

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Cr.Appeal No.243/2005

Date Order with signature of Judge

For hearing of Main case

25.04.2016

Mr. Javed Anwar, advocate a/w
appellant Muhammad Jahangir.
Ms. Rahat Ahsan, D.P.G.

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The appellant/accused has filed this appeal against his conviction awarded by VIIth Additional Session Judge (South) Karachi in Session case No.600/2004 to undergo R.I for six months for an offence under Section 14(2) of Foreigner Act, 1946 r/w Section 3/2(a) of Foreigner Order, 1951 with further directions to be deported on completion of terms.

Briefly stated FIR No.220/2004 was registered at P.S Mithadar (SB) Saddar Town. According to the FIR three persons were arrested. Two of them were released by police under **Section 169** PPC at the request of very honest Investigation Officer on the basis of NIC and birth certificate produced by them which were verified by the concerned department and found to genuine. However, when present appellant produced CNIC and birth certificate, the honest **I.O** did not even bother to verify these documents and the challaned the accused in the court of Session Judge South Karachi. At the trial, the prosecution examined (1) HC Mehdi Ali, (2) PC Saleem Qureshi and (3) I/O SI Saeed Raza. The appellant produced two defense witnesses and also recorded their statement on oath. The trial

court convicted the appellant by judgment dated 27.4.2005. Being aggrieved the appellant filed the instant appeal.

Heard learned counsel for appellant and the State counsel.

Learned counsel for the appellant has argued that the trial court has misread the evidence and shifted the burden on appellant to prove his innocence. It is contended that burden was on prosecution to establish that the appellant has entered in Pakistan in 1985 and also that the CNIC and birth certificate on which he was relying were not genuine documents. He further contended that on the contrary the CNIC and birth certificate of 1958 were very found genuine. The counsel for the prosecution was unable to meet this argument since the birth certificate of the applicant was verified by the trial court and the record shows that his birth certificate was found genuine. Similarly his CNIC which also bears old NIC number were also found genuine as reported by the NADRA on the request of verification by the learned trial court.

It is indeed a matter of regret that even Addl. District & Sessions Judge while convicting the accused fails to appreciate from the challan that the two accused had been released on the basis of NIC and birth certificate and by ignoring challan even in his conviction order Session Judge declared that NIC is not proof of nationality without elaborating on the point that what else is required to prove nationality other than CNIC and birth certificate. Yet another regrettable finding of Addl. District &

Sessions Judge namely Mr. Abrar Hassan Memon is that the CNIC and birth certificate of appellant were sent by the court for verification to the NADRA authorities and Karachi Metropolitan Corporation and both the NADRA and KMC have informed the learned court that CNIC and birth certificate are genuine. Not only this even in CNIC of the appellant old NIC # 518-5846572-9 is also mentioned and the very existence of old NIC on computerized NIC issued by NADRA confirms that appellant in Pakistan prior to 1985.

The story of prosecution that the appellant entered in Pakistan through Wagha border in 1985 had not been proved. It is not confessional statement of the accused that he entered into Pakistan in 1985 through Wagha border. The burden was on Prosecution to establish that in 1985 he entered in Pakistan, through Wagha border. The whole story is fabricated and there is hardly any substance and yet learned Addl. District & Sessions Judge without applying his judicial mind to the verified / admitted documentary evidence declared that the CNIC of the appellant was not sufficient proof of nationality. If learned Judge was clear in mind that NIC of NADRA was not proof of nationality then he should have directed the prosecution to challan the other two accused named in column No.2 of the same challan and who were released by the police. It was duty of the learned Addl. District Judge to ensure that law should apply on each and every person even handedly. It is difficult to appreciate why learned Session Judge was unable to

give credence to the record from NADRA and KMC that CNIC and birth certificate were genuine documents. His such failure amounts to failing in discharging his duty.

In view of the above, appeal is allowed, the impugned order is set aside and surety bond stand discharged.

JUDGE

SM