

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : FOREIGNERS ACT 1946

CrI.M.C. 127/2004 and CrI.M.A. 479/2004

Date of decision: 06.05.2009

SOM CHAI SRI CHAWLA

...PETITIONER

Through: Mr.Kawal Nain, Advocate

Versus

STATE

...RESPONDENT

Through: Mr.Navin Sharma, APP

MOOL CHAND GARG, J. (ORAL)

1. The petitioner in this case was challaned under Section 7 read with Section 14 of the Foreigners Act 1946 inasmuch as the petitioner furnished incorrect information about his nationality while staying at Hotel Hyatt, New Delhi by claiming that he was an Indian National while admittedly he is a Thai national. The prosecution after investigating the matter and after collecting evidence including the registration card signed by the petitioner himself where his nationality was shown as 'Indian' and his local address was also given, and after recording the statement of the care taker, i.e., Inder Sachdeva of the property where the petitioner whose real name is Jaswant Singh had been residing, i.e., 14 A/62, WEA, Karol Bagh, Delhi.

2. Section 7 of the Act reads as under:-

Section 7. Obligation of hotel keepers and others to furnish particulars. — (1) It shall be the duty of the keeper of any premises whether furnished or unfurnished where lodging or sleeping accommodation is provided for reward, to submit to such person and in such manner such information in respect of foreigners accommodation in such premises, as may be prescribed.

Explanation. — The information referred to in this sub-section may relate to all or any of the foreigners accommodated at such premises and may be required to be submitted periodically or at any specific time or occasion.

(2) Every person accommodated in any such premises shall furnish to the keeper thereof a statement containing such particulars as may be required by the keeper for the purpose of furnishing the information referred to in sub-section (1).

(3) The keeper of every such premises shall maintain a record of the information furnished by him under sub-section (1) and of the information obtained by him under sub-section (2) and such record shall be maintained in such manner and preserved for such period as may be prescribed, and shall at

all times be open to inspection by any police officer or by a person authorised in this behalf by the District Magistrate.

(4) If in any area prescribed in this behalf the prescribed authority by notice published in such manner as may in the opinion of the authority be best adapted for informing the persons concerned so directs, it shall be the duty of every person occupying or having under this control any residential premises to submit to such person and in such manner such information in respect of foreigners accommodated in such premises as may be specified; and the provisions of sub-section (2) shall apply to every person accommodated in any such premises.

3. Learned Metropolitan Magistrate vide her order dated 27th April, 2001, detailed the evidence of the prosecution while framing the charge, which is reproduced herein:-

“I have perused the material on record (not legible) it is apparent from the record that the address given on the gold passport is of Thailand yet the registration card of Hayat Regency show the nationality of accused as an Indian and his residence as 14A/62, WEA Karol Bagh, from which it is apparent that this can only be on the basis of the information provided by the accused. This fact is also apparent from the statement of one Inder S Achdeva who is the caretaker of the property of Jaswant Singh @ Som Chai Sh.Chawla of the Karol Bagh address. The disembarkation card of the accused shows that the nationality of the accused is Thai but the address is India as Holiday Inn in 1994. The registration card of the Hayat Regency again shows the nationality of the accused as Indian. Further, the register maintained by the Hayat Regency Hotel as prescribed under the public entertainment i.e rule regulation 32 for keeping place in Delhi again shows the nationality of the accused as Indian. The various immigration cards of the accused and his gold card shows his nationality as Thai.

Prima facie it is apparent from the material on record that the accused had furnish incorrect information with regard to the nationality in the record of the hotel. At this stage the aspect of men-rea is not required to be look into as it is the person concerned who known best as to why this information has been received. The provisions of the Section 7 are very clear. There is a strict liability upon the accused to furnish to the keeper a statement containing such particulars as required as per the provision of Section 7 clause I of the F.Act. The offence alleged of is a strict liability offence. The provision of registration of Foreign (exemption) order No.1957 do not applied to the present accused.

At this stage, I do not find any ground to discharge the accused. Hence I hereby hold that charge u/s 7/14 F.Act is made against the accused.

Be listed for framing of the charges on 29.5.2001.”

4. The petitioner then approached the Additional Sessions Judge by filing a revision u/s 397 of Code of Criminal Procedure which was dismissed vide impugned order dated 17.09.2003. The learned Additional Sessions Judge also referred to material collected on record and made the following observations in para 6 of the impugned judgment:-

6. It is not in dispute that the petitioner is a Thai resident and not an Indian National. A perusal of registration card dated 26.2.1994 signed by the petitioner at Hotel Hyatt New Delhi shows that ‘Indian’ has been written against the column of nationality and the address given is 14A/62 WEA Karol Bagh. Admittedly this registration card bears signature of the petitioner. A perusal of registration card filled at Hyatt Regency on 11.11.94 shows that ‘India’ has been written against the column of nationality. Admittedly this document also bears signature of the petitioner. In registration card dated 12.1.1995 signed at Hotel Hyatt Regency on 28.2.95 ‘India’ has been

written against the columns Origin and nationality. In registration card filled at Hotel Hyatt Regency on 28.2.95 'India' has been written against the column of nationality. In registration card filled at Hotel Hyatt Regency on 16/12/94 'India' has been written against the column of nationality. Admittedly all these registration cards bear signature of the petitioner.

5. Section 7 of the Foreigner Act, 1946 mandates the petitioner to give correct information about his identity including his nationality to the care taker of the premises where he wanted to stay i. e. Hotel Hyatt Regency in this case. Thus, I do not find any infirmity in the orders passed by the learned Additional Sessions Judge.

6. Even otherwise, the present petition which is in the nature of a second revision is barred by virtue of the provisions contained under Section 397 (3) Cr.P.C. The petitioner has also not been able to make out any case which requires interference by this Court even if powers under Section 482 Cr.P.C. could have been invoked. The law in this regard is well-settled. Reference can be made to a judgment of the Apex Court in the case of Kailash Verma Vs. Punjab State Civil Supplies Corporation & Anr. (2005) 2 SCC 571., wherein it is held,

5. It may also be noticed that this Court in Rajathi v. C. Ganesan (1999) 6 SCC 326 said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

7. The issue has also been discussed threadbare by this Court in CrI.M.C.204/2004 titled as Chander Bose Vs. Ved Prakash & Ors. decided on 2nd February, 2009 and CrI.M.C.4024/2008 titled as Gajraj Singh Tomar Vs. State and Ors. decided on 2nd February, 2009.

8. Thus, the petition filed by the petitioner is dismissed. Interim orders stand vacated. Petitioner now to appear before the Trial court on 2.7.2009. Copy of order be sent to the Trial Court for information who would now proceed with the case in accordance with law.

Sd./-
MOOL CHAND GARG,J

MAY 06, 2009