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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21<sup>ST</sup> DAY OF SEPTEMBER 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.4496 OF 2020.

BETWEEN

1 . JANTRA WANIDA

THE PETITIONERS ARE PARAMANENT CITIZENS  
OF THILAND, THEY ARE FOREIGN NATIONALS  
AND THEIR PASSPORT IS IN CUSTODY OF  
THE RESPONDENT POLICE

...PETITIONERS

(BY SRI: SHANTHI BHUSHAN H, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA  
BY VIVEKA NAGAR POLICE  
REPT BY SPP  
HIGH COURT COMPLEX  
BENGALURU-560001
- 2 . RAFEEL K M  
AGED ABOUT 40 YEARS  
POLICE INSPECTOR  
VIVEKA NAGARA POLICE STATION  
VIVEK NAGARA  
BENGALURU-560 047
- 3 . FOREIGNERS REGIONAL REGISTRATION OFFICER  
5<sup>TH</sup> FLOOR, A BLOCK, TTMC  
BMTC BUS STAND BUILDING  
K H RAOD, SHANTI NAGAR  
BENGALURU-560027  
REP BY ADDITIONAL SOLICITOR GENERAL  
GOVERNMENT OF INDIA

...RESPONDENTS

(BY SRI: R.D. RENUKARADHYA, HCGP FOR R1 & R 2;  
SRI: ADITYA SINGH, CGC FOR  
SRI: C.SHASHIKANTHA, ASG FOR R3)

THIS CRIMINAL PETITION IS FILED U/S.482 OF CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS AGAINST THE PETITIONERS IN CR.NO.14/2020 C.C.NO.10933/2020 FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 14(b) FOREIGNERS ACT PENDING ON THE FILE OF METROPOLITAN MAGISTRATE TRAFFIC COURT-1 BENGALURU

THIS CRIMINAL PETITION COMING ON FOR ORDERS, THROUGH VIDEO CONFERENCE, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioners are sought to be prosecuted for the offences punishable under section 14(b) of the Foreigners Act.

The case of the prosecution is that the petitioners are the citizens of Thailand and they came to India on tourist visa, but in violation of the terms of visa conditions, they were found working in a massage centre as Therapists near Koramangala – Domlur Ring Road, Ejipura.

Heard learned counsel for petitioners and learned HCGP appearing for respondent Nos.1 and 2 and Sri.Aditya Singh, learned CGC for Sri.C.Shashikanth, learned ASG appearing for respondent No.3.

2. This petition, in my view, deserves to be allowed on two grounds:-

Firstly, the allegation made in the complaint do not attract the ingredients of section 14(b) of the Foreigners Act. The section reads as under:-

**14. Penalty for contravention of provisions of the Act, etc. —Whoever**

(a) xxxxx

(b) *does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;*

(c) xxxxx

*shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.*

3. The specific case of the prosecution is that the petitioners had entered India under tourist visa. Though it is alleged that in violation of the conditions of the visa, the petitioners were found employed in a massage centre, yet, no material is available to show that the petitioners were employed in a massage centre as Therapists at any point of time. On the

other hand, the documents produced by the prosecution in support of the charge go to show that except the statement of the witnesses, no other clinching material is available in proof of the said accusations. Even with regard to these statements, it is pointed out that all these statements were recorded in proceedings No.13/2020 registered under sections 3, 4, 5 and 7 of the ITP Act and section 370 of IPC. Statements recorded in the said case have been incorporated in the instant case to make out a case that the petitioners were working as Therapists in the said case. By no stretch of imagination, it could be believed that the customers who had taken therapy could have known the nationality of the petitioners or that the petitioners were the one who had given therapy at the relevant point of time, as such, there is no prima facie material to support the accusations leveled against the petitioners. As a result, the charge brought against the petitioners being groundless and not supported with any prima facie material, the prosecution of the petitioners for the above offences is wholly illegal and amounts to abuse of process of court and therefore, deserves to be quashed in exercise of powers under section 482 of Cr.P.C. Accordingly, the

proceedings in Cr.No.14/2020 pending in C.C.No.10933/2020 on the file of Metropolitan Magistrate, Traffic Court, Bengaiuru for the offence punishable under section 14(b) of the Foreigners Act is quashed.

4. As it is contended that all the petitioners are the residents of Thailand, this Court is required to ensure that the petitioners are deported to their country. In this regard, learned counsel for respondent No.3 would submit that the petitioners have not applied for exit permit through FRRO and NOC from the State Government is not issued and therefore, petitioners cannot be allowed to leave the country.

5. Per contra, learned counsel for petitioners by referring to the letter issued by Royal Thai Consulate-General, Chennai (page 72 of the records) would submit that Royal Thai Government has arranged for repatriation of Thai nationals and the petitioners are also eligible for travel in the said flight on 25.09.2020.

6. This document no doubt goes to show that such a flight has been arranged, but it does not satisfy the compliance of the legal requirements of the Exit Permit from the FRRO and NOC from the State Government. It is submitted that petitioner Nos.2 and 5 have already obtained the Exit Permits and the FRRO has instructed the other petitioners to file on-line exit applications. If so, the remaining petitioners are directed to make on-line applications for grant of Exit Permit to respondent No.3 immediately and shall obtain necessary NOC from the Foreigners Regional Registration Office of India and clearance from the State Police to the effect that no other cases are pending against petitioners. Petitioners shall produce copies of all these documents through their counsel before this Court by 12.00 noon on 23.09.2020. If the on-line applications are submitted by the petitioners, the respondent No.3 shall pass necessary orders thereon, without any delay. In the event the petitioners fail to produce the copies of the relevant documents obtained by them on or before 12.00 noon on 23.09.2020, the case shall be put up for orders at 2.30 p.m. on 23.09.2020 and

necessary directions will be issued to withhold the onward journey of the petitioners to Thailand.

7. Communicate this order to the Trial Court with a direction that in view of the quashment of the proceedings, if any application is filed on behalf of the petitioners for return of the passport and if the same is in the custody of the court, the same shall be returned to the petitioners immediately, on proper identification.

8. This order is passed based on the submission made by learned counsel for petitioners that apart from the instant case in C.C.No.10933/2020, no other case is pending against the petitioners. The learned Public Prosecutor shall ensure return of the passport of the petitioners to enable the petitioners to comply with the above directions.

Petition is **disposed of** in terms of the above order.

List this matter on 23.09.2020 at 2.30 p.m. to report compliance of the above directions.

**Sd/-  
JUDGE**

Bss