

P L D 2024 Islamabad 231

Before Babar Sattar, J

RAHIL AZIZI---Petitioner

Versus

The STATE and 5 others---Respondents

Writ Petition No. 1666 of 2023, decided on 19th June, 2023.

(a) Interpretation of statutes---

---Criminal trial---Where language is amenable to different interpretations, the one more favorable to accused must be adopted.

(b) Constitution of Pakistan---

---Arts. 4 & 9---State and citizen, relationship---Principle---Law is not meant to act as trap---Constitution and law regulate relationship between State and citizens and any other persons who for the time being are within the territorial boundaries of the State---Purpose of law is to act as a benevolent instrument to facilitate and uphold rights of citizens and other persons as guaranteed by the Constitution.

(c) Foreigners Act (XXXI of 1946)---

---S. 14 (2)---Refugee Convention, 1951, Art. 31---Constitution of Pakistan, Arts. 9 & 199---Constitutional petition---First Information Report, quashing of---Illegal entry into Pakistan---Pre-conditions---Intention to seek refuge---Petitioner/accused entered Pakistan illegally to seek political asylum---Authorities registered FIR against petitioner/ accused under Foreigners Act, 1946 and put her in judicial custody---Trial Court and Lower Appellate Court declined to release her on the plea that she wanted to return to her country---Validity---Components of offence under S. 14(2) of Foreigners Act, 1946, include entry into Pakistan for an illegal purpose and doing so knowingly---Actus reus of offence is entering Pakistan illegally and mens rea is intent to enter for an illegal purpose---Intent to seek refuge to save one's life is not an illegal purpose---Where facts established that a foreigner entered into Pakistan to save her life and sought asylum fearing persecution in her home country, such action did not constitute an illegal purpose within the meaning of S. 14(2) of Foreigners Act, 1946---Orders passed by two Courts below were not in accordance with law and had disregarded protection of life and liberty afforded by Art. 9 of the Constitution to any person for the time being in Pakistan---Both the Courts below also failed to appreciate that a foreigner who entered Pakistan as a refugee to save her life from persecution in home country and to seek asylum in a third country in accordance with international law was not liable for a criminal offence under S. 14(2) of Foreigners Act, 1946---High Court set aside orders passed by two Courts below---High Court directed Federal Government to prescribe a mechanism in consonance with Art. 31 of Refugee Convention, 1951, to enable refugees to voluntarily report upon arrival in Pakistan that they would seek refuge and wished to register with UNHCR to seek asylum in a third country---High Court further directed the Government to frame SOPs to direct police authorities to release an accused refugee under S. 169 of Cr.P.C. or file an appropriate report under S. 173 of Cr.P.C., or file an appropriate application under S. 494 of Cr.P.C. to withdraw from prosecution of foreigner, depending on the stage when once refugee status of foreigner is recognized by UNHCR and application for

grant of asylum is under process or has been approved---High Court quashed FIR against petitioner/accused as there was no evidence establishing that she had knowingly and illegally entered into Pakistan instead of entering Pakistan as a refugee to save her life---High Court directed Federal Government to issue an exit permit to petitioner/accused forthwith---Constitutional petition was allowed, in circumstances.

Messrs Najib Zarab Limited v. Government of Pakistan through Secretary Ministry of Finance, Islamabad and 4 others PLD 1993 Kar. 93; Federation of Pakistan and others v. Shaukat Ali Mian and others PLD 1999 SC 1026; Farooq Ahmad Khan Laghari v. Federation of Pakistan PLD 1999 SC 57; (Human Rights Case No. 29388-K of 2013) PLD 2014 SC 305; Sadia Jabbar v. Federation of Pakistan and others 2018 PTD 1746; Mumtaz Bibi v. Qasim and others PLD 2022 Isl. 228; Aamir Aman v. Federation of Pakistan PLD 2020 Sindh 533 and Al-Jehad Trust v. Federation of Pakistan 1999 SCMR 1379 ref.

(d) Convention Relating to the Status of Refugees, 1951---

---Art. 31 & Preamble---Refugees handling---Principle---Facilitating settlement of a refugee in a third country does not just burnish the credentials of Pakistan as a polity that understands plight of refugees, given that it has shouldered the burden of refugee settlement from neighboring countries---This is also a sensible public policy choice to reduce litigation and prevent further burdening of criminal justice system with unnecessary trials.

Umer Ijaz Gillani for Petitioner.

Aqeel Akhtar Raja, A.A.G., Saif Ali Khan, S.O. (PE-II), Ministry of Interior, Muhammad Asif, S.O. Ministry of Safron, Sarij Haider Turk, Legal Coordinator, Ministry of Safron, and Ms. Rashida Anwar, Sub-Inspector, FIA for Respondents.

#### JUDGMENT

BABAR SATTAR, J.---The petitioner, Rahil Azizi, is a national of Afghanistan, who has sought (i) quashment of FIR No. 133/2021 dated 25.08.2021, and (ii) setting aside of order dated 03.03.2023 passed by the Judicial Magistrate Section-30, Islamabad whereby he dismissed the application filed by the petitioner under Section 249-A, Cr.P.C, and order dated 13.04.2023 pursuant to which the Additional Sessions Court dismissed the revision petition against order of the Judicial Magistrate dated 03.03.2023.

2. Ms. Azizi claimed that she was working for the Afghan Police for five years under the erstwhile Afghan National Government. In August 2021, the said regime fell and the Taliban assumed control of Afghanistan and formed a new Government. Many civilians as well as officials working with law enforcement agencies feared for their lives due to regime change in Afghanistan on the aftermath of a violent civil war. To save her life Ms. Azizi escaped to Pakistan by crossing the border. She, however, did not have a visa to enter Pakistan and had no time to seek one, given the security situation in Afghanistan in August 2021.

3. Ms. Azizi, approached the police in Islamabad and narrated her story. She was produced before Assistant Commissioner Potohar, in Islamabad and was initially sent to Dar-ul-Aman. Subsequently the impugned FIR was registered against her by the Federal Investigation Agency ("FIA") for an offence under Section 14(2) of the Foreigners Act, 1946 ("Foreigners Act") and was sent to Adyala jail.

4. Ms. Azizi, filed bail petition (Crl. Misc No. 536-B/2022), which was allowed by this Court by order dated 21.06.2022 and Ms. Azizi was released into the custody of Secretary Interior, who placed her under the supervision of an official working with the United Nations High Commissioner for Refugees ("UNHCR") pending processing of her asylum application and her trial under the Foreigners Act.

5. During the bail proceedings, this Court sought to understand the framework for grant of asylum status to refugees in Pakistan. In its report dated 25.05.2022, the Ministry of Interior submitted the following:

"A tripartite agreement between Government of Pakistan (signed by Ministry of SAFRON), Government of Afghanistan and UNHCR was signed in 1993 and further extended in 2010, acknowledging the application of the UNHCR Statute in carrying out its international protection mandate activities. Under this framework Afghan heads of families approach UNHCR claiming a need for international protection. In the absence of an asylum avenue within Pakistan legislation/administrative framework, UNHCR through its international partners, have been conducting pre-screening of those Afghans seeking international protection. The individuals are provided with a pre-screening confirmation slip certifying that they have approached UNHCR's partner and completed a pre-screening interview. Although the confirmation slip does not attest to any formal legal status in Pakistan, it is in practice providing some basic protection to its bearer until the determination of his/her claim for international protection is made."

6. Likewise, the Ministry of Law and Justice submitted in its own report dated 31.05.2022 that stated the following:

"That there is no such domestic legal frame work system in Pakistan with regard to grant refugee status and protection to asylum seekers during the period in which the case(s) of the asylum-seeker are being processed by UNHCR. However, in the absence of domestic law with regard to asylum-seeker, Pakistan accedes to the UNHCR's decision with regard to grant of refugee status and allows asylum seekers who are still undergoing the procedure in accordance with the 1993 Cooperation Agreement between the Government of Pakistan and UNHCR."

7. The Cooperation Agreement entered into between the Government of Pakistan and UNHCR dated 18.09.1993 and further extended in the year 2010 states in Article-III that, "co-operation between the Government and UNHCR in the field of international protection of, and humanitarian assistance to, refugees and other persons of concern to UNHCR shall be carried out on the basis of the Statute of UNHCR and, of other relevant decisions and resolutions relating to UNHCR adopted by United Nations organs." It is on the basis of this agreement and in the absence of a legislative or policy framework to grant protection to refugees and process any applications for asylum that the Government of Pakistan relies on UNHCR as a proxy to determine the refugee status of migrants who enter Pakistan to seek refuge and asylum.

8. During the bail proceedings, the State did not oppose the bail application. It was clear that Ms. Azizi was being kept in jail merely because she did not have a valid visa to enter Pakistan and pending the verification of her credentials and processing of her application for formal grant of refugee status and for seeking asylum in a third country, the State did not know what to do with Ms. Azizi. While

granting bail this Court had observed that, "the petitioner is caught between the rock and a hard place. She feared for her life and escaped to Pakistan in order to seek asylum and for such purpose her case is under consideration by the UNHCR. But she has been arrested for entering Pakistan without a valid visa and has been lodged in jail and is being treated as a criminal. The Ministry of Interior has confirmed that UNHCR has issued an Asylum Seeker Certificate to the petitioner confirming that she is a legitimate applicant for asylum status and her case is under consideration. The Constitution guarantees the right to liberty as well as the right to dignity of every person who for the time being is in Pakistan under Articles 9 and 14. Given that the status of the petitioner as a legitimate asylum seeker has been confirmed by the Ministry of Interior, fettering her rights to liberty and dignity by confining her in a penitentiary is illegal." Consequently, Ms. Azizi was released into the custody of an authorized officer appointed by the Secretary, Ministry of Interior and was lodged in a facility maintained by UNHCR.

9. The question before the Court now is whether the petitioner is liable for an offence under Section 14(2) of the Foreigners Act given that she entered Pakistan without a visa or whether the charge is without any ground and there is no possibility of her conviction. Section 14(2) of Foreigners Act, states the following:

"Where any person knowingly enters into Pakistan illegally, he shall be guilty of an offence under this Act and shall be punished with imprisonment for a term which may extend to ten years and fine which may extend to ten thousand Rupees."

10. Let us recount some of the developments in relation to Ms. Azizi's case subsequent to grant of bail. She was certified as a recognized refugee in the office of UNHCR in Pakistan. The UNHCR also filed a note before the Judicial Magistrate, Islamabad stating that, "in Pakistan, in the absence of the national asylum framework, UNHCR has been carrying out registration and Refugee Status Determination activities under its mandate. The documentation issued to the registered asylum-seekers and refugees attests to their status and has been largely respected by the Government of Pakistan as a valid documentation, protecting asylum-seekers and refugees from refoulement, as well as arbitrary detention and arrest."

11. The note confirmed that the UNHCR had issued Ms. Azizi an asylum-seeker certificate and UNHCR's access to Ms. Azizi had been duly authorized by the Ministry of Foreign Affairs as well as the Ministry of Interior. It further submitted that, "as a person of concern to UNHCR who might face serious harm in case of return to her country of nationality, Ms. Azizi is exempted from the provisions of the Foreigners Act pertaining to illegal stay. She is also protected from forcible return to Afghanistan where she might to expose to protection risks. The principle of non-refoulement is a cornerstone of the international refugee protection enshrined not only in the 1951 Refugee Convention (Art.33(1)) but also embedded in key international Human Rights instruments such as International Convention on Civil and Political Rights, 1966 (ICCPR) and Convention Against Torture, 1984 (CAT), to which Pakistan is a party."

12. Ms. Azizi's application for refugee status and grant of asylum filed with the UNHCR succeeded and she was granted a refugee status and a humanitarian woman at risk visa by Australia on 26.04.2023, which entitles her to remain permanently in Australia. This confirmed not only her refugee status but also the grant of asylum by Australia. She then needed an exit permit to be issued by the Ministry of Interior authorizing her to leave Pakistan and travel to Australia to

settle there. The Ministry of Interior took a position that the exit permit could not be issued as Ms. Azizi was under trial pursuant to the impugned FIR. She then filed an application with the Judicial Magistrate under Section 249-A of Cr.P.C, which was dismissed by order dated 03.03.2023. And the revision against such dismissal order was also dismissed on 13.04.2023, hence this petition.

13. The only question before the Court is whether Ms. Azizi is entitled to be granted permission to travel to Australia after issuance of exit permit after quashment of the impugned FIR or should she be forced to face a complete trial before such permission can be granted. What appears to have prevailed with both the Judicial Magistrate as well as the Additional Sessions Court in dismissing her application under Section 249-A of Cr.P.C is that she was granted asylum-seeker certificate by UNHCR after two months of her arrest and registration of the FIR, and grant of such certificate could not be applied retrospectively to legalize her entry into Pakistan without a visa.

14. The learned counsel for the petitioner submitted that the penalty described under Section 14(2) of the Foreigners Act constituted a criminal offence and attracted punishment of up to ten years in jail. But as it was a criminal offence, an essential component of the charge was guilty intent or mens rea on part of an accused. He submitted that there was no illegality where a refugee was forced to take refuge in Pakistan in order to save his/her life, which fact was confirmed by the grant of an asylum-seeker certificate by UNHCR and subsequent approval of her asylum application and grant of the same by Australia. He submitted that the Constitution of Pakistan guaranteed the right to life and liberty to all persons for the time being in Pakistan, including refugees. And the inability of a refugee, seeking to protect his/her life, to seek a visa to enter Pakistan could not seal the fate of such refugee by painting him/her as a criminal liable to punishment under the Foreigners Act.

15. The learned Assistant Attorney General representing the Federation did not contest the background facts or even the grant of an exit permit to the petitioner. He confirmed that Ms. Azizi was not charged with any other offence in Pakistan and was not wanted in any other case. However, the only hurdle to issuance of an exit permit was that she was an accused under trial and could not be allowed by the Federation to leave Pakistan without grant of permission by the trial Court. And as the trial Court had rejected Ms. Azizi's application under Section 249-A of Cr.P.C, Ministry of Interior could not issue her an exit permit to travel to Australia.

16. Pakistan does not have a statutory framework for recognition of refugees and grant of asylum. It is also not a signatory to the 1951 Refugee Convention. This, however, poses no challenge in the present case. The decision re whether or not the petitioner's application under section 249-A of Cr.P.C ought to have been accepted or not does not rest on Pakistan's adherence to the 1951 Refugee Convention alone.

17. For purposes of analysis under international law it is admitted that Pakistan is a signatory to the International Convention on Civil and Political Rights, 1966 ("ICCPR") as well as the Convention Against Torture, 1984 ("CAT"). The scope of application of International law is now fairly settled in Pakistan. It was held by Sindh High Court in Messrs Najib Zarab Limited v. Government of Pakistan through Secretary Ministry of Finance, Islamabad and 4 others (PLD 1993 Karachi 93) that, "nations must march with the international community and the municipal law must respect rules of international law, even as nations respect international opinion. The comity of nations requires that rules of international law may be accommodated in the municipal law even without express legislative sanction

provided they do not run into conflict with Acts of Parliament. The doctrine of incorporation also recognizes the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament, comity of nations and municipal law must prevail in case of conflict."

18. The principle of incorporation was endorsed by the Supreme Court in *Federation of Pakistan and others v. Shaukat Ali Mian and others* (PLD 1999 SC 1026), wherein it was held that, "[in] Pakistan the Courts apply municipal law and not international laws in order to examine the vires of a provision of a statute. However, if a municipal law and an international law are consistent with each other and there is no conflict or inconsistency, the Court, to reinforce its view as to the interpretation of a constitutional provision or of a provision of statute, may press into service international law and/or conventions", while reiterating the apex court's approach to international law previously endorsed in *Farooq Ahmad Khan Laghari v. Federation of Pakistan* (PLD 1999 SC 57).

19. The principle of incorporation was once again emphasized by the Supreme Court in *Human Rights Case No. 29388-K of 2013* (PLD 2014 SC 305) where while considering the matter of enforced disappearance it cited with approval a practice adopted by the Supreme Court of Nepal that had applied the principles enshrined in the *Convention against enforced disappearances, 2006*, as a sub-set of the right to life guaranteed by the constitution of Nepal even though Nepal had not ratified the said convention.

20. A Division Bench of the Sindh High Court in *Sadia Jabbar v. Federation of Pakistan and others* (2018 PTD 1746) noted that, "[i]t is of course, well settled as a general principle that if two interpretations of a provision are possible, then the one consistent with international law or Pakistan's treaty obligations will be preferred. And it is equally well settled that if the meaning of the municipal law is clear then it must be given effect to, even though it may conflict with Pakistan's obligations under international law."

21. This Court in *Mumtaz Bibi v. Qasim and others* (PLD 2022 Islamabad 228) had summarized the approach of the Courts to international law as follows:

"In the event that municipal law of Pakistan is in conflict with provisions of international law, the municipal law for the time being in force is to be given effect by the courts in Pakistan notwithstanding any conflicting international obligation. However, for purposes of interpretation, where the express provisions of municipal law of Pakistan do not contradict obligations undertaken by Pakistan by becoming party to a treaty or convention, it is to be assumed that the legislature never intended to set up municipal law in conflict with Pakistan's obligations under international law. Thus, where the text of a statutory instrument provides room for interpretation, the interpretation is to be undertaken such that it is not in conflict with Pakistan's obligation under international law."

22. Article 2 of ICCPR requires, "each State Party to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind " Article 9 provides that, "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention " and Article 12(2) states that, "everyone shall be free to leave any country, including his own." Likewise, Article 3(1) of CAT states that, "no State Party shall expel, return ("refouler") or extradite a person to another

State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Pakistan is signatory to both ICCPR and CAT. But even otherwise the principles enshrined therein, as reproduced above, are in consonance with the guarantees under the Constitution afforded to all persons for the time being in Pakistan (i.e. to treatment in accordance with law and to protection of law such that no action detrimental to life, liberty and body is taken (Article 4), to life and liberty (Article 9), to dignity (Article 14)).

23. Article 31 of the 1951 Refugee Convention provides the following:

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life and freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Pakistan is not a contracting party to the 1951 Refugee Convention. But the principles enshrined in the Refugee Convention are relevant for our purposes in view of the doctrine of incorporation attracted while interpreting statutory provisions i.e. incorporating principles of international law that do not contradict but rather supplement provisions of statutory law. Article 31 of the Refugee Convention thus becomes a useful aid to interpret section 14 of the Foreigners Act, read with provisions of ICCPR, CAT, the agreement entered into by and between the State of Pakistan and UNHCR, and Articles 4, 9 and 14 of the Constitution.

24. The legal question before the Court is whether after the grant of refugee status to the petitioner by UNHCR and the acceptance of her asylum application by the Government of Australia, must the State of Pakistan try her under Section 14 of the Foreigners Act on the basis that she breached the law by entering Pakistan without permission.

25. A related question came before the Sindh High Court in *Aamir Aman v. Federation of Pakistan* (PLD 2020 Sindh 533). The matter related to the status of two Turkish nationals, who were teaching at Pak Turk International Schools and Colleges. While they were granted visas to enter into and teach in Pakistan, their visas had expired and were not renewed by the Government of Pakistan. The question of their status came before the Sindh High Court. In its order Sindh High Court reproduced an excerpt from the UNHCR website dedicated to Pakistan, which provided the following:

"Pakistan' generally accepts UNHCR decisions to grant refugee status and allows asylum-seekers (who are still undergoing the procedure) as well as recognized refugees to remain in Pakistan pending identification of a durable solution."

While allowing the two Turkish nationals to stay and work in Pakistan Sindh High Court held that, "the Turkish petitioners and their families are entitled to remain in Pakistan till such time as their applications remain pending with UNHCR. If those

applications are disposed off in a manner accepted by them, then they are to be dealt with in the manner as so provided for and not otherwise, within such timeframe as may be applicable. If those applications are rejected or disposed off in a manner that they consider adverse to them, either in whole or in part, then they are to be given a period of 15 days to review their position and seek such remedy, if any, before such forum and in such proceedings as may be appropriate in accordance with law."

26. The point of distinction between the present case and Aamir Aman is that in the said case the petitioners had not entered into Pakistan without a visa but had remained in Pakistan after expiry of the visa.

27. The question before us is whether once an individual enters into Pakistan without a visa for fearing his/her life and liberty, is his/her fate sealed as far as the offence under Section 14(2) of the Foreigners Act is concerned. The answer cannot possibly be in the affirmative in any civilized country. Section 14(2) of the Foreigners Act cannot be treated as a strict liability offence where culpability stands established notwithstanding guilty intent and notwithstanding the circumstances that forced the alien to enter Pakistan. The legislative intent behind the Foreigners Act is not to punish but to prescribe a procedure regulating entry and exit from Pakistan for foreigners and to deter those who seek to enter Pakistan without seeking prior permission, for illegal purposes. Such legislative intent is manifest in Article 14-B of the Foreigners Act, which provides a mechanism for deportation of foreigners, who enter Pakistan illegally, pending their trial or after their punishment. It provides that pending a trial an accused can be deported by the Federal Government with the permission of the trial Court. And in the event that a foreigner has been found guilty of an offence under the Foreigners Act, he/she can be deported by the Federal Government while undergoing a sentence. The legislative intent is therefore abundantly clear: to prevent foreigners from entering Pakistan without permission and staying in the country for illegal purposes. But the idea is not to punish them and ensure that they serve out their entire sentence in Pakistan. The intent is to deport a foreigner back to his home country once it is found that he/she is present in Pakistan illegally and is liable for an offence under the Foreigners Act.

28. To interpret the offence under section 14 as a strict liability offence would fall foul of the principle of non-refoulement enshrined in Article 3(1) of CAT as well as the guarantee of freedom of movement provided in Article 12(2) of ICCPR. Pakistan is a signatory to both these conventions. A textual interpretation of Section 14(2) does not require the offence to be treated as a strict liability offence. And provisions of ICCPR, CAT and the Refugee Convention militate against interpretation of Section 14(2) as a strict liability offence. It is a settled principle of interpretation of criminal law that where the language is amenable to different interpretations, the one more favorable to the accused must be adopted. As discussed above, a purposive interpretation of the Foreigners Act presents it as a statute meant to regulate entry and exit of foreigners and not to punish anyone who manages to escape from their own country to Pakistan to save their lives.

29. The provisions of the Foreigners Act are to be read together with provisions of the Constitution. It was explained by the Supreme Court in *Al-Jehad Trust v. Federation of Pakistan* (1999 SCMR 1379) that there are two categories of fundamental rights guaranteed by the Constitution: those that for protection to any person for the time being in Pakistan; and those that are meant to protect the right of citizens. In the foreigners category falls the protection afforded to the right of

any person to life and liberty and safeguard against arbitrary arrest and detention as well as the right to dignity, amongst other rights. Likewise, Article 4 of the Constitution affords the protection of law and the right to be treated in accordance with law to every person for the time being in Pakistan. Article 10-A of the Constitution guarantees the right of every person for the time being in Pakistan to fair trial and due process. The obvious question that arises next is whether a foreigner who enters Pakistan to seek refuge out of the fear that not doing so might be detrimental to his/her life, will be afforded the protection of Articles 4, 9, 10-A and the 14 of the Constitution or whether he/she will be treated as a criminal for having breached Section 14(2) of the Foreigners Act by having entered into Pakistan without permission. It would be unconscionable as well as inconceivable that the legislature intended that every person entering Pakistan without a valid visa was liable to be punished for a period of ten years under Section 14(2) of the Foreigners Act, even if the entry was caused by a set of circumstances where such foreigner feared for his/her life. Just because there is no statutory or policy mechanism available to a foreigner to disclose to the State of Pakistan at the time of entry that he/she has entered to seek refuge and save their lives and to apply for asylum in accordance with principles of international law, does not mean that Section 14-B will come into play automatically to penalize such foreigner.

30. Whether or not a foreigner has been forced to enter Pakistan out of fear for his/her life is no doubt a factual determination. But making such factual determination will not always require a full-fledged trial. In the instant case, the underlining facts are uncontroverted. The petitioner is an Afghan national, who entered Pakistan and herself disclosed to the police that she was in Pakistan without a visa and wished to register with the UNHCR as an asylum seeker as she feared for her life under the new regime that had formed Government in Afghanistan. She was subsequently registered with the UNHCR, which certified her status as a potential refugee seeking asylum in a third country. Her credentials were subsequently verified and her application to asylum was accepted by Australia. While in Pakistan she was alleged or found to have been involved in any illegal activities. The only thing holding her up in Pakistan is an FIR charging her with illegal entry into Pakistan due to which the Ministry of Interior is refusing to issue an exit permit to allow her to travel to Australia.

31. The law is not meant to act a trap. The Constitution and the law regulate the relationship between the State and citizens and any other persons who for the time being are within the territorial boundaries of the State. The purpose of law is to act as a benevolent instrument to facilitate and uphold the rights of the citizens and other persons as guaranteed by the Constitution. It is in this context that Section 14(2) of the Foreigners Act is to be read together with Article 4, 9, 10-A and 14 of the Constitution, while also taking into account the entrenched principles of international law that recognize the right of refugees to safety, to not be treated as criminals, and to seek asylum in a foreign country. That Pakistan does not have its own national legal framework for refugees does not mean that anyone seeking refuge out of fear for his/her life or liberty must do so at the cost of being imprisoned for a term prescribed under Section 14(2) of the Foreigners Act.

32. The components of offence under Section 14(2) of the Foreigners Act include entry into Pakistan for an illegal purpose and doing so knowingly. The actus reus of the offence is entering Pakistan illegally and the mens rea is the intent to enter for an illegal purpose. However, the intent to seek refuge to save one's life is not an illegal purpose. Where facts establish that a foreigner entered into Pakistan to save his/her life and seek asylum fearing persecution in his/her home

country, such action will not constitute an illegal purpose within the meaning of Section 14(2) of the Foreigners Act. A contrary interpretation of Section 14(2) of the Foreigners Act is not conceivable in a country such as Pakistan that treats fundamental rights as inalienable rights of human beings.

33. There might have been no illegality in the initial recording of an FIR against the petitioner. However, subsequent verification of her credentials and issuance of appropriate certification by UNHCR as well as approval of her asylum application by the Government of Australia has established that the petitioner did not enter into Pakistan for an illegal purpose. And her claim that she feared that she would be persecuted if she remained in Afghanistan and was therefore forced to seek refuge and asylum elsewhere has been vindicated by the grant of her asylum application by the Government of Australia.

34. In these circumstances, the Judicial Magistrate ought to have allowed the application filed by her under Section 249-A of Cr.P.C as the record establishes that the components of the offence punishable under Section 14(2) of the Foreigners Act are not made out in the instant case and there was no possibility of conviction. The question before the Judicial Magistrate and the Additional Sessions Court was not whether the UNHCR certificate of the petitioner's refugee status would have retrospective effect. The question was whether in view of verification carried out by UNHCR and confirmation of the petitioner's refugee status the offence under section 14(2) was made out.

35. In view of the above, this Court is of the view that the impugned order dated 03.03.2023 by the Judicial Magistrate and order dated 13.04.2023 by the Additional Sessions Court is not in accordance with law. The impugned orders disregarded the protection of life and liberty afforded by Article 9 to any person for the time being in Pakistan and failed to appreciate that a foreigner who seeks to enter Pakistan as a refugee to save his/her life from persecution in home country and to seek asylum in a third country in accordance with international law is not liable for a criminal offence under Section 14(2) of the Foreigners Act. The said orders are therefore set aside.

36. It must also be noted that in a case where the State has initially registered an FIR under the Foreigners Act, but has subsequently verified through the instrumentality of UNHCR that the foreigner in question is a bona fide and legitimate refugee seeking asylum in a third country, the state is not a hapless bystander. Upon verification of the refugee status of a foreigner by UNCHR, the refugee must not be kept incarcerated like an under trial prisoner. The Federal Government must prescribe a mechanism in consonance with Article 31 of the 1951 Refugee Convention to enable refugees to voluntarily report upon arrival in Pakistan that they seek refuge, and wish to register with UNHCR to seek asylum in a third country. It must also make arrangements to lodge refugees independently or in association with UNHCR so that pending recognition of refugee status and decision on asylum applications, such refugees are not locked-up in prisons. The government must also frame SOPs' to direct police authorities to release an accused refugee under Section 169 of Cr.P.C. or file an appropriate report under Section 173 of Cr.P.C., or file an appropriate application under Section 494 of Cr.P.C. forthwith to withdraw from the prosecution of the foreigner, depending on the stage in the case in question, once the refugee status of the foreigner has been recognized by UNHCR and his application for grant of asylum is under process or has been approved. This will ensure that a foreigner seeking refuge is not unnecessarily charged, and where the charge has been framed, such foreigner can be acquitted in

respect of any offence under the Foreigners Act that he/she has been charged with. And the Ministry of Interior can issue an appropriate exit permit to enable such foreigner to travel to the country that has granted him/her asylum. Facilitating the settlement of a refugee in a third country would not just burnish the credentials of Pakistan as a polity that understands the plight of refugees, given that it has shouldered the burden of refugee settlement from neighboring countries. It would also be a sensible public policy choice to reduce litigation and prevent further burdening of the criminal justice system with unnecessary trials.<sup>37</sup> Let a copy of this judgment be sent to Secretary Interior for his information and compliance.

38. These are the reasons for the short order announced on 19.06.2023 in the following terms:

"For reasons to be recorded later, this petition is allowed. There is no evidence establishing that the petitioner knowingly and illegally entered into Pakistan instead of entering Pakistan as a refugee to save her life. The impugned FIR is therefore quashed. The Ministry of Interior will issue an exit permit to the petitioner forthwith."

MH/93/Isl. Petition allowed.

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