

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 461 of 2018

Appellant : Muhammad Yousuf
through Mr. Liaquat Ali Khan, Advocate

Respondent : The State
through Mr. Muhammad Ahmed,
Assistant Attorney General

Ms. Samina Iqbal, Advocate for NADRA

Date of hearing : 20th January, 2023

JUDGMENT

Omar Sial, J: Mohammad Yousuf was convicted and sentenced on 29.08.2018 by the learned 1st Additional Sessions Judge, Malir, Karachi as follows:

- (i) For an offence under sections 13 and 14 of the Foreigners Act, 1946 to a 5 year prison term and a fine of Rs. 10,000 or a further period of 3 months in prison.
- (ii) For offences under sections 419, 420, 468 and 471 P.P.C. to 5 year prison terms on each count.

Yousuf has challenged his conviction and sentence through this appeal.

2. A background to the case is that Yousuf had travelled from Saudi Arabia to Karachi and when he reached Karachi he was arrested for travelling on a forged passport and being an Afghan National. F.I.R. No. 332 of 2017 was registered against him under sections 3(2), 13 and 14 of the Foreigners Act, 1946 read with sections 419, 420, 468, 471 and 109 P.P.C. at the F.I.A. Anti-Human Trafficking police station. Yousuf pleaded not guilty to the charge against him and claimed trial.

3. **PW-1 S.I. Chaudhry Mohammad Arif** was the F.I.A. official deputed at the airport on the night between 21.09.2017 and 22.09.2017 when

Yousuf had arrived from Saudi Arabia. The computer had shown that Yousuf's passport was on the black list. He was therefore apprehended and handed over to the F.I.A. officials. **PW-2 Mohammad Imran Wazeer** witnessed the arrest of the appellant. **PW-3 Inspector Ghulam Akbar Zardari** was the investigating officer of the case. In his section 342 Cr.P.C. statement Yousuf denied all wrong doing and further stated that he was legally residing in the Afghan Refugee Camp and was registered in the NARA.

4. I have heard the learned counsel for the appellant as well as the learned Assistant Attorney General. Summons were also issued to NADRA and the learned counsel for NADRA was also heard. My observations and findings are as follows.

5. At the very outset, both the Assistant Attorney General of Pakistan and the learned counsel for NADRA submitted that the appellant had legally and after completing all formalities been issued an Afghan Citizen Card from NADRA and that he along with his entire family had been residing in Pakistan as an Afghan National on the basis of the said Card which was a proof of his registration in the NADRA database. The original Afghan National Cards of the appellant and his entire family of 13 members were also produced. Both the learned AAG and NADRA's counsel were of the view that the appellant was registered and legally living in an Afghan Refugee Camp.

6. I notice from the record that while the appellant was sentenced for making forged papers, not an iota of evidence was led by the State at trial in this regard. None from the passport office was examined as a witness. No record was obtained from the concerned authorities to determine whether the documents of the appellant were forged or not. The CNIC and passport which were alleged to be forged were also not produced at trial. I also notice that the investigating officer conceded at trial that NADRA had initially issued the appellant a CNIC card but had later cancelled it (ostensibly to issue him an Afghan Registration Card). He also admitted that

it was on the basis of a warning against the CNIC number of the appellant on the F.I.A. system that he was stopped and arrested. No inquiry or investigation was done on the passport of the appellant. He also conceded that if the appellant was registered, any offence under the Foreigners Act was not applicable.

7. In view of the fact that the appellant is duly registered in Pakistan as an Afghan National and that NADRA had initially issued him a CNIC (converted later into a NARA card), the arrest of the appellant on the evidence available was not correct. No offence under the Foreigners Act, 1946 was made out nor was an offence of having forged a CNIC made out keeping in view the fact that NADRA had initially issued him CNIC. As regards the passport, no evidence was produced at trial to show that the same was forged or fake or whether it was issued on the basis of the CNIC issued by NADRA earlier.

8. The prosecution having failed to prove its case, the appeal is allowed and the conviction and sentence given to the appellant is set aside. He is on bail. His bail bonds stand cancelled and surety discharged which may be returned to its depositor upon identification.

JUDGE