

**IN THE HIGH COURT OF SINDH AT KARACHI**

Crl. Jail Appeal Nos. 375 &amp; 376 of 2019

Appellant : Noor Alam  
through Mr. Habib-ur-Rehman Jiskani,  
Advocate

Respondent : The State  
through Mr. Siraj Ahmed Chandio, Addl.P.G.

Date of short order : 25.11.2020

Date of reasons : 27.11.2020

**JUDGMENT**

**Omar Sial, J.:** The appellant Noor Alam has impugned a judgment passed by the learned 10<sup>th</sup> Additional Sessions Judge, Karachi West on 21.5.2018. In terms of the said judgment, the appellant was convicted for an offence under section 14 (2) of Foreigner Act and sentenced to simple imprisonment of 3 years.

2. The brief facts of the case are that an FIR No.296/2016 was registered at P.S. Pakistan Bazar on 4.9.2016 on the complaint of State acting through SIP Ali Nawaz. In the said FIR the complainant recorded that the police party led by him was on snap checking duty when at about 1900 hours they saw a person who they found to be suspicious. They stopped that person and asked for his identity card who told the police party that he is resident of India Bihar Province, however, at that time he was unable to produce his passport or document that would show his nationality. Upon further search one 30 pistol with two live rounds were also recovered from him. An FIR No.297/2016 was therefore also registered under section 23 (1)(a) of Sindh Arms Act, 2013.

3. Both appeals arise from the same transaction therefore I will dispose of both of them by this single judgment.

4. The charge was framed against the appellant to which he pleaded not guilty and sought trial. At the trial in the case arising out of the FIR No.296/2016 the prosecution examined **Gulab Khan** as its first witness (he was a witness to the arrest of Noor Alam. Second prosecution witness was **Javed Iqbal** (I.O. of the

case). Third prosecution witness was **Ali Nawaz** (who was complainant in this case).

5. The appellant recorded his section 342 Cr.P.C. statement in which he pleaded his innocence and further submitted that he was a Pakistani national and has been in country since his birth.

6. In the case arising out of the FIR No.297/2016 the prosecution examined Nasir Siddique as its first witness who was witness to the recovery of weapon. The remaining two witnesses were Javed Iqbal and Ali Nawaz and in the section 342 Cr.P.C statement recorded in that case the appellant once again pleaded his innocence and submitted that this case has been foisted upon him as he had declined to cater to the illegal demands made by the police party.

7. I have heard learned counsel for the appellant as well as learned Add.P.G. and have also perused the record with their able assistance. My observations are as follows:

8. The prosecution witness Gulab Khan very categorically stated that although at the time of arrest of the appellant he could not show any document of his citizenship to the police party yet subsequently he had produced his original birth certificate as well as original CNIC of Mazharul Haq, father of appellant, original CNIC of Zaibunnisa, grand other of appellant, original CNIC of Noor Ayesha, mother of the appellant and original CNICs of Noor Islam and Muhammad Khalid, two brothers of the appellant. PW Gulab Khan after reviewing these documents testified that there is a possibility that the appellant may be a Pakistani national but he at the time of his arrest could not show his citizenship. PW Javed Iqbal categorically testified at trial that he had not even bothered to conduct any investigation/inquiry from the residents of the area where the appellant lived, let alone seek the record from NADRA that the appellant and his family members were indeed Pakistani nationals. PW Javed Iqbal at trial however testified that after seeing the documents of citizenship that had been produced by the appellant it was revealed that the appellant was a resident of Orangi Town and belonged to the family headed by Mazharul Haq. Complainant Ali Nawaz in his testimony also confirmed that it was correct that Mazharul Haq was the father of the appellant, Zaibunnisa, grand mother of the appellant, Noor Ayesha, mother of the appellant, Muhammad Noor and

Muhammad Khalid, brothers of the appellant were Pakistani citizens and residing in Orangi Town however, to justify the arrest on the ground he too stated that when the appellant was arrested he could not produce proof of citizenship. It appears to me that apparently no investigation has been carried out in this case. The documents and evidence provided by the appellant to the police were not taken into account by them and that the only justification which they had to arrest the appellant on the charge under the Foreigner Act that was that he at the time of his arrest he was unable to produce his citizenship. As regards the case filed under section 23 (1)(a) of Sindh Arms Act, 2013 is concerned, apart from the fact that the prosecution has completely failed to prove its case against the appellant Noor Alam with regard to his citizenship, the memo of arrest and recovery reflects that the weapon ostensibly recovered from the appellant did not have a number, quite surprisingly the FSL report which has been put on record reflects that the seized pistol clearly had a number marked on it. No sanctity can be given to such an alleged recovery. The arguments of learned Add.P.G. that the sentence awarded to the appellant in the case arising out of the FIR under Sindh arms Act, 2013 was than what the legislature had prescribed for such an offence becomes an academic one as I have reached the conclusion that the prosecution had failed to prove its case against the appellant beyond reasonable doubt.

9. Above are the reasons for the short order of 25.11.20208 in terms of which the appeal was allowed, the appellant acquitted of the charge and ordered to be released forthwith if not required in any other custody case.

JUDGE