



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02980/2015**

THE IMMIGRATION ACTS

**Heard at Field House
On 4th January 2016**

**Determination
Promulgated
On 4th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ARCHER

Between

**RP
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Tom Gaisford, Counsel, instructed by Sriharans Sols
For the Respondent: Mr S Staunton, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is an asylum seeker who might be at risk just by reason of being identified.
2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds

against a decision taken on 6 February 2015 refusing to grant him further leave to remain and to remove him to India.

Introduction

3. The appellant is a citizen of India born in 1962. He claims that he was arrested in November 2011 in India, accused of killing another person and potentially faced a murder charge. He was taken to Thiruvonam police station where he was beaten and tortured but managed to escape after two days. He was falsely accused of murder because he was a member of the DMK party which was out of favour with the ruling party in Tamil Nadu. He was innocent but is wanted for murder. He travelled by lorry to Chennai where he stayed at a friend's house for three months before leaving India with the assistance of an agent.
4. The appellant entered the UK illegally on 11 March 2012 and was arrested on 14 March 2012. He made his asylum claim on 14 June 2012. The respondent rejected the appellant's claim that the ADIAMK party tried to implicate him in the murder or that the police were going to frame him and arrest him. The account of arrest and escape was not accepted. A criminal conviction was not a bar to a political career in India.

The Appeal

5. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Hatton Cross on 19 August 2015. He was represented by Mr Gaisford. The appellant attended the hearing complaining of shortness of breath, dizziness and lack of sleep. He had recently attended hospital with atrial fibrillation and had an outpatient appointment booked for 25 August 2015. Mr Gaisford sought an adjournment which was refused. The appellant adopted his witness statement but continued to complain of breathlessness and chest problems. The judge rose to allow the appellant to see a first-aider who called an ambulance. The paramedics confirmed that the appellant's heartbeat was irregular and took him to hospital. The hearing then continued on the basis of oral submissions.
6. The judge found that the appellant chose to give no particulars of the alleged torture either in written evidence or interview. The judge would have expected a reasonably detailed account and rejected the torture claim. The judge rejected the appellant's explanation for delaying his asylum claim i.e. that he was told to wait until the agent advised him to make an asylum claim. The judge was prepared to proceed on the basis that the Indian authorities had an interest in the appellant in relation to an allegation of murder. The judge did not accept that the appellant would not have a fair trial; the appellant would have a public trial and would be entitled to a reasoned verdict. The appellant claimed that he was miles away when the murder was committed and therefore would have an obvious alibi defence. As a political figure of some importance it was even less likely that other would seek to suborn the judicial process and the appellant had not suggested that he could not procure the services of competent lawyers.

The Appeal to the Upper Tribunal

7. The appellant sought permission to appeal on 13 September 2015 on the grounds that the judge erred in law by refusing the adjournment request, wrongly criticised counsel for failing to elicit details of the ill-treatment suffered in custody, failed to consider the fact that the appellant had provided a specific description of abuse during his asylum interview, wrongly suggested that because the appellant was a political figure it was less likely that others would seek to suborn the judicial process and made a further misdirection of law at paragraphs 30-33 of the decision because the respondent had never raised exclusion under the Refugee Convention and no evidence was advanced in support of the judge's hypothesis that the appellant could be wanted by police in relation to a genuine murder charge.
8. Permission to appeal was granted by First-Tier Tribunal Judge Landes on 30 September 2015 on the basis that it was arguable that the judge erred by finding that the appellant had failed to prove torture because he had not given a detailed account. The other grounds were not highly regarded in the grant of permission but all grounds were arguable.
9. In a rule 24 response dated 9 October 2015, the respondent sought to uphold the judge's decision on the basis that the adjournment request was fully and properly considered and counsel chose to proceed by way of oral submissions. The judge fully considered the claim as to the false allegation but found that the appellant would have a fair trial in India. That finding was open to the Tribunal.
10. Thus, the appeal came before me.

Discussion

11. Mr Gaisford submitted that there is an error of fact in paragraph 28 of the decision. The appellant was in no condition to give evidence and was not cross examined. It is clear that the judge had not read everything because of his comments on the torture issues. If the appellant is believed then he has a case that he would be persecuted rather than prosecute. A part heard hearing would not have been a fair hearing. Judicial corruption is widespread in India.
12. Mr Staunton conceded that he struggled to take the rule 24 response any further. That was particularly in relation to the way in which the adjournment request was handled. The appeal should be remitted to the First-tier Tribunal if I found a material error of law.
13. I find that there was a material error of law in relation to the adjournment application. The appellant was clearly unfit to give evidence and Mr Gaisford was not in a position to ask any supplementary questions. The appellant was denied any opportunity to meaningfully participate in the proceedings. That was particularly significant given the judge's concerns

regarding the lack of detail in relation to the allegation of torture whilst in police custody in India.

14. I have not found it necessary to make findings in relation to the other grounds of appeal. The issues raised will be addressed at the rehearing. There are a number of significant factual issues to be resolved including whether the appellant was detained and escaped as claimed, whether he is wanted for murder as claimed and whether the criminal process in India would amount to prosecution or persecution.
15. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and its decision cannot stand.

Decision

16. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the error of law infects the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.
17. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed 

Date 31 January 2016

Judge Archer

Deputy Judge of the Upper Tribunal