Abdul MatIn Vs. the State

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Court : Guwahati

Decided On : Jan-13-1959

Judge : J.N. Datta, J.C.

Appellant : Abdul Matin

Respondent : The State

Judgement :

J.N. Datta, J.C.

1. The petitioner in revision Abdul Matin was convicted by Magistrate Second Class, Dharmanagar, for an offence punishable under Section 6 of the Indian Passport Rules, 1950 and sentenced to pay a fine of Rs. 25/- or in default to undergo imprisonment for a month. He also ordered that the Petitioner be removed from India by the Officer-in-charge Dharmanagar on the payment of fine or after undergoing imprisonment in case of default, presumably under Section 5 of the Indian Passport Act, 1920.

The learned Magistrate wrongly recorded the conviction as under Section 3 of the Act, and failed to state whether the imprisonment in the event of failure to pay the fine will be simple or rigorous. Again the award of one month's imprisonment in default of payment of fine was illegal in view of the provisions of Section 65 of the I. P. C., since the offences under the Rules Order 1950, are punishable with imprisonment for a term not exceeding 3 months.

The learned Sessions Judge while dismissing the appeal made the imprisonment in default rigorous and an objection was taken to it on the ground that the Sessions Judge was not competent to do so, as in doing so he enhanced the punishment, because the Magistrate might have awarded simple imprisonment. But it will not be necessary to go into that point, since this revision petition must be accepted.

2. The prosecution case was that the petitioner who is a Pakistani citizen, had entered India without a Passport and was arrested Order 16-2-1957 on Indian soil, namely on the way between Fati-kuli and Dharmanagar both of which are in India. The defence was that he was born in Tripura State, and though his father is a Pakistani citizen, he always lived in India, and was brought up by his mother's sister, who lives at village Fatikuli. That he was living at Fatikuli since at least sometime before was also admitted in the charge sheet filed by the Police.

3. It is an admitted fact that the Indian Pass-port Rules, 1950, were applied to this area from 15-10-1952, and before that there was no restriction as regards entry from East Pakistan info India and vice versa. Therefore the only question for decision was and the prosecution was bound to prove that the Petitioner entered India after 15-10-1952, because if he entered before that date he could not clearly be convicted under Section 6, whatever liability he might have thereby incurred under any other law.

4. But it appears that this question, which was the real question involved, was lost sight of, and the learned Magistrate applied himself to the question whether the Petitioner was a citizen of India or not, and on reaching the finding that he is a Pakistani national recorded the conviction as already stated and the appellate Court also upheld this.

5. Now there was no evidence on the side of the prosecution to show that the petitioner had entered India after 15-10-1952. Only two witnesses besides the constable who arrested the petitioner were examined on behalf of the prosecution, but it might be stated at once, that their evidence is neither here nor there. P. W. 2 a resident of Dharmanagar does not recognize the petitioner, but that does not necessarily prove that the petitioner came to India recently.

P. Ws. 2 and 3 who are said to have beea present when the petitioner was accosted and arrested by P. W. 1, gave evidence to the effect that when the petitioner was questioned he admitted that he was a resident of Bokshimul in Pakistan, but that admission was clearly inadmissible under Section 25 of the Indian Evidence Act. In any case it does not prove that he came to India after 15-10-1952.

The learned Magistrate also found that there were discrepancies in the evidence of these prosecution witnesses, but he brushed them aside on the ground that the real question for decision was whether the petitioner was a citizen of India. He observed after dealing with the defence evidence that the mere fact that the petitioner has been residing in India for more than 5 years, immediately preceding the Constitution and after that too for so long will not make him a citizen of India.

But as already seen, petitioner could not be convicted even if he is not a citizen of India unless it was proved that he entered India after 15-10-1952. The question whether he is a citizen or India or not need not therefore be gone into, if it is found that such an entry has not been proved.

6. Six D. Ws. were examined to show that the petitioner has been living with his aunt in India since his childhood, his mother being dead, and the aunt has adopted him. It is besides the point whether under the Muslim law there can be a valid adoption or not, and the fact remains that a Muslim may still keep a boy or girl with him and bring him up as his own son or daughter.

7. The D. Ws. included the aunt and her husband, and two at least whose status and respectability cannot be questioned and has not been doubted. They all supported the case of the petitioner and neither the learned Magistrate nor the learned Sessions Judge has given any reason why the evidence of those witnesses who are independent witnesses should not be believed, and none was advanced before me.

As I have already said the Courts below appear to have accepted this part of the story of the petitioner on the strength of the defence evidence led in support, but found against the petitioner because he had failed to prove domicile and therefore

citizenship of India.

8. The questions that the petitioner owns no property in India, pays- no Adda-tax and his name is not in the Voters list were matters to which hardly any importance could be attached. The petitioner is aged about 19, and one finds it difficult to see how his name can be expected to be in the Voter's list. He will not pay Adda-tax, because he lives with his aunt, and everyone living in India does not own immovable property.

9. Thus the petitioner successfully proved his residence in India from before 15-10-1952, and it appears that this was accepted by the Courts below also, It was not the prosecution case that he has been coming off and on during this long period, rather what was stated in the charge sheet was that he had come recently.

10. There was thus no evidence in support of the prosecution case, and his conviction under Section 6 of the Indian Passport Rules, 1950, was on the face of it illegal and must be set aside. I accent the revision and set aside the conviction and sentence of the petitioner, and acquit him. The order for removal from India is also set aside. Fine if recovered shall be forthwith refunded to the petitioner.