

**CALCUTTA HIGH COURT
CIRCUIT BENCH AT JALPAIGURI**

**20.06.2024
sn/ss/15
Court No.3**

C. R. R. 176 OF 2024

**In Re: An application under Section 401 read with Section 482 of
the Code of Criminal Procedure, 1973;**

In the matter of : Christian Marc Durand

..petitioner

Mr. Sanjay Vashishtha
Mr. Dhiraj Lakhota
Mr. Saptak Mazumder
Ms. Khushi Kundu

...for the petitioner

Mr. Aditi Shankar Chakraborty
M r. Arjun Chowdhury ..for the State

This is an application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') for quashing of proceedings being G.R. Case no.59 of 2024 (arising out of Darjeeling Sadar Police Station Case No. 25 of 2024 dated 12th April, 2024) under Section 14 of the Foreigners Act, 1946 (hereinafter referred to as the 'Act of 1946') pending before the learned Chief Judicial Magistrate, Darjeeling.

The brief fact of the case is that the petitioner is a Swiss national, who came to India for the purpose of tourism and was granted Visa by the competent authority on 19th March, 2024 allowing the petitioner to stay in India up to 18th April, 2024. The petitioner visited the Foreigners Registration Office(FRO) to seek permission to enter Sikkim. During his interaction Immigration officials discovered the absence of an arrival stamp on his passport and raised the question about legality of his entry. As a result, the petitioner was arrested by law enforcement officials and

FIR was registered being Darjeeling Sadar Police Station Case No. 25 of 2024 under Section 14 of the Act of 1946. Upon investigation, the charge sheet was filed against the petitioner under Section 14 of the Act of 1946. Being aggrieved by such proceedings, the petitioner has preferred the present revisional application for quashing.

Mr. Sanjay Vashishtha, learned advocate for the petitioner submits that the petitioner came to India from Switzerland on tour on valid Passport and Visa. The petitioner tried to enter through Sonauli Land Immigration Check Post(LICP) on Nepal-India border where immigration officials cancelled his entry and instructed him to proceed to Delhi by flight instead of over land. However, on the assurance of a travel agent he re-entered Indian territory through Gorakhpur. Due to certain technical difficulties, he was arrested and proceeding was initiated under the Foreigners Act. The petitioner did not have any *mala fide* intention to enter India without valid documents. In fact, the petitioner himself sought for permission to enter Sikkim. The allegations made in the FIR that the petitioner tried to enter India through Gorokhpur, Uttar Pradesh in violation of the existing laws is unsustainable since he was wrongly guided by local agent. The language barrier and unfamiliarity with the local protocols further exacerbated the confusion. The petitioner has no malicious intent and did not knowingly attempt to breach immigration law. Referring to Section 15 of the Act of 1946, he submits that there cannot be any prosecution initiated against the petitioner where anything is done in good faith or intended to be done under the Act. In view of the aforesaid submissions, he prays for quashing of the proceedings.

Mr. Arjun Chowdhury, learned advocate for the State submits that there are no such *mala fide* allegations against the petitioner. However,

prosecution has not yet received report from the Passport authority due to which supplementary charge sheet could not be filed.

In reply, learned advocate for the petitioner submits that the petitioner is holding a valid Passport and Visa and it has already been extended up to 21st August, 2024. He files a copy of the e-FRRO, which is taken on record.

After initiation of the proceedings under Section 14 of the Act of 1946, investigation has been undertaken and charge sheet under Section 14 of Act of 1946 has been filed. Be that as it may, during investigation no such *mala fide* intention of the petitioner transpired, save and except that the Passport was bereft of arrival stamp. The petitioner has filed a copy of e-FRRO issued by the Bureau of Immigration, India. Upon perusal of the same, it is found that on due consideration the visa for stay of the petitioner has been extended from 6th May, 2024 till 21st August, 2024. The e-FRRO records that the passport being no. X2234182 of the petitioner is valid upto 14th October, 2025. From the materials placed before this Court, it is found that the case has resulted out of a bona fide mistake of the petitioner. In view of the above, the act of petitioner is protected by Section 15 of the Foreigners Act, 1946 which provides that no suit prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under the Act. Accordingly, this Court finds substance in the submissions of the learned advocate for the petitioner in this regard.

Thus, the revisional application being **CRR 176 of 2024** is allowed.

The proceeding being G.R. Case no.59 of 2024 arising out of Darjeeling Sadar Police Station Case No. 25 of 2024 dated 12th April, 2024 under Section 14 of the Foreigners Act, 1946 pending before the learned Chief Judicial Magistrate, Darjeeling, stands quashed.

Interim order, if any, stands vacated.

All connected applications, if any, also stand disposed of.

Urgent Photostat certified copy be supplied to the parties on priority basis, if the same is applied for.

(Bivas Pattanayak, J.)