

State of Sikkim Vs. Buglar Muslim

State of Sikkim Vs. Buglar Muslim

SooperKanoon Citation : sooperkanoon.com/497071

Court : Sikkim

Decided On : Jun-01-2001

Reported in : 2002CriLJ168

Judge : Ripusudan Dayal, C.J. and; Anup Deb, J.

Acts : [Foreigners Act, 1946](#) - Sections 14

Appeal No. : Criminal Revn. No. 30 of 2000

Appellant : State of Sikkim

Respondent : Buglar Muslim

Advocate for Pet/Ap. : S.P. Wangdi, Public Prosecutor,; Karma, Adv. and; Thinla

Disposition : Petition dismissed

Judgement :

Ripusudan Dayal, C.J.

1. This criminal revision was registered suo motu by this Court in order to be satisfied as to the correctness, legality and propriety of the order dated 10-2-2000 delivered by Mrs. M.M. Rai, the then Judicial Magistrate, West Sikkim in Criminal Case No. 1/2000.

2. By the impugned order, charges were framed against the accused-respondent under Section 14 of the [Foreigners Act, 1946](#) to which he pleaded guilty. He was sentenced to imprisonment for one month and also to pay a fine of Rs. 500/- and in default of payment of fine to undergo further imprisonment of one month. Thereafter, the order reads as under :--

Accused is to be deported out of the State, S.P. West is directed to take steps for deportation immediately. Copy of this order be sent to S.P. West for compliance and necessary action and to the D.G.P., Sikkim Police headquarters for information. Compliance report be filed by the S.P. (West) in this Court on 10-2-2000 without fail.

3. In the order, the learned Magistrate did not state even the bare facts. She did not state as to which Nationality the accused belonged. In the charge framed also there is no such mention. The charge states:--

That you on or about the 29th day of Sept. 99 at Sreebadam (W. Sikkim) you were found in the said area without obtaining any documents from the concerned authorities and thereby committed as offence punishable under Section 14 of the Foreigners Act and within my cognizance.

4. From the charge sheet, we find that according to prosecution case, the accused person was a Pakistani National. In this connection, the Learned Public Prosecutor has referred to Ministry of Home Affairs F. No. 25019/20/97-P. III dated 26-2-1998 addressed to the Home Secretaries of All States/UT Admns. of which material portion reads as under :--

2. The issue of repatriation/exchange of civil prisoners of both the countries has been reviewed and it has now been decided as follows:

(i) Pakistani civil prisoners who are in possession of valid passports on completion of jail term will be individually repatriated after they are issued exit permit by the competent authorities of the State Govt./UT Admns. Details of their deportation/repatriation shall be simultaneously sent to the MEA (Pak Division) and MHA (Foreigners Division) without fail.

(ii) Details of such Pakistani civil prisoners who are not in possession of any travel documents or have expired travel documents will be sent to MEA (Pak Division) with copy to MHA (Foreigners Division) immediately upon arrest for establishment of national identity through Pak authorities and readying (sic) of travel documents for their eventual repatriation upon completion of their jail terms. This category will be presented for consular access.

5. In view of the above letter, the accused-respondent should have been sent to the Ministry of External Affairs (Pak Division) with a copy to the Ministry of Home Affairs (Foreigners Division). The order of the learned Magistrate directing the deportation' of the accused-respondent out of the State of Sikkim was not legally correct.

6. Since the accused-respondent has already been deported out of the State, the situation cannot be helped. Accordingly, no further action is required to be taken in this respect.

7. As such, the revision is dismissed.

8. A copy of this order along with a copy of the notification dated 26-2-1998 referred above, and other notifications available in the High Court on such matter be sent to all the Judicial Officers for their guidance. Let a copy of this order be also sent to the Director General of Police to give suitable instructions to the concerned Police Officers and the learned Public Prosecutors and Assistant Public Prosecutors.