

**Case:-** CRIMINAL APPEAL No. 1144 of 2016

**Appellant:-** Mohammad Ahmed Mousa Abu Zayed

**Respondent:-** State of U.P.

**Counsel for Appellant:-**Om Prakash Srivastava, Shailendra Srivastava

**Counsel for Respondent:-** Govt. Advocate

**Hon'ble Ram surat Ram (Maurya), J**

1. Heard Sri Shailendra Srivastava, for the appellant and Sri Raj Bahadur, A.G.A., for State of U.P.
2. This appeal has been filed from the conviction and sentence passed by Additional Sessions Judge, Court No. 4, Maharajganj dated 30.01.2016, in S.T. No. 23 of 2015, State of U.P. Vs. Mohammad Ahmed Mousa Abu Zayed (arising out of Case Crime No. 911 of 2014, under Section 417, 420, 466, 467, 468, 471, 474 IPC and Section 14 (a) of Foreigners Act, 1946, P.S. Sonauli, district Maharajganj), sentencing the appellant for one year rigorous imprisonment with fine of Rs. 5000/- under Section 417 IPC, seven years rigorous imprisonment with fine of Rs. 10000/- under Section 420 IPC, seven years rigorous imprisonment with fine of Rs. 10000/- under Section 466 IPC, ten years rigorous imprisonment with fine of Rs. 20000/- under Section 467 IPC, seven years rigorous imprisonment with fine of Rs. 10000/- under Section 468 IPC, ten years rigorous imprisonment with fine of Rs. 20000/- under Section 471 IPC, seven years rigorous imprisonment with fine of Rs. 10000/- under Section 474 IPC and five years rigorous imprisonment with fine of Rs. 20000/- under Section 14 (a) of Foreigners Act, 1946, with default stipulation.
3. On the complaint of Ramakant Yadav (PW-1), Head Constable-40 Ramanuj Yadav (PW-2) registered FIR of Case Crime No. 911 of 2014, under Section 417, 420, 466, 467, 468, 471, 474 IPC and Section 14 (a) of Foreigners Act, 1946, at P.S. Sonauli, district Maharajganj, on 14.09.2014 at 23.00 hours against Mohammad Ahmed Mousa Abu Zayed (the appellant). It has been stated in FIR that first informant was posted as Assistant Immigration Officer at Immigration Office Sonauli. On 14.09.2014, he was on his duty. At about 15.00 hours, one foreigner, who was in the way to Nepal, handed over his Passport to him for checking. Passport bears number 628698 AMMAN (JORDAN) in the name of Mohammad Ahmed Mousa Abu Zayed (M), Date of birth- 18.09.1990,

Issued on 09.04.2014. Photo affixed on the Passport was of that man. On checking of Passport, it was found that there was neither any stamp of departure nor that of arrival. On page-7 of Passport, an endorsement of India of DOUBLE ENTRY EXTENSION VISA No. KA/B003/VEN/JOR/ 006325/2014, issued from FRRO BANGALORE on 14.04.2014, was found. According to the information supplied from CFB Delhi, Mohammad Ahmed Mousa Abu Zayed arrived in Bangalore on 15.08.2010 and residing there since his arrival. In such circumstances, it is not possible for him to obtain Passport from AMMAN (JORDAN) on 09.04.2014. Double Entry Extension Visa obtained by him appeared to be forged. During preliminary inquiry, the foreigner had admitted that his Extension Visa was forged. He informed his name as - Mohammad Ahmed Mousa Abu Zayed son of Ahmed Mousa Abu Zayed, resident of Jordan- Amman- Alnusha- Al Zarqa, Jordan, Father's mobile No. 00971506341551. From above facts, it is proved that Mohammad Ahmed Mousa Abu Zayed has resided in India on the basis of fabricated documents and on that day he was departing from India on the basis of those fabricated documents.

4. At the time of arrest of Mohammad Ahmed Mousa Abu Zayed (i) Twelve notes of Rs. 500/- each total Rs. 6000/- Indian currency, (ii) one mobile of Nokia (iii) one mobile of Samsung Galaxy S-3, (iv) one Laptop Toshiba, charger and Bag (v) wearing clothes (vi) one old Passport of Jordan No. J 835385, were recovered, of which attachment memo (Ex-Ka-6) was prepared. After registering FIR, SI Vijay Shankar Yadav (PW-3), investigated the case. He recorded statements of the witnesses. He obtained information regarding old Passport No. J 835385, from the Foreigners Regional Registration Office Bangalore, who through fax message dated 07.10.2014 (Ex-Ka-8) informed that Mohammad Ahmed Mousa Abu Zayed had obtained Passport No. H 963507, issued on 28.12.2003, which was valid till 28.12.2008. He obtained another Passport No. J 835385, issued on 24.09.2008 valid till 23.09.2013. He arrived in India via Bangalore on 28.06.2008 on Student Visa No. AD763456 issued on 22.06.2008 valid till 21.12.2008. Initially he took admission for BCA Course of three years duration in Mehra's Institute of Management Studies BCA & BBM College Bangalore. He then changed the College to Indian Academy Degree College, Bangalore and registered with this office vide No. RCF/3161/BC/JORD/2008 and RP/Stay Visa issued up to 21.12.2011. He stayed

at No. 911, Kalyannagar, Banasawadi, HRBR Layout Bangalore-43. After that he did not approach that office for any Visa extension and overstaying since 22.12.2011. On 20.05.2012, a case was registered against him by Banasawadi Police Station Bangalore City vide Crime No. 258/2012, u/s 341, 143, 147, 323, 324, 332, 353 IPC. He was arrested and enlarged on bail by ACMM Court 11, Bangalore. The case was pending vide Criminal Case No. 24344/2013, in which next date 15.12.2014 was fixed. After completing investigation, he submitted charge sheet No. 82 of 2014 on 18.10.2014 against the appellant, on which cognizance was taken. On committal, S.T. No. 23 of 2015 was registered. Additional Sessions Judge, framed charges on 01.04.2015. He amended the charges on 19.12.2015. The appellant denied charges and claimed trial.

5. In order to prove the charges, the prosecution examined Assistant Immigration Officer Ramakant Yadav (PW-1), the first informant, HC Ramanuj Yadav (PW-2), to prove check FIR and Vijay Shankar Yadav (PW-3), Investigating Officer. The appellant in his statement under Section 313 Cr.P.C. denied the charges and stated that he had handed over his papers to an Agent for extension of his Visa, who had handed over Extended Visa and he bonafide believed that it was genuine Visa. He could never know that his Visa was a fabricated document. Additional Sessions Judge, by his judgment dated 30.01.2016, held that admittedly Passport found from the possession of the appellant was a fabricated document. The appellant overstayed in India without extension of Visa. On these findings, he convicted the appellant under Section 417, 420, 466, 467, 468, 471, 474 IPC and Section 14 (a) of Foreigners Act, 1946, and sentenced as mentioned above. Hence, this appeal has been filed.

6. I have considered the arguments of the counsel for the parties and examined the record. At the time of arrest of the appellant, (i) Twelve notes of Rs. 500/- each total Rs. 6000/- Indian currency, (ii) one mobile of Nokia (iii) one mobile of Samsung Galaxy S-3, (iv) one Laptop Toshiba, charger and Bag (v) wearing clothes (vi) one old Passport of Jordan No. J 835385, were recovered, of which attachment memo (Ex-Ka-6) was prepared. When Investigating Officer made inquiry in respect of old Passport of the appellant, from the Foreigners Regional Registration Office Bangalore, then through fax message dated 07.10.2014 (Ex-Ka-8), he informed that Mohammad Ahmed Mousa Abu Zayed had obtained Passport No. H 963507, issued on 28.12.2003,

which was valid till 28.12.2008. He obtained another Passport No. J 835385, issued on 24.09.2008 valid till 23.09.2013. He arrived in India via Bangalore on 28.06.2008 on Student Visa No. AD763456 issued on 22.06.2008 valid till 21.12.2008. Initially he took admission for BCA Course of three years duration in Mehra's Institute of Management Studies BCA & BBM College Bangalore. He then changed the College to Indian Academy Degree College, Bangalore and registered with that office vide No. RCF/3161/BC/JORD/2008 and RP/Stay Visa issued up to 21.12.2011. He was stayed at No. 911, Kalyannagar, Banasawadi, HRBR Layout Bangalore-43. After that he did not approach the office for any Visa extension and overstaying since 22.12.2011. From this it is clear that the appellant came to India under a valid Passport and Student Visa, which was later on extended and valid till 21.12.2011. He was overstaying since 22.12.2011 and was arrested on 14.09.2014, when he was trying to cross border of India. Thus he has committed offence under Section 14 (a) of Foreigners Act, 1946 and his conviction by Court below in this respect does not suffer from any illegality.

7. From fax message dated 07.10.2014 (Ex-Ka-8), it is also proved that on 20.05.2012, a case was registered against the appellant by Banasawadi Police Station Bangalore City vide Crime No. 258/2012, u/s 341, 143, 147, 323, 324, 332, 353 IPC. He was arrested and enlarged on bail by ACMM Court 11, Bangalore. The case was pending vide Criminal Case No. 24344/2013, in which next date 15.12.2014 was fixed. In the meantime, he obtained a Passport No. 628698 AMMAN (JORDAN), issued on 09.04.2014. On page-7 of this Passport, an endorsement of India of DOUBLE ENTRY EXTENSION VISA No. KA/B003/VEN/JOR/006325/2014, issued from FRRO BANGALORE on 14.04.2014. This Passport and entry in it of Extension Visa was a forged and fabricated document. The defence of the appellant before the Court below that he had handed over papers for extension of his Visa to an Agent, who after getting extension, handed over this Passport and he could never know that this document was a fabricated document. But this Passport and Extension Visa were obtained after registering FIR of Crime No. 258/2012, u/s 341, 143, 147, 323, 324, 332, 353 IPC, on 20.05.2012 against the appellant. The appellant has already got his Student Visa No. AD763456 issued on 22.06.2008 valid till 21.12.2008 extended as such his defence that the Agent has cheated him is not

liable to be accepted. He has not disclosed the name of the Agent, who has cheated him. Thus he has committed offence punishable under Section 466, 471 and 474 IPC. His conviction under Section 417, 420, 467 IPC is set aside.

8. So far as sentence awarded to the appellant is concerned, from the evidence on record, it is proved that the appellant came to India on the basis of valid Passport and Student Visa. He also took admission for BCA three years degree Course in Mehra's Insitute of Management Studies BCA & BBM College Bangalore. He then changed the College to Indian Academy Degree College, Bangalore. The age of the appellant is also about 27 years. Supreme Court in **Habib Ibrahim v. State of Rajasthan, (2008) 6 SCC 772**, held that for violation of Foreigners Act, 1946, there is need for imposing stricter sentence as the large number of infiltrators that come to India without valid documents. Maximum sentence under Section 14 of Foreigners Act, 1946 is five years imprisonment. Other offences have been committed in relation to the offence under Foreigners Act, 1946 as such for other offences also same sentence is liable to be awarded.

9. In the result, the appeal is partly **allowed**. The conviction of the appellant under under Section 417, 420, 467 IPC passed by Additional Sessions Judge, Court No. 4, Maharajganj, dated 30.01.2016, in S.T. No. 23 of 2015, State of U.P. Vs. Vs. Mohammad Ahmed Mousa Abu Zayed (arising out of Case Crime No. 911 of 2014, under Section 417, 420, 466, 467, 468, 471, 474 IPC and Section 14 (a) of Foreigners Act, 1946, P.S. Sonauli, district Maharajganj), is set aside. The conviction of the appellant under Section 466, 471 and 474 IPC and Section 14 (a) of Foreigners Act, 1946 in S.T. No. 23 of 2015, State of U.P. Vs. Vs. Mohammad Ahmed Mousa Abu Zayed (arising out of Case Crime No. 911 of 2014, under Section 417, 420, 466, 467, 468, 471, 474 IPC and Section 14 (a) of Foreigners Act, 1946, P.S. Sonauli, district Maharajganj), is hereby confirmed. Sentence is modified and the appellant is sentenced for five years imprisonment with fine of Rs. 20000/- under Section 466, 471 and 474 IPC and Section 14 (a) of Foreigners Act, 1946. In case of default in payment of fine, he would serve a sentence of one month's additional imprisonment.

**Order Date:**24.3.2017

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