Abdul Samad Vs. the State of U.P.

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Court : Allahabad

Decided On : Jul-17-1963

Reported in : AIR1965All158; 1965CriLJ410

Judge : Gyanendra Kumar, J.

Acts : Evidence Act, 1872 - Sections 106; Passport Rules, 1950 - Rules 3 and 6; Code of Criminal Procedure (CrPC) , 1898 - Sections 182 and 531

Appeal No. : Criminal Ref. No. 408 of 1962

Appellant : Abdul Samad

Respondent : The State of U.P.

Advocate for Def. : H.C.P. Tripathi, Adv.

Judgement :

Gyanendra Kumar, J.

1. This reference has been mode by the learned Sessions Judge of Kanpur. The notice of the case was personally served on Abdul Samad applicant on 9-2-1963 but nobody has put in appearance on his behalf

2. The facts of the case briefly are that in the first instance the applicant Abdul Samad had entered India with a passport and visa bat had overstayed here.

Accordingly he was deported to Pakistan in 1956. Thereafter he is alleged to have entered India without any valid passport or visa and was found residing in the city of Kanpur. Accordingly he was challaned under Rule 6 of the Passport Rules for contravention of Rule 3 of the Rules. The applicant raised a preliminary objection to his trial being held within the jurisdiction of Kanpur court on the ground that the words used in Rule 3 have to be strictly construed Rule 3 runs as follows:

'Save as provided in Rule 4, no person proceeding from any place outside India shall enter, or attempt to enter, India by water, land or air unless he is in possession of a valid passport conforming to the conditions prescribed in Rule 5.' The learned Magistrate rejected the contention of the applicant by one-word-order 'rejected'

3. On revision being filed before the learned Sessions Judge of Kanpur, than latter agreed with the contention of the applicant and made the instant reference to this Court. The learned Judge pointed out that the charge against the applicant was one of entering India without a valid passport' The learned Judge, however, held that the applicant could arrive in the district of Kanpur only after he had already entered the country through some border district He, therefore, reasoned out that the offence of entering into India without a valid passport could not have been committed within the jurisdiction of Kanpur court.

4. A perusal of Rule 3 shows that the entry into India could either be by water, land or air. The learned Judge seems to have taken into accountonly the first two modes of entry, namely, by land or water when he found that he could not have reached Kanpur without first having entered some of the border districts situate at the boundary of the India. He did not envisage the possibility of the applicant landing at Kanpur by air He might as well have smuggled himself into some air-craft, civil or military and straightway landed at Chakeri Airport, Kanpur. The accused has not stated the mode and the route of his reaching Kanpur. If he reached Kanpur by air, the Kanpur court would obviously have jurisdiction to try the case. The single process of entering into the country would continue till he had actually landed at Chakeri Airport, Kanpur

5. The learned Sessions judge then went on to observe that Section 182 Cr P C had no application to the instant case, because in his opinion the offence was not a continuing one I am afraid the interpretation put by the learned Judge is not quite correct. It has to be given a liberal interpretation and one has to guard against a too narrow and restricted interpretation of the same

6. The meaning of the word enter as given, in the New English Dictionary by Sir James A. H. Murray, inter alia, means 'to pass within the boundaries of a country, region, portion of space, medium etc.' Likewise the word 'enter' as defined in Shorter Oxford English Dictionary, inter alia, means 'to pass within the boundaries of, to penetrate into; to be plunged deeply.' Thus the word 'enter' does not necessarily mean the initial stepping into the country or region but includes travel within the territory, even deep into the heart of the country. Therefore, when the applicant passed or travelled through the boundaries of India so as to reach Kanpur, be would still be deemed to have been entering the country within the meaning of Rule 3 of the Passport Rules, 1950. The offence was thus a continuing one within the meaning of Section 182 of Cr. P. C. The learned Sessions Judge was, therefore, not quite correct when he held that Kanpur Court had no jurisdiction to try the case, inasmuch as, the applicant had already entered the country at some other border district.

7. The fact where the applicant had initially entered the country was in the special knowledge of the accused, who did not disclose the point or the place or his having entered the country. The burden of proving the same was, therefore, on the accused within the meaning of Section 106 of the Indian Evidence Act, which he failed to discharge

8. The charge-sheet had admittedly been furnished to the applicant at Kanpur, where he was found to be residing and was being tried for the contravention of Rule 3 of the Indian Passport Rules. In State of Madhya Pradesh v. K.P. Ghiara, (S) AIR 1957 SC 196 their Lordships of the Supreme Court, while interpreting the provisions of Section 183 Cr. P. C. observed at page 197 para 2 as follows

'The venue of enquiry or trial of a case like the present is primarily to be determined by the averments contained in the complaint of charge-sheet and

unless the facts there are positively disproved, ordinarily the Court where the charge-sheet of complaint is filed, has to proceed with it.'

Their Lordships in para 6 further observed:

'..... .the fact that the charge-sheet wasfiled at Nagpur suggests that the prosecution considered Nagpur as the place where offence was committed.'

9. In the present case the charge-sheet was submitted at Kanpur; hence prima fade the Kanpur Court shall have jurisdiction to proceed with the trial, unless the matter was positively disproved, which has not been done.

10. In the instant case the learned Magistrate had already rejected the plea of want of jurisdiction raised by the accused. It is regrettable that he did not give his reasons for rejecting the plea but contented himself by noting the word 'rejected' on the written objection filed by the applicant. It is desirable that the orders passed by 'Magistrates, even on interlocutory applications and objections should be in the nature of speaking orders, so that the parties as well as the courts of appeal or revision may have the advantage of knowing the reasons for passing these orders, In case the Magistrate had taken care to pass such an order, the learned Sessions Judge might have 'agreed with the reasoning of the Magistrate and might not have been driven to the necessity of making a reference to this Court, inasmuch as Section 531 Cr. P. C. clearly provides that a finding or order of a criminal court shall not be set aside merely on the ground that the trial in which a particular order was passed took place in a wrong district or sub-division, unless it further appeared that such error had in fact occasioned the failure of justice. Even the learned Sessions Judge does not mention that any failure of justice had resulted or was likely to result to the accused if the case was tried by the City Magistrate of Kanpur. The applicant being now at Kanpur and claiming himself to be the original resident of Kanpur, his witnesses were also likely to belong to Kanpur and he would have all convenience and facility in getting himself tried at Kanpur itself, where he could easily attend the court and produce his witnesses.

11. In the result the reference made by the learned Sessions Judge is rejected, the order of the Magistrate being maintained. The case would now go back to the City

Magistrate, Kanpur who shall proceed with the trial of the case in the light of the observations made by me.