

GR No. 976 of 2022

Reg No.2278 of 2022

Order dt. 19-07-2022

The record is taken up for passing necessary order in respect of a petition dated 19/07/2022 by the ld. public prosecutor praying that the charge may be framed against the accused persons in respect of proper penal provision.

Heard both sides. Perused the instant petition and the materials of record and the CD. Considered.

The submission of the ld prosecution in brief is that the Investigating Officer of this case has submitted charge sheet against the accused person namely Sarma Sikhdar u/sec.14 Foreigners Act. The aother accused has been charge sheeted in respect of section 12 of PP Act read with section 188 of I.P.C. But there is sufficient materials in the CD to frame charges against the said accused persons u/sec.14A (b) of the Foreigners Act on the ground that they were illegally crossing the IB from Bangladesh to India. Hence, it is prayed that charge may be framed against the said accused persons in respect of appropriate penal provision.

The ld. Defence counsel raises objection on the ground that the insatnt petition on behalf of the prosecution is bad in law. It is contended, that the provision u/sec.14 A Foreigners act is applicable only when the alleged offence is committed in the restricted area as notified by the Government, but the place of occurrence is within the area of Swarupnagar P.S, Basirhat sub-division, in district of North 24 Parganas, which is not a restricted area. It is submitted that the charge sheet has been submitted in proper sections, so the instant petition may be rejected.

The gist of FIR case is that the accused persons namely Sarma Sikhdar and another on 17-03-2022 at around 19.00 hrs have been arrested and detained by the on duty BSF personnels when they were moving towards India from Bangladesh side by illegally crossing International Border (henceforth shall be referred as IB) at Tarali (BOP) under Swarupnagar P.S, Basirhat sub-division, in district of North 24 Parganas. It is stated that on being asked by the BSF personnels the accused persons have failed to produce any valid documents. Hence this complaint has been lodged. Initially the FIR was registered under sec.14 of the Foreigners Act.

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Thereafter on completion of investigation and also further investigation the charge sheet lastly has been filed in respect of sec.14 Foreifners Act (hereinafter shall be referred as ‘F Act’) and cognizance is taken accordingly. Then the case is transferred to this court of ld. ACJM for trial. During pendency of trial some of the accused persons has filed a petition to plead guilty at the time of framing of charge. The Ld APP also files the instant petition at that time. The submission of the prosecution and counter submission by the defence have already been narrated above.

Be it mentioned here that the police report is submitted in respect of sec.14 F Act without specifying any particular clause. The said section 14 starts with the heading “penalty for contravention of provisions of the Act etc,” Three different types of offences are classified in the clauses (a), (b) and (c) of the sec.14 F Act. As per this provision *whoever-- (a) remains in any area in India for a period exceeding the period for which the visa was issued to him; (b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder; (c) contravenes the povisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for whih no specifi punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine;”*

It may be put in tabular form for the purpose of convenience and brevity:

Sec.14 Foreigners Act

Penal Provision	Nature of offence/Definition	Puishment
14 (a)	<i>Remains in India exceeding the period granted in his VISA</i>	Imprisonment for a term which may extended to five years and also fine.
14 (b)	Dose any act in <i>violtion of the onditions of the valid VISA</i>	
14 (c)	<i>Contravenes any provision/order</i> made under this Act Or <i>Contravenes any order under this Act for which no specific punishment is prescribed in this Act.</i>	

On plain reading of the aforesaid provision it can be said that the cl (a) and (b) of the sec.14 relates to offences when a person initially enter into India with valid visa, but subsequently does overstay after expiry of the period granted therein, or violates any condition of visa. So these two types of offences do not match with allegaion in the present FIR.

Now comes the cl (c) of the sec.14 Foreigners Act. It has two parts as shown in the above table. The first part is general in nature, that is to say, any type of contavention of the provisions/orders of this Act is punishable under this provision. In other words no specific offence is defined in this clause; whereas the second part of clause (c) is residuary in nature, which is applicble for the contravetion of any provision/order in the Act for which no specific punishment has been prescribed therein.

In this context it is to be kept in mind that as per settled principle of law when any offence is specifically defined and clasified in any statute, such offence must be put in that category, and not in the general and/or residuary group. The allegation in this case relates to entering and staying in the territory of India without valid documents in respect of accused persons.

The ld. Prosecutor submits that the aforesaid misdeed on the part of the accused persons can aptly be placed in the category of sec.14A cl(b) F Act. On this point the ld. Defence counsel submits that the sec.14A is applicable only when the alleged act is committed in the area which is notified by the Government as 'Restricted Area', but the area within Basirhat Police District/the district of North 24 is not such type of restricted area, so the aforesaid provision could not be attracted in the present case. In this regard the ld. Counsel for the accused persons draws the attention of this court to the heading of the provision u/sec.14A F Act.

Now let the discussion be directed to the heading of the section 14A Foreigners Act. The said heading read as... 'Penalty for entry into restricted areas, etc.' The ld. APP hammers on the word 'etc' in the aforesaid sentence. In fact the word 'et-cet-era' or 'etc' in abbreviated form, means, as per dictionary, something which denotes that there are other things that could be mentioned or 'so on'. To put in a simple way the plain reading of the heading denotes that the secion does not end with 'restricted area', but there are other things.

Turning from the heading of the section when we enters into the contents of the provision, the thing becomes clear. The sec.14A lays down that “ *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 stay in any area in India without the valid documents requied 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 aos liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees;*”

The entire sec.14A of Foreigners Act may be shown in tabular form for sake of convenience and brevity:

Section 14 A of Foreigners Act

Penal Provision	Nature of offence/Definition	Punishment
14 A (a)	Enter into any area in India which is restrict ted ---- <i>without obtaining permit.</i>	Imprisonment which may extented to eight years but not less than two years & Fine which shall not be less than Rs.10000/- but which may extend to Rs.50000/-
14 A (b)	Enter into as stay any area in India ---- <i>without valid documents.</i>	

It may be seen that two different types of offences are defined in cl(a) and cl(b) of sec. 14A Foreigners Act. Keeping in mind the bare statutory provision as discussed above my considered view is that the the act of entering and staying in the any area without valid documents in India attracts the provision of cl(b) of sec. 14A, whereas entering in restricted area in India without obtaining permit, applies to the provision of cl(a) of sec.14 Foreigners Act. Thus the offence committed in the Basirhat Police District and district of North 24 Parganas, does fall in the category of offence as classified u/sec.14A (b) Foreigners Act, even though the area is not a restricted area.

Now both sides have referred some decisions in favour of their respective submissions. On persusal of these decisions it appears that in all the cases a similar issue arises, that is to say, an issue wheather sec.14A Of the Foreigners Act is applicable if an accused enters and stays any area in India, which is not notified as ‘restricted area’.

The prosecution firstly refers the decision passed by the Hon'ble High Court in the case of Samirul Mondal Suman -vs- State of West Bengal (August 21, 2014). In this decision the Hon'ble Court was pleased to hold the view that offence u/sec.14-A (b) Foreigners Act is committed if a foreigner enters or stay in India without valid documents, even if it is not a restricted area. Be it mentioned here that in this judgement an earlier decision of Hon'ble Calcutta High Court in the case of Tarikul vs State of West Bengal (2009) 1 C Cr LR (Cal) 571 has been discussed by the Hon'ble Court. Simailr view is taken by the Hon'ble High Court Calcutta in another case cited in CRR 4076 of 2012 (supra).

The ld. Defence counsel, on the contrary refers a decision from CRR 3180 of 2007 (Sanyashi Mondal vs State of West Bengal) where it has been held by the Hon'ble Court that the specific language of sec.14A clearly indicates that any entry in the restricted area without valid documents shall attract the penal provision as prescribed under sec.14A of the Act. In this regard I would like to refer a more recent decision passed in a case of Belayet @ Belal Hossain & Anr vs State of West Bengal (08/04/2019). In this decision also a conviction u/sec.14A(b) of Foreigners Act in respect of an offence which was committed in non-notified area or the place which is not restricted area, was affirmed by the Hon'ble Calcutta High Court.

The ld defence counsel in this regard submits that the decisions referred on behalf of the prosecution is not applicable in the present case, on the ground that in this case the charge sheet has been submitted in respect of 14 Foreigners Act. However, the court has ample discretion to frame charge u/sec.211 CrPC other than the provisions mentioned in the charge sheet, or to add/alter charges u/sec.216 CrPC at the time of trial. So I am not inclined to accept the submission of the ld.defence counsel.

On consideration of all the above citations I humbly submit that as per settled principle of jurisprudence the latter judgements always prevails over the earlier decisions. Therefore in view of the decisions passed in the year 2014 and 2109 as discussed above I have no hesitation to hold that the alleged offence committed by the present accused persons attracts the provision u/sec.14A (b) of the Foreigners Act. In my opinion had it been the position that the sec.14A only relates to the offence committed in restricted area, then what is the necessity of the statute to include the cl(b) in the said provision? I rather do opine that when reading harmoniously the provision u/sec.14A F Act lays

down two different situations one relates to restricted area (cl.a) and another relates to any area in India (cl.b). Otherwise the said section would ends with the clause(a) only.

In view of the above findings it can be asserted that there is sufficient materials to frame charge against the accused person u/sec.14A (b) Foreigners Act. But the maximum punishment which can be awarded for these offences is imprisonment which may extend to eight yeras, hence it exceeds the limit of maximum punishment, which a court of magistrate can sentence, so in my view the case is triable exclusively by the court of session. Under this circumstances I am of the view that in stead of framing charge, the case is required to be committed before the Court of ld. Sessions Judge.

The petition dated 20/07/2022 by the ld APP is hereby disposed off.

Ler the copy of this order be sent to the O.C Swarupnagar P.S, SDPO concerned and also to the SP Basirhat Police District for information.

To 02-08-2022 for production and appearance.

Concerned authority of correctional home is directed to produce the accused before Ld. A.D.J. Basirhat on the date fixed.

D/C by me.

A.C.J.M, Basirhat.

*Addl. Chief Judicial Magistrate,
Basirhat*