

HIGH COURT OF CALCUTTA

Bench : Hon'ble Justice Shampa Dutt (Paul)

Date of Decision: May 3, 2024

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

CRA 111 of 2017

AKHIRUJJAMAL @ AKHIRUJJAMAN @ AFRUL DOCTOR ...APPELLANT

VERSUS

THE STATE OF WEST BENGAL

...RESPONDENT

Legislation:

Section 14A, 14C of the Foreigners Act

Sections 379, 406, 420 of the Indian Penal Code (IPC)

Subject: Appeal against conviction under Section 14C of the Foreigners Act for harboring foreigners without valid documents.

Headnotes:

Criminal Law – Foreigners Act – Conviction under Section 14C – Appeal against Trial Court's conviction for harboring foreigners without valid documents – High Court finds insufficient evidence of appellant's knowledge or involvement in the harboring of foreigners – Held, conviction set aside – Acquittal of appellant from charges under Section 14C of Foreigners Act. [Paras 1-22]

Evidentiary Assessment – Lack of direct evidence tying appellant to knowledge of foreigners' illegal status – Supreme Court precedent emphasized abetment requires active encouragement, instigation, or aiding

– No evidence presented that appellant engaged in such activities – Noted passivity and lack of proactive involvement do not constitute abetment under Section 14C – Acquittal on grounds of failure to prove abetment. [Paras 14-16]

Reference to Supreme Court decision in Abinash Dixit Vs. The State of Madhya Pradesh, where mere passivity was ruled insufficient for abetment under Foreigners Act – Applied to current case to overturn conviction. [Para 13]

Referred Cases:

- Abinash Dixit Vs. The State of Madhya Pradesh, Criminal Appeal No. 267 of 2022 (SLP (CrI.) No. 2266 of 2020), decided on 22 February 2022.

Representing Advocates:

For the Appellant: Mr. Apalak Basu

For the Respondent: Mr. Rana Mukherjee, Mr. Santanu Chatterjee

Shampa Dutt (Paul), J.:

The Appeal:-

1. The Appeal has been preferred against a Judgment and Order dated 25.01.2017 and 27.01.2017 passed by the Learned Sessions Judge, Cooch-Bihar in Sessions Trial No. 5(2)2016 (corresponding to Sessions Case No. 8 of 2016), convicting thereby Asraf Mia and Kamal Matubbar for commission of offence punishable under Section 14A of Foreigners Act and sentencing them to suffer Rigorous Imprisonment for 2(two) years and to pay a fine of Rs. 10,000/- (Rupees ten thousand) i.d. Simple Imprisonment for six months more for the offence under Section 14A of Foreigners Act and further sentencing the appellant (Akhirujamal @ Akhirujaman @ Afrul Doctor) to suffer Rigorous Imprisonment for 2(two) years and to pay a fine of Rs. 10,000/- (Rupees ten thousand) i.d. to suffer Simple Imprisonment for six months for the offence under Section 14C of Foreigners Act.

The prosecution:-

2. The present appellant along with two others namely, Asraf Mia and Kamal Matubbar were put on trial before the Learned Sessions Judge, Cooch-Bihar in connection with Sessions Trial No. 5(2)2016 wherein charge was framed against the present appellant under Section 14C of Foreigners Act. The Session Trial had at its genesis on a First Information Report lodged by one S.I. Soumitra Sarkar (examined as PW-1 at the time of trial) on 17.10.2014 under Section 14A/14C of Foreigners Act subsequently added Sections 379/406/420 of the Indian Penal Code.

3. The prosecution case is as follows:-

On 16.10.2014 at 23.45 hrs, PW1 received an information that two Bangladeshi Nationals were detained by the people of Kholta, who were the tenants of the appellant and accordingly they went to the said place and found a huge gathering in front of the house of the appellant and they detained the said Bangladeshi nationals on suspicion and on being asked, said two persons disclosed their names and P.W.1 searched the said two persons and 4 small note books were seized from the possession of accused Asraf Mia and one mobile phone and some money of Indian Currency (Rs. 9,465/-) were seized from the possession of Kamal Matubbar. On interrogation they stated that on 15.09.2014 they entered into Indian Territory through Benepole – Haridaspur Border without having any Passport or valid document and initially they were staying in the house of Hazeda Begam of Katwa and Masoom Sk. of Krishnanagar and later on they came to Kholta about 15 days ago and started residing there in a rented house of the appellant.

On 17.10.2014, Gopal Sarkar (P.W.9) lodged another F.I.R. thereby alleging that P.W.9 is a businessman by avocation and he had business transaction with Asraf Mia and Kamal Matubbar. On 20.09.2014 the abovenamed miscreants had stolen his money worth of Rs. 83,000/-. Thereafter P.W.9 could not trace out those persons and on 16.10.2014 at about 5.30p.m. P.W.9 came across the said Kamal at Alipurduar Bir Para Junction and he started following said Kamal and at about 10 p.m. he found said Kamal entered into a house near Kholta Check Post and he

*informed his friends and they surrounded the said accused persons.
Subsequently police came and intercepted the accused persons.*

4. On completion of investigation, charge sheet was filed vide Charge Sheet No. 1189/2014 dated 15.12.2014 against the appellants along with two others under Sections 14A/14C of Foreigners Act and Sections 379/406/420 of the Indian Penal Code and in course of time, the proceedings reached the court of Learned Sessions Judge, CoochBehar wherein it was registered as Sessions Trial No. 5(02)2016.
5. The Learned Trial Court by an order dated 16.04.2016 framed charge under Section 14C of Foreigners Act against the appellant and examined 13 witnesses out of 44 witnesses. Apart from the oral evidence so adduced, prosecution during the course of the trial also relied on documentary exhibits, which included the Written Complaint (Ext.3), G.D. Entry (Ext.4), etc.
6. The Learned Trial Court on assessment of evidence found the appellant along with others guilty of the charge as framed, and accordingly recorded an order of conviction by its Judgment and Order dated 25.01.2017 and 27.01.2017 in Sessions Trial No. 5(2)2016 (corresponding to Sessions Case No. 8 of 2016), convicting thereby Asraf Mia and Kamal Matubbar for commission of offence punishable under Section 14A of Foreigners Act and sentencing them to suffer Rigorous Imprisonment for 2(two) years and to pay a fine of Rs. 10,000/- (Rupees ten thousand) i.d. Simple Imprisonment for six months more for the offence under Section 14A of Foreigners Act and **further sentencing appellant (Akhirujamal @ Akhirujjaman @ Afrul Doctor) to suffer Rigorous Imprisonment for 2 (two) years with a fine of Rs. 10,000/- (Rupees ten thousand) only i.d. Simple Imprisonment for six months for the offence under Section 14C of Foreigners Act.**

The Defense:-

7. The appeal has been preferred on the following grounds:-

- i) The prosecution has not established the identity of the appellant.
- ii) The prosecution has failed to produce even one document to suggest that the house belonged to the appellant.
- iii) One of the co- accuseds had a valid visa. iv) There is nothing to suggest that the said persons were Bangladeshis.

- v) There is not even a whisper regarding any instigation or abetment.
- vi) The seizures were never proved. vii) Even the identity of the co-accuseds was not established.
- viii) No iota of proof or evidence to establish that the appellant had any knowledge regarding the citizenship of the co-accuseds. ix) There cannot be a conviction on the basis of assumption that a particular community usually indulges in such activities.
- x) The place from where the co-accused persons were arrested was also not established.

8. The Appellant has relied upon the ruling of the Supreme Court in

Abinash Dixit Vs. The State of Madhya Pradesh, in Criminal Appeal No. 267 of 2022 (@ SLP (Crl.) No. 2266 of 2020), decided on February 22, 2022.

The Evidence:-

9. Prosecution Witness no. 1 is the Complainant. He has reiterated the contents in the Written Complaint (Exhibit 3).
10. On being cross examined, he has admitted that though many people had gathered at the place of occurrence, no one was asked to act as seizure witness.
11. P.W. 9 – knows the Appellant. This witness had helped the other accuseds (Bangladeshi) in some of their personal matters.
12. The Appellant was charged, tried, convicted and sentenced for offence punishable under Section 14C of the Foreigners Act.
13. The Supreme Court in ***Abinash Dixit Vs. The State of Madhya Pradesh, in Criminal Appeal No. 267 of 2022 (@ SLP (Crl.) No. 2266 of 2020), decided on February 22, 2022***, held:-

“..... On the aspect of violation of Section 14-C, the requirement is that the accused should have abetted the offences under sections 14, 14-A and 14-B of the Foreigners Act. Section 14-C reads:

"14-C: Penalty for abetment. - Whoever abets any offence punishable under section 14 or section 14A or section 14B shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence."

The word 'abet' is an essential ingredient of Section 14-C, and has received judicial interpretation. 'Abet' means to aid, to encourage or countenance. An abetment of the offence occurs when a person instigates any person to do that offence or engages with another person(s) in doing that thing. Mere passivity and insouciance will not tantamount to offence of abetment."

14. In the present case, there is no evidence to support the prosecution case to show that the Appellant had the knowledge that the coaccuseds were Bangladeshi's (Foreigners) who had entered this country without valid papers.
15. There is also no evidence to show that the said foreigners were tenants under the Appellant.
16. In view of the Judgment of the Supreme Court in ***Abinash Dixit Vs. The State of Madhya Pradesh (Supra)***, the prosecution in this case has not been able to bring on record any evidence to show that the Appellant has in any manner aided, encouraged, or instigated the foreigners to commit offence under Sections 14A of the Foreigners Act in this case.

Conclusion:-

17. Thus the Judgment and Order dated 25.01.2017 and 27.01.2017 passed by the Learned Sessions Judge, Cooch-Bihar in Sessions Trial No. 5(2)2016 (corresponding to Sessions Case No. 8 of 2016), thereby **convicting and sentencing the appellant (Akhirujamal @ Akhirujjaman @ Afrul Doctor) to suffer Rigorous Imprisonment for 2(two) years** and to pay a fine of Rs. 10,000/- (Rupees ten thousand) i.d. to suffer Simple Imprisonment for six months for the offence under Section 14C of Foreigners Act, **is hereby set aside.**
18. **CRA 111 of 2017 is thus allowed.**
19. **Appellant is acquitted of his charge and released from his bail bonds.**
20. All connected applications, if any, stand disposed of.
21. Interim order, if any, stands vacated.

- 22.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 23.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

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