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Court : Guwahati

Decided On : Jan-16-1958

Judge : Sarjoo Prosad, C.J. and H. Deka, J.

Appellant : Mohammad Hussain

Respondent : The State

Prior history : Sarjoo Prosad, C.J. 1. (Criminal Revision No. 93/56. :) The petitioner in this case was convicted under Rule 6 of the rules framed under the Passport Act 1920 and he has been sentenced to a fine of Rs 30/ , in default to undergo rigorous imprisonment for one month. He contends that the conviction under the rule is unwarranted and illegal. It is stated that the petitioner obtained a passport on 26th January, 1953 for rntrv into India which is due to expire on the 25th January, 1958. He also obt

Judgement :

Sarjoo Prosad, C.J.

1. (Criminal Revision No. 93/56. :) The petitioner in this case was convicted under Rule 6 of the rules framed under the Passport Act 1920 and he has been sentenced to a fine of Rs 30/ , in default to undergo rigorous imprisonment for one month. He contends that the conviction under the rule is unwarranted and illegal. It is stated that the petitioner obtained a passport on 26th January, 1953 for rntrv into India which is due to expire on the 25th January, 1958. He also obtained a

corresponding visa in respect of his stay in this country which was renewed from time to time; but renewal thereof was refused after the 12th March 1956. The petitioner in spite of this refusal continued to stay in this State when ne was arrested at Golaghat on 9th June, 1956 for contravention of the above rule and tried and convicted as aforesaid.

2. Rule 6 (a) of the Indian Passport Rules 1950 provides that any person who contravenes or abets the contravention of the provisions of rule 3 fs liable to be punished with imprisonment for a term which may extend to three months or with fine or with both. Rule 3 says that:

save as provided in rule 4, no person proceeding from any place outside India, shall enter, or attempt to enter, India by water, land or A.I.R. unless he is in possession of a valid passport conforming to the conditions prescribed in rule 5.

These rules have been framed on the authority of Section 3 of the Indian Passport Act (Act 34 of 1920). The petitioner contends that the rules provide only against unauthorised entry or attempt to unauthorised entry from outside without a valid passport. They have no reference to a case where a person has validly entered but he overstays the period given in his passport or in his visa. He therefore urges that his conviction under the law is quite illegal. The point appears to have been settled by a number of decisions of the various High Court in India and indeed on the language of Rule 3 itself the point appears to be quite clear.

If the intention was also to provide for penalising unauthorised stay in India, in spite of the period given in the passport or the visa having expired, then the rule would have definitely said so. It could have been in that case worded as

Save as otherwise provided as in rule 4, no person, proceeding from any place outside India,, shall enter, or attempt to enter, India by water, land or A.I.R. unless he is in possession of a valid passport conforming to the conditions prescribed in rule 5; nor shall such a person be allowed to stay in India when the period given in his visa or passport ha expired, unless it is validly renewed or extended.

There is no such provision in the rule as it stands. In fact in the Passport Act itself the preamble shows that the Act was intended merely to regulate entry in India and it has nothing to do with the case of unauthorised stay in India, in respect of which It appears that provisions have been made under the Foreigners Act (Act. No. 31 of 1946). The above rules are penal rules and they must be strictly construed. No forced or unnatural interpretation should' be put upon them so as to stretch their language.

The decision of the Bombay High Court in State v. Ibrahim Adam : AIR1956 Bom593 has elaborately dealt with the scope and application of these rules and it seems unnecessary for us to repeat the observation' made therein with which we entirely agree. It was there pointed out that the overstay in India of a foreigner after the period prescribed in his visa had expired did not amount to a contravention punishable under rule 6 (a) read with rule 3 of the Indian Passport Rules 1950. Reliance has been placed on behalf of the opposite party, the State of Assam on certain casual observations made in a decision of the Nagpur High Court in Karimun Nisa v. State Government of Madhya Pradesh A.I.R. 1955 Nag. 6.

This case was considered by Gajendragadkar J. in the Bombay decision to which I have referred and there the learned judge observed with reference to this case that the point was not examined or argued in that case and the observation made was more or less in the nature of an obiter dictum. The same view has been taken In some of the Other decisions as in the Bombay case, for instance, in Chhanga Khan v. State : AIR1956 All69 . Mst. Bashiran v. State and State v. Hamidkhan A.I.R. 1956 Madh B 239. Indeed the point is, as I said, sufficiently clear on the language of the rule itself. The conviction therefore is illegal and must be set aside and the rule should be made absolute.

3. Criminal Govt. Appeal No. 9/56:- The point involved in the Government appeal is exactly similar. We therefore think that the order of acquittal passed in the case was a valid order an should he affirmed. The appeal is therefore dismissed.

H. Deka, J.

4. I agree.

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