

Bailly Gui Landry vs The State Of Telangana on 22 June, 2021

Equivalent citations: AIRONLINE 2021 TEL 82

Author: K. Lakshman

Bench: K. Lakshman

* THE HONOURABLE SRI JUSTICE K.LAKSHMAN

+ CRIMINAL PETITION NOS.4396 AND 4400 OF 2021

% Dated 22.06.2021

CRIMINAL PETITION NOS.4396 AND 4400 OF 2021

Between:

Bailly Gui Landry ...Petitioner/accused

AND

\$ The State of Telangana, rep. by
Its Public Prosecutor, High Court of Telangana
Through Cyber Crime, Cyberabad. ...Respondent

! Counsel for the Petitioner: P.Shashi kiran

^ Counsel for the Respondent: Public Prosecutor,
State of Telangana.

< Gist :

> Head Note :

? Cases Referred : -Nil-

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION Nos.4396 AND 4400 OF 2021
COMMON ORDER:

Mr.Bailly Gui Landry, petitioner, has filed these two Criminal Petitions under Section - 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the order of deportation in the judgments both dated 06.05.2021 in C.C.No.36 of 2020 and C.C.No.27 of 2020 passed by the I Additional Junior Civil Judge-cum-IX Additional Metropolitan Magistrate, Cyberabad at Kukatpally and also release him from custody of Cyber Crime, Cyberabad immediately.

2. Since the petitioner is common, the issue involved is common and the contentions raised by the parties are also common, both the Criminal petitions are heard together and decided by this common order.

3. Heard Sri P.Shashi Kiran, learned counsel for the petitioner and learned Public Prosecutor for State and perused the record.

4. In both the Criminal Petitions, the order of deportation of the petitioner in the judgments in C.C.No.27 of 2020 and 36 of 2020 both dated 06.05.2020 is under challenge.

5. Sri P.Shashi Kiran, learned counsel for the petitioner would submit that the Magistrate while dealing with the Calendar Case and vide pronouncing judgment under Section 248 of Cr.P.C. is not having power to order deportation of any or foreign citizen for any kind of violation.

6. According to him, there is procedure prescribed under the Foreigners Act, 1946 (for short, 'the Act') for deportation of a foreign citizen for violation of the provisions of the said Act, but learned Magistrate is not having power to order deportation of any foreign citizen for violation of the provisions of the Act.

7. A perusal of the judgments in both the C.C.Nos.27 of 2020 and 36 of 2020 would reveal that the petitioner belongs to Ivory Coast. He is having passport of the said country bearing passport No.17AP188083 valid till 30.10.2022. He was holding Indian visa which was valid till 07.02.2020. He came to India on employment visa. He has involved in two cases i.e. Cr.No.198 of 2019 and Cr.No.137 of 2020 for the offences under Sections 417,419 and 420 IPC and Section 66 © and (D) of I.T.Act, 2000. The allegations in both the said crimes are almost same. He has induced the defacto-complainants herein saying that he will provide a job, he has taken money and cheated them.

8. After completion of investigation, the Investigating Officer has filed charge sheets in both the above said crimes and the same were taken on file as C.C.No.27 of 2020 and 36 of 2020. After conducting trial, learned I Additional Junior Civil Judge-cum-IX Additional Metropolitan Magistrate, Cyberabad at Kukatpally, has acquitted the petitioner herein in both the above said Calendar Cases, vide judgments both dated 06.05.2021. While acquitting the petitioner, learned

Magistrate directed the jail authorities to release the accused forthwith, if he is not required in any other cases, he may be deported immediately to his native country, if there are no other cases were pending against him in India.

9. The petitioner, aggrieved by the order of his deportation in the said judgments both dated 06.05.2021, preferred these two Criminal Petitions for quashing the same.

10. In view of the said contention of the petitioner, it is relevant to refer relevant provisions of the Cr.P.C. Chapter XIX of the Cr.P.C. deals with trial of warrant cases by Magistrates. Section 248 of the Cr.P.C. deals with the acquittal or conviction. Therefore, as per the said proviso, the trial Court has to either acquit or convict the accused by giving reasons, after conducting full-fledged trial. In the present case, learned Magistrate, after conducting full fledged trial, acquitted the petitioner herein in the Calendar Cases vide judgments both dated 06.05.2021. But in the said judgments, learned Magistrate has ordered for deporting the petitioner immediately to his native country.

11. A perusal of both the judgments would reveal that learned Magistrate did not give any reasons for ordering deportation of the petitioner. There is no reason mentioned by the learned Magistrate in the judgments both dated 06.05.2021 that the petitioner herein a foreign citizen staying in India in contravention of the Act. As discussed above, learned Magistrate is not having power to order deportation of any foreign citizen even in case of violation of the provisions of the Act or otherwise. Learned Magistrate has to confine his findings with regard to either acquittal or conviction of accused therein under Section 248 of the Cr.P.C., Learned Magistrate is not having power to order deportation of any foreign citizen for any violation. Therefore, in view of the above said discussion, judgments both dated 06.05.2021 in C.C.No.27 of 2020 and C.C.No.30 of 2020 ordering deportation of the petitioner/accused, an Ivory Coast National, is illegal and contrary to the provisions of Cr.P.C. It is also relevant to note that the Code of Criminal Procedure, does not permit learned Magistrate to pass deportation order while dealing with the above Calendar Cases. Therefore, to the extent of deportation order of the petitioner passed in C.C.No.27 of 2020 and C.C.No.30 of 2020 both dated 06.05.2021, is quashed.

12. It is relevant to note that learned Public Prosecutor has placed written instructions, submitted by the Sub Inspector of Police, Cyber Crimes Police Station, Cyberabad Commissionerate, dated 15.06.2021 along with certain documents. In the said written instructions, it is specifically mentioned that after obtaining a copy of the judgment, the Deputy Commissioner of police, Crimes, Cyberabad Commissionerate addressed a letter to the Foreigners Regional Registration Officer (FRRO), Bureau of Immigration (BOI), Government of India (GOI), Shamshabad, Hyderabad on 17.05.2021 with a request to issue deportation and also movement restriction orders against the petitioner herein, a foreign national. Pursuant to the said request, the FRRO, vide his order dated 18.05.2021 directed the petitioner herein, a foreign national, not to move out of the premises of CCS, Hyderabad, as there is likelihood of he may go underground or indulge in undesirable activities which are detrimental to national security. It is also further mentioned that Cyber Crimes Police have booked tickets for journey of the petitioner herein for 02.06.2021 by Qatar Airways. But Qatar Airways office sent a mail to the Cyber Crimes Police stating that the customers traveling from India are not allowed to enter LOS. Due to the said reasons, the petitioner has not been deported yet. It is

also further mentioned in the said written instructions, dated 15.06.2021 that after getting permission from the concerned authorities, the petitioner will be deported to his country. It is also further mentioned that the visa of the petitioner expired on 07.02.2020 itself and he is staying in this country illegally. The Sub Inspector of Police, Cyber Crimes Police Station, Cyberabad Commissionerate, has also filed copies of the visa, passport, letter addressed by the Deputy Commissioner, CCS, Cyberabad, the order of the FRRO dated 18.05.2021 issued by the FRRO, notice received from Qatar Airways and tickets along with his written instructions in proof of his submissions mentioned in the written instructions, dated 15.06.2021. In view of the same, it is relevant to mention the procedure laid down under the Act. Section 3 of the Act deals with the power to make orders. As per Section 3(2)(c) of the Act, a foreigner shall not remain in India or in any prescribed area therein and as per Section 3(2)(e) of the Act a foreigner shall comply with such conditions as may be prescribed or specified as under:-

- (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 identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;
- (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;
- (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;
- (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;
- (viii) prohibiting him from using or possessing prescribed or specified articles;
- (ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

13. Section 14 of the Act deals with penalty for contravention of provisions of the Act, which is also relevant to decide the lis involved in the present Criminal Petitions extracted below:-

14. Penalty for contravention of provisions of the Act, etc.-- 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 provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific 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; and if he 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 why such penalty should not be paid by him.

Explanation.--For the purposes of this section, the expression "visa" shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (entry into India) Act, 1920 (34 of 1920)."

Thus, The Act, is a special enactment and procedure for deportation of a foreign national is specifically mentioned therein.

14. It is also relevant to note that the FRRO in its order No.4/FRRO/HYD/LR/MRO/2021, dated 18.05.2021 specifically mentioned that in pursuance of the Government of India Gazette Notification S.O.No.324 (E) by Sub Rule (1) of Rule 3 of the Registration of Foreigners Rules, 1992 and in exercise of powers conferred by Section 3(2)© of the Act. impose restriction under para-11(2) of the Foreigners Order, 1948 on the petitioner herein, an Ivory Coast national who has involved in Cr.No.198 of 2019 and Cr.No.137 of 2020 of P.S.Cyber Crimes, Cyberabad not to move out of the premises of CCS, Hyderabad as there is likelihood that he may go underground or indulge in undesirable activities and detrimental to national security. Non-compliance of the said order shall render him liable for prosecution under section 14 of the Act. The FRRO has passed the said order dated 18.05.2021, on the request made by the Joint Commissioner of Police, Crimes, Cyberabad Commissionerate dated 17.05.2021. The said order dated 18.05.2021 is in force.

15. As stated above, the Cyber Crime Police have also booked tickets to the petitioner to send him to his native place Ivory Coast through Qatar Airways, on 22.06.2021 but due to the present COVID-19 pandemic situation on the request of the Qatar Airways, the deportation of the petitioner herein could not happen. In the written instructions, it is specifically mentioned that after getting permission from the concerned authorities, the petitioner will be deported to his country. Thus, there is no dispute that the visa granted to the petitioner was expired on 07.02.2020 itself. A perusal of a copy of visa filed by the Sub Inspector of Police, Cyber Crimes Police Station would reveal the said fact. It is also not in dispute that the petitioner is having Ivory Coast passport bearing No.17AP18083 valid till 30.10.2022. Thus, deportation of a foreign national for any violation is

specifically mentioned in the Act and Regulations mentioned therein. The Police have already invoked said procedure and an order dated 18.05.2021 was passed by the FRRO. The efforts are being made to send the petitioner to his native place.

16. In view of the above said discussion, the prayer sought by the petitioner to release him from the custody of Cyber Crimes Police, Cyberabad immediately, is rejected. If at all, the petitioner is having any grievance, he has to challenge the order dated 18.05.2021 through which the FRRO has directed him not to move out of premises of CCS Hyderabad on the ground of national security. However, the Cyber Crimes Police, Cyberabad Commissionerate and the FRRO and civil authorities Hyderabad, shall make an endeavour to deport the petitioner to his native place as early as possible after getting permission from the concerned authority.

17. With the above said directions, these Criminal Petitions are disposed of.

As a sequel, miscellaneous petitions, if any, pending in these Criminal Petitions shall stand closed.

_____ K. LAKSHMAN, J Date:22.06.2021.

Note: L.R. copy to be marked.

b/o.vvr