

(2009) 01 CAL CK 0051
In the Calcutta High Court
Case No : C.R.R. No. 3843 of 2008

Tarikul Islam Sardar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 12-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Foreigners Act, 1946 — Section 14, 14A, 2, 3(2)

Citation : (2009) CriLJ 1186 : (2010) 6 RCR(Criminal) 2188

Hon'ble Judges : Partha Sakha Datta, J

Bench : Single Bench

Advocate : N.C. Mondal, for the Appellant; S.K. Mullick, for the Respondent

Judgement

Partha Sakha Datta, J.—This is an application u/s 401 read with Section 482 of Cr.P.C. filed on 30th September, 2008 to challenge an order being dated 24th September, 2008 passed by learned ACJM, Diamond Harbour in connection with Kulpi P.S. case No. 8 dated 25-1-2008 u/s 14 of Foreigners Act (G.R. No. 101 of 2008).

2. The petitioner was arrested in connection with Kulpi P.S. Case No. 8/08 dated 25-1-008 u/s 14 of the Foreigners Act at 21.05 hours on 25-1 -2008. Allegedly the petitioner had entered into Indian Territory but he failed to produce any valid passport or visa. Upon completion of investigation police submitted charge sheet against the petitioner u/s 14 of the Foreigners Act. It has been alleged in this charge sheet that he was found suspiciously moving at Dakshin Gazipur Bazar under Kulpi Bazar. After submission of charge sheet the learned Magistrate took cognizance of the offence. While considering charge against the petitioner the Id. Magistrate observed that the case is triable by the Court of Sessions and he committed the case to the Court of Sessions.

3. The Id. Additional Sessions Judge, Diamond Harbour by his order dated 29th March, 2008 passed in connection with S.C. 15(3) of 2008 has opined that case was not triable by the Court of Sessions and it was a case only u/s 14 of the

Foreigners Act. Record was remitted back to the Id. Magistrate. Still the Id. Magistrate was not satisfied and he by his order dated 25th April, 2008 observed that the matter may be referred to High Court for answering the question whether the case is triable u/s 14 or Section 14A of the Foreigners Act.

4. It has been submitted by the Id. Advocate for the petitioner that the Id. Magistrate was not justified in refusing the prayer u/s 14 of the Foreigners Act against the petitioner after the Id. Additional Sessions Judge was of the opinion that the case would cover u/s 14 of the Foreigners Act. My attention has been drawn to the Foreigners (Restricted Orders) Order 1963 which has three Schedules namely, I, II and IIA.

5. Before we go into the Schedule and read Section 14A which is as follows:

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 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 by such penalty should not be paid by him.

6. u/s 2(b) of the Foreigner's Act (Restricted Areas) Order, 1963 "Restricted Areas" means any of the area specified in Schedule I" In Schedule I places in the district of Darjeeling, Cooch Bihar, Jalpaiguri, Malda and West Dinajpur in the District of West Bengal have been specified to be "Restricted Areas" in terms of the said Foreigners (Restricted Areas) Order, 1963.

7. As per charge sheet and the FIR the petitioner who is said to be a resident of a village under P.S. Satkhira in the district of Satkhira of Bangladesh was arrested after he was found to have entered at Dakshin Gazipur Bazar within Gram Panchayat Gazipur P.S. Kulpi, District South 24 Parganas. He failed to produce passport and visa and other related papers in respect of his entry into the area under Kulpi P.S. in the district of South 24 Parganas. The place under the District of South 24 Parganas does not fall under the "Restricted Areas" in view of paragraph 2(b) of the Foreigners (Restricted Areas) Order 1963 read with Schedule I".

8. FIR was lodged u/s 14 of the Foreigners Act and charge sheet was also submitted under that section of law. It is not the prosecution case even that place where the petitioner is alleged to have entered falls within the "Restricted Areas" and Id. Advocate for State concedes to this position.

9. In the circumstances, the Magisterial order is not sustainable at all and I do not think that the Id. Additional Sessions Judge committed any illegality in holding that the case is not triable by the Court of Sessions.

10. Accordingly, the petitioner shall be tried by the Court of the Id. Magistrate u/s 14 of the Foreigners Act. Reference stands disposed of.

Both the applications are disposed of accordingly.

Let urgent certified Xerox copy of this order be made available to the Id. Advocates for the parties, if applied for.