

State of U.P. Vs. Jafar Ali

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Court : Allahabad

Decided On : Sep-29-1961

Reported in : AIR1963All18; 1963CriLJ28a

Judge : D.P. Uniyal and ;K.B. Asthana, JJ.

Acts : [Foreigners Act, 1946](#) - Sections 2, 3(2) and 14; Foreigners (Amendment) Act, 1957 - Sections 2; Code of Criminal Procedure (CrPC) - Sections 364

Appeal No. : Govt. Appeal No. 462 of 1961

Appellant : State of U.P.

Respondent : Jafar Ali

Advocate for Def. : T. Rathore, Adv.

Advocate for Pet/Ap. : Government Adv.

Disposition : Appeal allowed

Judgement :

Uniyal, J.

1. This is an appeal by the State of Uttar Pradesh against an appellate order of acquittal dated 13-12-1960 passed by the learned Sessions Judge of Muzaffarnagar, acquitting the respondent Jafar Ali of the offence under Section 3

read with Section 14 of the Foreigners Act.

2. The admitted facts of the case are that the respondent was originally resident of village Monanawala, police station Purqazi, district Muzaffarnagar. Sometime in 1947 the respondent left India and went to Pakistan. He was at that time a minor aged about thirteen years. His parents, however, continued to remain in India, The respondent while, in Pakistan attained majority and thereafter he came to India on the basis of a Pakistani passport dated 7-2-1955 and a visa dated 10-3-1955. The visa was for a period of one year. The respondent entered the Indian territory on the 11th of March 1955. He did not leave the country after the expiry of the period mentioned in the visa. According to the visa his stay in India was valid upto 10-3-1956.

The respondent was eventually served with an order exhibit Ka-4, dated March 11, 1960 made by the state Government under Clause (c) Sub-section (2) of Section 3 of the [Foreigners Act, 1946](#) (No. XXXI of 1946) as amended by the Foreigners Laws (Amendment) Act, 1957 (no. 11 of 1957) (hereinafter referred to as the Act.) This order was duly served on him and a report to that effect was made by the officer concerned on 6-4-1960 vide exhibit Ka-6. By this order the respondent was required to leave India within twenty-four hours of the service of the order. He failed to comply with that order and continued to stay in India. He was, therefore, prosecuted for the breach of Section 3(2) (c) of the Act. Section 3(2) (c) reads thus:

'The Central Government may by order make provision either generally or in respect of all foreigners or with respect of any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of foregoing power, orders made under this section may provide that the foreigner-

(c) shall not remain in India or in any prescribed area therein.'

The Central Government have delegated the powers conferred on it by Clause (c) of Sub-section (2) of Section 3 above to the State Government in notification No. 4/3/56-(I)-F. I. dated April 19, 58, and therefore the order of the State Government dated 11-3-60, was a valid order the disobedience of which is an offence.

3. Section 14 of the Act makes the contravention of an order made under Section 3 punishable with imprisonment and also with fine.

4. The respondent was examined before the Magistrate under Section 364, Cr. P. C. and there in answer to a question whether he was a Pakistani national, he admitted that he was a Pakistani national. He further admitted that he had come on the basis of a Pakistani passport and a visa and that the period mentioned in the visa had expired. He, however did not leave the country in spite of the service of the order of the State Government. The respondent examined himself under Section 342-A, Cr. P. C. as a defence-witness and stated that he was an Indian citizen and not a Pakistani national. He deposed that he had made a false declaration in the application for passport and the visa that he was a Pakistani national and that he had done so in order to enable him to enter India.

5. it was contended on behalf of the respondent that the prosecution had not established that the respondent was a Pakistani citizen and that his parents being originally residents of that part of the country which formed part of undivided India, he continued to be an Indian national inasmuch as when he left the country he was a minor and as such incapable of acquiring citizenship of a foreign country. It is no doubt true that on the date when the respondent left India for Pakistan he was a minor. It is, however, beyond dispute that on the 7th of February 1955 when he obtained Pakistani passport he was a major and was capable of acquiring citizenship of a foreign country. Both in his application for passport as well as in the application for grant of visa he made a declaration that he was a Pakistani national and it was on this footing that he entered the territory of India on the 11th of March 1955. It is however, true that on the date when he entered India he was not a 'foreigner' within the meaning of the un-amended definition of Section 2 of the [Foreigners Act, 1946](#) so that he was under no legal obligation to obtain any permit as required by para 7 of the Foreigners Order 1948. His entry and

movements in the country could not be restricted so long as the definition of foreigner stood as given in the unamended Section 2 of the Foreigners Act.

6. The position, however, materially changed when the legislature passed the Foreigners Laws Amendment Act' (No. 11 of 1957). By Section 2 of that Act a foreigner was defined as follows: 'Foreigner' means a person who is not a citizen of India. The amendment in Section 2(a) of the Foreigners Act 1946, thus makes every person who is not a citizen of India a 'foreigner'. The question, therefore, that arises for consideration is whether the respondent who had come on a Pakistani passport and a visa can be held to be a citizen of India. Prima facie, the nationality of the person holding the passport is that which is described in the passport. Under the Pakistani citizenship Act, a person can obtain a Pakistani passport if he is a citizen of that country and not otherwise. It follows, therefore, that the passport issued to the respondent by the Pakistan authorities was presumptive proof of the nationality of the respondent.

The admission made by the respondent in his statement under Section 364, Cr. P, C. that he was a Pakistani citizen and had come out to India on a Pakistani passport and a visa issued by the Indian High Commissioner in Pakistan also goes to show that he had acquired the citizenship of Pakistan. His subsequent statement in court that he was an Indian citizen and not a Pakistani citizen was obviously an afterthought and appears to have been made for the purpose of escaping prosecution. We are convinced that the statement of the respondent that he is an Indian citizen Was not a true statement and his claim that he is an Indian citizen is not bona fide.

7. The learned Sessions Judge set aside the conviction of the respondent on the ground that he was not a 'foreigner' as he was not required to comply with the provisions of para 7 of the Foreigners Order 1948. in support of this proposition he relied on the case of Mohammad Hanif Khan v. State, AIR 1960 All 434. In that case MJ. justice Desai (as he then was) held that Para 7 of the Foreigners Urder applies to a person who is a foreigner at the time of entry into India and not to a person who was not a foreigner at the time of entry, but becomes a foreigner by a subsequent change in law. There can be no quarrel with the proposition of law laid

down in the above case.

8. On the date when the respondent entered the territory of India he was not a 'foreigner' and could not have been convicted for breach of para 7 of the Foreigners Order. But the present case does not relate to a prosecution for breach of para 7 of the Foreigners Order. Here the respondent was charged for the disobedience of an order made under Section 3(2)(c) of the Foreigners Act in that he did not depart from India as directed by the said order.

9. Section 2 of the Foreigners Act, as amended by Act XI of 1957, came into force with effect from 19-1-1957. As from that date a person who is not a citizen of India was declared to be a foreigner and, therefore, unless he showed that he had acquired the citizenship of India either on or after the date of his entry, he could not be heard to say that the amendment of Section 2 of the Foreigners Act did not apply to his case.

10. Strong reliance was placed on behalf of the respondent on a Division Bench case of this Court in Cri. Revn. No. 959 of 1960, Khalil Ahmad v. State of U. P., D/- 12-5-1961: (AIR 1962 All 383). In that case one of the points for decision was whether the question of citizenship was open to decision by a criminal court in a prosecution for breach of para 7 of the Foreigners Order. There a person had been prosecuted for breach of Para 7 of the Foreigners Order and had pleaded that on the date of his entry into India he was not a foreigner in view of the definition of Section 2 of the Foreigners Act as it then stood. It was held that he was not a foreigner on the date of his entry in India and that a decision as to his status as citizen of India or Pakistan was a matter which could only be determined by the Central Government under Section 9(2) of the Citizenship Act, 1955. The case turned on its own facts. The point to be noticed, however, is that that was a case which related to the breach of Para 7 of the Foreigners Order and the question at issue was whether a person whose entry in the territory of India was initially lawful could successfully be prosecuted for the breach of Para 7 of the Foreigners Order on the allegation that he had not obtained a permit for his entry and movement in the territory of India. It is thus clear that the case of Khalil Ahmad Cri. Revn. No. 959 of 1960 D/- 12-5-1961; (AIR 1962 All 383) (supra) has no

relevance to the facts of the present case.

11. We think that the clear and unequivocal admission¹ made by the respondent in his statement under Section 364 Cr. P. C. proves beyond doubt that he was a Pakistani national and had entered India under a Pakistani Passport and visa in which his nationality was mentioned as Pakistani. On his own showing he cannot be allowed to take-refuge under the plea that he had made the said admission under a misapprehension. In fact even when he examined himself as a defence witness he admitted that he had asked the authorities to return his passport so that he may return to Pakistan, which would indicate that he had no doubt in his mind about his status as a Pakistani national.

12. We, therefore, allow this appeal and set aside the order of acquittal. We convict the respondent Jafar Ali under Section 3(2)(c) read with Section 14 of the Foreigners Act and sentence him to one month's rigorous imprisonment. He shall be taken into custody and serve out the sentence awarded to him.

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