

2022 LiveLaw (SC) 218

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SANJIV KHANNA; BELA M. TRIVEDI, JJ.**

CRIMINAL APPEAL NO. 267 OF 2022 (@ SLP (Crl.) No. 2266/2020); FEBRUARY 22, 2022

ABINASH DIXIT *Versus* THE STATE OF MADHYA PRADESH

Foreigners Act, 1946 - Section 14C - Abetment - Mere passivity and insouciance will not tantamount to offence of abetment - The word 'abet' is an essential ingredient - 'Abet' means to aid, to encourage or countenance. An abetment of the offence occurs when a person instigates any person to do that offence or engages with another person(s) in doing that thing.

Summary - Appellant Engineer accused of facilitating visit by two Chinese citizens who were on tourist visas to Rewa Solar Plant Project site - No indication or allegation that the appellant was aware and had knowledge that the Chinese citizens had traveled on tourist visas - Criminal proceedings quashed.

(Arising out of impugned final judgment and order dated 23-01-2020 in MCRC No. 37147/2019 passed by the High Court of M.P. Principal Seat at Jabalpur)

For Petitioner(s) Mr. Neeraj Kishan Kaul, Sr Adv. Mr. Suyash Mohan Guru, Adv. Mr. Tosiv Goyal, Adv. Mr. Raghav Agarwal, Adv. Mr. Prasanjit keswani, Adv. Mr. Vardhman Kaushik, AOR Mr. Nitin Sangra, Adv. For Respondent(s) Mr. Sourabh Mishra, AAG Mr. Abhinav Shrivastava, Adv. Mr. Sunny Choudhary, AOR

ORDER

Leave granted.

Heard the learned counsel for the parties.

It is accepted that the charge under Section 188 of the Indian Penal Code, 1860 has not been framed, and hence, the said aspect need not be examined.

The provisions of the Foreigners Act, 1946 require compliance, and violations can justify penal action. However, in the facts of the present case, it is apparent that the prosecution of the appellant is not justified and warranted.

The appellant was working as Senior Engineer (Construction) with Sprng Energy Private Limited, which had the responsibility of providing the manpower and other facilities at Rewa Solar Plant Project ('site').

An employee of M/s. P.S. Enterprises, namely Adarsh Kumar Singh, had visited the site along with two Chinese citizens representing Bosan Robotics Ltd., China. The allegations are that the appellant facilitated this visit by the two Chinese citizens who were on tourist visas. Thus, First Information Report was registered for violation of Section 7 and Section 14 of the Foreigners Act.

It is noticeable that the police, after the investigation, had not found any violation of Section 7 of the Foreigners Act and the said provision was not invoked in the charge

sheet. However, the trial court, while framing charge vide order dated 24.01.2020, had observed as under:

“On perusal of the case prima facie, sufficient basis has been made out against the Accused for offence under Section 7 read with Section 14 of the Foreigners Act, 1991(sic.). Therefore, charges framed under the said sections against the accused were read over and explained to the Advocate Arun Kumar Sharma present on behalf of the Accused who denied the offence”

We cannot comprehend and fathom the reasoning given by the trial court in reference to the offence under Section 7 read with Section 14 of the Foreigners Act. The learned counsel for the respondent has also not been able to justify the aforesaid observations made by the trial court in framing the charges under Section 7 read with Section 14 of the Foreigners Act.

On the aspect of violation of Section 14-C, the requirement is that the accused should have abetted the offences under sections 14, 14-A and 14-B of the Foreigners Act. Section 14-C reads:

“14-C: Penalty for abetment. — Whoever abets any offence punishable under section 14 or section 14A or section 14B shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.”

The word ‘abet’ is an essential ingredient of Section 14-C, and has received judicial interpretation. ‘Abet’ means to aid, to encourage or countenance. An abetment of the offence occurs when a person instigates any person to do that offence or engages with another person(s) in doing that thing. Mere passivity and insouciance will not tantamount to offence of abetment.

As noticed above, the two Chinese citizens had visited the site at the behest of and along with the employee of M/s P. S. Enterprises, Adarsh Kumar Singh, who had brought them to the site. There is no indication or allegation that the appellant was aware and had knowledge that the Chinese citizens had traveled on tourist visas. Prosecution has not been initiated against either Adarsh Kumar Singh or M/s P.S. Enterprises. They are not co-accused. Further, the Chinese citizens were issued a Leave India Notice on 21.04.2019 through Adarsh Kumar Singh. In the absence of any material and evidence, the allegation of abetment against appellant has no basis and foundation.

In the aforesaid background, we do not see any reason why the prosecution should continue.

Hence, we allow the present appeal and quash the criminal proceedings against the appellant.

There would be no order as to costs.

Pending application(s) stands disposed of.