SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

The State Vs. Ibrahim Adam

The State Vs. Ibrahim Adam

SooperKanoon Citation : sooperkanoon.com/351508

Court : Mumbai

Decided On : Feb-14-1956

Reported in : AIR1956Bom593; (1956)58BOMLR477; 1956CriLJ1063; ILR1956Bom635

Judge : Gajendragadkar and ;Gokhale, JJ.

Acts : Indian Passport Act, 1920 - Sections 3(1); Indian Passport Rules, 1950 - Rules 3, 3(2), 4, 5, 6 and 6(2); Permit System Rules, 1949 - Rule 19; Constitution of India - Article 226

Appeal No. : Criminal Appeal No. 1265 of 1955

Appellant : The State

Respondent : ibrahim Adam

Advocate for Def. : S.B. Vakil, Amicus Curiae

Advocate for Pet/Ap. : A.A. Mandgi, Asst. Govt. Pleader

Judgement :

Gajendragadkar, J.

1. Does the over-stay in India of the respondent who is a Pakistani national, after the period prescribed in his visa has expired, amount to a contravention

punishable under Rule 6(a) of the Indian Passport Rules 1950. This is the short point of law which arises in this appeal.

2. The facts giving rise to this point are not in dispute. The respondent is a Pakistani national and he holds a Pakistani passport No. 124981 issued at Karachi on 7-7-1953. He entered India on 24-2-1954 with Category 'C' visa No. 8809 dated 17-2-54 issued at the Indian High Commission at Karachi.

This visa was valid only during the period ending 16-5-1954. Having entered India with this visa, the respondent obtained permission to continue his stay in India up to 6-6-1954 from the Deputy Commissioner of Police, Special Branch, C. I. D., Bombay. Two further extensions were also granted to him at his request by the Passport Officer to the Government of Bombay.

The last extension granted to the respondent expired on 6-7-1954. He reported his departure at Jalalpore on 2-7-1954, but this was a hoax. In fact the respondent had not left India on or before 6-7-1954 and over-stayed here. He was found in a village Abrama within the limits of Jalalpore Police Station on 8-12-1954.

Immediately thereafter he was arrested and charge-sheeted for breach of Rule 3 of the Indian Passport Rules punishable under Rule 6(a) of the said Rules. The Respondent admitted these facts, but he contended that his over-stay in India beyond the period permitted by the passport authorities did not amount to a contravention of Rule 3 and was not punishable under Rule 6(a) of the Indian Passport Rules.

The learned trial Magistrate has upheld this plea, with the result that the respondent has been acquitted of the offence charged. In the present appeal, it has been urged before us on behalf of the State that the view taken by the learned trial Magistrate is based on a misconstruction of the material passport rules. That is how the only point which falls to be considered in the present appeal is one of construing the material passport rules.

3. The Indian Passport Act, 1020, has been enacted because Legislature thought it expedient to take power to require passport of persons entering India. Under

Sub-section (1) Section 3 of this Act, the Central Government is authorised to make rules requiring that persons entering India shall be in possession of passports, and for all matters ancillary or incidental to that purpose. Sub-section (2) of Section 3 enumerates the topics on which rules may be framed by the Central Government without prejudice to the generality of the power already conferred under Sub-section (1).

It is under this power of making rules that the Indian Passport Rules 1950, have been made by the Government of India. Rule 3 provides 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 air unless he is in possession of a valid passport conforming to the conditions prescribed in Rule 5.

It is common ground that the respondent's case does not fall under Rule 4, so that he is governed by Rule 3 and he could not enter or attempt to enter India as laid down by this rule without a valid passport. There is no dispute on this point. Rule 6 is a penal rule and Clause (a) of Rule 6 provides that any person who contravenes or abets the contravention of the provisions of Rule 3 shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

The respondent contends that what is made penal under Rule 6 (a) is an illegal entry or an attempt to make an illegal entry. Rule 3 refers to the entry or an attempt to make an entry without a passport and the contravention of this rule must necessarily be confined to cases where a foreigner has either entered into or has attempted to enter India illegally without a valid passport.

It is conceded that, even though a foreigner may have entered India with a valid passport, it would be obligatory for him to leave India as soon as the period prescribed on the visa has expired, and in that sense his over-stay may not be legal. But whether such over-stay is legal or not, it can- not be penalised unless it falls within the purview of Rule 6(a).

Now, the Act itself defines entry as meaning entry by water, land or air, so that there is no difficulty whatever in construing Rule 3. This rule refers to the entry or

an attempt to make an entry and requires that no foreigner should enter or attempt to enter India without a valid passport. A foreigner's residence in India would no doubt be governed by the limitations prescribed in the visa; but his residence or its continuance after he has once entered India cannot, we think, be brought within the mischief of Rule 3.

The question as to whether his continued residence in India is legal or not should not be confused with the main question which arises under Rule 6(a). The contravention of Rule 3 cannot be said to have been committed by a foreigner because he has over-stayed in India though he entered India with a valid passport. Rule 6(a) is a penal provision and it is well settled that a penal provision must be strictly construed.

Besides, it seems to us difficult to construe the word 'enter' or the words 'Attempt to enter' as referring to residence either within the period permitted by the visa or beyond it. Giving the words used in Rule 3 their plain grammatical construction, it is, we think, impossible to hold that continued residence of the foreigner, however wrongful it may be, can attract the provisions of Rule 3 and could be made the basis of his conviction under Rule 6(a).

4. In this connection, it would be relevant to refer to the preamble of the Indian Passport Act itself. The Act has been passed in order 'to take power to require passports of persons entering India', In other words, the object of the Act prima facie' appears to be to regulate the entry of foreigners into India.

Unless words used in any of the sections of the Act or in the rules framed thereunder clearly and unequivocally refer to the residence of foreigners in India, it would be difficult to hold that the Act intended to deal with the question of foreigners' residence in India under the visas issued in their favour or their over-stay beyond the period prescribed by the visas.

The provisions of Section 3 Sub-section (2), which enumerate the topics on which rules can be framed, also do not show that the residence of a foreigner in India after his valid entry into the country was intended to be covered by any such rules. Therefore, if the object of the Act was to regulate the entry of persons into India,

'prima facie' the question of requiring the foreigners to leave India at the end of the period prescribed in their visas does not appear to have been expressly dealt with by the provisions of the Act or the rules framed thereunder.

Section 5 of the Act, which confers power on the Central Government to remove, by general or special order, any person from India who ill contravention of any rule made under Section 3 has entered India, also refers to the entry of the foreigner into India and- does not seem to contemplate his unauthorised continued residence in India beyond the period mentioned in the visa.

But whether or not it would be competent to the Government to make rules for regulating the residence of foreigners in India, it seems to us clear that the rules that have been made do not cover the case of wrongful residence of foreigners in India, and the respondent cannot, therefore, be held to have committed any offence punishable under Rule 6(a) of the Indian Passport Rules.

5. In considering the scope of the Passport rules, it would be relevant and useful to refer to the preamble of the Foreigners Act (Act 31 of 1946). This Act has been passed by the Indian Legislature because it was thought expedient 'to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into India, their presence therein and their departure therefrom'.

It would be noticed that the object of pass-Ing the Foreigners Act was, not only to deal with the entry of foreigners into India, but with their presence in and their departure from India. Section 3 of this Act which confers powers on the Central Government to make orders against foreigners, specifically authorises the Central Government, to make rules regulating the stay of the foreigners or their presence or continued presence in India as well as their departure from India.

This section tends to show that, in the case of a foreigner who has entered India on a valid passport but continues to stay in India beyond the period permitted by his visa, it would be open to the Central Government to take action under the appropriate rules framed under Section 3 of the Foreigners Act, 1945. If this be the true position, it cannot be said that the Central Government would be powerless to deal with a foreigner like the respondent who has over-stayed in India beyond the

period permissible under the rules.

6. When Legislature wants either to legislate or to make rules in respect of the continued residence Of a foreigner in India, appropriate words are always used either in the sections of the statute or in the rules framed under that statute. In this connection, reference may be made to Rule 19 of the Permit System Rules, 1949, which expressly refers to the residence or the continuance of residenct of a person who has entered India under the Per-mite System Rules.

Rule 3 with which we are concerned does not refer to the residence or continued residence of a foreigner and Rule 6 (2) cannot, therefore, be said to apply to a foreigner merely because he has over-stayed in India beyond the period allowed by the visa. Entry into the country and residence in the country are, in our opinion, two different acts and rules regulating the first set of acts, cannot by themselves purport to govern the second set of acts, unless appropriate words are used in the rule itself.

As soon as a foreigner enters India, the act of entry has been completed and his presence in India, however unauthorised it may be, cannot, be said to amount to an entry into India from the moment his residence becomes illegal Entry into a country is a physical act and once the act Is accomplished and the foreigner has planted himself in India, it cannot be said even symbolically that after the period prescribed by the visa has expired he must be deemed to have gone back to his own country and entered this country unauthorisedly thereafter. We think it would be unreasonable to adopt any such fiction to be able to invoke Rule 6(a) against the respondent in the present case.

7. It has been urged before us that the State wants this point to be decided authoritatively so far as this Court is concerned in order that the State may consider whether any amendment in the Act or the Rules is required. In support of the construction of Rules 3 and 6 for which the Slate contends in this appeal, reliancs has been placed on a decision of the Nagpur High Court in -- 'Karimun Nisa v. State Govt. of Madhya Pradesh' AIR 1955 Nag 6 (A).

In this case the petitioner Kariman Nisa had applied to the Nagpur High Court under Article 226 of the Constitution of India for issue of certain writs against the State Government, and the Union Government directing them not to order the petitioner to leave India against her wish and on her behalf several constitutional points were urged.

The Judgment delivered by the Court shows that all the Constitutional objections raised by the petitioner were rejected, though at the end of the judgment the learned Judges requested the Government to consider the ease of the petitioner sympathetically. Incidentally, it has been observed that the period during which the petitioner was allowed to stay having expired, her stay in India thereafter became unlawful and liable to be punished under Rule 6(a).

The learned Judges observed that this result could not be avoided. With respect the question as to whether Rules 3 and 6(a) could be invoked against a foreigner on the ground that the foreigner has over-stayed in India beyond the time permitted by his visa, even though the entry of the foreigner into India was lawful does not appear to have been argued before the learned Judges, and the point of construction of the said rules does not appear to have been considered. We are unable to agree that over-stay of foreigner would bring his case within the mischief of Rule 6(a) read with Rule 3 of the Passport Rules.

8. In the result, the order of acquittal passed by the learned trial Judge must be confirmed and the appeal preferred by the State dismissed.

9. We would like to thank Mr. Vakil who appeared in this case amicus curiae to assist us to deciding the point.

10. Appeal dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com