

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
M.Cr.C. No.21084/2017 **(-1-)**
(Muyinat Adenike and another Vs. State of Madhya Pradesh and another)

M.Cr.C. No.21084/2017

Indore, dated: 08.03.2018

Shri Vismit Panot, learned counsel for the petitioners.

Ms. Nidhi Bohra, learned Government Advocate for the respondent No.1/State.

Shri Manish Nair, learned counsel for the respondent No.2.

Petitioners before this Court have filed this present petition under Section 482 of Cr.P.C. for quashment of F.I.R. No.20/2016 registered at Police Station-Crime Branch-Indore under Sections 417, 420, 467, 468, 471 and 120-B of IPC and Section 66-D of I.T. Act, 2000.

2. Facts of the case reveal that respondent No.2 is the proprietor of Jose Travel and a request was made by HR Manager, STI Sanoh India (P) Ltd., Gurgaon (Haryana) for booking air tickets. The request was made by HR Manager based upon an e-mail received from its London Office.

3. One Kenneth Stone projected himself to be the Unit Manager, Sanoh UK Manufacturing Ltd., England and as many as 83 tickets were booked for Rs.1,02,68,178/- through the complainant. Later on, the fraud was discovered and the respondent No.2 lodged a complaint with Crime Branch Police and after conducting preliminary inquiry, crime was registered at crime No.20/2016 against the co-accused Chand Singh Yadav and Kenneth Stone under Sections 417, 420, 467, 68, 471 and 120-B of IPC and Section 66-D of I.T. Act, 2000.

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4. During the investigation, it was revealed that the petitioner No.1, who is holding British passport came to India on a medical visa for treatment of Osteoporosis of very advance stage and for knee replacement and the petitioner No.2 came to India with her mother as an attendant. While they were getting their medical check-up done, they were arrested by the Police at All India Institute of Medical Sciences, New Delhi on 24.01.2017.

5. Learned counsel has further argued before this Court that an application for grant of bail was preferred i.e. M.Cr.C. No.3040/2017 under Section 439 of Cr.P.C. and the same was allowed by this Court on 25.04.2017 directing the applicants to furnish personal bond in the sum of Rs.5 Lacs each with two solvent sureties each in the sum of Rs.2,50,000/- to the satisfaction Chief Judicial Magistrate.

6. Learned counsel has argued before this Court that the petitioners do not have any local contact and they are literally hand to mouth and even they do not have return tickets to go back to their country and they are in jail for more than one year. He has also brought to the notice of this Court that the co-accused persons Chand Singh Yadav and STI Sanoh India (P) Ltd., Gurgaon (Haryana) have entered into a compromise with the complainant by filing an application under Section 482 of Cr.P.C. and a prayer was made for quashment of F.I.R. and this Court has quashed the F.I.R. registered at crime No.20/2016 in respect of other co-accused.

7. It has been argued that once the F.I.R. has been

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quashed, the question of keeping the petitioners in jail does not arise. He has further argued that the applicants are the bonafide purchasers of air tickets and they have purchased the tickets by paying amount trusting Mr. Kenneth Stone him that he is a travel agent and the forgery, if any, which has been committed in the matter, has been committed by Kenneth Stone. It is no body's case that the petitioners have booked the tickets directly through respondent No.2 at any point of time.

8. Shri Nair, learned counsel appearing for respondent No.2 was fair enough to inform this Court that the tickets were booked by one Kenneth Stone not by the present petitioner. However, he has argued before this Court that the F.I.R. in M.Cr.C. No.310/2017 has been quashed only to the extent it relates to the applicants – STI Sanoh India Pvt. Ltd. and Chand Singh Yadav. He prays for dismissal of the present petition.

9. Heard the learned counsel at length and perused the record.

10. Undisputed fact reveals that two of applicants have preferred a petition under Section 482 of Cr.P.C. for quashment of F.I.R. and by an order dated 18.08.2017 passed in M.Cr.C. No.310/2017 the F.I.R. has been quashed, the order dated 18.08.2017 reads as under:-

“M.Cr.C. No.310/2017

18.08.2017

Shri Arvind Gokhale, learned counsel for the applicants.

Shri Hemant Sharma, learned counsel for

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respondent No.1/State.

Shri Manish Nair, learned counsel for the complainant/respondent No.2.

This application under Section 482 Cr.P.C. is filed for quashment of FIR registered by Police Station – Crime Branch, Indore in Crime No.20/2016 under Sections 417, 420, 467, 468, 471 and 120-B of IPC & Section 66(D) of Information Technology Act, 2000.

According to counsel for the applicants, applicant No.1 is private limited company and is a subsidiary company of Sanoh Industrial Company Ltd., Japan. The parent company Sanoh Industrial Company Ltd. is manufacturer of tubular automobile components and other products. Mukesh Kumar Garg S/o Shri Bhagwandas Agrawal is authorized to look after the legal matters of the company and he was fully aware of the facts, who filed this application on behalf of the company. Non-applicant No.2- Proprietor Jose Travels lodged an FIR in Police Station- Crime Branch, which was registered under the provisions of law, as stated above.

The facts giving rise to this application was that one person Kenneth Stone, who pose himself to be an employee of Sanoh UK Manufacturing Ltd., send an e-mail to applicant No.2 and requested him to make certain arrangements for his travel to India. Receiving the e-mail, without doubting any malafide intentions on behalf of the sender of the e-mail, he engaged non-applicant No.2 for booking international tickets of said Kenneth Stone. It was alleged in the FIR that huge amount was due against the payment of international tickets, which was not paid, and therefore, FIR was lodged.

The parties have entered into a compromise and this application under Section 482 Cr.P.C. is filed on the basis of the compromise entered into by them. The FIR lodged by non-applicant No.2 may be quashed and the applicant No.2 may be discharged from the offences, as mentioned above.

The factum of compromise between the parties was verified by Principal Registrar of this Court on 10.07.2017.

Learned counsel for the applicants submits that the offences under the aforementioned provisions

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of law were not compoundable, however, if this Court permits such compounding of the offence exercising extraordinary power under Section 482 Cr.P.C., the same may be compounded.

Learned counsel for the applicants cited the judgment of Hon'ble Apex Court in *Narinder Singh and Anr. Vs. State of Punjab and Anr.*, (2014) 3 SCC (Cri) 54. In this case, Hon'ble Apex Court in para 29 of the judgment laid down the guidelines on which the High Court using the extraordinary jurisdiction under Section 482 and quash the charges framed under non-compoundable offences. Taking the guidelines framed by the Supreme Court under consideration. It is apparent that the present dispute is regarding a business matter. It is their personal dispute and society at large is not affected by the dispute. The Hon'ble Apex Court in para 29.2 laid down two tests stating therein that the guiding factor in such cases would be to secure:

- (i) ends of justice, or
- (ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

Learned counsel for the applicants also placed reliance on judgment of Hon'ble Apex Court in case of Central Bureau of Investigation vs. Sadhu Ram singla and others; (2017) 5 SCC 350. In para 14 of this judgment, the Hon'ble Apex Court observed as under :-

“13.

14. Having carefully considered the singular facts and circumstances of the present case, and also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the view taken in *Manoj Sharma's case* (supra) and several decisions of this Court delivered thereafter with respect to the doctrine of judicial restraint. In concluding hereinabove, we are not unmindful of the view recorded in the decisions cited at the Bar that depending on

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the attendant facts, continuance of the criminal proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of Court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties”.

Reverting back to the present case, there appears mainly to be a dispute of payment of money. Learned counsel for the applicants submits that money has already been paid, and therefore, after taking into consideration, the principles laid down in aforementioned cases by the Hon'ble Apex Court, this Court is of the view that this is a fit case, where the extraordinary jurisdiction conferred of this Court may exercise in favour of the applicants.

Accordingly, the application is allowed. The FIR registered by Police Station- Crime Branch, Indore at Crime No.201/2016 is hereby quashed. The applicants are discharged from offences under Sections 417, 420, 467, 468, 471 and 120-B of IPC & Section 66-D of Information Technology Act.”

11. Later on, an application was also filed for correction of typographical error and in place of Crime No.201/2016, Crime No.20/2016 has been substituted, meaning thereby, even it is presumed that the F.I.R. has been quashed in respect of the applicants of M.Cr.C. No.310/2017, the petitioners cannot be prosecuted for the offence under Sections 417, 420, 467, 468, 471 and 120-B of IPC and Section 66-D of I.T. Act, 2000. They are the bonafide purchaser of travelling tickets and they are British passport holders and they have purchased tickets from Kenneth Stone. As informed, the inter-pole has issued a lookout notice in respect of Kenneth Stone, who has played fraud with

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respondent No.2 as well as STI Sanoh India Pvt. Ltd. and with Chand Singh Yadav.

12. The petitioners have at no point of time played any fraud with the respondent No.2. No material has been brought to the notice of this Court either by the State Government or by the respondent No.2 showing involvement of the petitioners in respect of the crime in question. The only thing is that they have purchased the tickets from a travel agent, who has played fraud in the matter. They are in jail for the last one year and in spite of bail order granted by this Court, as they do not have local contacts and they do not have financial resources, they are languishing in jail. The F.I.R. lodged in the matter reads as under:-

“ 12 First Information contents (प्रथम सूचना तथ्य)

मैं थाना अपराध शाखा इन्दौर में इन्चार्ज थाना प्रथारी के पद पर पदस्थ हूँ। श्रीमान अतिरिक्त पुलिस अधीक्षक अपराध इन्दौर के पत्र क्र. 3552/16 दिनांक 20.12.16 के द्वारा आवेदक टी.के. जोश प्रोपायटर जोश ट्रेवल्स इन्दौर का आवेदन पत्र प्राप्त हुआ जिसके अवलोकन से पाया गया कि आवेदक की मेल आई डी **josedomesticgmail.com** पर दिनांक 5.12.2016 को अनावेदक सी.एस. यादव मैनेजर एच आर एस टी आई सनोह गुडगांव हरियाणा द्वारा उसकी मेल आई डी **chandsingh.yadavstisanoh.com** से मेल भेजते हुए उनकी कंपनी की यूके स्थित मैन्यूफैक्चरिंग युनिट को एयरलाइंस के टिकिट बुक कराये जाने हेतु केनेथ स्टोन मैनेजर सनोह यू.के. मैन्यूफैक्चरिंग लिमिटेड की मेल आई डी **kenneth stoneuksanoh.com** को रेफर किया गया। आवेदक द्वारा अनावेदक के पूर्व से व्यावसायिक संबंध होने से आवेदक द्वारा केनेथ स्टोन से मेल के जरिये इस संबंध में सम्पर्क किया गया जो केनेथ स्टोन ने दिनांक 05.12.16 से 13.12.16 तक विदेशी नागरिकों के एयर टिकिट बुक करने हेतु यात्रियों के नाम, पासपोर्ट नम्बर, स्थान आदि जानकारी मेल के माध्यम से भेजी जाकर कुल राशि 1,02,68,178/- रूपयों के एयर टिकिट बुक करा लिये गये। अनावेदकगणों से आवेदक द्वारा खर्च की गई धनराशि 1,07,90,724/- रूपये की मांग की गई तो अनावेदक केनेथ स्टोन द्वारा आवेदक को दिनांक 09.12.16 को मेल भेजा गया कि उसने 27300 ग्रेट ब्रिटेन पाउंड (जीबिपी) आवेदक के फेडरल बैंक लिमिटेड के खाता न. 12345500001081/ एफसीआरएल 0001234/एफडीआरएल आई एन बी/बी आई

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बीडी में जमा किये गये हैं परन्तु आवेदक के खाते में दिनांक 10.12.16 तक राशि जमा नहीं होने पर आवेदक द्वारा अनावेदक को पुनः सूचित करने पर अनावेदक केनेथ स्टोन ने दिनांक 13.12.16 को एचएसबीसी की रसीद आवेदक को भेजी गई जिसमें यूएसडी 71923.50 जो ग्रेट ब्रिटेन पाउंट (जीबिपी) 71850 जमा करने का उल्लेख किया गया था परन्तु उक्त दोनो राशि आवेदक के खाते में जमा नहीं हुई है जो अनावेदक सी.एस.यादव व केनेथ स्टोन ने मिलकर छलकपट बेईमानीपूर्वक आवेदक टी.के. जोश से 1,07,90,724/- रुपये के एयर टिकिट की प्रतिपूर्ति हेतु कूटरचित दस्तावेजो के माध्यम से 27300 ग्रेट ब्रिटेन पाउंड (जीबिपी) एवं 71850 ग्रेट ब्रिटेन पाउंट (जीबिपी) आवेदक के खाते में जमा करने का मेल भेजा गया जो राशि जमा नहीं हुई इस पर से अनावेदक चन्दरसिंह यादव मैनेजर एच आर एस टी आई सनोह गुडगांव हरियाण एवं केनेथ स्टोन यूनिट मैनेजर सनोह यू.के. मैन्यूफैक्चरिंग लिमिटेड ब्रिस्टल यू.के. के विरुद्ध अपराध धारा 417, 420, 467, 468, 471, 120 बी भा.द.वि. एवं 66 डी आई.टी. एक्ट का अपराध घटित किया जाना पाया जाने से मुताबिक आदेश वरिष्ठ अधिकारियों के अपराध पंजीबद्ध किया जाकर विवेचना में लिया गया आवेदक द्वारा प्रस्तुत आवेदन पत्र की नकल निम्नानुसार है ।

To, DIG, INDORE, Sub: Suspected cheating and fraud by sanoh manufacturing unit UK through STI Sanoh Gurgaon, Details of the Corporates: 1. STI Sanoh India LTD, Steel Tubes Road, Dewas 455001 Ph:7272234208. 2STI Sanoh India Ltd, 161, Secto 4 IMT Manesar, Gurgaon Haryana 122052 Mr. Chand Singh Yadav Head HR Contact No.09717392728, Mr. Rajesh Contact No.08130001446, 3 Sanoh Manufacturing Ltd. Grandeur Point, Fourth Way, Avonmouth, Bristol, BS 8DL, UK. Mr. Kenneth Stone Manufacturing Unit Manager Contact No.442033897601, sequence of Events 1 On 5th Dec 16, Mr. Chand Singh Yadav from STI Sanoh, Gurgaon, called our office between 33.30 Pm, and informed us that their UK counterpart sanoh UK manufacturing Unit Bristol, UK needs assistance for their travel requirements. We have long association with STI group ie, STI India Ltd, Pithampur Tools and STI Sanoh Ltd Dewas and with the recommendation of STI Sanoh Dewas, we had started business with their Gurgaon office. Since Gurgaon office introduced their UK Unit, we accepted the offer and his to send an official mail to us regarding the same. 2 On 5th Dec 16, 346 PM, Mr. CS Yadav send a mail to their UK manufacturing Unit manager Mr. Kenneth stone, informing our office telephone no and email address to enable him to contact us, and marked a copy of the mail to us. 3 On 5th Dec 16, 4.03 pm, we received a mail from Kenneth stone

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that as you have spoke to our India office and also we received your contact details from Mr. CS Yadav, as further he asked to do the bookings with a credit period of 7 to 14 days and he will strictly adhere to the payment conditions. 4 On 5th Dec 16, 7.10 pm we have accepted the proposal and forwarded our bank details to them to enable them to remit the payments. We had send a copy to CS Yadav, STI Sanoh, Gurgaon. 5 On 6th Dec 16, 11.03 am we received the acceptance mail from Sanoh Manufacturing Unit. 6 On 6th Dec 16, 12.44 pm we started the bookings for travel Sanoh UK, and he forwarded us the travel itinerary and the preferred airlines. And asked us to quote the fare. Once they agreed with our itinerary and fare quote, they send us the passengers name, date of birth, passport no, date of expire and Nationality of the PAX to enable us to issue the tickets. 7 On 6th dec 16, at 6.02 pm all the invoices against the tickets which was booked on that day was raised for Rs.8,75,908/ and Mr. Kenneth acknowledged the same. 8 On 7th Dec 16, 4.56 pm, we had forwarded the account statement for INR 21,37,736/ since it was a huge amount, we requested him to transfer the amount immediately. Mr. Kenneth acknowledged the mail which was also marked to STI Gurgaon office. 9 On 8th Dec 16, 4.55 pm Mr. Kenneth had send us the screenshot of the transfer details after which we continued with the further bookings. 10 On 10th Dec 16, 6.20 pm we forwarded the bills and statement by mail to Mr. Kenneth stone, Sanoh UK and Mr. Yadav, Sanoh Gurgaon for Rs 35,18,549/- requesting them to process the payment immediately also informant that the previous remittance of GBP 27300 was not yet credited to our account, which is again acknowledged by Mr. Kenneth and marked it to Mr. CS Yadav, STI Gurgaon. 11 On 12th Dec, 7.46 pm we again raised the invoice for Rs.1,02,68,178/ and Mr. Kenneth acknowledged the same. 12 On 13th Dec 16, 1.30 pm we forwarded the final statement to both sanoh UK and Gurgaon, for Rs. 1,07,90,724/ requesting them to remit the same along with the confirmation of previous transfer to continue with the booking. 13 On 13th Dec 16, at 3.26 pm Mr Kenneth had the next confirmation of transfer for GBP 71850 equivalent to USD 71923.50. We noticed some manipulation in the calculation and realized that the said amount transfer may not be correct. We have forwarded the same to Sanoh

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Gurgaon and requested them to verify the same. We telephonically contacted Mr CS Yadav on his mobile on 09717392728 and he informed that since he is driving, he deputed Mr Rajesh to find out from UK office rgardin the payments. We called Mr Rajesh and he advised us to stop the booking immediately since they found some suspicious dealing. Sanoh Gurgaon also informed us later that Mr. Kenneth is on leave for the past one week. Hence we suspect that we have been cheated by the company in UK and Gurgaon and they have purposely drawn us into this situation. We request you to kindly look into this matter. We will be very thankful for this. Thanking you हस्ताक्षर अपठनीय TK Jose, Jose Travels, G3 Ahinsa Tower, 7 MG Road, Indore 01, Ph:9826026150 Enclosure: They day wise correspondence and communication with Sanoh UK and STI Sanoh India Ltd.”

13. The petitioners have not been named in the F.I.R. and the persons, who have been named in the F.I.R. have entered into a compromise with respondent No.2. It was only during investigation, the petitioners were made accused because they have travelled on the tickets issued by the respondent No.2 and therefore, keeping in view the F.I.R. and the entire record, this Court is of the opinion that the F.I.R. No.20/2016 registered by police station-Crime Branch, Indore for offence under Sections 417, 420, 467, 468, 471 and 120-B of IPC and Section 66-D of I.T. Act, 2000 to the extent the present petitioners are concerned deserves to be quashed.

14. The Apex Court in the case of **State of Haryana and Ors Vs. Ch. Bhajan Lal and Ors.**, reported in 1992 AIR SC 604 in paragraph No.8.1 has held as under:-

“8.1. In the exercise of the extra-ordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to

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prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- ĩ7 myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the ac- cused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investi- gation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institu- tion and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [305D-H; 306A-E] 8.2. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justi- ĩ7 on and this case does not call for the exercise of extraor- dinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] [State of West Bengal v. S.N. Basak](#), [1963] 2 SCR 52; distinguished.

[R.P. Kapur v. The State of Punjab](#), [1960] 3 SCR 388; [S.N. Sharma v. Bipen Kumar Tiwari and Ors.](#), [1970] 3 SCR 946; [Hazari Lal Gupta v. Rameshwar Prasad and Anr.](#) etc., [1972] 1 SCC 452; [Jehan Singh v. Delhi Administration](#), [1974] 3 SCR 794; [Amar](#)

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Nath v. State of Haryana, [1977] 4 SCC 137; Madhu Limaye v. State of Maharashtra, [1977] 4 SCC 551; Kurukshetra University and Anr. v. State of Haryana and Anr., [1977] 4 SCC 451; State of Bihar and Anr. v.J.A.C. Saldanha and Ors., [1980] 1 SCC 554; Municipal Corporation of Delhi v. Purshotam Dass Jhunjunwala and Ors., [1983] 1 SCC 9; State of West Bengal and Ors. v. Swapan Kumar Guha and Ors., [1982] 3 SCR 121; Smt. Nagawwa v. Veeranna Shiva- lingappa Konjalgi & Ors., [1976] Supp. SCR 123; Pratibha Rani v. Suraj Kumar and Anr., [1985] 2 SCC 370; Madhavrao Jiwaji Rao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors., [1988] 1 SCC 692; State of Bihar v. Murad Ali Khan and Ors., [1988] 4 SCC 655; Talab Haji Hussain v. Madhukar Purshottam Mondekar and Anr., [1958] SCR 1226; L.U. Jadhav v. Shankarrao Abasa- heb Pawar, [1983] 4 SCC 231; J.P. Sharma v. Vinod KumarJain and Ors., [1986] 3 SCC 67; State of U.P.v.V.R.K. Srivastava and Anr., [1989] 4 SCC 59; Emperor v. Khwaja Nazir Ahmad, AIR 1945 P.C. 18; referred to.”

15. In light of the aforesaid judgment, the F.I.R. deserves to be quashed and is, accordingly, quashed. The petitioners be released forthwith from judicial custody. A copy of this order be immediately forwarded to the British High Commission for ensuring safe return of both of their citizens.

16. A copy of this order be also forwarded to Nigerian Embassy by the Principal Registrar of this Court to take appropriate steps in the matter. This Court has not expressed any opinion in respect of the passport issued in favour of the petitioners as they are holding British Passport and it has been informed that they have travelled on a Visa, which is not a forged and fabricated Visa and the same has been issued by the Indian Government.

(S.C. Sharma)
Judge