

**Kallan Khan Vs. State**

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**Court :** Allahabad

**Decided On :** Sep-23-1960

**Reported in :** AIR1961All261; 1961CriLJ584

**Judge :** B. Upadhyaya and ;A.P. Srivastava, JJ.

**Acts :** [Foreigners Act, 1946](#) - Sections 3(2) and 14; Indian Passport Act, 1920

**Appeal No. :** Criminal Revn. No. 1736 of 1959

**Appellant :** Kallan Khan

**Respondent :** State

**Advocate for Def. :** Govt. Adv.

**Advocate for Pet/Ap. :** A.B. Saran, Adv.

**Judgement :**

**A. P. Srivastava, J.**

1. This application in revision has been referred to this Bench for the decision of the following question :

'In order to sustain a conviction under Section 14 read with Section 3(2)(C) of the Foreigners Act, is it necessary to prove (a) that a permit was issued to the accused under Section 7 of the Foreigners Order and (b) that the accused stayed

on in India after the expiry of the period indicated in the permit or can the accused be convicted merely for staying on beyond the period shown in his visa?'

2. The applicant Kalian Khan had migrated to Pakistan, He obtained a passport bearing No. 330624 from the Pakistan Government on the 5th July 1955 and also obtained Visa No. 28781-82 of the 26th March 1957. The visa was of category 'C'. He entered India on the basis of the passport and the visa and reported his arrival at Police Station Mundha on the 30th March 1957. The District Magistrate of the place granted him a permit entitling him to remain in India till the 12th July 1957 and fixing the time of exit from India as the 14th July of that year.

The permit was never extended but the applicant continued residing in India beyond the period fixed in the permit. On the 25th February 1958 a notice was given to him requiring him to leave India within thirty days but as he did not comply with it ho was prosecuted under Section 3 read with 14 of the Foreigners Act. The charge framed against him read as follows :

'That you on or about the 12th day of July 1957, being a foreigner, were found remaining in India without any valid passport and permission and thereby committed an offence punishable under Section 3/14 of [Foreigners Act, 1946](#) and within my cognizance.'

3. The applicant pleaded not guilty. He said that ho was an Indian national who had gone to Pakistan but had come back from the place in 1957 because he could not get any employment there. He denied that he had been living in India without permission.

4. The Magistrate, who tried the case, found the applicant guilty of the charge framed against him and sentenced him to undergo simple imprisonment, for one year and also to pay a fine of Rs. 25. In default of the payment of fine he was directed to undergo further simple imprisonment for one month.

5. The applicant preferred an appeal to the Sessions Judge who admitted the appeal on the point of severity of sentence. He dismissed the appeal but reduced the sentence to six months' simple imprisonment but maintained the sentence of

fine.

6. The applicant then applied to this Court in revision and the application first came up for disposal before Mr. Justice Broom. He felt satisfied that the applicant was a foreigner at the time when he had re-entered India on the 29th March 1957 on the basis of his Pakistani Passport and the visa granted to him. It was contended before the learned Judge that the conviction of the applicant could not be maintained because the prosecution had not proved that any permit had been granted to him as required by paragraph 7 of the Foreigners Order 1948 and that he had overstayed that permit.

It was urged on behalf of the State on the basis of the decision reported in *Wahid Mian v. State*, 1960 All LJ 179 : (AIR 1961 All 111), that irrespective of the question whether the permit was or was not issued a foreigner could be convicted for not leaving India within the period indicated in his visa. Mr. Justice Broom felt somewhat doubtful about the correctness of that decision and finding the question to be a question which was likely to arise in a large number of cases he referred the question which we have mentioned at the beginning of this judgment to a Division Bench for decision.

7. It is obvious that before the learned Judge the case was argued on the basis that though the applicant possessed a passport of the Pakistan Government and had also obtained the necessary visa there was nothing to show that he had obtained a permit for stay as required by paragraph 7 of the Foreigners Order, 1948. It was on that basis that the applicant contended in support of the application in revision that till it was proved that a permit for a particular period had been issued and that the applicant had overstayed that period the applicant could not be convicted under Section 3(2)(C) read with section 14 of the [Foreigners Act, 1946](#), for the breach of paragraph 7 of the Foreigners Order, 1948.

8. With the help of learned counsel we have perused the record and have seen the passport of the applicant which was filed by him. The passport shows that it was issued originally by the Pakistan Government in 1955. The applicant then obtained a visa of Category 'C' from the Visa Officer on the 8th July 1955. It was valid till the 7th October 1955. He left Pakistan on the 13th July 1955 and entered India on the

14th July of that year.

He then obtained a permit as required by paragraph 7 of the Foreigners Order, 1948 which entitled him to remain in India till the 21st October 1955 and fixed the time for his exit from India as the 31st October 1955. The period of the permit was subsequently extended first in December 1955, then in March 1956 and again in May 1956. The applicant then left India for Pakistan. On the 26th March 1957 he again obtained a visa from the Indian High Commissioner at Lahore, visa No. 28781-82 dated the 26th March 1957. The visa was for a period of six months and on the basis of that visa he entered India on the 29th March 1957.

He reported himself at thana Mundha, district Moradabad, and obtained from the District Magistrate a permit required by paragraph 7 of the Foreigners Order, 1948 on the 26th June 1957. The permit entitled him to remain in India till the 12th July 1957 and fixed the time for his exit from this country as the 14th July 1957. The applicant did not get the period of this permit extended in any manner but continued residing in India till a notice was served upon him requiring him to leave the country within thirty days.

9. It is thus clear that the case that the applicant had not obtained any permit as required by paragraph 7 of the Foreigners Order 1948 and that there was nothing to show the period entered in the permit to enable the Court to find whether the applicant had overstayed that period was not correct, A permit as required by that paragraph had been issued to the applicant. According to that permit he could stay in India only till the 12th July 1957 and was bound to leave India before the 14th of that month.

The period was never extended. If, therefore, he continued staying in India beyond the 12th July 1957 he clearly committed a breach of Paragraph 7 of the Foreigners Order, 1948 and was on that account liable to be punished under section 14 read with Section 3(2)(C) of the [Foreigners Act, 1946](#). His stand that the prosecution had not proved that any permit had been issued to him and that he had stayed in India beyond the period of the permit was, therefore, wholly unjustified.

10. In view of the facts above mentioned the question referred to us does not really arise in this case. As, however, the case has come to us only for answering question we proceed to consider it.

11. Paragraph 7 of the Foreigners Order, 1948, reads as follows :

'Every foreigner who enters India on the authority of a visa issued in pursuance of the Indian Passport Act, 1920 (XXXIV 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, 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,'

12. It will be noticed that paragraph 7 provides for two things. In the first place, it provides that every foreigner shall obtain a permit indicating the period during which he is authorised to remain in India. It also provides that the foreigner concerned must, unless the period is extended by the Central Government, depart from India before the expiry of that period. Thus the duty of obtaining a permit is also enjoined by this paragraph on the foreigner. He, therefore, commits a breach of its provision not only by overstaying the limits of the permit if one is granted to him but also by omitting to obtain a permit. In either case the foreigner concerned will be liable to be convicted under Section 14 read with Section 3(2)(C) of the Foreigners Act.

13. Remaining in India beyond the period mentioned in the visa may be actionable under the Indian Passport Act of 1920 or the Indian Passport Rules of 1950. In order to attract the penalties provided in Section 14 of the Foreigners Act it is necessary that there must be some contravention of the provisions of the Act itself or of any order made thereunder or any direction given in pursuance of the Act or the Order. If the allegation is that paragraph 7 of the Foreigners Order, 1948 which has been issued under the Foreigners Act has been contravened it must be

proved either that the person concerned had omitted to obtain a permit as required by that paragraph or that he had overstayed the period provided in that permit.

14. The case will now go back to the learned Judge who made the reference with the above opinion.

(The case went back to Broom, J. who, in his final order, while maintaining the conviction of the applicant under Section 3/14 of the Foreigners Act, reduced his sentence of imprisonment to the period already undergone but made no alteration in the fine that had been imposed.)

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