

**(2016) 12 PAT CK 0004**  
**In the Patna High Court**  
**Case No : Criminal Revision No. 965 of 2016**

Syed Naqui Alam

APPELLANT

Vs

State of Bihar

RESPONDENT

**Date of Decision :** 22-12-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 397, Section 401  
Foreigners Act, 1946 — Section 14

**Citation :** (2017) CriLJ 2590

**Hon'ble Judges :** Mr. Chakradhari Sharan Singh, J.

**Bench :** Single Bench

**Advocate :** Mr. Arvind Prasad Singh, Advocate, for the Petitioners; Mr. Sri Jagdhar Prasad, APP, for the Respondents

**Final Decision :** Disposed Off

## Judgement

Chakradhari Sharan Singh, J. (Oral) - Heard learned counsel for the parties.

2. The petitioner in the present criminal revision application filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, has assailed an order, dated 17.03.2016 passed in Criminal Appeal No. 36 of 2013 by learned third Additional Sessions Judge, Jehanabad, whereby he has affirmed the judgment of conviction and order of sentence of imprisonment for a period of three years recorded by the Court of learned Judicial Magistrate Ist Class, Jehanabad, holding the petitioner guilty of offence punishable under Section 14 of the Foreigners Act, 1946. The said trial No. 2765 of 2013 before the learned Judicial Magistrate Ist Class, Jehanabad arose out of Arwal P. S. Case No. 196 of 2012 corresponding to G. R. No. 2111 of 2012.

3. Even while assailing the impugned judgments and orders, learned counsel appearing on behalf of the petitioner has not disputed the fact that the petitioner is a citizen of Pakistan. He had travelled to India on the basis of Visa No. V11598679 dated 10.12.2011, which was valid for a period of three months. The Visa expired on 10.02.2012. Despite expiry of the Visa, the petitioner

overstayed. On this allegation an F.I. R. was registered being Arwal P. S. Case No. 196 of 2012 on 30.10.2012. He was arrested by the police and he was, thereafter, produced before the learned Judicial Magistrate Ist Class, Jehanabad on 31.10.2012. The police upon completion of investigation submitted charge-sheet on 19.11.2012.

4. At the trial, one Syed Masood Alam was examined as D. W.1, who claimed to be the father of the petitioner and a citizen of India. He deposed that the petitioner was born at Arwal and he had studied up to Class- VIII in Umairabad, High School. He also deposed that the petitioner procured citizenship of Pakistan and he had come to India with the said Visa, the period of which had expired.

5. Learned counsel appearing on behalf of the petitioner has submitted that the petitioner is citizen of India by birth and he intends to acquire the citizenship of India again. He has submitted that the Courts below ought to have taken into account the undisputed fact that the petitioner was born at Arwal in India.

6. I find from the record that there is no dispute that the petitioner acquired the citizenship of Pakistan and when he came to India, it was on the basis of the Visa, which was valid only up to 10.02.2012. Even if the case of the petitioner is treated to be true that he was born in India, though there is no such judicial determination on this point, once he acquired citizenship of Pakistan, his citizenship stood terminated by operation of Section 9 of the Citizenship Act, 1955.

7. Section 9 of the Citizenship Act reads thus:-

9. Termination of citizenship.-

(1) Any citizen of India who by naturalization, registration otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act, voluntarily acquired the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India: Provided that nothing in this subsection shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires, the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any 1[citizen of India] has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

Since he admittedly, overstayed the period of Visa, he acquired the status of an illegal migrant within the meaning of Section 2(1)(b) (ii) of the Citizenship Act

8. Section 14 of the Foreigners Act, 1946 prescribes for penalty for contravention of the provisions of the Act, which specifically provides that whoever remains in any area in the India for a period exceeding the period for which the visa was

issued to him shall be punished with an imprisonment for a term which may extend to five years and shall also be liable to fine. Section 14 of the Foreigners Act reads thus:-

"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; tc" (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 to" (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, tc" (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. Explanation.-For the purposes of this section, the expression "visa" shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920)."

9. Since there is no dispute over essential facts to establish that the petitioner overstayed the period of visa and was, therefore, liable for action in accordance with the provisions of Section 14 of the Foreigners Act, 1946, conviction recorded by the trial Court and upheld by the appellate Court by the judgments and orders under challenge do not require any interference.

10. Learned counsel appearing on behalf of the petitioner, however, has submitted that there are mitigating circumstances for taking lenient view in the matter of award of sentence. According to him, the petitioner had approached the Superintendent of Police, Arwal for extension of a period of visa, though after expiry of the said period. He has secondly, submitted that nothing more than the fact that the petitioner overstayed period of visa has been alleged against the petitioner.

11. I find some substance in the aforesaid submission of learned counsel for the petitioner that there exist mitigating factors for taking a lenient view on the question of quantum of punishment. First and foremost among them is that there is no evidence to show that he hurt any one and committed the offence in a manner to cause any harm to any one. Secondly, there is no evidence of this

criminal past. Thirdly, it was never the case of the prosecution that the petitioner was not born in India. In such circumstance, his plea that he overstayed in India with his parents is also a mitigating factor.

12. Considering the above, in the facts and circumstances of the present case while upholding the conviction of the petitioner of an offence punishable under Section 14 of the Foreigners Act, 1946, I intend to modify the order of sentence to imposition for a term of seven months. The period undergone by the petitioner in custody pre-conviction and post-conviction both will be required to be adjusted.

13. This revision application is, accordingly, disposed of.

14. The Inspector General (Prisons), Bihar is directed to ensure that after completing formalities, the petitioner is deported to Pakistan after his release from the Jail after serving the sentence.

15. It is made clear that no observation made in the present order shall be construed as expression on the merits of the petitioner's claim of being son of D.W.1 or born in India, which can be subject-matter of adjudication in accordance with law.

16. Let a copy of this order be communicated to the Inspector General (Prisons), Bihar, forthwith.