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State Vs. Hyder Ali

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Court : Andhra Pradesh

Decided On : Jan-17-1955

Reported in : 1955CriLJ798

Judge : Qamar Hasan,; Manohar Pershad and; Srinivasachari, JJ.

Appellant : State

Respondent : Hyder Ali

Judgement :

Qamar Hasan, J.

1. This reference Under Section 7, Hyderabad High Court Act arises out of an appeal preferred by the State of Hyderabad against the judgment and order of the learned Sessions Judge, Hyderabad, dated 28-8-1953 by which he acquitted the respon-dent by reversing the conviction and sentence-passed by the Magistrate First Class, West Taluk under Sub-section (1) of Section 5, Influx from Pakistan (Control) Act, 1949.

2. In order to provide a proper context for the appreciation of the point canvassed at the .hearing of the appeal and which now forms the subject-matter of this reference, it may be mentioned that according to the prosecution, the respondent, Hyder All s/o Mir Yawar All was a Pakistani national who under a temporary permit numbering 97340 dated 20-6-1950 came to Sitaphal Mandi a suburb lying

between Hyderabad and Secunderabad on 2-7-1950 with the avowed object of seeing his ailing father. Terminus ad quem of his visit expired on 20-7-1950 but the respondent instead of leaving Hyderabad shifted himself to Darush Shifa. His father Yawar Ali on 22-6-1951 applied to the Government of Hyderabad to convert the temporary permit into a permanent one. The Chief Secretary to the Govt. of Hyderabad by his letter No. 12704/PN-175/50 dated 16-7-1951 communicated to the respondent's father :

Your son's case was recommended to the Govt of India but they point out that apart from the fact that he was carrying on business in Pakistan for nearly 2| years, his case cannot be covered by the Circular issued by the Hyderabad Government, which directed the Government servant's wife or husband and children dependent on him should be recalled. The term 'children' cannot be deemed to include a person of Shrl Hyder Ali's age. Under the circumstances, I am to request you to see that your son leaves the country within fifteen days of receipt of this communication; otherwise arrangements will be made to extern him. He may however apply from Pakistan for a reconsideration of the present decision.

A copy of this letter was forwarded to the Collector of Hyderabad with a direction that if the respondent does not leave the country in compliance with the above order, arrangements may be made for his externment. The Collector conveyed the order of externment to the District Superintendent of Police, Hyderabad District. But as, in the opinion of the Police, the respondent had as well contravened the conditions of the permit not only by overstaying but also by residing in the city limits, they, instead of making arrangements for his externment, charge-sheeted him on 4-10-1951 for the contravention of the provisions of Section 3, Influx from Pakistan (Control) Act made punishable Under Section 5 of the same Act.

3. The learned Magistrate after examining three witnesses on behalf of the prosecution with no rebuttal in defence proceeded on the simple logic that respondent having been proved to have overstayed beyond the duration of visit allowed by the permit, was liable to conviction under Sub-section (1) of the Act and consequently, he sentenced him as statea above to a fine of Rs. 200/- or In default to undergo simple imprisonment for three months.

4. On appeal by the respondent, the learned Sessions Judge differed from the view of the case taken by the trial Magistrate. In his opinion as the Act was not In force in the State of Hyderabad on the date of the expiry of the term Of stay by reason of its exclusion from the territory of India to which the Act was made applicable, no charge of the commission of an offence Under Section 5 of the Act can be brought home to the res- pondent. It was argued beforfe him on behalf of the prosecution that the moment the Act was made applicable to the State by force of Ordinance 12 of 1950 on 24-7-1950 every person found residing in the State in contravention of the terms of the permit should be deemed to have committed an offence Under Section 5 of the Act and therefore liable to punishment. The learned appellate Judge repelled the contention on the ground that there was no indication in the said Ordinance to show that a retrospective operation was intended to be giver to ib.

5. Against these findings and consequent order of acquittal, the State filed the present appeal Under Section 417, Cr.PC It came on for hearing before a Bench of this Court. There the argument on behalf of the prosecution took the turn that the act of overstaying was a continuing offence, therefore, when Ordinance 12 of 1950 came Into operation, the act of overstaying or in other words, the omission to leave Hyderabad for Pakistan before the expiry of the period of one month automatically constituted itself into an offence rendering the respondent responsible for the legal consequences of his act or omission whatever it may be said to be. In support of this contention, reliance was placed upon - 'Abw Mohmed Memon v. Chief Secy., Govt. of Sau-rashtra' AIR 1952 Sau 98 (SB) (A), which approved a previous decision of that Court in the case of - 'United States of Saurashtra v. Khatrl Osman Mamed', 2 Sau LR 212 (B) and on the case of - 'State v. Kunja Behari' : AIR1954 Pat371 . As against these authorities, the respondent's advocate cited the case of -'Mohammad Shan v. State' : AIR1952 All921 and an unreported judgment of this Court in the case of - 'Dilawar Abdullah v. Government', Revn. Petn. No. 1138/6 Of 1952, D/- 17-12-1953 (Hyd) (E).

6. The learned Judges after tracing the history of the legislation on Control of Influx from Pakistan and the amendments from time to time introduced therein felt that the decision of the Bench in Dilawar Abdullah's case (E), required reconsideration

inasmuch as In their view, the correct rule seemed to be what has been laid down in the Patna and Saurashtra cases.

7. It would appear from the order of reference that the contention which was raised before the learned Judges on behalf of the respondent was that

as he came to Hyderabad under a valid permit and had overstayed the period of his permit when Act 23 of 1949 was not applicable to the State of Hyderabad and the rules prohibiting overstay were framed subsequently, he cannot be removed nor can he be convicted of any offence.

In repelling this contention, the learned Judges observed :

It Is true that the respondent came to Hyderabad under a valid permit but that was a temporary permit and that too for a special purpose, namely, to see his ailing father. The period of permit expired on 20-7-1950. No doubt, at that time Act 23 of 1949 was not applicable to the State of Hyderabad, as such 'the respondent cannot be deemed to have committed any offence'. In the present case, the respondent is charged with overstaying and changing the place of residence without intimating (to) the police. It is possible that the overstay during the period when the Government could not remove a person on that ground cannot by subsequent legislation be made a ground of removal. 'But from the date on which the Act was made applicable to the State of Hyderabad, the respondent's stay in Hyderabad in breach of the conditions of the permit became an offence as the act of overstay is a continuing offence.

After distinguishing the case of AIR 1952 All 921 (D), on the ground that the learned Judges of the Allahabad High Court were dealing with a case in. which the alleged guilt of the accused had to be determined according to the law which did not contain any provision prohibiting overstay and in which it was not necessary to fix any period for purposes of staying, the learned referring Judges proceeded to consider the unreport-ed case of Dilawar Abdullah (E). They agreed with the learned Advocate for the respondent that the case was directly in favour of the respondent but they thought that the dictum therein that overstaying was not a continuing or recurring offence was wrong in view of the pronouncement of the Full

Bench of the Patna High Court in the case of AIR 1954 Pat 371 (C), which laid down that the expression 'continuing offence' means that, if an act or omission on the part of an accused person constitutes an offence, and if that act or omission continues from day to day, a fresh offence is committed on every day on which the act or omission continues. On the basis of this authority, the learned referring Judge came to the conclusion :

Not to leave Hyderabad after the expiry of the period of permit was a contravention of the rule and overstay is surely continuing contravention of the same rule (i.e. Rule 19, Permit System Rules, 1949 No. II (55 E) 49-N).

The passages which I have underlined (here into ' ') & the conclusion just quoted would go to show that in the opinion of the learned Judges, who have referred the case to this Bench, the respondent even though he had committed a breach of the condition of the permit by not leaving Hyderabad by 20-7-1950. and by overstaying, he was not amenable to any criminal proceeding for his overstay upto 23rd July 1950 by reason of the fact that the Influx from Pakistan (Control) Act (23 of 1949) did not apply to the State of Hyderabad; but he became so amenable when that Act was applied to the State by the Influx from Pakistan (Control) Amendment Ordinance. 1950 (22 of 1950) which came into force on 24-7-1950 and his stay from that date on the doctrine of continuity of offence rendered him an offender against the Act and the rules made thereunder.

8. This was also the gist of the argument addressed to us by Shri Raghavachari on behalf of the State which he reinforced by citing the Pull Bench cases of the Saurashtra and Patna High Courts already referred to above.

9. Before considering the rival contentions of the parties it would be appropriate to take stock of the statutory position obtaining in this case of the time when the respondent came to Hyderabad and when he was charge-sheeted before the Magistrate. Without going into the history of ditierent legislative measures to control influx from Pakistan, it would be sufficient to state for purposes of this appeal that at the time of the respondent's entry into Hyderabad, the Law in force in India was the Influx from Pakistan (Control) Act (23 of 1949) to be hereinafter referred to as the Act. The Act received the assent of the Governor-General on 22-

4-1949 and was published in the Gazette of India Extraordinary on April 23rd. It is intituled an Act to 'control admission into and regulate movements in, India of persons from Fakistan'. The preamble opens with th words

whereas it is expedient to control the admission into, and regulate the movement, in India of person from Pakistan.

Sub-section (2) of Section 1 extended the operation of the-Act to the whole of India, in Section 2(b), 'Officer of Government' was denned as any officer of the Central Government or of a State Government or of the Government of an Acceding State. Section 2(c) denned 'permit' as a permit issued at renewed or the period whereof has been extended in accordance with the rules made under the Act.

10. Section 3 provided that no person shall enter India from any place in Pakistan, whether directly or indirectly unless (a) he is in possession of a permit. Section 4 empowered the Central Government by Notification in Official Gazette to make rules (b) regulating the movements in India of any person who is in possession of a permit. Section 5 is the penal section Sub-section (1) of which says:

(a) Whoever enters India in contravention of the provisions of Section 3 or having entered India contravenes the provisions of any rule made Under Section 4 or commits a breach of any of the conditions of his permit, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

Permit System Rules were published through Notification No. II (55 E) /49-N dated 5-5-1949, Rule 19 whereof provided that no person holding a temporary permit shall stay in 'India' after the expiry of such permit.

11. Then came 26th January 1950. On that date by reason of the Firman of H. E. H. The Nizam dated 23-11-1949 published in the Gazette of India Extraordinary, p. 440. dated 25-1-1950, the State of Hyderabad became an acceding State. The logical result of the accession would have been to make the Act applicable to the State of Hyderabad, but to prevent that contingency, the President of India in the

exercise of his powers under Ol. (2) of Article 372 of the Constitution promulgated the Adaptation of Laws Order on 26-1-1950 and modified the Act by introducing amendments in Sections 1 & 2. After the amendment Sub-section (2) of Section 1 reads as follows :

It extends to the whole of India except the State of Hyderabad.

After omitting the words 'or of the Government of an Acceding State' from Ol. (b) of Section 2, a new clause i.e., Clause (d) was added to that Section emphasising the fact that 'India does not include the State of Hyderabad'.

The amendments remained in force till 23-7-1950. On 24-7-1950 the President promulgated Ordinance No. 22 of 1950. The Ordinance in extenso reads as follows : 'Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action. Now, therefore, in exercise of the powers conferred by Clause (1) of Article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :

1. (1) This Ordinance may be called the In- flux From Pakistan (Control) Amendment Ordinance, 1950.

2. It shall come into force at once, 2. In Sub-section (2) of Section 1, Influx from Pakistan (Control) Act, 1949 (hereinafter referred to as the said Act), the words 'except the State of Hyderabad' shall be omitted.

Clause (d) of Section 2 of the said Act shall be omitted.

The position which emerges from the above survey of the relevant enactments is that constitutionally, the State of Hyderabad was never under the legislative control of any Central Indian Legislature till 26-1-1950 (Vide the case of - Manardhan Eeddy v. The State' AIR 1951 SO 124 (P); - 'Muhammad Yusuf-ud-din v. Queen Empress', 24 Ind App 137 (PC) (G); and - 'Hem-chand v. Azam Sakarlal', 33 Ind App 1 (H), and when in fact it became a part of India, it was excepted from the operation of the Act by force of the Adaptation of Laws Order. That privilege was however taken away by Ordinance No. 22 of 1950 and from the date of its promulgation, the Act became1 applicable to the State of Hyderabad.

12. The title of an Act is undoubtedly part of the Act itself and it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope. Chitty J. observed in the case : of - 'East and West India Dock Co. v. Shaw, Savill and Altaian Co.' (1888) 39 Ch D 524 at p. 531 (I), that the title of an Act may be referred to for the purpose of ascertaining generally the scope of the Act. The preamble of an Act sets forth the reasons for the particular Act of the Legislature and foreshadows what is intended to be effected by the Act. It is a key to open the minds of the farmers of the Act. It is to the preamble, more especially, that we are to look for the i-eason or spirit of every statute itself; rehearsing this, as it ordinarily does, the evils sought to be remedied and so evidencing, in the best and most satisfactory manner, the object or intention of the Legislature, in making and passing the Statute, - 'Brett v. Brett' (1826) 162 ER 456 at p. 458 (J). The Supreme Court in the case of - 'Ebrahim Vazir v. State of Bombay' AIR 1954 SC 229 (K), has looked to the title and preamble of the Act while interpreting the word 'person'.

The Act, as the title and preamble show, was intended 'to control the admission into and regulate the movements in India of persons from Pakistan'. The exclusion of the State of Hyderabad from the operation of the Act is an unmistak- able indication that the President of India in the exercise of his Constitutional powers did not deem it expedient to control the admission into and. regulate the movements in, the State of Hyderabad of persons from Pakistan eitner because there was no evil to be remedied or for reasons which I am not aware of, he intended that status quo anto may be maintained and persons from Pakistan be left free, vis a vis India, to make ingress in the State of Hyderabad without incurring any penal consequences under the Act. In other words, such persons were, under no legal obligation to conform to the conditions laid down in the permit and these conditions during the currency of the Act as it stood amended by the Adaptation of Laws Order, 1950 were no more than so many precepts only morally binding on the permit-holder.

13. The main controversy which has given rise to this reference centred round the question, as to what is the effect of the further amendment of the Act by Ordinance 22 of 1950. That Ordinance as already stated has deleted the words 'except the

State of Hyderabad', from Sub-section (2) of Section 1 of the Act and omitted Clause (d) which stated that 'India does not include Hyderabad'. In the opinion of the learned Judge referring the case, the result would be that:

From the date on which the Act was made applicable to the State of Hyderabad, the respondent's stay in Hyderabad in breach of the conditions of the permit became an offence as the act of overstaying is a continuous offence.The doctrine of continuity of offence presupposes-a point of time when the act or omission made punishable becomes a completed offence. If that point of time is taken to be 21,22,or 23-7-1950, then in order to make that act or omission an offence, the Act will have to be applied retrospectively because continuous overstaying during that period was not an offence. If on the other hand, if he supposed that an offence would be deemed to have been committed on 24-7-1950, when the Ordinance 22 came into force, no question of continuity would arise unless the prosecution wanted to-secure the conviction of the respondent Under Section 234, Cr.PC, for more offences than one.

14. It is a well-established canon of interpretation that a new Act which penalises what otherwise is not an offence must be so construed as to make it strike at future acts or omissions unless the Legislature has said so. In - 'Reg v. Griffiths' (1891) 2 QB 145 (L), Denman J. observed that a criminal offence ought not to be created retrospectively. It has been laid down by Cock-burn C. J. in - 'Reg v. Ipswich Union' (1877) 2 QBD 269 (M), that it is a general rule that where a Statute is passed altering the law, unless the language is expressly to the contrary, it is to be taken as intended to apply to a state of facts coming into existence after the Act. Following - 'Eourks v. Nutt' (1894) 1 QB 725 (N), a Bench of the Allahabad High Court in the case of ' : AIR1952 All921 ', which was relied upon on behalf of the respondent, has held that ordinarily an Act operates only on cases or facts which come into existence after the Statute is passed.

Apart from that, there is also a Constitutional aspect of the question which cannot by any means be ignored. Article 20 of the Constitution guarantees that

No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence nor be subjected to a

penalty greater than that which might be inflicted under the law in force at the time of the commission of the offence.The Supreme Court had occasion to consider the provisions of this Article in - 'Shiv Bahadur Singh v. State of Vindhya Pradesh' AIR 1953 SO 394 (O), and therefore no original thinking is required on my part. Jagannadhadas J., who delivered the judgment of the Court observed at p. 398 of the report:

This Article in its broad import has been enacted to prohibit convictions and sentences under 'ex post facto' laws. The principle underlying such prohibition has been very elaborately discussed and pointed out in the very learned judgment of Justice Willes in the well known case of - 'Phillips v. Eyre' (1870) 6 QB 1 at pp. 23 and 25 (P), and also by the Supreme Court of U. S. A. in - 'Calder v. Bull' (1798) 3 Dall 386= 1 Law Ed. 648 at p. 649 (Q). In the English case it is explained that 'ex post facto' laws are laws which 'voided and punished what had been lawful' when done. There can be no doubt as to the paramount importance of the principle that such 'ex post facto' laws which retrospectively create offences and punish them are bad as being highly inequitable and unjust. In the English System of Jurisprudence repugnance of such laws to universal notions of fairness and justice is treated as a ground 'not' for invalidating the law itself but as compelling a beneficial construction thereof where the language of the Statute by any means permits it. In the American system, however, 'ex post facto' laws are themselves rendered invalid by virtue of Article 1, Sections 9 and 10 of its Constitution....

On a careful consideration of the respective Articles, one is struck by the marked difference In language used in the Indian and American Constitutions. Sections 9 (3) and 10 of Article 1 of the American Constitution merely say that 'No 'ex post facto' law shall be 'passed'...' and 'No State shall pass 'ex post facto' law...' But in Article 20 of the Indian Constitution the language used is in much wider terms, and what is prohibited is the conviction of a person or his subjection to a penalty under 'ex post facto' laws. The prohibition under the Article is not confined to the passing1 or the validity of the law but extends to the conviction or the sentence and is based on its character as an 'ex post facto' law. The fullest effect must therefore be given to the actual words used in the Article.... It cannot therefore be doubted that the phrase 'law in force' as used in Article 20 must be understood in

its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law 'deemed' to have become operative by virtue of the power of Legislature to pass retrospective laws.

Despite this weighty and binding pronouncement. I cannot resist the temptation of referring to some passages from the case of - 'Calder v. Bull' (Q), a locus classicus on the point under consideration. Chase J. while discussing the meaning and scope of 'ex post facto' laws observed:

I will state what laws I consider 'ex post facto' laws within the words and the intent of the prohibition. 1st; Every law that makes an action done before the passing of the law; and which was innocent when, done, criminal; and punishes such action. 2nd. Every law that aggravates a crime, or makes it greater than it was' when committed. 3rd. Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed. 4th. Every law that alters the legal rule of evidence and receives less or different testimony than the law required at the time of the commission of the offence in order to convict the offender. All these and similar laws are manifestly unjust and oppressive. In my opinion the true distinction is between 'ex post facto' laws and retrospective laws. Every 'ex post facto' law must necessarily be retrospective, but every retrospective law is not an 'ex post facto' law. The former only, are prohibited.

Every law that takes away or impairs, rights vested agreeably to existing laws is retrospective, and is generally unjust, and may be oppressive; and it is a good general rule, that a law should have no retrospect; but there are cases in which laws may justly, and for the benefit of the community and also individual, relative to a time antecedent to their commencement; as statutes of oblivion or of pardon. They are certainly retrospective and literally both concerning, and after, the facts committed. But I do not consider any law ex post facto within the prohibition that mollifies the rigour of criminal law; but only those that create or aggravate the crime or increase the punishment or change the rules of evidence for the purpose of conviction. Every law that is to have an operation before the making thereof, as to commence at an antecedent time to save time from the statute of limitation or to excuse acts which were unlawful, and before committed, and the like is

retrospective. But such laws may be proper or necessary, as the case may be. There is a great and apparent differ-ence between making an unlawful act lawful and the 'making an innocent action criminal and punishing it' as a crime.

The Act, as I have already said, was intended to control the admission into, and regulate the movements in India of persons from Pakistan. In so far as the condition precedent for admission in India was concerned, the respondent fulfilled it by obtaining the necessary permit under Section 3 of the Act. Therefore, whatever law applied, no question of his guilt for having contravened the provisions of Section 3 Under Section 5 (1) can possibly arise. If, instead of coming to Hyderabad, he had stayed in territories within the connotation of India and failed to leave them after the expiry of the permit, he would have certainly brought himself within the mischief of Section 5 (1) for contravening the condition of the permit. But the respondent's destination was Hyderabad which was expressly excluded from the operation of the Act.

As Rule 19, Permit System Rules which were published on 5-5-1949, prescribed that no person holding a temporary permit shall stay in 'India' after the expiry of such permit, it was certainly open to the authority issuing the permit to have refused it but having consented to issue it, he could not legally fix a period for sojourn in a place which was not within India. If he had done that, it would amount to no more than redundancy creating no legal obligation to conform to it. Even on the assumption that there was no redundancy, one cannot lose sight of the fact that R, 19 only enjoined the person holing the permit to abstain from staying in India after the permitted duration visit and not in place or places which were not in India. Similarly territorial restriction on his movement in such place or places would not make him amenable to the penal provisions of the Act.

15. It would thus be apparent that the respondent's movement from Sitaphalmandi, one of the suburbs of Hyderabad to Darushshifa, a mohalla in Hyderabad and his omission to leave Hyderabad after the expiry of the permit upto the date of the promulgation of the Ordinance were innocent acts and omissions, when done or omitted to be done. In order to make them criminal, the Ordinance will have to be regarded in the nature of an -ex post facto' law or a retrospective operation will

have to be given to it. As an 'ex post facto' law it would be within the mischief of Article 20, because according to that Article

no person shall be convicted except for violation of a law in force at the time of the commission of the act charged as an offencewhich expression according to Section 3 (38), General Clauses Act read with Article 367 of the Constitution includes an omission. I have already quoted authorities for the proposition that criminality cannot be wriggled out of an innocent act.

16. As regards the retrospective operation of the Ordinance, I find nothing therein to show that any such effect was intended to be given to it expressly or by necessary intendment. What it states in Sub-section (2) of Section 1 is that it shall come into force at once. I have already quoted weighty pronouncements in support of the proposition that it is a general rule that where a statute is passed altering the law, unless the language is expressly to the contrary, it is to be taken as intended to apply to a state of facts coming into existence after the Act. The result is that the doctrine of continuity of offence cannot be made to relate back to state of facts existing before the promulgation of the Ordinance. Can it then be said, as was contended for by the learned Advocate for the State, that at the zero hour when the Ordinance altering the Act came into force the innocent act or omission on the part of the respondent automatically converted itself into a full-fledged offence and from that time onwards it became a continuing offence.

The difficulty in accepting this argument is that the respondent had spent the period of his visit and according to the prosecution overstayed in Hyderabad which the Act itself as it stood amended by the Adaptation of Laws Order bad induced. It may be recalled that Rule 19 does not cover the case of a person who having entered India with a permit overstays in a territory which was not India, In these circumstances, it cannot be premised that any fresh state of facts came into existence so as to attract the penal provisions of the Act. Therefore, no foundation can be said to have been laid for applying the doctrine of continuity of the offence.

I have no quarrel with the ratio decidendi of the Pull Bench of the Patna High Court in the case of AIR 1954 Patna 371 (C). In that case, the accused was convicted Under Section 39, Mines Act 1923 for the contravention of Rule 3 (a), Mines

Creche Rules, 1946 and sentenced to fine. Rule 3 (a) provided that

the owner of every mine shall construct a creche in accordance with plan in conformity with these rules and previously approved by the competent authorityand Rule 3 (b) laid down that

such creche shall be constructed within nine months of the date of publication of these rules provided that where land has to be acquired for the purpose, the competent authority may extend the time limit to a period not exceeding twelve months from the said date.Under Section 42, Mines Act, no court could take cognizance of any offence under the Act unless complaint thereof has been made within six months of the date on which the offence is alleged to have been committed. The date of the publication of the rules was 23-7-1946 so that nine months from the date expired on or about 22-4-1947. One of the arguments advanced on behalf of the accused in that case was as no creche was constructed within nine months, the complaint ought to have been lodged within six months from the date of the expiry of the nine months and that as the complaint was presented on 8-11-1950 much beyond six months from 23-4-1947, it ought to have been dismissed in limine as being barred by time. The learned Judges repelled this contention observing that

Section 42, just mentioned, lays down that no court shall take cognizance of any 'offence' under the Act unless complaint thereof has been made within six months of the date of the offence. The term 'offence' has been defined in Section 3(38). General Clauses Act. as meaning 'any act or omission made punishable by any law for the time being in force. The definition includes an omission. In the present case, there was an omission to construct the required creche. This omission may be completed offence or a continuing offence. The expression 'continuing offence' means that, if an act or omission on the part of an accused constitutes an offence, and if that act or omission continues from day to day, then a fresh offence is committed on every day on which the act or omission continues. Not to have constructed the creche as required within the time allowed was a contravention of the rule, and to carry on mining operation without the creche is surely a continuing contravention of the same rule.

Section 38, Indian Mines Act, provides for punishment for continuing contravention as well. It says:

whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinafter provided shall be punishable with fine which may extend to one thousand rupees, & in the case of a continuing contravention, with a further fine which may extend to one hundred rupees for every day on which the offender is proved to have persisted in the contravention after the date of the first conviction.The section clearly contemplates a continuing contravention as well. I have no doubt in my mind that the contravention of Rule 3 (a), Mines Creche Rules by the petitioners was a continuing one, and there can be no question of the prosecution being barred Under Section 42, Mines Act.

The above passage from the text of the judgment Is sufficient to show that the facts and the statutory basis on which the dictum as to the nature of the continuing offence was enunciated were different from those obtaining in this case and I fail to see how that authority can have any bearing on the decision of this appeal.

17. The other authorities cited by the learned advocate for the State are also distinguishable and lay down nothing which might militate against the correctness of the decision in -'Dila-war Abdullah's case (E) The facts in 'AIR 1952 Sau. 98 (SB) (A), were that Abu Mohmed after his conviction Under Section 4 read with Section 3, Influx from Pakistan (Control) Ordinance, 12 of 1948 for overstaying in India applied for a writ restraining the opponent from removing him from India alleging that he apprehended that the District Superintendent of Police, Jamnagar acting under the instructions of the Government of Saurashtra and the Central Government intended to remove him from India. It was argued in that case on behalf of the petitioner that he had overstayed the period of his permit when there were no rules prohibiting such overstay and the Government had no authority to remove him on the ground of overstay and that he could not be removed because the rules prohibiting overstay were subsequently framed & because subsequent legislation rendered persons overstaying in India in contravention of the rules or the conditions of the permit liable to removal from India. Article 20 was relied upon

in support of this contention. Baxi J., with whom Shah C. J. and Chhatpar J. agreed held:

It is possible that petitioner's overstay during the period when the Government could not remove a person on that ground cannot by subsequent legislation be made a ground of removal. But from the date on which the new Ordinance viz., Ordinance 34 of 1948 came into force, the petitioner's stay in India in breach of the conditions of the permit and in breach of the Permit System Rules became an offence and the Central Government became entitled to direct his removal.

In support of that proposition, reliance was placed upon '2 Sau LR 212 (B)', which was also relied upon before us on the learned advocate for the State. Unfortunately, this authority is not available in the High Court Library nor the learned advocate relying upon it has been able to produce it for our perusal. In 'Abu Mohamed's case (A)', the point decided in the latter case is stated to be that overstay after the expiry of the permit was punishable under the Permit System Rules even though the permit had expired before the rules were framed. Then follows the passage:

The Act of petitioner's overstay is a continuous offence and can be dealt with under Ordinance, 34 of 1948 and the rules and notifications thereunder though such overstay could not have been punished or made a ground of removal under the Ordinance 17 of 1948.

However, on consulting Indian Digest, 1950 on page 553, I found the following summary of the case.

18. Two persons were prosecuted Under Section 4 of the Ordinance read with Rule 12 framed thereunder for overstaying their permit in Manavadar without having applied for any extension. Both of them had no intention to infringe the law and had acted in good faith with the intention of abandoning Pakistan and staying in Manavadar. Manavadar on the material date was 'under Saurashtra Government'. In the case of the second person, his permit had already expired when Rule 12 was published.

HELD: (1) that though the State was under the Saurashtra Government the accused were governed by the Central Ordinances and were subject to Rule 12.

2. that rule would apply to the second person also and that there was no question of retrospective operation. United States of Saurashtra v. Abdul Aziz', 2 Sau LR 6 (QA), distinguished.

3. that though there was a breach of Rules 12 and 12-A that amounted only to a technical offence adequately punishable with a nominal tine.

According to the Digest, the above summary seems to have been made of those portions of the judgment which were to be found reported on pp. 213, 214 & 215. Being thus handicapped of the opportunity of perusing the full report of the case, J would not be justified in speculating as to what were the reasons on the strength of which it was held that no question of the retrospective operation of the relevant ordinance arose and how the doctrine of continuity of the offence was made applicable to the facts of that case. But to my mind, one thing is clear that these cases mainly proceeded on the common ground that Saurashtra and for the matter of that Manavadar was at all material times, part of India and the different acts of overstaying were struck by the prospective operation of the subsequent Ordinance. Another thing to be noted is that on the dates when the accused in those cases were convicted and punished, the Constitution had not Coma into force and in 'Abu Mohmed's case (A)', the learned Judges were dealing with a case of removal after conviction.

19. Without further discussing these cases, in the light of authorities which I have referred to in the foregoing lines, I may point out that in 'Katri Osman Mamed's case (B)', the accused was indicted for having overstayed without applying for extension of the period mentioned in the permit. Now let me see whether during the period When the Act and the rule framed thereunder were not applicable to the State of Hyderabad, was it possible, feasible or practicable for the respondent to obtain extension of period in order to avoid the penal consequence of an unforeseen territorial extension of the Act. Rule 20, Permit System Rules, 1949 almost analogous to Rule 12-A, Permit System Rules of 1948 provided that where the holder of a temporary permit desires that the period for which the permit was

originally granted should be extended, he may, in the first instance, apply in writing to the Superintendent of Police of the District in .which he may for the time being be residing, and the Superintendent of Police may, if satisfied, that the extension has become necessary on account of circumstances over which the holder of the permit has no control, extend the period by such number of days, not exceeding twenty, as he may think fit. If the holder of any such permit desires, the period of permit to be extended beyond the period of twenty days, he may, through the Superintendent of Police apply in writing to the Government of the State concerned, which Government if satisfied as mentioned, extend the period of permit by such further period not ex- ceeding two months and for period exceeding two months, he was to apply through the State Government concerned to the Central Government or the High Commissioner or Deputy High Commissioner for India respectively at Karachi and Lahore and if satisfied as above, these authorities were empowered to extend the period as might be considered necessary.

20. If the respondent, apprehending or anticipating some sudden change in law, ex abundante cautela, or under a misapprehension that the Act and the rules applied to him, had applied for an extension of the duration of his visit, none of the authorities mentioned in the rule would have found themselves competent to do so either because the Act was inapplicable to Hyderabad or because the desired extension would be no more than mere surplusage. Being thus under no legal obligation to secure an extension after the expiry of the permit for legalising his stay for the period covered by 21 to 23-7-1950, the respondent cannot by any stretch of imagination be said to have automatically converted himself Into an offender on 24-7-1950 upto the date of the delivery of this judgment.

Now coming to the case of - 'State of Mysore v. Abdus Salam' AIR 1951 Mys 116 (R), I find that the trying Magistrate acquitted Abdus Salam on the ground that the prosecution had failed to satisfy him as to the applicability of the Act to the State of Mysore on the dates when the offence charged was said to have been committed. Vasu- levamurthy J., with whom Medapa C. J. concurred disagreed with that view and observed:

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 matter 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, 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 23 of 1949, which was to extend throughout India, which expression has been denned 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.

It would thus appear that the reason for holding that the Act applied to the State of Mysore from the very date of its enforcement was based on the constitutional position obtaining in that State by reason of the Instrument of Accession and the Schedule attached thereto. It is nobody's casa in the present appeal that the Constitutional position obtaining in the State of Hyderabad on the date of the enforcement of the Act was similar to that of the Mysore State. As observed by Bose J. in - 'Virendra Singh v. State of Uttar Pradesh' AIR 1954 SO 447 (S), Native States as they were then called were in British days Independent States under the para-mountcy of British Crown. They acknowledged the British Crown as the suzerain power and owed a modified allegiance to it but none to the Government of India. In 1947 India obtained independence and became a Dominion by reason of the Indian Independence Act of 1947. The suzerainty of the British Crown over the Indian States lapsed at the same time because of Section 7 of the said Act. Immediately after, all but three of the Indian States acceded to the new Dominion by executing Instruments of Accession. It is common knowledge now that one of the non-acceding States was the State of Hyderabad.

As I have already shown, unlike the State of Mysore which acceded on 16-3-1947, the State of Hyderabad had to wait till 26-1-1950 for full accession. Even then it was excepted from the operation of the Influx from Pakistan (Control) Act, 1949. I do not think that any further detailed discussion is required on my part to impress the fact that the Mysore case on its face is clearly distinguishable and the reasoning adopted therein is not in the least helpful in deciding this appeal. Had the legal position in this case and the Mysore case been identical, I would not have hesitated in following pronouncement of their Lordships of the Mysore High Court,

The case of AIR 1952 All 921 (D) is directly in favour of the respondent wherein it has been decided that when Rule 12 (corresponding to Rule 19, Permit System Rules) speaks of the expiry of a temporary permit it is intended that expiry should occur after the Rule had come into force. The rule has no application in a case where the expiry had occurred before the rule came into force, which in other words means that the incriminating state of facts should come into existence after the law came into force. The learned advocate for the respondent mainly relied on the Saurashtra and Patna cases in arguing that the Allahabad case has been wrongly decided. On principles of administration of criminal justice and the rules of interpretation applicable thereto, I do not feel inclined to differ from the view of the matter taken by their Lordships of the Allahabad High Court.

21. It is a well known fact that after the Police Action many persons related to Government Servants went away to Pakistan. To avoid the possibility of divided allegiance, the State Government, as is admitted by the prosecution, issued a Circular enjoining their servants to call back certain specified relatives who might have gone to Pakistan. This fact amply shows that in the opinion of the State Government their measure was justifiably unassailable on the ground that the Act or rules made thereunder were not applicable to the State of Hyderabad. Now supposing a servant of the Government as in this case, in pursuance of tile Circular recalls his wifte or children dependent on him whilst in. Hyderabad and on 24-7-1950 they are, according to the condition of the permit under which they have returned, found to have overstayed, can the State turn round and accuse them of the contravention of Rule 19, Permit System Rules? My answer to that question is in a categorical negative for the reason, let me repeat that control of influx into Hyderabad of persons from Pakistan, was not within the contemplation of the Act as it then stood.

The impugned observations in 'Dilawar Abdullah's case (E)', to the effect that 'overstaying beyond the period of permit has not been made a continuous offence or a recurring offence in any of the enactments' and the succeeding passage referred to in the order of reference, were intended and must be taken to be confined to the facts of that case. It was pointed out by their Lordships of the Judicial Committee in -'Punjab Co-operative Bank Ltd., Amritsar v. Commr. of

Income Tax', Lahore AIR 1940 PC 230 (T), that exposition of the Law in a judgment must be qualified by the particular facts of the case. Their Lordships had, in a previous decision, -'Enrol Mackey v. Oswald Forbes' AIR 1940 PC 16 (U), said that Section 205, Government of India Act,

imposes on the High Court, the duty of considering and determining in 'every case' as part of its judgment, decree or final order, the giving or withdrawing of a certificate.

Dealing with this remark, their Lordships said in. the latter case:

The remark of the Board as regards the duties of the Judges of the High Court must be read as confined to cases of the nature which arose in that case; and in that connection, reference may be made to the remarks of Lord Halsbury in 'Quinn v. Leathern' (1901) AC 495 (V), that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there, are not intended to be the exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found.

For the reasons stated above, I am of the opinion that the unreported case of 'Dilwar Abdullah' (E), was rightly decided and the impugned dicta therein were perfectly justified by the particular facts of that case and I have not been able to discover any cogent reason to differ from it and overrule it,

22. No arguments on the factual side of the present case have been addressed, to us. Tb result is that the appeal fails and Is hereby missed.

Srinivasachari, J.

23. I have had the advantage of going through the judgment of my learned brother yamar Hasan, J. in this case. With respect I most regretfully have to differ from him in the conclusion that he has arrived at.

24. This reference has been made by the Division Bench of this Court in an appeal which came before it against an order of acquittal passed by the Sessions Judge,

Hyderabad District. The respondent in his case, Hyder Ali, is admittedly a Pakistani National. He came from West Pakistan under a temporary permit of 20-6-1950 and this permit was to last for a month. The purpose of the visit as mentioned in the permit Was to see his ailing father. It would appear that this Hyder All did not return even after the expiry of the period mentioned in the permit that Is to say, he stayed in Hyderabad beyond 20-7-1950 without obtaining an extension of the time for stay. He was therefore prosecuted under . 5 (1), Influx from Pakistan (Control) Act of 1949 and convicted by the Magistrate, West Tq. Hyderabad District and sentenced to pay a fine Of Rs. 200/-.

On appeal to the Sessions Judge, the Sessions Judge acquitted him on the ground that the Act under which he was challaned was applied to the Hyderabad State only on 24-7-1950 and, therefore his staying in Hyderabad beyond 20-7-1950 would not constitute an offence. In short the basis of his judgment is that the person could not be convicted for an act which became an offence some time later, that is to say, no retrospective operation could be given to the Influx from Pakistan (Control) Act as applied to the Hyderabad State. Against this judgment of the Sessions Judge acquitting the accused, the State filed an appeal in the High Court which came before the Rivision Bench and the Bench referred the case to a Pull Bench.

25. The reference to the Full Bench by the Division Bench was occasioned on account of the fact that the Division Bench which heard this appeal entertained a view contrary to that of another Division Bench of this Court in the case Revn. Petn. No. 1138/6 of 1952, D/- 17-12-53

26. It is not necessary to trace the history of the Legislation relating to the Influx from Pakistan. The first piece of legislation which came into being was Ordinance No. 17 of 1948 which came into force on 6-8-1948. This was followed by another Ordinance No. 34 of 1948. This latter Ordinance was repealed by Act 23 of 1949. This Act, it may be mentioned, clearly excluded the State of Hyderabad from the operation of this Statute, for the words of Section 1(2) of the Act were-to the following effect:

It will extend to the whole of India except the Hyderabad State.

Further in Section 2, 01. (D) was added, to the following effect;

India does not include the Hyderabad State.' This state of the law continued till 24-7-50 when, by an Ordinance, Ordinance No. 22 called 'The Influx from Pakistan (Control) Amendment Ordinance ', the words 'except the State of Hyderabad' were omitted and Section 2 deleted. This Ordinance continued to hold the ground until it was substituted by Act 55 of 1950 being Influx from Pakistan (Control) Amendment Act 55 of 1950 which, was passed on 22-8-1950.

27. The short point for consideration before this Full Bench is as to whether Hyder Ali the respondent could be said to have committed any offence as stated by the prosecution. That he came under a valid permit is not disputed. The foundation of the argument advanced on behalf of the respondent is that it would be in violation of the fundamental principles relating to the application of penal Statutes to give them a restrospective effect. It is said that the period of one month fixed in the permit expired on 20-7-1950. Any stay in India after that date was liable to be visited with penalty Under Section 5(1) of the Act read with Rule 19. It is contended that a contravention of any of the rules is only punishable under the Act and this Act could not be said to have come into force in the Hyderabad State until the Amending Ordinance was passed ort 24th July 1950, as Hyderabad had been expressly excluded from the operation of the Act by virtue of Act 23 of 1949.

It is conceded however on behalf of the learned advocate appearing for Hyder Ali that it would constitute an offence if the period fixed in the permit expired on 23-7-1950 & the permit holder continued to stay in India on 24-7-1950 for it is stated, that it was on that day 'overstay' had been declared penal and liable to punishment by the application of the law to the Hyderabad State. A subtle point is sought to be made by urging that on 20-7-1950 it was no offence at all as no law declared overstay an offence and if it was not an offence on 20th July it could scarcely be an offence on any day thereafter. The gist of the argument is that sta innocent act at its inception could not become an offence by virtue of the operation of an Ex Post Fact legislation. While elaborating this contention our attention was invited to the well accepted principle that no enactment could be said to have a retrospective operation much less a penal Statute, Reliance was placed upon two decisions,

one of the Supreme Court and the other of the Allahabad High Court viz. AIR 1954 SO 229 (K) and AIR 1952 All 921 (D).

28. It would be desirable to dispose of this argument in the first instance as that appears to b& the most formidable argument advanced on behalf of the learned advocate for the respondent. It Is a well accepted principle of law that any new law that is made should ordinarily affect future transactions, not past ones. This principle has been engrafted in the Constitution in Article 20(1) which says that no person shall be convicted for an offence except for the violation of a law in force at the time of the commission of the act charged as an offence. The Supreme Court emphasised this principle in the case of AIR 1953 SC 394 (O). In this case their Lordships of the Supreme Court laid down that this principle applied irrespective of whether the law under which the conviction is sought to be made was passed before the advent of the Constitution or after. The principle enunciated is based on the well known case of (1870) 6 QB 1 (P).

There can be no doubt as regards the correctness of this proposition of law. The question is whether this principle would apply to the case now under 'consideration before us. Is it intended to charge the respondent herein for any act committed by him before the Amending Ordinance 22 of 1950 came into force? There can be no manner of doubt that after this Ordinance was introduced any stay after the period fixed in the permit, would come within the mischief of Rule 19 and if it fell within the mischief of Rule 19, the omission to leave India would constitute an offence. Therefore it would follow that on 24-7-1950 the act of overstaying or the omission to leave India became an offence. There can be no getting away from this position. The only objection raised is that on 21-7-1950 when the respondent could be said to liave committed the act of overstaying, it was no violation of the Rules, and, therefore the continuance of this overstaying could not become an offence where it was not an offence at its inception. However plausible this argument may appear to be, in my opinion, there is a fallacy in it.

Under an enactment like the Essential Supplies Temporary Powers Act or Special Notifications issued under the Defence of Hyderabad Regulation relating to the storing of grain upto a particular limit and transport of food stuffs and other

commodities, it is ordered that a stockist of grains should submit a report to the authorities of the quantity Of grain in his possession, likewise the movement of grains from one district to another is prohibited. The non-compliance with these notification is visited with penalty. Let us take it that these notifications came into force on 24-7-1950. The storing of grain without intimating to the authorities would not constitute an offence till 23-7-1950. But would it cease to be an offence on the 24th? Similarly it would have been open to an individual to transport grain to the next district till 23-7-1950 but he could not send any grain without a valid licence on and after 24th July. What was an innocuous act on 23-7-1950 became an offence on 24th July by virtue of the coming into force of the notification.

It may be useful to consider the nature of the offence envisaged by Rule 19, Permit System Rules. Rule 19 reads as under :

No person holding a temporary permit shall stay in India after the date of the expiry of such permit.

Putting it affirmatively the rule says that a person 'shall not stay in India' beyond the period fixed in the permit for his stay. It is imperative that he should leave the place (India). The grave men of the offence, if that expression could be I, used, is the staying over in India after the particular period fixed in the permit.

(b) Offence has been held to mean, any act or omission made punishable by any law for the time being in force. In this case it is the omission to leave India after the expiry of the period permitted, for stay that is made punishable. It would,., therefore, follow that it is the continuing to stay in India that constitutes the offence. An offence of this kind must be regarded as a continuing Act, an act done from day to day. Support is lent to this view by the decision of the Saurashtra. High Court in the case referred to above. Judged from this point of view even if the act of the-respondent in staying over from 20-7-1950 to 23-7-1950 did not constitute an offence, decidedly such-act did become an offence on 24-7-1950 and continued to be an offence thereafter. The position is that each day's stay would not be regarded as a separate offence but the overstay after the period fixed in the permit (when the law forbade residing in India) would constitute a 'continuing offence'. I am in agreement with the learned Judge Jamuar, J. of the Patna High

Court in the case of State v. Kunj Behari (C), when he says

The expression 'continuing offence' means that if an act or omission on the part of an accused; constitutes an offence and if that act or omission-continues from day to day, then a fresh offence is committed on every day on which the act or omission continues'. - AIR 1954 Patna 371 at 375 (C).

I would only modify this observation by saying that the omission to do the act which, constituted-an offence continued and it is a continued omission and as such a continuing offence.

29. I might now turn to the cases adverted to. by the learned advocate for the respondent. The? first case is the case of AIR 1954 SC 229 (K). No. doubt this was a case which arose under the Influx from Pakistan (Control) Act 23 of 1949. The point that was decided in this case was that Section 7 of the Act was in conflict with Article 19(1)(d) &. (e) of the Constitution in that it laid restriction, on the freedom of movement in India of a citizen of India. It was a case where a citizen of India had gone to Pakistan and returned to India. Their Lordships of the Supreme Court laid down: that Section 7 overstepped the limits of control and-regulation of persons coming from Pakistan,, because Section 7 empowered the Executive to remove an Indian citizen from his own country. This-decision can have no application to this case now under consideration. The respondent in this case-is admittedly a Pakistan National and the Act, the Influx from Pakistan (Control) Act is intended and purports to control admission into and; regulate the movements in India of persons entering from Pakistan. No question of the Act or any of its provisions contravening the fundamental) rights under Article 19 of the Constitution arises to this case.

30. The second case is the case decided by the Allahabad High Court reported in AIR 1952 All 921 (D). In this case one Mohd. Shaft who had gone to Pakistan was granted a temporary permit a 2-8-1948 which was to enure till 2-9-1948. He - overstayed and was arrested on 1-10-1948. The Rule (Rule 12) providing a penalty for overstaying came into operation only on 7-9-1943 when the 'Permit System Rules of 1948' were introduced. Obviously the overstay till 6-9-1948 could not be 'Visited with penalty. The learned Judges in considering the question of the

guilt of the person

He did not commit any offence when he overstayed after 2nd September, 'at any rate up to 6-S-194S.

This latter observation indicates that the learned -Judges thought that there could be no offence till 8-9-1918 but they felt a doubt as to whether after 6-9-1848 it would not constitute an offence. In -deciding whether it would constitute an offence , after the coming into force of the Rules, the learned Judges stated that it would not be an offence because the expiry of the temporary permit did not occur when the Rules came into force, tat before that. With respect I must state that 'there is no warrant for holding that the expiry of the permit should occur exactly when the Rules relating to prohibition from overstaying come into force. Under the circumstances with respect I -would beg to differ from the learned Judges of fee Allahabad High Court. I agree with the decision of the Mysore High Court that overstaying is an offence AIR 1951 Mys 116 (R).

31. The third case is the case of Mohd. Zahurul Huque v. State, decided by the Madhya Bharat High Court and reported in AIR 1950 Madh B 17 CW>. This case can never apply to the facts of Ute present case. There the question was as to whether Ordinance 17 of 1948 promulgated by the 'Governor-General of India could have the force of Jaw in Madhya Bharat. Having regard to the 'terns of the Instrument of Accession it was held -that the Ordinance of the Governor-General could mat have the force of law and hence the Influx from Pakistan (Control) Ordinance would not .-apply. In the case now before us the Ordinance which was later substituted by Act 55 of 1950 that Is sought to be applied to the case is a valid and enforceable legislation and no question of its applicability can arise.

32. The oft-advanced argument that penal laws must be construed strictly and in favour of the imrty was also put forth. I fail to see how a strict construction of the Act read with the Rules would make any difference. I may point that a penal statute must be read in a manner consistent with commonsense. It has to be construed no doubt strictly but the intention of the Legislature must govern in the construction of a penal statute as much as in any other statute. What is the intention of the Legislature in enacting the Influx from Pakistan (Control) Act? It is

only with a view to 'control admission into India' of persons scorning from Pakistan and to 'regulate their movements'. Where, therefore, a citizen of Pakistan Is allowed to come to India for a particular pur- pose such as to see an ailing relation of his, or to wind up any business that he may have in India, it is of the essence of the purpose of the Act that such person should be made to leave the shores of India immediately the work, is over for which permission had been given to him, and that he should not be allowed to stay in India any longer. That the same rules would govern the construction of penal statutes as in the construction of other statutes may be taken to be the present law. I am supported in this view of mine by Craies. The learned author says that:

All statutes whether penal or not are now construed by substantially the same rules.

The distinction between a strict and liberal construction has also disappeared. In my opinion to hold that because on the 20-7-1950 Ordinance j 22 of 1950 was not in force and, therefore, Hyder All's stay in Hyderabad was not an offence and it could never be an offence on any subsequent date would be doing violence to the words of the Act and the Rules. I may usefully refer to the observations of the Privy Council in 'The Gauntlet' (1872) 4 PC 184 (X), wherein their Lordships observed :

No doubt all penal statutes are to be construed strictly, that is to say, the court must see cha the thing charged as an offence is within the plain meaning of the words used,.., Where the thing is brought within the words and within the spirit, then a penal enactment is to be construed like any other instrument according to the fair commonsense and meaning of the language used.

Applying the above test could it be said that the construction of the Influx from Pakistan (Control) Act would inevitably result in holding that it would be an offence only if the time limit fixed in the permit expired after the law was applied to the Hyderabad State? I do not think that a plain meaning of the Act would lend support to an explanation of the kind. I am constrained to differ with respect from the learned Judges who decided the case of Dilawar Abdullah v. State of Hyderabad (E). The overstaying after the Act came into force would constitute an offence,

Under Section 5 of the Act read with Rule 19, Permit System Rules. The respondent must, therefore, in my opinion, be held guilty Under Section 5, Influx from Pakistan (Control) Act read with Rule 19, Permit System Rules. He is convicted under the above Act and sentenced to pay a fine of Rs. 200/-(rupees two hundred only) and in default of payment to undergo imprisonment for a period of three months. Accordingly we allow the appeal of the State and set aside the judgment of the appellate court and restore that of the trial court.

Manohar Pershad, J.

33. I agree with the conclusion arrived at by my brother Srinivasa Chari, J. and have nothing to add.

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