remains in such area beyond the period specified in such permit for his stay; or

(b) enters into or stays in any area in India without the valid documents required for such entry or for such stay, as the case may be, under the provisions of any order made under this Act or any direction given in pursuance thereof,

shall be punished with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees; 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"

5. A perusal of the aforesaid provision shows that it has two limbs-(1) unauthorised entry into any area in India, which is restricted under any order made under this Act or direction given in pursuance thereof or stay in such area beyond the permitted period and (II) entry or stay in any area in India without valid documents required for such entry or such stay under the provisions of any order made under this Act or any direction given in pursuance thereof. It is nobody''s case that the petitioner entered in any restricted area notified under the relevant order passed by the Government in exercise of the provisions of the Foreigners Act. Section 14 of the Act reads as follows:

"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."

6. The said provision makes the following acts punishable in law:-

(a) staying in India beyond the period for which visa is granted;

(b) committing any act in violation to the conditions of visa granted to him;

(c) contravention of any provision of the Act or any order or any direction issued under the provisions of the Act or order for which no punishment is prescribed.

7. While entry or stay into India with valid visa/passport/travel document as prescribed is punishable u/s 14A(b) of the Act, overstaying in India after entering the country on a valid travel document or acting in violation of the conditions laid down in such travel document is punishable as a lesser offence u/s 14 of the Act.

8. It is the case of the prosecution that the petitioner who is a foreigner had entered and remained in India without valid documents. In my opinion, offence u/s 14A(b) of the Foreigners Act is committed if a foreigner enters or stays in any area in India (even if it is not a restricted area) without valid documents. Hence, I am of the opinion that the prosecution case against the petitioner prima face discloses ingredients of the offence punishable u/s 14A(b) of the Foreigners Act. In Tarikul Islam Sardar (supra) charge sheet had been filed u/s 14 of the Foreigners Act and not u/s 14A of the said Act. The allegation against the petitioner in the cited case was that he was found at a place in India, which was not a restricted place and had failed to produce valid passport or visa. In this factual backdrop, the Court was called upon to decide as to whether petitioner who was booked u/s 14 of the Foreigners Act (and not u/s 14A of the Foreigners Act) could be tried by the learned magistrate. It is pertinent to note while Section 14 of the Foreigners Act is a Magistrate triable offence, offence u/s 14A of the Act is a sessions triable offence. In the aforesaid decision it was argued as the accused had not entered any restricted area in India and had been charged only u/s 14 of the Act he ought to be tried by the Magistrate. A learned Single Judge of this Court decided such proposition in the affirmative. No argument had been advanced before the Court in the cited decision that since the accused had entered any area in India without travel documents he ought to be tried u/s 14A(b) of the Act. A judgment is not an authority for the proposition which is neither raised nor argued [see Rajput Ruda Meha and Others Vs. State of Gujarat, and Mittal Engineering Works (P) Ltd. Vs. Collector of Central Excise, Meerut, Hence the aforesaid judgment is not an authority for the proposition as to applicability of Section 14A(b) of the Act in a case where the foreigner enters any part of India without travel documents-a proposition neither raised nor argued in the said report. A judgment is an authority for the proposition if decides and not what logically follows therefrom. Unlike the reported decision where charge sheet was filed u/s 14 of the Act, charge sheet has been filed u/s 14A(b) of the Act for entering and staying in India without travel documents in the instant case. Such being the situation, framing of charge against the

petitioner u/s 14A(b) of the Act by the learned Judge cannot be said to be contrary to law. Similar view has also been taken by another learned Single Judge of this Court in C.R.R. 4076 of 2012 (supra).

9. For the aforesaid reasons, I find no merit in the revision petition and the same is, accordingly, dismissed.

10. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties upon compliance of all necessary formalities.