

**Reserved on 26.4.2016**  
**Delivered on 31.5.2016**

**Case :- CRIMINAL REVISION No. - 84 of 2016**

**Revisionist :-** Dante Farinello Cardoso

**Opposite Party :-** State Of U.P. And Another

**Counsel for Revisionist :-** Shishir Tandon

**Counsel for Opposite Party :-** G.A.

**Hon'ble Om Prakash-VII,J.**

This criminal revision has been filed by the revisionist Dante Farinello Cardoso, a foreign national (Brazilian) against the judgment and order dated 10.12.2015 passed by the Additional Sessions Judge/FTC, Maharajganj in criminal appeal no. 61 of 2015 whereby the judgment and order dated 28.8.2015 passed by the Chief Judicial Magistrate, Maharajganj in criminal case no. 4680 of 2014, arising out of case crime no. 897 of 2014, P.S. Sonauli, District Maharajganj convicting and sentencing the revisionist for the offences under Sections 420, 467, 468 and 471 IPC and Section 14 of the Foreigners Act, 1946 has been affirmed.

Brief facts of the case are that a First Information Report was lodged on 11.9.2014 at 8.15 hours at P.S. Sonauli, District Maharajganj on the basis of a written report submitted by Jitendra Kumar, Junior Immigration Officer, Check-Post Sonauli, District Maharajganj making averments that on 11.9.2014 when he was clearing the passengers at the check-post Sonauli, the revisionist came at the counter and showed Passport bearing no. YB111530 issued by the Brazilian Embassy on 7.10.2013. On enquiry made by the informant about the documents submitted by the revisionist, double entry was found at page 6 of the Passport and at page 7 an entry dated 29.5.2014 for arrival at Mumbai was also found. The documents were sent for verification at New Delhi and thereafter on verification, the VISA as well as the arrival entry both were found forged. During interrogation, the revisionist also admitted possession of one more Passport bearing no. CX414712 issued on 27.2.2008 from the Passport Office, Brazil. This Passport was valid upto 26.2.2013. Old Passport and the VISA No. AD794919 dated 10.9.2008 issued from Bangkok was valid upto 9.3.2009 and on that basis the revisionist had entered into the territory of India through Kolkata Air-Port on 14.9.2008 and thereafter he went to Varanasi and stayed there for about six months and again he moved for Gujarat and was living there continuously. After expiry of the aforesaid period, the revisionist moved for Nepal and obtained Second Single

Tourist India VISA No. AG850432 issued on 22.7.2007 and the same was valid upto 22.10.2009 and on the basis of this document, the revisionist again entered within the territory of India through check-post Sonauli on 30.7.2009 and stayed at different places within the territory of India and was earning his livelihood by doing different type of works. It also revealed during investigation that he married with one lady belonging to Gujarat to change tourist VISA in X-category. It also appears that on 14.6.2010, the VISA was converted into X-category and the revisionist stayed at different places on the basis of changed VISA. On expiry of the period of old Passport, the revisionist obtained fresh / new Passport dated 7.10.2013 from Brazilian Embassy and posted stamp of forged VISA and entry and on that basis he reached at check-post Sonauli where he was interrogated and stopped. Thus, the FIR was lodged on the basis that the revisionist being a foreign national stayed in India after expiry of the VISA period on the basis of forged VISA and entries made thereon. On the basis of FIR, G.D. Entry was made and matter was investigated and charge-sheet filed. The revisionist was tried by the court having jurisdiction in the matter. The trial court vide the aforesaid order dated 28.8.2015 convicted and sentenced the applicant. Against the said order, the revisionist preferred criminal appeal, which was also dismissed, hence this criminal revision.

Heard Shri G.S. Chaturvedi, learned Senior Counsel assisted by Shri Shishir Tandon, learned counsel for the revisionist and the learned AGA appearing for the State.

It was submitted by the learned Senior Counsel appearing for the revisionist that offence under Section 467 IPC is not made out in the present matter. Other offences are also not attracted in the matter. Proper investigation was not done in this case. There is no sufficient evidence to hold guilty the revisionist. The trial court and the appellate court both have erred in appreciating the evidence in right perspective and passed the impugned orders illegally. It was further submitted that there is manifest error of law in the matter as the trial court has not framed proper charge against the revisionist. This fact was raised before the trial court and the appellate court both but the plea was rejected on insufficient ground. It was further submitted that the trial court without making any observation regarding guilt of the revisionist for distinct offences, illegally convicted and sentenced the revisionist for the aforesaid offences. It was further submitted that in the present matter, offence under Section 420 IPC is also not made out from the evidence adduced by the prosecution. The revisionist was only travelling. There is no evidence at all on record for preparing a forged VISA making forged entry of

arrival, hence, the judgment and orders passed by the courts below are illegal and perverse and are liable to be quashed and the revision is liable to be allowed.

On the other hand, learned AGA appearing for the State submitted that though the trial court has not recorded specific finding disclosing the penal sections regarding guilt of the accused yet the court below has discussed in detail each and every offence in the context of the evidence available on record. The submission raised by the revisionist in this respect was rightly turned down by the appellate court also. It is not disputed in the matter that the revisionist was a foreign national. He stayed in India on the basis of a forged Passport and VISA. Hence, there is no infirmity or illegality in the impugned orders warranting interference by this Court.

I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned orders carefully.

In the instant matter, it is not disputed fact that the revisionist is a foreign national who initially entered in the territory of India on the basis of Passport issued by the Brazil Government. It is also evident from the record that the period of passport and VISA issued at initial stage expired and the revisionist stayed in India unauthorizedly for some period, which has neither been explained in the statement recorded under Section 313 CrPC nor any evidence to rebut the prosecution evidence has been adduced. The information gathered by the Investigating Officer on the basis of electronic devices is admissible in evidence as is clear from the amendment incorporated in the Evidence Act. Before dealing with the submissions made by the learned counsel for the parties, it will be useful to quote the provisions of Sections 420, 467, 468 and 471 IPC, which are as under:

**"420. Cheating and dishonestly inducing delivery of property.**

*—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

**"467. Forgery of valuable security, will, etc.—**

*Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of*

*money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

**"468. Forgery for purpose of cheating.—***Whoever commits forgery, intending that the 1[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

**"471. Using as genuine a forged 1[document or electronic record].—***Whoever fraudulently or dishonestly uses as genuine any 1[document or electronic record] which he knows or has reason to believe to be a forged 1[document or electronic record], shall be punished in the same manner as if he had forged such 1[document or electronic record]."*

Passport is a valuable property which should be procured legally, as it has significance not only for the individual concerned but also for the country. In the present matter, the revisionist has been convicted and sentenced for the offence under Section 14 of the Foreigners Act. Admittedly, he is a foreign national (Brazilian). He stayed within the territory of India many years unauthorizedly without valid passport / VISA. Hence, the conviction held by the trial court and affirmed by the appellate court for the offence committed under Section 14 of the Foreigners Act need no interference.

So far as the offences under Sections 420, 467, 468 and 471 IPC are concerned, it has come in the evidence that when the complainant enquired from the revisionist about the passport produced before him for clearance, it was found forged. The concerned authority also verified the passport/ VISA from the office of Brazilian Embassy and also from the office dealing with the mater. The entry made in the passport was found forged. No passport was issued in favour of the revisionist. Hence, in my view, the findings recorded by the trial court as well as the appellate court regarding the offences committed under Sections 420, 467, 468 and 471 IPC do not require interference by this Court. Since fake passport was prepared and produced, essential ingredients to constitute the offences under Sections 420, 467, 468 and 471 IPC are available in the matter. The revisionist was living within the territory of India unauthorizedly on the basis of fake passport. Thus, after close scrutiny of the entire facts and evidence available on record, I am of the opinion that the trial court as well as the appellate court both have not committed any illegality in passing the impugned orders. There is no infirmity or illegality in the said orders.

So far as the sentence imposed upon the revisionist for

the offences under Sections 420, 467, 468 and 471 IPC and Section 14 of the Foreigners Act, 1946 is concerned, awarding sentence is always a difficult task which requires balancing of various considerations.

It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of the offence and the manner in which it was executed or committed. It is the obligation of the court to constantly remind itself that the right of the victim, and be it said, on certain occasions the person aggrieved as well as the society at large can be victims, never be marginalised. The measure of punishment should be proportionate to the gravity of the offence. Object of sentencing should be to protect society and to deter the criminal in achieving the avowed object of law. Further, it is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. [Vide : **(Sumer Singh vs. Surajbhan Singh and others, (2014) 7 SCC 323, Sham Sunder vs. Puran, (1990) 4 SCC 731, M.P. v. Saleem, (2005) 5 SCC 554, Ravji v. State of Rajasthan, (1996) 2 SCC 175].**

In view of the above propositions of law, the paramount principle that should be the guiding factor is that the punishment should be proportionate to the gravity of the offence.

In the present case, the trial court has imposed maximum sentence of five years rigorous imprisonment and a fine of Rs. 5,000/-. The trial court has not imposed the extreme sentence / punishment and has taken a lenient view in imposing the sentence upon the revisionist.

Hence, in view of the settled legal position and the findings recorded by the trial court on the point of imposing sentence in the present case, I am of the opinion that the sentence / punishment imposed upon the revisionist by the trial court in the impugned judgment and order and affirmed by the appellate court would meet the ends of justice and the same is not manifestly excessive or unreasonable.

Thus, I am of the opinion that the conclusion taken by the trial court and affirmed by the appellate court regarding conviction and sentence of the revisionist is in accordance with law and the evidence available on record.

Considering the entire facts and circumstances of the case and the submissions made by the learned counsel for the parties, this Court is of the opinion that the impugned judgement and orders passed by the trial court is well thought and well discussed. The appellate court has also affirmed the impugned order in accordance with law. As such, the impugned judgement and orders passed by the trial court and affirmed by the appellate court are liable to be upheld and the revision having no force is liable to be dismissed.

Accordingly, the impugned judgement and orders dated 28.8.22015 and 10.12.2015 passed by the trial court and affirmed by the appellate court are upheld and the criminal revision being devoid of merits is dismissed.

**Order date : 31.5.2016**

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