

**HabijuddIn and ors. Vs. the State**

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**Court :** Guwahati

**Decided On :** Jan-11-1961

**Judge :** T.N.R. Tirumalpad, J.C.

**Appellant :** HabijuddIn and ors.

**Respondent :** The State

**Judgement :**

T.N.R. Tirumalpad, J.C.

1. These four references arise out of four Criminal cases Nos. C. R. 68, 70, 66 and 67 of 1959 in which the first class Magistrate, Kamalpur sentenced the 4 accused persons (one in each case) under Rule 6(a) of the Indian. Passport Rules and sentenced each of them to a fine of Rs. 25/-. As the facts and the prosecution evidence to the four cases are more or less similar and as the Sessions Judge has made the references on the same ground in all the cases, I am dealing with them in one common order.

2. The two constables Sona Sinha and Nepal Sarker arrested the 4 persons concerned in these references on 5-6-1959 at Muktabil on the ground that they were Pakistanis and produced them before Shri B. B. Paul the Officer-in-charge of Kamalpur Police station. The said officer is said to have interrogated them and found that they were Pakistanis who could not produce any valid travel

document; He submitted reports for the prosecution of the 4 persons under Rule 6(a) of the Indian Passport Rules and the

Sub-divisional Magistrate, Kamalpur took cognizance of the four cases on 5-6-1959 itself. In all the four cases, the plea of the accused persons was that they were Indian nationals living in India for very many years and that they have not contravened any provisions of the Indian Passport Rules. They examined very many witnesses in each of the cases to support their defence that they were Indian nationals.

3. The learned Magistrate who dealt with the four cases found that there was no direct evidence in any of the cases to show when the accused persons actually entered India. The Magistrate was not satisfied from the defence evidence that they were Indian nationals and he held that they must have entered India after the introduction of the Passport Rules in 1952 without Passports. Accordingly, he convicted the 4 accused persons in the four cases So a fine of Rs. 25/- each.

4. The learned Sessions Judge was not satisfied with the way in which, the cases were dealt with by the Magistrate. According to him, the arrests of the 4 persons by the two constables were without authority as Section 4 of the Indian Passport Act provided that the power of arrest cannot be exercised by a Police Officer below the rank of a Sub-Inspector. Apart from that, the Sessions Judge found that the Magistrate had thrown the burden in the cases on the accused to prove their innocence. The Sessions Judge felt that the prosecution had to prove that the accused had entered India from outside after the introduction of the Passport Rules in 1952 and he found that the prosecution had not proved this in any of the cases. He has therefore made these four references for setting aside the conviction and sentence in the four cases.

5. There is no doubt that the Magistrate Mr. N.K. Sinha has acted illegally in these cases. He has not understood the Indian Passport Act or Rules at all. He has failed to understand the scope and the object of the Indian Passport Act and the Rules framed thereunder. If only he had cared to read Rule 3 of the Indian Passport Rules, 1950 he would have seen that the question whether the person concerned in the case was a Pakistani or an Indian national did not enter into the

picture at all.

6. Rule 3 of the Indian Passport Rules is as follows:

3. 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 air unless he is in possession of a valid passport conforming to the conditions prescribed in Rule 5. It is clear from the above Rule that no person whether he is an Indian national or a Pakistani proceeding from any place outside India can enter or attempt to enter India, unless he is in possession of valid Passport. Thus the prosecution who charges a person under Rule 6 of the Indian Passport Rules for violation of Rule 3 of the rules has to prove that the person concerned proceeded from a place outside India and entered or attempted to enter India without a valid Passport.

7. All that the two constables deposed in the four cases was that the 4 accused persons were Pakistanis and that they did not have Passports with them. The constables did not say that they saw the 4 persons entering India from outside. In fact their evidence did not even show that the four persons were arrested anywhere near the border.

The learned Magistrate has himself stated that the prosecution did not give any evidence about the entry into India from outside of the 4 persons. The Magistrate should have thrown out the four cases in the absence of any evidence on the side of the prosecution to show that the 4 persons entered India from outside. Instead of doing so, he has gone into lengthy discussions of the defence evidence which was intended to show that they were Indian nationals. It is surprising that the Magistrate took it for granted that the 4 persons were Pakistanis and thrust the burden upon them to prove that they were Indian nationals.

8. I have already stated that the Magistrate was not concerned with the question whether the persons concerned were Pakistanis or Indian nationals. Even if they were Pakistanis, they cannot be arrested under the Indian Passport Act and Rules, if they are found in India. The gravamen of the charge under Rule 3 of the Indian Passport Rules is the entry into India from outside. Even the Sessions Judge has gone wrong in stating in the references that it would be enough if there was

evidence to show that the 4 persons who are Pakistanis entered India after the Indian Passport Rules, 1950 came into force in 1952.

Even a Pakistani cannot be arrested if he is found inside India in 1959, under the Passport Rules by showing that he had entered India after the Indian Passport Rules came into force in 1952. The prosecution has to prove that he was seen crossing or attempting to cross into India from outside. If no such evidence was forthcoming, the person has to be acquitted. A foreigner found inside India cannot be arrested under the Indian Passport Act and Rules. He can be dealt with only under the Foreigners Act, 1946 or the Foreigners Order, 1948 or the Rules framed either of them or under the Registration of Foreigners Act or the Rules framed thereunder.

9. Thus it follows that there was no case at all against the 4 petitioners under the Indian Passport Act and Rules. The two constables had no power at all to arrest them inside India or to question them whether they had Passports. Under Section 4 of the Indian Passport Act, no Police Officer below the rank of a Sub-Inspector can arrest a person for contravening any Rule or Order made under the Indian Passport Act. The two constables Sona Sinha and Nepal Sarker acted without authority in arresting these 4 persons.

At this rate, any person living near the border areas could be harassed by these lower ranks of the police by dubbing him as Pakistani and asking him to produce his passport, When the 4 persons were produced before Shri B. B. Paul, the Officer-in-charge of Kamalpur Police station it was his duty to have let them off immediately. The Magistrate concerned should not have taken cognizance of the offence at all as the reports themselves did not show that the persons concerned had violated Rule 3 of the Indian Passport Rules.

There has been unnecessary harassment of the 4 persons concerned by the illegal acts of the constables, the Officer-in-charge of the Police station and the Magistrate concerned. The Magistrate concerned even went to the length of throwing the burden on the 4 persons to prove that they have not violated Rule 3 of the Indian Passport Rules instead of seeing whether the prosecution has made out a case.

10. It is necessary that action should be taken against the two constables Sana Sinha and Nepal Sarker for acting in excess of their

authority in arresting the 4 persons. Action has also to be taken against Shri B. B. Paul, the Sub-Inspector for having submitted reports against the 4 persons

for prosecution when there was no case at all against them and thus harassing the 4 petitioners. A copy of the judgment will go to the Superintendent of Police Tripura, for necessary action.

11. A copy of the judgment will also go to the District: Magistrate. He will impress on the Magistrates particularly who are posted in the border areas to acquaint themselves with the Passport Act and Rules in order to see that innocent persons are not unnecessarily harassed in the border areas. He will also call for explanation from the Magistrate Mr. N. K. Sinha and deal with him suitably.

12. The four references are accepted and the convictions and sentences of the petitioners are set aside.

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