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HABIB IBRAHIM  
v.  
STATE OF RAJASTHAN  
(Criminal Appeal No. 994 of 2008)

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JUNE 13, 2008

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

*Foreigners Act, 1946: Ss 3 and 14:*

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*Sentencing – Arrest of a Pakistani resident for living in India illegally – FIR – Investigation – Trial Court found the accused guilty of committing the offence punishable u/ss. 3 and 14 of 1946 Act and sentenced him to undergo imprisonment for five years – Affirmed by High Court – Reduction in sentence – Held: Accused possessed no valid document to stay in India – Hence, there is no scope for interference with the judgment of the High Court.*

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Appellant, a resident of Pakistan, was arrested by the police allegedly for living in India illegally. An FIR was registered against him and after completing the investigation, charge sheet was filed by the police. The Chief Judicial Magistrate found him guilty of committing the offences punishable u/s. 3 r/w S.14 of the Foreigners Act, 1946 and sentenced him to undergo rigorous imprisonment for 5 years. Conviction and sentence of the appellant was upheld by the High Court. Hence, the present appeal.

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Appellant contended that since he has already suffered custody for more than four years and six months, the sentence may be reduced.

Dismissing the appeal, the Court

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HELD: It was rightly noted by the Courts below that the appellant had been issued a transit visa that too for

Nepal for a period of six months. There was no valid document in possession of the appellant to stay in India. Therefore, S.3 read with S.14 of the Act have been rightly applied. Hence, the conviction cannot be faulted. So far as the sentence is concerned, considering the large number of infiltrators come to India without valid document, there is need for imposing stricter sentence. The reasons given by the appellant to justify his presence in India have hardly any substance. Appellant's feeble plea that he did not know that he is required to be in possession of valid document is without substance. Otherwise, he would not have obtained any transit visa for Nepal. Hence, there is no scope for interference in the appeal. (Paras – 7 and 8) [1184-E-H, 1185-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 994 of 2008

From the final Judgment and Order dated 21.11.2007 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in Crl. Revision No. 1201 of 2006

Dinesh Kumar Garg, Abhishek Garg, B.S. Billowria and D.K. Gupta for the Appellant.

Naveen Kumar Singh and Aruneshwar Kumar Gupta for the Respondents.

The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Learned Single Judge of the Rajasthan High Court, Jaipur Bench, upholding the conviction of the appellant for offence punishable under Section 3 read with Section 14 of the Foreigners Act, 1946 (in short the 'Act') and sentence to five years rigorous imprisonment with fine of Rs.25,000/- with default stipulation. Two other persons faced trial alongwith the appellant for offences punishable under Section 13 read with Section 14 of the Act. While co-accused Bagwan Sahai Sain acquitted, the other ac-

A cused Smt. Sunita alias Sonu alias Nagma convicted and sentenced to undergo simple imprisonment for three years and to pay fine of Rs.5,000/- with default stipulation.

3. Background facts in a nutshell are as follows:

B SHO Vidhadhar Nagar, Jaipur acting upon the information of informant on 13.1.2004, the then SHO Richpal Singh alongwith Superintendent of Police reached at Vidhyadhar Nagar bus stand No. 15 and verified the information given that the persons accompanying with Bhagwan Sahai Sain R/o Village Aakedadugar is a Pakistani resident who is living in India illegally. Thereafter at about 8.15 am he reached at Bus stand C No. 1t alongwith two witnesses. He found one person with D Bhagwan Sahai. Upon inquiry, he told his name to be Habib Ibrahim, son of Ibrahim Rahamtullah R/o Gali No. 3 Mullah Allah Dadlen Gobol Road, Liyari, Karachi, Pakistan. The documents E authorizing stay in India were demanded from Habib Ibrahim and he was asked the reasons for coming to India. He did not give any satisfactory answer. On the basis of suspicion he was searched in the presence of witnesses and a Pakistani passport was recovered from his pocket and tourist visa for six months F for Nepal, telephone bills were recovered from him. Bhagwan Sahai and Smt. Sunita @Sonu@Nagma were also arrested as they were helping Habib Ibrahim who was living in Indian G illegally. FIR No. 14/2004 was registered and investigation started. During investigation a spot map was prepared and the statement of accused were recorded and they were arrested. On the information of accused Habib Ibrahim, Nepalese currency, a reliance mobile of Nokia company and tickets of airlines, documents and cash relating to Bangladesh and Indian H Nagar which were seized and produced before the court. After complication of investigation, charge sheet was filed.

4. The learned Chief Judicial Magistrate, Jaipur found that the accusations against the accused appellants were fully established. Accordingly conviction was recorded and sentence

was imposed. In the Criminal revision filed before the High Court, stand taken was that he had come to meet his wife and children who were residing at Jaipur. It was further submitted that since the accused had suffered custody for more than three years and nine months, a liberal view has to be taken. The State opposed the stand contending that the appellant knowingly and willfully came and stayed in India without any passport. Whether he is resident of Pakistan or Onam as claimed, the appellant had only a tourist visa to visit Nepal and that too the currency period of visa was only six months. Long thereafter the appellant was found in India without a passport.

5. The High Court found that the conviction was well founded and there was no scope for reducing the sentence.

6. The stand taken by the parties before the High Court was reiterated. It is submitted by learned counsel for the appellant that he has already suffered custody for more than four years and six months and the sentence should be reduced Sections 3, 13 and 14 of the Act reads as follows:

“Section 3: Power to make orders (1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect of any particular foreigner or any prescribed class or description of foreigner, for prohibiting regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this Section may provide that the foreigner-

(a) shall not enter India or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from India or shall depart only at such times and by such route and from such port or

- A place and subject to the observance of such conditions on departure as may be prescribed;
- (c) shall not remain in India or in any prescribed area therein;
- B (cc) shall, if he has been required by order under this Section not remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal.
- (d) shall remove himself to, and remain in, such area in India as may be prescribed;
- C (e) shall comply with such conditions as may be prescribed or specified-
- D i. requiring him to reside in a particular place;
- ii. imposing any restrictions on his movements;
- iii. requiring him to furnish such proof of his identify and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;
- E iv. requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified'
- F v. requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;
- G vi. prohibiting him from association with persons of a prescribed or specified description;
- vii. prohibiting him from engaging in activities of a prescribed or specified description;
- H viii. prohibiting him from using or possessing

- prescribed or specified articles; A
- ix. otherwise regulating his conduct in any such particular as may be prescribed or specified;
- (f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions; B
- (g) shall be arrested and detained or confined; and may make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect of this Act. C
3. Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) [for class (f) of sub section (2)] D
- Section 13. Attempts etc., to contravene the provisions of this Act, etc. – (1) Any person who attempts to contravene or abets or attempts to abet or does any act preparatory to a contravention of the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act. E
- (2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of that Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that contravention. F
- (3) The master of any vessel or the pilot of any aircraft, H

A as the case may be, by means of which any foreigner  
enters or leaves India in contravention of any order  
made under or direction given in pursuance of,  
Section 3 shall, unless he proves that he exercised  
all due diligence to prevent the said contravention,  
B be deemed to have contravened this Act.

14. Penalties – If any persons contravenes the provisions  
of this Act or of any order made thereunder, or any  
direction given in pursuance of this Act or such order, he  
shall be punished with imprisonment for a term which may  
extend to five years and shall also be liable to fine; and if  
C such person 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  
D why such penalty should not be paid.”

7. Prosecution evidence clearly establishes that the ap-  
pellant did not have passport to stay in India. This fact is not  
disputed by the appellant. The only plea to justify his presence  
was that he had come to visit his wife and children. As rightly  
E noted by the courts below, the appellant had been issued a transit  
visa that too for Nepal for a period of six months. There was no  
valid document in possession of the appellant to stay in India.  
The only plea to justify his presence was that he had come to  
visit his wife and children. That does not give any right to him to  
F stay illegally in India. As rightly noted by the courts below, the  
appellant had been issued a transit visa that too for Nepal for a  
period of six months. There was no valid document in posses-  
sion of the appellant to stay in India. Therefore Section 3 read  
with Section 14 of the Act have been rightly applied. The con-  
G viction therefore cannot be faulted. So far as the sentence is  
concerned, considering the large number of infiltrators come to  
India without valid document, there is need for imposing stricter  
sentence. The reasons given by the appellant to justify his pres-  
ence in India have hardly any substance. Appellant's feeble plea  
H that he did not know that he is required to be in possession of

valid document is without substance. Otherwise, he would not have obtained any transit visa for Nepal. A

8. Above being the position there is no scope for interference in the appeal.

9. The appeal is accordingly dismissed. B

S.K.S. Appeal dismissed