

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL REVISION APPLICATION NO. 212 OF 2013
WITH
CRIMINAL APPLICATION NO.208 OF 2013**

Anwar Hussain Abdul Kadar Shaikh & Ors. ...Applicants

versus

State of Maharashtra ...Respondents

Mr. R.A.Shaikh for Applicant

Mr.S.S.Pednekar, APP for State-Respondent no.1.

CORAM : K.U.CHANDIWAL, J.

DATED : 26th July, 2013

P.C. :

1. The concurrent findings recorded against the accused-applicant for offence punishable under Rule 3 r/w. Rule 6 of the Passport (Entry into India) Rule 1950 and under para for the Foreigner Order 1948 r/w. Section 14 of the Foreigner's Act, 1946, directing the accused-applicant to undergo simple imprisonment for 6 months and to pay fine of Rs.500/- each with default clause and sentence of 6 months and fine of Rs.500/- for offence punishable under para 3(1) for Foreigner's Order, 1940 r/w. Section 14 of

the Foreigner's Act, 1946, are questioned.

2. Learned Counsel vehemently submitted that the applicant no.1 is born in India and his birth certificate illustrates so. The applicant no.2 has a passport showing his nationality to be Indian. The applicant no.4 – Rani Begum also has a passport. The applicants possess Adhar Card, and consequently, according to them, they being Indian National by birth, the prosecution needs interference. Learned Counsel admits, these documents pertinently the birth certificate or the passport was not placed before the learned Judge while recording evidence and he has urged this court to remit the matter to the learned Metropolitan Magistrate for reconsideration.

3. In normal circumstances, considering the plight faced or being non representation this could have been done. However, the passport to which the learned Counsel gave reference is already terminated passport. Therefore, no legal basis can be achieved for its reliance. The birth certificate of one of the applicant Anwar, will not co-ordinate as under the law it is imperative for such applicant to establish that his parents were Indian National. There is no such proof adduced before the learned Judge.

4. The learned Appellate Court has succinctly dealt with even the documents to which Mr. Shaikh has given reference before this Court and

how they will not be able to counter for cause espoused by the applicants.

5. Learned Counsel for the applicants has placed reliance to the judgment of this Court dated 20th April, 2012 in Revision Application No.90 of 2012 wherein though the documents were tendered before the learned Metropolitan Magistrate, they were felt to be public documents and were not properly established. Hence this court remitted the matter.

6. In Criminal Application No.9 of 2013, in Criminal Revision No.7 of 2013, on January 24, 2013 accused therein was released on bail and rule in the revision was issued. It does not demonstrate that this Court directed remand to the learned Metropolitan Magistrate.

7. One of the point raised by the learned Counsel that provisions of Citizenship by Birth under Citizenship Act, 1965, would not be applicable to the applicants is difficult to accede as there is nothing to suggest that said Act has been turned to be ultra-vires to Constitution. Provisions of Section 3 thereof categorically illustrates the person who can be accepted to be Indian Citizen after 26th day of January,1950 or before the 1st day of July, 1987. Survey of above facts does not call for interference. Revision and Application are dismissed.

. Applications disposed of. The order is stayed upto 26th August, 2013.

(K.U.CHANDIWAL, J.)