

(2009) 10 DEL CK 0067
In the Delhi High Court
Case No : Criminal R.P. No. 142 of 2001

Tara Singh

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 13-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Foreigners Act, 1946 — Section 14
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471

Citation : (2010) 1 Crimes 186

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Rajesh Mahajan, for the Appellant; Manoj Ohri, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—On 5.5.1999, at 3.00PM Alpana Sharma, PW-2 Section Officer in the Afghan Section of the FISR Branch of the FRRO, Hans Bhawan, New Delhi lodged a complaint with P.S. I.P. Estate. It was alleged that one Afghani national had approached her along with his passport for the grant of an exit visa. On the scrutiny of his passport No. OR-387146 dated 14.9.1997, issued at Nangartain, Afghanistan, it revealed that he i.e. Tara Singh had entered India on 8.4.1999 on the strength of visa No. 995502 issued on 6.4.1999 from Islamabad, Pakistan. This visa was valid till 5.10.1999 with the condition of entry by train and being an entry visa, it meant that he required either an exit visa or a re-entry visa in order to visit Pakistan. A further scrutiny of his passport revealed that there was a re-entry visa issued from Peshawar; this was a forged visas as Pakistani visas had since been changed from rubber stamp type to sticker type visas and this was evident from page No. 17 which contained the rubber stamp visa and pages No. 15 and 13 of his passport which contained the sticker type visa. Preliminary questions revealed that the petitioner had obtained this forged visa from an agent at Tilak Nagar area to gain entry in Pakistan. These facts had been notified by PW-2 to her senior officer Sh. Arvind Kapoor

PW-3, who confirmed these revelations. Request for registration of FIR under Sections 468/471/420/120B IPC r/w Section 14 of the Foreigners Act (in short the Act) was made.

2. On the aforesaid complaint investigation was set into motion. After scrutiny of the documents and the recording of the disclosure statement of the accused as also the statement of the witnesses FIR under the aforesaid provisions of law was registered at 5.15PM on the same day.

3. Vide judgment dated 25.8.2000, accused Tara Singh was convicted u/s 14 of the Act. He was sentenced to suffer RI for a period of 1-1/2 years as also to pay a fine of Rs. 3,000/-. This order was modified by the Court of the learned ASJ. While upholding the conviction, the sentence was modified to the sentence already undergone by the appellant i.e. the period of 35 days of incarceration suffered by him. The fine of Rs. 3,000/- stood already deposited. The petitioner was directed to leave the country within 10 days from the date of the judgment i.e. within 10 days from 5.3.2001.

4. Counsel for the petitioner has assailed the judgment on the short point that testimony of PW-2 and PW-3 clearly shows that no efforts have been made by either of the two witnesses to verify whether the visa was a genuine visa or a forged visa. Attention has been drawn to the cross-examination of PW-2 who had admitted that she had not verified about this forged or re-entry visa from Pakistan. PW-3 had also admitted that he had not verified about this fake/forged exit visa issued from Pakistan Embassy. It is argued that the prosecution has to stand on its own legs and the prosecution having failed to discharge its onus; it is clear that the ingredient of the offence u/s 14 of the Act are not made out; giving benefit of doubt to the petitioner he is entitled to an acquittal.

5. Section 14 of the Act is the penal provision for the contravention of the provisions of the Act or of any order made there under or any direction given in pursuance of the said Act or such order. The object of this Act is to provide for prescribing, regulating and restricting amongst other things the presence and continuous presence of a foreigner in India. What appears to have been intended is to confer power on the executive authority to prescribe and specify conditions for continuance of a foreigner in India.

6. PW-2 Alpana Poddar is the complainant. After reciting the averments on oath as made by her in her complaint Ex.-PW2/A, she has categorically averred that the passport of Tara Singh was endorsed with a re-entry visa which was fake and this was at page No. 17. In her cross-examination she has admitted that she had not verified from the Pakistani Embassy as to whether this visa was forged or fake; she has gone on to explain that in their office a circular was given that re-entry visas were being issued by Pakistan in a sticker form and not in a rubber stamp form and she has also consulted her senior in this regard.

7. PW-3 Arvind Kumar Kapoor, Inspector Incharge Crime Section, FRRO, Hans Bhawan was the senior officer of PW-2. He has corroborated the version of PW-2

on oath. He has deposed that at 3.15 PM Alpana Sharma, Section Officer manning one of the counters at the Afghan Section had approached him with a passport of one Afghan national, namely, Tara Singh. Tara Singh intended to take an exit visa for Pakistan which is mandatory for an Afghan national leaving India. Upon scrutiny of his travel documents it was found that his re-entry visa issued from Peshawar was forged on two counts i.e. it was of a rubber stamp type which was not in circulation for the last 3-4 years as also for the reason that the date of issue of the said visa from Peshawar was not supported by corresponding visits of Tara Singh from Afghanistan to Peshawar and back and this was evident from his passport. In his cross-examination he has stated that the verification of this exit visa on the passport of Tara Singh had not been conducted from the Pakistan Embassy. He has further deposed that it is very much in knowledge that the said forged visa is not in circulation for the last 3-4 years and sticker type visas were presently being issued by the Pakistan High Commission; the said specimen sticker visas are also found on pages No. 13 and 15 of passport of Tara Singh.

8. The Investigating Officer SI Subod Anand has been examined as PW-5.

9. A perusal of this evidence clearly establishes that both PW-2 and PW-3 were the Section Officer and the Officer Incharge working in the Afghan Section of FRRO, Hans Bhawan, New Delhi. They were, in this official capacity obviously well conversant with the entry and exit visas which are endorsed on passports of Afghan nationals who are entering and exiting India. Both PW-2 and PW-3 have deposed that there is a circular to the effect that Pakistan High Commission since the last 3-4 years had not been issuing rubber stamp visas but sticker type visas were being issued; the questioned visa at page No. 17 of Ex.P-3 is not a sticker type visa but it is a rubber stamp visa. The genuine specimen visa i.e. the sticker type visa was also located on pages No. 13 and 15 of the passport Ex.P-3. PW-3 had further stated that the date of issue of the said visa from Peshawar was not supported by the corresponding visits of Tara Singh from Afghanistan to Peshawar and back. There is no cross of the said witnesses on this score that their deposition is false; no such suggestion has also been given. The bald defence of the accused in his statement u/s 313 of the Cr.P.C. is that the visa is genuine, is of little credence.

10. It is not only the oral versions of PW-2 and PW-3, which has established the case of the prosecution but also the documentary evidence which is the passport P-3 of the accused clearly evidencing that the visa issued from Peshawar on Page 17 is a rubber stamp visa and not a sticker type visa. Circular of the Pakistan High Commission was to the effect that such visas had been discontinued since the last 3-4 years and sticker type visas were presently being issued to the foreigners. Conviction of the petitioner calls for no interference. Revision petition is without merit. It is dismissed.