

Sadiq Ali Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-06-1987

Reported in : AIR1990All9

Judge : B.N. Katju and ;B.L. Yadav, JJ

Acts : [Citizenship Act, 1955](#) - Sections 9(2); [Constitution of India](#) - Articles 6 and 7; Foreigners Act, - Sections 14

Appeal No. : Criminal Revn. No. 1340 of 1981

Appellant : Sadiq Ali

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : M.A. Qadeer, Adv.

Judgement :

ORDER

B.N. Katju, J.

1.The applicant was convicted under S. 14 of the Foreigners Act, 1946 (hereinafter referred to as the Act) and was sentenced to two years rigorous imprisonment by the Judicial Magistrate, Khalilabad at Basti by his judgment dated 24-9-1979

passed in Criminal Case No. 1154 of 1979. He filed criminal appeal No. 167 of 1979 which was dismissed by the IV Additional Sessions Judge, Basti by his judgment dated 10-8-1981. He thereafter filed this revision in this Court.

2. The learned single Judge who heard this revision referred the undermentioned two questions for decision to a Bench:

(1) Whether a person cannot be prosecuted under S. 14, Foreigners Act, without obtaining a decision of the Central Government under S. 9(2), Indian Citizenship Act?

(2) Whether the decision has to be obtained from the Central Government in such a case by the State or by the person who is affected?

3. It appears that the applicant was born on 5-6-1932 in village Maghar, Police Station Khalilabad in the District of Basti and migrated to Pakistan in 1948. He came to India on 16-9-1954 on Pakistani Passport No. 199376 dated 24-7-1954 and Indian Visa of category C No. 48284 dated 25-8-1954 valid till 24-11-1954. He stayed in India beyond the aforesaid period and a case was registered against him under S. 14 of the Act on 17-6-1959. He, however, could not be traced for a long time and was ultimately arrested on 8-3-1975 from the house of his father at Maghar.

4. Article 7 of the Constitution is as follows:--

'7. Rights of citizenship of certain migrants to Pakistan -- Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of Cl. (b) of Art. 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948'.

5. As the applicant migrated from the territory of India to the territory now included in Pakistan in 1948 and did not return to the territory of India under a permit for resettlement or permanent return issued by or under the authority of law he shall not be deemed to be a citizen of India in view of Art. 7 of the [Constitution of India](#). He was thus not a citizen of India on 26-1-1950. It is true that he was a minor in 1948 when he migrated to Pakistan and was also a minor on 26-1-1950 when the [Constitution of India](#) came into force but this is of no importance in view of the decision of the Supreme Court in *Kulathil Mammu v. State of Kerala* : 1966 CriLJ1217 in which it was held that the word 'migrated' in Art. 7 of the Constitution means movement from one place to another whether or not there is any intention of settlement in the place to which one moves and it was observed:

'In the view we have taken of the meaning of the word 'migrated' in Art. 7, it is unnecessary to consider the other point raised on behalf of Aboobacker, namely that a minor can never have the intention implicit in the narrower meaning of the word 'migrated'.'

It may be mentioned that Aboobacker on whose behalf the writ petition from which the aforesaid appeal had arisen was filed was born on 5-3-1936 and had left India in 1948 and had come to India for the first time, in 1954 on a Pakistani Pass-port and an Indian Visa.

6. As a decision under S. 9(2) of the Indian Citizenship Act is necessary only in those cases in which a citizen of India on 26-1-1950 has acquired the citizenship of any other country it was obviously not required to be obtained in the case of the applicant who was not a citizen of India on 26-1-1950. In these circumstances the two questions referred to us for decision do not arise in this case.

7. For the reasons given by us we do not consider it necessary to answer the questions referred to us for decision.

8. Let our opinion be placed before the appropriate Bench.

9. Order accordingly.

