

CHAPTER VII
Offences and Penalties

24. Offences and Penalties – (1) Whoever –

Except in conformity with the provisions of this act emigrates:

Or

Contravenes the provisions of Sec. 16: or

By intentionally furnishing any false information or suppressing any material information obtains a certificate or a permit or an emigration clearance under this Act: or

Without lawful authority makes or causes to be made any alteration in any certificate or permit or in any document or endorsement by way of emigration clearance issued or made under this Act ; or

Disobeys or neglects to comply with any order of the Protector of Emigrants under this Act ; or

Collects from an emigrant any charges in excess of the limits prescribed under this Act ; or

Cheats any emigrant ;

Shall be punishable with imprisonment for a term which may extend to two years and with fine which extend to two thousand rupees:

Provided that in the absence of any special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than six months and such fine shall not be less than one thousand rupees.

(2) Whoever attempts to commit any offence under sub section (1) shall be punishable with the punishment provided for such offence under that sub section.

(3) Whoever contravenes any term or condition subject to which any emigration clearance has been given under this Act, shall, if no other punishment is provided elsewhere in this Act for such contravention, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.

(4) Whoever abets any offence punishable under this Act shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided for that offence.

(5) Whoever, having been convicted of an offence under any provision of this Act is again convicted of an offence under the same provision, shall be punishable, for the second and for each subsequent offence, with double the penalty provided for that offence.

Comments

“Offence” – Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law, when trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act.(1)

Penal provision. – The provision is to be construed rigidly. (2)

Penalty – Collection of fine or penalty amount when bad. – The penalty cannot be collected unless the penalty order is first signed and pronounced. (3)

25. Offence by companies. – (1) Where an offence under this Act has been committed by a company, every person who, at the time of the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

Explanation- For the purpose of this section-
"Company" means any body corporate and includes a firm or other association of individuals; and
"director", in relation to a firm, means a partner in the firm.

Comment

Explanation- It is now well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely to explain or clarify certain ambiguities which may have crept in the statutory provision.

Offences to be cognizable.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973{2 of 1974}, all offences under this Act shall be cognizable.

Previous sanction of Central Government necessary.- No prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorized by that Government by order in writing in this behalf :

Provided that no sanction shall be required when an offence has been committed in respect of an emigrant or an intending emigrant and the complaint is filed by such emigrant, or intending emigrant, or on behalf of such emigrant or intending emigrant, by the father, mother, husband, wife, son, daughter, brother, sister or guardian of such emigrant or intending emigrant, or if such emigrant or intending emigrant is a member of a joint Hindu family, by the manager of that family.

28. Punishment to be without prejudice to any other action.- The award of punishment for an offence under this Act shall be without prejudice to any other action which has been or which may be taken under this Act with respect to such contravention.

Comment

The law in its wisdom seeks to punish the guilty who commits the sin and not the person, who is innocent.²