

Nizam UddIn Vs. State

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Court : Allahabad

Decided On : Jun-13-1958

Reported in : AIR1959All19; 1959CriLJ4

Judge : A.P. Srivastava, J.

Acts : Permit System Rules, 1949 - Rule 31(1) and 31(2); ;Influx form Pakistan (Control) Act, 1949 - Sections 3; [Constitution of India](#) - Article 19, 19(1) and 19(5)

Appeal No. : Criminal Revn. No. 340 of 1956

Appellant : Nizam Uddin

Respondent : State

Advocate for Def. : J.R. Bhatta, Asst. Govt. Adv.

Advocate for Pet/Ap. : Syed Sadiq Ali, Adv.

Judgement :

ORDER

A.P. Srivastava, J.

1. The applicant was convicted by a Magistrate First Class of Shahjahanpur under Section 5 of the Influx from Pakistan (Control) Act, 1949, and sentenced to six months' R.I. He went up in appeal to the Sessions Judge who upheld his

conviction but reduced the sentence to three months' R.I. He has now come up to this Court in revision.

2. The facts which have been found against the applicant by both the courts below are that he entered India without a valid permit from West Pakistan in April 1952 where he had gone in 1950.

3. The defence which the applicant had set up was that he had not entered India from West Pakistan, but that he had gone to Dacca in East Pakistan with his family in April 1950 and that he returned in 1952 from that place. He probably wanted exemption under Sub-rule (1) of Rule 31 of the Permit System Rules, 1949, on the ground that he had come from East Pakistan. This defence of his was, however, rejected.

4. Three contentions have been pressed on behalf of the applicant in this Court. The first is that there was no evidence to support the finding that the applicant had entered India from West Pakistan and not from East Pakistan. The second is that Section 3 of the Influx from Pakistan (Control) Act, 1949, on the breach of which the applicant has been convicted under Section 5 of the Act is ultra vires as it puts an unreasonable restriction on the rights of an Indian citizen.

The third contention is that even if the conviction of the applicant is maintained, the sentence imposed upon him should be reduced because the offence which he committed is only a technical offence.

5. There are two replies to the first contention. In the first place, there is evidence to prove that the applicant was seen in Karachi in West Pakistan in March 1952. Thereafter he entered India in April, 1952. A presumption of fact which can be drawn under Section 114 of the Indian Evidence Act is that a state of affairs if once proved to exist continues to exist until the contrary is proved. It was, therefore, for the applicant to show that from Karachi he had gone to East Pakistan and that he had entered India from East Pakistan. This he has not done. The courts below could, therefore, infer from the circumstances established in the case that the applicant had entered India from West Pakistan.

6. Secondly, even if it he conceded for the sake of argument that the applicant had entered India from East Pakistan he could not on that account get the benefit of Sub-rule (1) of rule 31 of the Permit System Rules, 1949, because that sub-rule is subject to Sub-rule (2), Clause (d) of that rule which provides that persons domiciled in India, who after a temporary visit to, or stay in West Pakistan, return to India through East Pakistan are not exempt from the possession of a permit as required by Sub-rule (1) of Rule 31. It is, therefore, clear that whether the applicant entered India from East Pakistan or West Pakistan, he should have been in possession of a permit at the time of the entry and if he entered without a permit, he committed a breach of the first clause of Section 3 of the Influx from Pakistan (Control) Act, 1949, and could be convicted under Section 5 of the Act.

7. The second contention is more serious. It is urged that the applicant was an Indian citizen as he had been born in this country. He had certainly gone to Pakistan temporarily in 1950, but he had every right to come back to his country and if he entered India two years later, he could not be held to have done anything unlawful. It is further contended that Section 3 of the Influx from Pakistan (Control) Act, 1949, so far as it relates to Indian Citizens, puts an unreasonable restriction on their movements and after the coming into force of the Constitution the provision became void because it went against the fundamental right of a citizen to move anywhere he liked.

8. The Constitution while guaranteeing to its citizens the right of movement permits the State to put reasonable restrictions on that right in the interest of the general public and a sovereign country must be held to be entitled to restrict even its citizens from entering its country if they come from outside. That may be necessary for the safety of the country under certain circumstances. Section 3 of the Act only provides that if a person enters the country from Pakistan, he will have to be in possession of a permit.

It is certainly a restriction on the rights of Indian citizens, but cannot in any way be said to be an unreasonable restriction. An observation of Raghuhar Dayal, J. in *Shabbir Husain v. State of, U. P.*, AIR 1952 All 257 (A),, supports the view. The validity of Section 3 of the Influx from Pakistan (Control) Act was not being

considered in that case. It related to a deportation order passed after the person concerned had entered India and had been punished for his unauthorised entry.

Incidentally, however, it was argued by the Government Advocate that the restriction in force by Section 3 of the Act was a reasonable one and. Mr. Justice Dayal agreed that

'the condition to require a permit on entering the territory of India is a reasonable restriction on such a right.'

9. It is also to be noticed in this connection that the Constitution only guarantees the fundamental right to a citizen of movement inside the country. It does not give any guarantee about his movement outside the country. If, therefore, a citizen of India leaves the country for another place and then wants to re-enter the country & is required to comply with certain conditions before he re-enters, he cannot contend that his movements in the country are being restricted. On this account too the provisions of Section 3 of the Influx from Pakistan (Control) Act, 1949, cannot be held to contravene any of the Fundamental rights guaranteed by the Constitution.

10. Though the validity of a deportation order after a person had entered India was considered after Shabbir Husain's case (A), by the Supreme Court also in Ebrahim Vazir Mavat v. State of Bombay, AIR 1954 SC 229 (B), the question whether Section 3 of the Influx from Pakistan (Control) Order was constitutionally valid or not does not appear to have been considered in any reported case. In the Supreme Court case however it was noted that the Bombay High Court from which the appeal had gone to the Supreme Court had taken a view that Section 3 was valid and has utilised that as an argument for upholding the validity of Section 7 of the Act also.

11. While, therefore, it is true that there is no direct authority either to show that Section 3 is valid or that it is invalid, on general principles it appears to me that this section cannot be questioned on the ground that it contravenes any of the fundamental rights guaranteed by the Constitution and is, therefore, valid. The contention that the conviction of the applicant under section 5 is invalid because

Section 3 is ultra vires must, therefore, be rejected as without force.

12. The conviction of the applicant must, therefore, be upheld and there remains only the question of sentence. The learned Magistrate had imposed a sentence of six months' R.I. and the sentence was reduced by the Sessions Judge to three months' R.I. Even if the offence be considered to be a technical one, as it is urged by the learned counsel for the applicant, the sentence of three months' R.I. cannot be said to be excessive and does not call for interference.

13. There is, therefore, no force in this application in revision. The application is rejected. The applicant must surrender to his bail and serve out the remaining portion of his sentence.

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