

The State of Mysore Vs. Abdul Salam

The State of Mysore Vs. Abdul Salam

SooperKanoon Citation : sooperkanoon.com/372436

Court : Karnataka

Decided On : Jul-05-1951

Reported in : AIR1951Kant116; AIR1951Mys116; ILR1951KAR419

Judge : Medapa, C.J. and ;Vasudevamurthy, J.

Acts : Influx from Pakistan (Control) Act, 1949 - Sections 1; [Government of India Act, 1935](#) - Sections 18

Appeal No. : Criminal Appeal No. 47 of 1950-51

Appellant : The State of Mysore

Respondent : Abdul Salam

Advocate for Pet/Ap. : Adv. General

Disposition : Appeal allowed

Judgement :

Yasudevamurthy, J.

1. This is an appeal by the State against the judgment of the learned Additional First Glass Magistrate, Ramanagaram in C. C. No. 1/50-51 acquitting the respondent one Abdul Salam who was charged before him for an offence under Section 5, Influx from Pakistan (Control) Act, 1949 read with Rules 19 and 26 of

the Permit System Rules, 1949 framed under s. 4 of that Act.

2. The facts of the case are not in dispute. The accused was a native of a village in Magadi taluk. He left India about 3 years ago to Pakistan. He returned to India to visit Nalabandvadi in Bangalore City under a temporary permit issued on 30-9-1949 by the High Commissioner for India at Karachi. Under that permit, the accused was allowed to stay in India for two months from 30-9-1949 to 30-11-1949. The accused was arrested on 27-2-1950 at Kudur in Magadi taluk on the ground that he had over-stayed in India after 30-11-1949 in contravention of Rule 19 of the Permit System Rules of 1949 and that he had visited certain places other than those mentioned in the permit in contravention of Rule 26 of the said Rules without informing the local police. The learned Magistrate held that the Influx from Pakistan (Control) Act, 1949 was an Act of the Dominion Legislature and it had not been shown that it was extended into Mysore State and was in force at the time in question. He observed that that Act had been published in the Mysore Gazette of 9-6-1949 only for the general information of the public and that it was not clear from the said Act as to when or how it had to come into force in Mysore.

3. The learned Magistrate has in his judgment referred to Articles 245 and 246(1) of the Constitution of India and doubts whether all Acts passed by the Dominion Parliament will have the force of law in the States acceding to the Dominion unless it is expressly provided in the concerned Act that it should do so and the date on which it should come into force is also fixed therein. The order of the learned Magistrate is not correct and cannot be upheld. Even under Article 245 of the Constitution of India the Parliament may make laws for the whole or any part of the territory of India subject to the provisions of the Constitution. Next under Article 246, the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule. 'Admission into, and emigration and expulsion from, India; passports and visas' comes under item 19 of List I (Union List). These Articles however do not appear to us to be relevant for the present case because Act XXIII [23] of 1949 was enacted before the Constitution of India came into force. The Influx from Pakistan (Control) Act, 1949 (Act XXIII [23] of 1949) received the assent of the Governor-General on 22-2-1949 and became law from that date. In Section 1 of that Act it is expressly provided

that it extends to the whole of India. Section 4 provides that the Central Government may by notification in the official Gazette make rules for the carrying out of the purposes of the Act. It has to be seen whether that Act has the force of law in Mysore and, if so, from what date. On 16-8-1947 His Highness the Maharaja of Mysore who was then its Ruler, and in the exercise of his sovereignty which he then possessed in and over the State of Mysore, executed the Instrument of Accession. He thereby declared that he acceded to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion Authority established for the purposes of the Dominion shall by virtue of the said Instrument of Accession but subject always to the terms thereof exercise in relation to the State of Mysore such functions as may be vested in them by or under the Government of India Act of 1935; and he further accepted the matters specified in the schedule to that Instrument as matters with respect to which the Dominion Legislature may make laws for the Mysore State. The schedule to that Instrument of Accession sets out matters with respect to which the Dominion Legislature may make laws for the State. Item 2 under 'B. External Affairs' of the Schedule to the Instrument clearly includes 'admission into, and emigration and expulsion from India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India or subjects of any acceding State.'

Therefore, in the matter of control of the admission into and regulating the movements in India of persons from Pakistan the Dominion Legislature was clearly authorised and empowered to make laws for the State also. By the India Provisional Constitution Order of 1947, Section 18, [Government of India Act, 1935](#) was substituted by a new section. That section declared that the powers of the Dominion Legislature under the Government of India Act should until other provisions were made by or in accordance with law made by the Constituent Assembly be exercisable by that Assembly and that accordingly the references under the Government of India Act to the Dominion Legislature should be construed as references to the Constituent Assembly. That Assembly could therefore legislate for the Dominion of India; and by virtue of the Instrument of Accession that Assembly could and did validly legislate for the Mysore State in matters relating to external affairs. It is one of the items mentioned in the schedule

to the Instrument of Accession. Act XXIII [23] of 1949, which was to extend throughout India, which expression has been defined in the Order of 1947 as meaning the Dominion of India to which His Highness the Maharaja came to accede though, during that period, it was only for certain purposes specified in the Instrument of Accession, is, therefore, applicable to and enforceable within the Mysore State with effect from the date when it received the assent of the Governor-General.

4. The accused must therefore be held to be guilty of an offence under Section 5 (1) of Act XXIII [23] of 1949 in that he has committed breach of the conditions of his permit by over-staying in India after the expiry of its period and by visiting places not specified in that permit. We, therefore, convict the accused for an offence under Section 5 (1) of Act XXIII [23] of 1949 and sentence him to rigorous imprisonment for 6 months. The accused will be arrested and will undergo the sentence.

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