

State Vs. Ashfaq Ahmad

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Court : Allahabad

Decided On : Jul-14-1960

Reported in : AIR1961All115; 1961CriLJ210

Judge : A.P. Srivastava and ;D.P. Uniyal, JJ.

Acts : [Foreigners Act, 1946](#) - Sections 2, 3(2), 9 and 14; British Nationality and Status of Aliens Act, 1914 - Sections 1(1); [Foreigners Order, 1948](#)

Appeal No. : Government Appeal No. 947 of 1959

Appellant : State

Respondent : Ashfaq Ahmad

Advocate for Def. : Kameshwar Prasad Agarwal, Adv.

Advocate for Pet/Ap. : Govt. Adv. and ;A.B. Saran, Adv.

Disposition : Appeal allowed

Judgement :

Srivastava, J.

1. This is an appeal on behalf of the State against the order of the Additional Sessions Judge of Bijnor by which he acquitted the respondent Ashfaq Ahmad in respect of an offence under Section 14 of the Foreigners Act 1946.

2. The facts leading up to this appeal are not disputed. The respondent Ashfaq Ahmad was a Pakistani national. He came to India under a passport No. 348864 dated the 7th of August 1955 issued in his favour by the Government of Pakistan. The High Commissioner for India in Pakistan granted him the necessary visa which permitted him to stay in India till the 19th of January 1956. On the basis of that passport and visa he entered India on the 2nd of November 1955. The visa was extended first till the 14th of March 1956, then to the 13th of June 1956, then to the 13th of September 1956, and lastly till the 29th of October 1956.

At the time of the last extension of the visa the time limit fixed for his exit from India was extended to the 1st of November 1956. Thereafter the visa was not extended. The respondent did not leave India after the expiry of his visa and even after he had got an exit endorsement extended first till the 17th of June 1957 and then till the 22nd of October 1957. The exit period also was not extended after the last mentioned date. He submitted an application to the Central Government for being registered as a citizen of India, but it is not known what happened to that application.

In any case there is nothing to show that it was granted. On the 13th of September 1957 the Superintendent of Police of Bijnor, acting as Civil Authority, served a notice on the respondent informing him of the fact that he had been overstaying in India since the 30th of October 1956, that his stay in India beyond that date was illegal and that he was liable to be prosecuted under the Indian Foreigners Act. He was told in the same notice that if he did not leave India within thirty days of the service of the notice his prosecution under Section 14 of the Foreigners Act would be launched. The notice was not complied with.

In response to it the respondent submitted an application to the District Magistrate of Bijnor in which he said that he had applied for being registered as a citizen of India, that he had obtained an exit endorsement up to the 22nd of October 1957 and that he may be allowed to stay in India pending the decision of his application by the Central Government. As, however, the period of his visa had not been extended it was not found possible to grant his request. A case was thereupon registered against him for his contravention of Section 14 of the Foreigners Act

and he was duly prosecuted on that basis, after the sanction of the District Magistrate for the prosecution had been obtained.

3. The respondent admitted that he had come to India after obtaining a passport from the Pakistan Government and that he had overstayed the period of his visa. He, however, said that as he had applied for being registered as an Indian citizen it became necessary for him to stay here till his request had been considered by the Central Government. At the trial the respondent also denied that he was a foreigner.

4. The trial magistrate held that the mere fact that the respondent had applied for being registered as an Indian citizen was no ground for justifying his overstaying the limit imposed by his visa. He also rejected the plea that the respondent was not a foreigner, being of opinion that by overstaying in India the respondent had contravened Para 7 of the Foreigners Order issued by the Central Government Notification No. 9/9/46-1 Political (EW) dated the 10th of February 1948, and was liable to be convicted under Section 14 of the Foreigners Act. He convicted him of that offence and sentenced him to imprisonment till the rising of the court and to pay a fine of Rs. 25/-. In default of payment of fine he was ordered to undergo one month's rigorous imprisonment.

5. The respondent went up in appeal to the Sessions Judge and challenged his conviction. Two points were urged on his behalf in support of the challenge. The first was that keeping in view the definition of the term 'foreigner' as given in the Foreigners Act, he could not be considered to be a foreigner on the date on which he entered India. The second was that because he was not a foreigner he could not contravene para 7 of the Foreigners order. On both these grounds it was urged he could not be convicted under Section 14 of the Foreigners Act. Both these contentions were accepted by the learned Additional Sessions Judge who disposed of the appeal, and in support of his view the learned Additional Sessions Judge relied on a decision of the Bombay High Court reported in *State v. Mahmadkhan Navrangkhan* : AIR1959 Bom359 . The appeal was consequently allowed and the conviction and sentence of the respondent set aside.

6. The State has appealed against the order of acquittal and it is contended on its behalf that the view taken by the learned Additional Sessions Judge was not justified in law and the acquittal must, therefore, be set aside.

7. The learned counsel for the respondent pressed before us the two grounds on which the respondent had been acquitted by the learned Sessions Judge and urged in addition that the charge in the present case was defective and that as no civil authority had been properly appointed as required by the Foreigners order of 1948 and the respondent was not in a position to leave India without the permission of such civil authority, he could not be convicted for overstaying the limit imposed by his visa. It was also contended that the Superintendent of Police as civil authority had no power to issue to the respondent a notice requiring him to leave India within a month and the non-compliance of such a notice could not be punished under Section 14 of the Foreigners Act. In support of this last mentioned contention reliance was placed on the case of *State v. Ibrahim Nabiji* : AIR1959 Bom525 .

8. The first question that therefore arises for decision in the appeal is whether the respondent was a foreigner within the meaning of the term as defined in the Indian Foreigners Act, at the time when he entered India on the basis of the passport obtained from the Government of Pakistan. The Foreigners Act was first passed in India in 1864. That Act was, however, replaced in 1946 by the Foreigners Act of that year (Act No. 31 of 1946). The definition of the term 'Foreigner' was given in Section 2(a) of the Act and was in these words:

"Foreigner' means a person who-

(i) is not a natural born British subject as defined in sub Sections (1) and (2) of Section 1 of the British Nationality and Status of Aliens Act 1914, or

(ii). has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in British India, or

(iii) is not a ruler or subject of an Indian State, or

(iv) is not a native of the Tribal areas:

Provided that any British subject who, under any law for the time being in force in British India, ceases to be a British subject shall thereupon be deemed to be a foreigner.' By Amending Act 38 of 1947 the Word 'British India' in Clause (ii) of the definition was substituted by the word 'India'. By the Adaptation of Laws Order, 1950 two changes were introduced. The third and the fourth clauses were deleted along with the proviso. In addition a new third clause was introduced which provided:

(iii) is not a citizen of India.' The amended definition of the word 'foreigner' as it stood as a result of the amendment introduced by the Adaptation of Laws Order, 1950, therefore, was as follows:

'Foreigner' means a person who-

(i) is not a natural born British subject as defined in sub-Sees. (1) and (2) of Section 1 of the British Nationality and 'Status of Aliens Act, 1914 or

(ii) has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in India, or

(iii) is not a citizen of India."

9. By an Ordinance issued in 1957 which was subsequently replaced by an Act of the same year (Act 11 of 1957) the definition was further amended with effect from the 19th of January 1957. According to this amendment Clauses (i) and (ii) of the original definition were deleted, and the definition of the term 'foreigner' stood like this:--

'Foreigner' means a person who is not a citizen of India.'

10. The contention of the respondent which has been accepted by the learned Sessions Judge is that not being a citizen of India the respondent may be considered to be a foreigner under definition as it stood amended by Act 11 of 1957. He had, however, entered India long before the amendment came into force. At the time of his entry in India the definition of the word 'foreigner' as given in the Indian Foreigners Act was different. On the date of his entry the respondent was

not a foreigner as defined in the Act in force at that time. He could not be affected by the subsequent amendment. If he was not a foreigner on the date on which he entered India he could not become a foreigner simply because the State thought it fit to introduce a new definition of that term in 1957.

11. On the question whether the amendment could apply to a person who had entered India before it came into force, (that is, the 19th of January 1957), conflicting views have been taken by single Judges of this Court. In the case of *Ali Sher v. State* : AIR1960 All431 Mr. Justice Mathur took the view that the amended definition applied even to a person who had entered India on an earlier date. He observed that the Foreigners Act 1946 and the Foreigners Order 1948 applied to Pakistan nationals after the passing of the Foreigners Laws (Amendment) Act, 1957 when the definition of 'foreigner' as contained in Section 2(a) of the principal Act was amended to include all persons who were not citizens of India. In other words after the commencement of the Amending Act, both the Foreigners Act and the Rules made thereunder became applicable to Pakistan nationals who entered under the authority of visa issued by the Central Government irrespective of whether they entered India before or after such date.

12. A contrary view was, however, taken by Mr. Justice Desai in *Mohammad Hanif Khan v. State* : AIR1960 All434 . He was of opinion that if a person was not a foreigner up to January 1957 and was not governed by the Foreigners Act 1946 up to that time he could not possibly become a foreigner as a result of the amendment of the definition of the term as given in the Act. Mr. Justice Desai reiterated his view in *Mt. Maroofan v. State*, Criminal Revn. No. 300 of 1958, (Lucknow Bench), decided on the 16th of December 1959 and relied in support of his view on a decision of the Bombay High Court in the case of : AIR1959 Bom359 . In two other cases *Union of India v. Hasan Ali* : AIR1954 Bom505 and : AIR1959 Bom525 the same view had been taken.

13. In our view the question of resolving this conflict does not arise in the present case. So far as the respondent is concerned he is admittedly covered by the amended definition of the term "foreigner" introduced by the amending Act of 1957 because he is not an Indian citizen and has not yet succeeded in getting himself

registered as such. If it is his case that he fell outside the definition of the term 'foreigner' as it stood before the amendment of 1957 it was for him to bring himself within one of the four clauses of the definition. It is not his case that he fell within the last three clauses of that definition. He could fall within the first clause only if he was a natural born British subject as defined in Sub-sections (1) and (2) of Section 1 of the British Nationality and Status of Aliens Act, 1914 (4 and 5 Geo. 5, Chapter IV). Section 1 stands as follows:---

'1 (1) The following persons shall be deemed to be natural born British subjects, namely:--

(a) Any person born within his Majesty's dominions and allegiance; and

(b) Any person born out of His Majesty's dominions, whose father was a British subject at the time of that person's birth and either was born within His Majesty's allegiance or was a person to whom a certificate of naturalization had been granted; and

(c) Any person born on board a British ship whether in foreign territorial waters or not: Provided that the child of a British subject whether that child was born before or after the passing of this Act, shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty exercises jurisdiction over British subjects.

(2) A person born on board a foreign ship shall not be deemed to be a British subject by reason only that the ship was in British territorial waters at the time of his birth.

(3) Nothing in this section shall, except as otherwise expressly provided, affect the status of any person born before the commencement of this Act.'

14. The respondent does not obviously fall within Sub-section (2) of the section because it is not his case that he was born on board a foreign ship. It is also not suggested on his behalf that his case is covered by Clauses (a) and (c) of Sub-section (1) or by the proviso to that sub-Section. It was urged on his behalf that his

case fell under Sub-clause (b) of Sub-section (1) of that section but no attempt appears to have been made at any stage to establish that claim. There is no evidence of any kind on record to show that the father of the respondent was a British subject at the time of the respondent's birth or that he was born within his Majesty's allegiance or was a person to whom a certificate of naturalization had been granted.

In fact there is no evidence at all as to where the respondent was born and who was his father and what was his nationality or place of birth. There can be no presumption that the respondent's father was a natural born British subject. That was a fact which ought to have been alleged and proved. It was neither alleged nor proved at any stage. On the contrary, the respondent obtained a passport from the Pakistan authorities by declaring himself as a Pakistan national and even after he had entered India he described himself as a Pakistan national and applied for being granted Indian citizenship. Reference must in this connection be made to Section 9 of the [Foreigners Act, 1946](#) which provides:

'If in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.'

In view of this provision, when the respondent was prosecuted under the Foreigners Act and wanted to raise a question as to whether he was a foreigner or not the burden lay upon him to prove that he was not a foreigner. No attempt was made to discharge that burden and to show that the respondent was not a foreigner because he was a British Indian subject on the date on which he entered India in November 1955.

15. In the above circumstances the respondent must be held to be a foreigner both under the definition of the term as it stood originally and as it stood after the amendment of 1957. The contention of the respondent that he was not a foreigner on the date of his entry in India and on that account the Foreigners Act or the

Foreigners order did not apply to him should not therefore have been accepted, The first ground on which the learned Sessions Judge based the respondent's acquittal is consequently untenable.

16. Under the Foreigners Act the Central Government was given several powers. They were mentioned generally in Sub-section (1) of Section 3 and some of those powers were specifically mentioned in Sub-section (2) of that Section. Clause (c) of Sub-section (2) specifically authorises the Central Government to issue a direction that a foreigner shall not remain in India or in any prescribed area therein. Under Section 12 of the Act the powers which were conferred on the Central Government by the Act could be delegated to any subordinate authority. Our attention has been drawn to Notification No. 9/9/46-I- Political (EW) dated the 10th February 1948 published in the Gazette of India of the 21st of February 1948, Part, I, Section 1, at page 230, which provided:

'In exercise of the powers conferred by Sub-section (1) of Section 124 of the Government of India Act 1935 as adapted by the India (Provisional Constitution) Order, 1947, the Governor-General is pleased to entrust to the provincial governments, with their consent, the functions of the Central Government under the [Foreigners Act, 1946](#), subject to the condition that notwithstanding this entrustment the Central Government may itself exercise any of the said functions in any particular case or class of cases.'

17. By this notification all the powers vested in the Central Government under the Foreigners Act stood delegated to the State Government.

18. Before delegating these powers the Central Government had in exercise of the power under the Foreigners Act, enacted the [Foreigners Order, 1948](#). That Order provided for the appointment of civil authorities and registration officers. Foreigners entering the country had to get themselves registered with the registration officers and had to get permits from them for their stay in the country. They had also to obtain permission from the civil authorities to enter India and also to depart from this country. Restrictions could be imposed on their sojourn in India, Para 7 of the Foreigners Order provided as follows;

"Every foreigner who enters India on the authority of a visa issued in pursuance of the Indian Passport Act, 1920 (34 of 1920) shall obtain from the Registration Officer having jurisdiction, either at the place at which the said foreigner enters India or at the place at which he presents a registration report in accordance with Rule 6 of the Registration of Foreigners Rules, 1939, a permit indicating the period during which he is authorised to remain in India and shall, unless the period indicated in the permit is extended by the Central Government, depart from India before the expiry of the said period; and at the time of foreigner's departure from India the permit shall be surrendered by him to the Registration Officer having jurisdiction at the place from which he departs.'

The proviso laid down that this requirement shall be deemed to have been complied with by a foreigner who enters India as a 'Tourist' and is granted a certificate of Registration in Form 'D' as provided for in the Registration of Foreigners Rules, 1939.

19. It is not clear from the record whether after his entry into this country the respondent obtained the necessary permit from the Registration Officer having jurisdiction. The permit has not been produced. At one stage a point was sought to be made of this omission and on the basis of certain observations made in 1959 All LJ 895: (AIR 1960 All 434) it was urged that no permit having been filed, in the absence of any knowledge of the period fixed for his stay in India there could be no conviction of the respondent under Section 14 of the Foreigners Act.

The point had, however, to be given up, when the attention of the learned counsel was drawn to a subsequent case decided by the same Judge in which he had modified his view. That case is reported in : AIR 1961 All 111 Wahid Miyan v. State. It was pointed out in that case that though a permit is something different from a visa it is not open to the person who grants the permit to extend the period entered in the visa, and the period entered in the permit though it can be shorter than that in the visa can never be longer.

The period during which a foreigner can stay in the country is, therefore, the period mentioned in the visa. As it cannot be extended by the permit, it is not necessary that the permit should be filed or the period mentioned in it should be disclosed.

No advantage can, therefore, be taken by the respondent of the fact that the permit issued to him by the Registration Officer has not been filed and it is not known as to what was the period entered in it. His visa is on the record and shows that he was permitted to remain in India until 29-10-1956.

Whether he had obtained a permit or not, therefore, he was bound in compliance of para 7 of the Foreigners Order to leave the country by that date. If he did not obtain the permit he contravened the first part of para 7. If after obtaining the permit he did not depart from the country within the period entered in the permit, which could in any case not be longer than that in the visa, he contravened the second part of the paragraph. In either case, therefore, it is clear that he contravened the provisions of para 7 of that Order.

20. The only ground on which the learned Addl. Sessions Judge held that para 7 had not been contravened was that it was attracted only in the case of a foreigner and the respondent was not a foreigner. We have already shown that the view on the latter point was incorrect and that the respondent could not escape being a foreigner on any valid ground. We are, therefore, unable to Uphold the view of the learned Addl. Sessions Judge that the respondent had not contravened the provisions of para 7 of the Foreigners Order.

21. Section 14 of the Foreigners Act provides as follows;

'If any person contravenes the provisions of this Act or o any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine: and if such person has entered in a bond in pursuance of Clause (f) of Sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting court why such penalty should not be paid.'

This section therefore punishes, (1) the contravention of the provisions of the Foreigners Act, (2) the contravention of any order made under the Act, and (3) the contravention of any direction given in pursuance of the Act or such order. The Foreigners Order of 1948 having been issued under the provisions of the

Foreigners Act, if contravention was made of para 7 of that Order it became punishable under Section 14 of the Act because the contravention of an order made under the Foreigners Act is clearly punishable under that section. By contravening para 7 of the Foreigners Order, therefore, the respondent made himself liable for being punished under Section 14.

22. The defect in the charge which was commented upon by the learned counsel for the respondent does not appear to be material at all. The charge said that the respondent had committed the offence of contravening para 7 of the Foreigners Order because he had stayed in India beyond 29-10-1956 on which date the period of his stay expired. It is not disputed that the 29th of October 1956 was the date up to which the period of the respondent's stay granted in his visa had been extended.

The visa had not been extended beyond that date. It was, however, pointed out that Exit Permits had been granted subsequent to that date also. The Exit Permit could not, however, have the effect of extending the period mentioned in the visa. The Exit permit was necessary in view of paragraph 5 of the Foreigners Order according to which no foreigner can leave India without obtaining a permit from the appropriate civil authority. The civil authority has, however, no right to grant a visa or to extend the period of it.

The fact that Exit permits were granted to the respondent after 29-10-1956, could not, therefore, justify him in remaining in the country beyond that date. The Exit permits only authorised him to depart from the country within the period mentioned in those permits by the routes referred to therein. There was, therefore, no mistake in the charge, nor has the respondent succeeded in satisfying us that he has been in any way prejudiced or misled by any mistake or error in the charge.

23. The Superintendent of Police of Bijnor granted to the respondent the Exit permits as required by para 5 of the Foreigners Order. The argument of the learned counsel for the respondent was that the Superintendent of Police had not validly been appointed a Civil Authority. The Exit Permit granted by him was, therefore, a nullity. That being so, the respondent had no permit to leave the country and could not depart from it without such a permit. Under the

circumstances if he overstayed the period of his visa he cannot be said to have committed any offence.

24. The basis of the argument that the Superintendent of Police had not been validly appointed a Civil Authority appears to be that under Clause (ii) of para 2 of the Foreigners Order a civil Authority can be appointed only by the Central Government. The contention is that in the present case the Superintendent of Police was not appointed a Civil Authority by the Central Government but that his appointment was made by the State Government,

25. The notification by which all Superintendents of Police in the Uttar Pradesh State were appointed Civil Authorities for their respective districts is No. 5103-PP/VII-I(ii)-48, dated 29th July 1950. It provides as follows:

'In exercise of the powers conferred by sub-para (2) of para 2 of the [Foreigners Order, 1948](#), and by virtue of authority delegated to the State government by the Government of India, Ministry of Home Affairs Notification No. 9/9/46-1-Political (EW) dated February 10, 1948, as continued in force by Article 372(i) read with Article 366(10) of the Constitution of India, the Governor of Uttar Pradesh is pleased to appoint the following as the Civil Authority for the areas noted against each: 1. District Superintendent of Police:- For respective districts. 2. Superintendents of Police Criminal Investigation Deptt, Uttar Pradesh for whole of Uttar Pradesh.'

The notification was published in the U. P. Gazette dated the 12th August 1950, Part I-A, at P. 507. We have already quoted the earlier notification issued by the Central Government which has been referred to in the above mentioned notification. According to that notification all the powers vested in the Central Government under the Foreigners Act, including the powers under the Foreigners Order, had been delegated to the Provincial (State) Government. It follows that the power conferred on the Central Government by Clause (ii) of para 2 of the Foreigners Order to appoint Civil Authorities also stood delegated to the State Government. The State Government had, therefore, the authority for appointing the Superintendent of Police of the Bijnor District as Civil Authority for that area. The Exit permits granted by the Superintendent of Police of Bijnor as Civil

Authority could not therefore, be challenged on the ground that his appointment as Civil Authority was invalid.

26. The only point that survives for consideration is that the Civil Authority had no power to issue the notice requiring the respondent to leave the country within thirty days. The notice was issued in the present case on the 13th of September 1957. It was urged by learned counsel that the power to direct a foreigner to depart from the country was vested under the Foreigners Act in the Central Government. Under Section 12 of the Act it could be delegated to a subordinate authority. In the present case the Central Government may be held to have delegated its powers to the State Government. The State Government had, however, no authority to delegate the powers again to another subordinate authority.

In the present case the notice directing the respondent to leave the country had not been issued either by the Central Government or by the State Government. It had been issued by the Superintendent of Police as Civil Authority. In that capacity the Superintendent of Police had no power to issue any direction. The notice issued by him could, therefore, be ignored and its contravention could not be punished. Reliance in support of this contention was placed on certain observations made in the case of : AIR1959 Bom525 .

27. In the Bombay case also a notice had been served by the Superintendent of Police of Kaira on the respondent Ibrahim Nabiji requiring him to leave the country within thirty days and threatening that failing compliance of the notice he would be prosecuted and deported under the Foreigners Act. AS he failed to comply he was actually prosecuted. It was argued before the High Court that the notice having been issued by an unauthorised person its non-compliance could not be made punishable. While dealing with this point the learned Judges observed as follows;

'As we have already observed the Superintendent of Police has issued the notice requiring the respondent to leave India, whereas under Section 3 of the Foreigners Act, the power to make an order either against an individual or against a class generally, is conferred upon the Central Government. It is true that under Section 12 of the Foreigners Act the power to make orders under Section 3 may be delegated to a subordinate authority subject to such conditions as may be

contained in the authorisation, and the learned Government Pleader has invited our attention to a Notification issued by the Government of India on 17-10-1955, No. 949/46/68/409A whereby power has been conferred under Section 3, Sub-section (2), Clause (c) of the [Foreigners Act, 1946](#) in respect of foreigners and enemy foreigners upon the State Government including the Government of Bombay. By virtue of this notification the power may be deemed to be conferred upon the State Government. But the learned Government Pleader has not been able to invite our attention to any order issued by the Central Government or competently by the State Government which has delegated the authority under Section 3 Sub-section (2), Clause (c) of the Foreigners Act upon the Superintendent of Police. The order passed by the District Superintendent of Police on 20-8-1957 must, therefore, be regarded as unauthorised and failure to carry out the requisition contained in that order cannot, in our judgment, be penalised under Section 14 of the Foreigners Act.'

28. We may state that in the present case also learned counsel for the State has not been able to draw our, attention to any notification issued by the Central or the State Government authorising Superintendents of Police as Civil Authorities to exercise the powers mentioned in Section 3, Sub-section (2) Clause (c) of the Foreigners Act, under which a foreigner can be directed to leave the country. The fact, however, appears to be entirely immaterial. What the respondent was charged with was not an omission to comply with the notice issued by the Superintendent of Police as Civil Authority but with the contravention of para 7 of the Foreigners Order issued under the Foreigners Act.

No provision under the Order or the Act has been brought to our notice under which it was necessary for any authority to issue a warning or notice to the respondent requiring him to leave the country on pain of being prosecuted under Section 14. He became liable for such prosecution as soon, as he failed to comply with para 7 of the Foreigners Order and omitted to depart from the country on the expiry of the period of his visa. The validity or otherwise of the notice issued on the 13th of September 1957 could not, therefore, affect the conviction of the respondent in any way.

With the utmost respect to the learned Judges who decided Ibrahim Nabiji's case : AIR1959 Bom525 they did not point out how the question of contravention of para 7 of the Foreigners Order depended on the validity of the notice served on the respondent in that case by the Superintendent of Police. If the respondent had not left India and had overstayed the period allowed to him by his visa, he contravened para 7 of the Order irrespective of the fact whether a direction had been issued to him by a competent authority or not.

29. The point was considered by Mr. Justice Mathur also in the case of 1959 All LJ 895: (AIR 1980 All 434) (supra). Though he also took the view that

'even if the Superintendent of Police was not a competent authority to issue notices, the applicant can be convicted under Section 14 for the reasons already mentioned above'

he went on to say that Notification No. 5103 PF/ VII-I(ii)-48 dated July 29, 1950 had appointed Superintendents of Police as Civil Authority, and the Superintendent of Police could, therefore call upon foreigners to leave the country within the period mentioned in the notice. The learned Judge, however, did not refer to any provision in the Foreigners Order under which Civil Authorities are appointed authorising them to issue a direction to leave the country within a fixed period.

30. Thus all the grounds on which the learned counsel for the respondent relied in support of his contention that the respondent had not committed the offence of which he had been convicted by the trial court are untenable, We are in the circumstances unable to uphold the order of acquittal recorded by the learned Addl. Sessions Judge.

31. We, therefore, allow this appeal, set, asidethe order of the learned Addl. Sessions Judge andrestore the order passed by the trial Court in thiscase.

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