

Jonathan Baud Vs. State of Kerala

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Court : Kerala

Decided On : Dec-02-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Jonathan Baud

Respondent : State of Kerala

Judgement :

CR IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID TUESDAY, THE 2D DAY OF DECEMBER 2014 11TH AGRAHAYANA, 1936 CrI.MC.No. 4720 of 2014 ----- CRIME NO. 1461/2014 OF VALAPPAD POLICE STATION, TRISSUR PETITIONER/ACCUSED: ----- JONATHAN BAUD, AGED 24 YEARS, RUE DU PRE-JEROME, GENEVA, SWITZERLAND. BY ADVS.SRI.S.RAMESH BABU (SR.) SRI.P.RAVINDRA NATH SRI.N.KRISHNA PRASAD RESPONDENTS/COMPLAINANT: ----- 1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. THE CIRCLE INSPECTOR OF POLICE VALAPPAD POLICE STATION, VALAPPAD, THRISSUR - 680 007. BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P R1 & 2 BY DIRECTOR GENERAL OF PROSECUTION SRI.ASIF ALI THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 0212-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 4720

of 2014 ----- APPENDIX PETITIONER'S ANNEXURES:
----- ANNEXURE-1. COPY OF THE FIR NO.1461/2014 VALAPPAD
POLICE STATION. ANNEXURE-2. COPY OF THE CERTIFICATE ISSUED BY
PROF.MATTHIEW LEIM GRUMBER DATED317/2014. ANNEXURE-3. COPY OF
THE CERTIFICATE DATED317/2014 ISSUED BY DR. CHARLES MAG NIN.
ANNEXURE-4.COPY OF THE CERTIFICATE DATED18/2014 ISSUED BY
PROF.MARY O' SULLIVAN. ANNEXURE-5. COPY OF THE LETTER ISSUED BY
THE MAYOR OF GENEVA DATED48/2014. ANNEXURE-5. COPY OF THE
REQUEST BY THE2D RESPONDENT. ANNEXURE-7. COPY OF THE REPORT
SUBMITTED BY THE POLICE BEFORE THE LEARNED MAGISTRATE COURT,
KODUNGALLOR WHILE RETURNING THE CUSTODY OF THE PETITIONER
DATED28/2014. ANNEXURE-8. COPY OF THE BAIL

ORDER

DATED78/2014. ANNEXURES8A): COPY OF THE REMAND REPORT
DATED297.2014 SUBMITTED BEFORE THE LEARNED MAGISTRATE.
ANNEXURE A9: COPY OF THE FINAL REPORT. RESPONDENTS'
ANNEXURES: ----- NIL //TRUE COPY// P.A TO JUDGE ab CR
P.UBAID, J.

----- CrI.M.C No.4720 of 2014
----- Dated this the 2nd day of December, 2014

ORDER

The petitioner herein is a citizen of Switzerland. He is being prosecuted at the instance of the Valappad Police, on the allegation that he attended a meeting in violation of the conditions of his Visa. He came here on a tourist visa, on 1.7.2014. On 28.7.2014, on his way, he happened to notice a condolence meeting at Triprayar. Probably out of curiosity he stepped into the meeting place and addressed the gathering voluntarily without being invited by anybody. He just introduced himself, who he is, and he also appreciated the greatness and sanctity of our democratic polity governed by Rule of Law. But our police thought that he is a radical, because the meeting which he addressed was in fact a condolence meeting organized by a political faction, which is said to be a radical group. He

was arrested on the spot, and the Sub Inspector of Police registered a crime against him under Sections 14(b) of the Foreigners Act, Crl.M.C No.4720 of 2014 2 1946 (for short 'the Act'). In rocket speed the investigation proceeded, and within no time the police submitted final report against him under Section 14(b) of the Foreigners Act 1946. Section 14 of the Foreigners Act reads as follows:

"4. 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." 2. The specific allegation against him in the final report, under Section 14(b) of the Act, is that he attended a public meeting here in violation of the conditions of the Visa issued to him. The said prosecution is sought to be quashed under Section 482 of the Code of Criminal Procedure, on the ground that such a prosecution cannot be legally sustained, Crl.M.C No.4720 of 2014 3 because attending a meeting by itself will not amount to the offence punishable under Section 14(b) of the Act.

3. At the very outset I required the learned Director General of Prosecution to tell the court what condition of Visa was in fact violated by the petitioner. The learned Director General of Prosecution drew the attention of this Court to the copy of the Visa appended to the passport of the petitioner. The conditions in the said Visa are as follows: "Non- extendable and non-convertible, Not valid for prohibited/restricted and contonment areas". The prosecution is not able to say whether the Visa contains any other condition. The unfortunate foreign national had to be in jail as remand prisoner for some time. However, now he is on bail. It requires to be examined thoroughly whether attending a meeting by itself will

attract a prosecution under Section 14(b) of the Act. When the Court repeatedly asked the prosecution what exactly is the condition violated by the accused, the prosecution repeatedly answered that he attended a meeting when the Visa issued to him does not authorise him or allow him to attend any such meeting. Copy of the Visa appended to the petitioner's passport does not contain any such condition that the tourist shall not Crl.M.C No.4720 of 2014 4 attend any meeting in India. During arguments the learned Director General of Prosecution further submitted that if not under Section 14(b) of the Act, the prosecution can well proceed under Section 5 of the Registration of Foreigners Act 1939. This section provides that any person who contravenes, or attempts to contravene, or fails to comply with, any provision of any rule made under the Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both. What is in fact made punishable under Section 5 of the Registration of Foreigners Act is violation of any Rule made by the Government under Section 3 of that Act. Section 3 of that Act provides the subjects on which Rules can be made by the Central Government. Such Rules may provide for (a) for requiring any foreigner entering, or being present in, India to report his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed; (b) for requiring any foreigner moving from one place to another place in India to report, on arrival at such other place, his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed; (c) for requiring any foreigner who is about to leave India to report the date of his intended departure and such other particulars as may be prescribed to such authority and within such period Crl.M.C No.4720 of 2014 5 before departure as may be prescribed; (d) for requiring any foreigner entering, being present in, or departing from India to produce, on demand by a prescribed authority, such proof of his identity as may be prescribed; (e) for requiring any person having the management of any hotel, boarding-house, sarai or any other premises of like nature to report the name of any foreigner residing therein or whatever duration, to a prescribed authority within such time and in such manner and with such particulars as may be prescribed; (f) for requiring any person having the management or control of any vessel or aircraft to furnish to a prescribed authority

such information as may be prescribed regarding any foreigner entering or intending to depart from, India, in such vessel or aircraft, and to furnish to such authority such assistance as may be necessary or prescribed for giving effect to this Act; (g) for providing for such other incidental or supplementary matters as may appear to the Central Government necessary or expedient for giving effect to this Act." 4. Attending any meeting is not seen prohibited anywhere under the Rules or under the Registration of Foreigners Act, 1939 or the Foreigners Act 1946.

5. Finding that the prosecution is in fact in confusion, the learned Director General of Prosecution further argued that in view of the definition of 'tourist' under Rule 2(j) of the Registration of Foreigners Rules 1992, the petitioner cannot Crl.M.C No.4720 of 2014 6 be considered as a tourist, and so he cannot be considered as a "tourist on valid visa". Tourist is defined as "a foreigner having no residence or occupation in India, whose stay in India does not ordinarily exceed six months, who has no other object in visiting India, than recreation, sightseeing or attending, in a representative capacity, meetings convened by the Government of India or International bodies or any other meeting or conference cleared by the Government of India." Rule 2(j) of the Registration of Foreigners Rules is not a penal provision at all. It only defines who a tourist is. The purport of this definition is to guide and tell the concerned authority as to who can be considered as a tourist, and also, when, or for what all purposes a tourist Visa can be issued. It is argued that if any tourist wants to attend any meeting, it must be a meeting convened by Government of India or any International Body. Rule 2(j) of the Rules only guides and tells the authority that if any foreign national wants to come to India for attending any "such" meeting in a representative capacity he can be issued a valid visa. The definition covers only such meetings convened by the Government of India or International Bodies.

6. We are proud that our constitution is the Crl.M.C No.4720 of 2014 7 greatest in the world. One important aspect which makes it the greatest is that "we" the people guarantee some fundamental rights to non-citizens also. Of course the precious freedoms of speech and expression, trade and commerce, travel in any part of India, etc. guaranteed under Article 19 are not available to foreigners. But

the very important fundamental rights guaranteed under Articles 14, 20 and 21 of the Constitution are available to non-citizens also. Our Constitution commands that foreign nationals coming here shall not be discriminated. They will have to be treated equally before the law, and their right to live will have to be honoured and protected. They shall not be prosecuted or convicted except for violation of any law in force in India. This is guaranteed under Article 20 of the Constitution. But it is quite unfortunate that when a foreign national came in India our police pounced on him with cynic suspicion that he is a radical.

7. The prosecution has no case anywhere in the prosecution records that the petitioner herein is a radical, or that he is a member of any radical group here or there. Every law has its spirit and objective. Application and enforcement of law without assimilating the spirit and without imbibing the CrI.M.C No.4720 of 2014 8 objective will deface the law enforcing machinery and the judicial system. It will also defile our democratic polity governed by rule of law. Finding a foreign national just addressing a meeting our police pounced on him on cynic suspicion that he is a radical. During the proceedings this Court directed the prosecution to produce the transcript copy of the speech made by him. The prosecution could not in fact produce a proper transcript. What is made available to the Court does not contain anything objectionable. He just addressed the meeting and introduced himself. We should thank him for having appreciated the sanctity and greatness of our democratic values, and the rights guaranteed by our Constitution. I fail to understand why, or on what material, or on what basis our police suspected that he is a radical. Just because he, out of curiosity, happened to address a condolence meeting organised by a political group, he cannot be treated as a radical, and he cannot be confined in jail as a radical. As a tourist in India he has every right to be treated equally with Indians and he has also the right to live here as guaranteed under Article 21 of the Constitution of India, so long as he continues here.

8. Coming back to Section 14(b) of the Foreigners CrI.M.C No.4720 of 2014 9 Act, I find that the prosecution does not have any clear or definite case, as to what condition of Visa was in fact violated by the petitioner. The copy of Visa appended to his passport does not contain any such condition, that he shall not attend any

meeting here. Tourists visiting Kerala can see different meetings here, organized by different political or other groups. They cannot identify whether a particular meeting is one organised by any political group, or communal group or radical group. They, out of curiosity, may just step in and view such meetings. If that is understood as violation of Visa conditions, every tourist visiting Kerala will have to be prosecuted. This is not the object of the law, and this is not the spirit of the law also. The Visa issued to the petitioner does not contain any condition that he shall not attend any meeting anywhere in India. Practically the prosecution would concede that the police does not have a definite case as to what condition of Visa was in fact violated by the petitioner. As I observed earlier, it was simply on cynic suspicion the foreign national was apprehended here, and it is quite unfortunate that he had to undergo much mental harassment and detention.

9. I find that the prosecution brought by the CrI.M.C No.4720 of 2014 10 Valappad Police as against the petitioner herein is legally unsustainable. The prosecution does not say what condition of Visa was in fact violated by the petitioner. The learned Director General of Prosecution repeatedly argued that attending a meeting by itself will amount to violation of Visa conditions, or violation of the Rules made under Section 3 of the Registration of Foreigners Rules. I find no such Rule prohibiting the alleged act of just attending a meeting. No doubt, continuance of this prosecution will be a sheer abuse of legal process, and the prosecution is liable to be quashed. In the result, this Criminal Miscellaneous Case is allowed. The prosecution against the petitioner herein in C.C No.4019/2014 of the Judicial First Class Magistrate Court II, Kodungalloor will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioner will stand released from prosecution, and the bail bond, if any, executed by the petitioner will stand discharged. The concerned authority will take immediate steps to facilitate the petitioner's travel back to his Nation if the period of his Visa has expired. P.UBAID
ab JUDGE