

## **CRIMINAL REVISION**

Present: **The Hon'ble Justice Ashim Kumar Roy**

*C.R.R. No. 657 of 2010*

**Judgment On: 31-03-2010**

*Parvez Musaraf&Ors.*  
*versus*  
*State of West Bengal&Anr.*

### **POINTS:**

ILLEGAL ENTRY-Petitioners Bangladeshi Nationals-Entry and stay in India without valid documents- The police submitted charge-sheet alleging commission of a wrong offence- Trial Court whether bound by the conclusion arrived at by the investigating agency-Foreigners' Act, 1946 Ss.14A(b), 14B- Code of Criminal Procedure,1973,S.482

### **FACTS:**

The petitioners were Bangladeshi National and were apprehended from inside a train compartment while they were moving suspiciously. The petitioners had no passport or visa or any other valid documents in support of their entries in the Indian Territory. The provision of Section 14B of the Foreigners Act provides for punishment for using forged passport and, accordingly, when the allegations were of entering into the territory of India without Passport and any other valid documents, the question of their prosecution under Section 14 of the Foreigners' Act does not at all arise. Therefore, invoking section 482 of the Code of Criminal Procedure, the petitioners moved this application for quashing of a Sessions Trial relating to an offence punishable under Section 14B of the Foreigners' Act.

### **HELD:**

It is true that the allegations against the petitioners are these that they were found inside the territory of India without any valid passport or visa or any other valid documents, thus, it is not the prosecution's case that they entered into India and remained there by using forged passport, as such, it cannot be said that any offence under Section 14B of the

Foreigners' Act has been made out against them. However, it appears that it is the prosecution case that the petitioners are Bangladeshi Nationals and have entered India and stayed here without any valid documents required for such entry and for such stay. As such, on the face of those allegations a prima facie case of the offence punishable under Section 14A (b) of the Foreigners' Act is certainly made out. The police might have submitted charge-sheet alleging commission of a wrong offence but the Trial Court is not bound by the conclusion arrived at by the investigating agency and it is the duty of the Court to find out which particular offence has been made out from the evidentiary materials collected by the police during the investigation, and if found on the evidentiary materials collected by the police any other offence has been made out, then in that case to proceed against the accused there under. Para-3

For Petitioner: Mr. Anindya Sundar Chatterjee

**THE COURT:**

1. Invoking Section 482 of the Code of Criminal Procedure, the petitioners has moved this application for quashing of a Sessions Trial relating to an offence punishable under Section 14B of the Foreigners' Act, now pending before the Learned Additional Sessions Judge, Fast Track 1st Court, Ranaghat.

2. It was submitted by the learned advocate appearing on behalf of the petitioners that it was the only allegation against the petitioners that they were Bangladeshi National and were apprehended from inside a train compartment while they were moving suspiciously. It was further allegation that the petitioners had no passport or visa or any other valid documents in support of their entries in the Indian Territory. The learned advocate of the petitioners draws attention of the Court to the provision of Section 14B of the Foreigners Act and submitted that the said Section provides for punishment for using forged passport and, accordingly, when the allegations were of entering into the territory of India without Passport and any other valid documents, the question of their prosecution under Section 14 of the Foreigners' Act does not at all arise.

3. I have given my anxious and thoughtful consideration to the submission made by the Learned Advocate of the petitioners. It is true that the allegations against the petitioners are these that they were found inside the territory of India without any valid passport or visa or any other valid documents, thus, it is not the prosecution's case that they entered into India and remains there by using forged passport, as such, it cannot be said that any offence under Section 14B of the Foreigners' Act has been made out against them. However, it appears that it is the prosecution case that the petitioners are Bangladeshi

Nationals and have entered India and stayed here without any valid documents required for such entry and for such stay. As such, on the face of those allegations a prima facie case of the offence punishable under Section 14A (b) of the Foreigners' Act is certainly made out. In the case, only the charge-sheet has been submitted and according to the Learned Advocate of the petitioner no trial has been commenced therefore at this stage no question of quashing of the impugned criminal proceedings at all arises. In this case, the police might have submitted charge-sheet alleging commission of a wrong offence but the Trial Court is not bound by the conclusion arrived at by the investigating agency and it is the duty of the Court to find out which particular offence has been made out from the evidentiary materials collected by the police during the investigation, and if found on the evidentiary materials collected by the police any other offence has been made out, then in that case to proceed against the accused there under.

4. This criminal revision has no merit and, accordingly, stands dismissed. Interim order, if any, stands vacated.

5. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

**( Ashim Kumar Roy, J. )**