

Ali Hussaln Vs. State

Ali Hussaln Vs. State

SooperKanoon Citation : sooperkanoon.com/454843

Court : Allahabad

Decided On : Oct-01-1959

Reported in : AIR1960All336; 1960CriLJ771

Judge : M.C. Desai, J.

Acts : [Citizenship Act, 1955](#) - Sections 9(2) and 18; Citizenship Rules - Rule 30; [Foreigners Act, 1946](#) - Sections 14; Code of Criminal Procedure (CrPC) ; Evidence Act

Appeal No. : Criminal Revn. Nos. 246, 265, 334 and 346 of 1959

Appellant : Ali Hussain

Respondent : State

Advocate for Def. : Asstt. Govt. Adv.

Advocate for Pet/Ap. : Virendra Swarup, Adv.

Disposition : Application dismissed

Judgement :

ORDER

M.C. Desai, J.

1. This and the companion applications are directed against orders passed by a Magistrate before whom the applicants are being tried under Section 14 of the Foreigners Act for infringement of Rule 7 of the Foreigners Order, 1948, refusing to stay proceedings in the cases. All the applicants were citizens of India under Article 5 of the Constitution on 26-1-1950, went to Pakistan in April, 1950 and returned to India in 1955 or 1956 after obtaining passports from the Pakistan Government as citizens of Pakistan. The passports were endorsed with visas by the Indian Diplomatic Authority in Karachi limiting the period of their stay in India.

They failed to depart from India before the expiry of the periods mentioned in their visas and are now being prosecuted for their failure under Section 14 of the Foreigners Act. Applications were made on their behalf for stay of the proceedings in the cases on the grounds that they could not be held to be foreigners unless they were held to have acquired the citizenship of Pakistan and thereby lost the citizenship of India, that the question whether they had acquired the citizenship of Pakistan or not was to be decided by the Central Government under Section 9(2) of the [Citizenship Act, 1955](#) and that they were referring the question to the Central Government for its decision.

The trial court dismissed the applications observing that there was no provision under which it was bound to stay the proceedings in order to enable the applicants to obtain a decision from the Central Government on the question whether they had acquired the citizenship of Pakistan or not. It also observed that the applications were not bona fide and that the applicants had ample time to move the Central Government for its decision if they were so minded.

2. It may be assumed that the applicants became citizens of India on 26-1-1950 and continued to be so under Article 10 subject to the provisions of any law that may be made by the Parliament. The Citizenship Act was enacted by Parliament to provide for acquisition and termination of citizenship. In these cases, I am concerned with termination of citizenship. Section 9(1) lays down that any citizen of India who voluntarily acquires, after 26-1-1950, the citizenship of another country shall, upon the acquisition or upon the commencement of the Act, cease to be a citizen of India.

In sub-sec. (2) of the section it is laid down that if any question as to whether, when or how any person has acquired the citizenship of another country arisen, it shall be determined by such authority in such manner, and having regard to such rules of evidence, as may be prescribed in his behalf. In Rule 30 of the Citizenship Rules, 1956 made by the Central Government in exercise of the power conferred by Section 18 of the Act, it is laid down that if a question referred to in Section 9(2) of the Act arises, the authority to determine it shall, 'for the purposes of Section 9(2)' be the Central Government and that it shall determine it with due regard to the rules of evidence specified in Schedule III.'

Rule 3 of Schedule III is to the effect that the acquisition by a citizen of India of a passport from the Government of any other country, shall be conclusive proof of his having voluntarily acquired the citizenship of that country before the date of the acquisition.

3. If the applicants, when they came to India from Pakistan, were citizens of India, they were not governed by the Foreigners Act. The case for the prosecution was that by obtaining passports from the Pakistan Government is citizens of Pakistan, they acquired the citizenship of Pakistan and thereby lost the citizenship of India. The contentions of the applicants are that this question whether they have acquired the citizenship of Pakistan could be determined only by the Central Government and that the trial Court should stay the proceedings so long as it is not so determined.

4. It cannot be disputed that a Court having, jurisdiction to try an accused for an offence has jurisdiction to determine all facts in issue and all relevant facts. In a case under Section 14 of the Foreigners Act, that the accused is a foreigner is a fact in issue to be decided by the Court. If it is accepted that a person who is not a citizen of India is a foreigner, it is a relevant fact that the applicants were not citizens of India when they entered India in 1955 or 1956, and so is the fact that they lost the citizenship by acquiring the citizenship of Pakistan. The Court had, therefore, jurisdiction to decide the question whether they acquired the citizenship of Pakistan unless it decided it, it could not decide whether they were foreigners and whether they were guilty. This jurisdiction of the Court to decide it has not

been taken away by Section 9(2) of the Citizenship Act. All that is laid down by it, read with Rule 30, is that the question whether a person has acquired the citizenship of another country shall be determined by the Central Government it does not say anything about the jurisdiction of a criminal court to decide it. It does not repeal the provisions of the Code of Criminal Procedure and the Evidence Act conferring power upon criminal courts to decide all facts in issue and relevant facts.

The power that undoubtedly vests in a criminal court to decide the fact of acquisition as a relevant fact is not taken away by Section 9(2). What it lays down is simply that an authoritative or binding decision on the question can be given only by the Central Government. If such a decision has been given by it, it will bind all courts but so long as it has not been given, courts are competent to decide the question themselves in exercise of their ordinary jurisdiction. The question is similar to questions of title, divorce etc. which are authoritatively and conclusively decided by civil courts but are also decided by criminal courts, if they are relevant in the proceedings pending before them.

A court trying a person under the Foreigners Act has jurisdiction to decide whether he acquired the citizenship of Pakistan, even though its decision is only for the purposes of the case and is liable to be superseded by a decision given by the Central Government under Section 9(2). Rule 30 (1) makes this clear by expressly providing that the decision of the Central Government is only 'for the purposes of Section 9(2).' There are many decisions given by courts trying criminal cases which are subject to decision of other courts and the decision of the question whether the accused has acquired the citizenship of Pakistan or not is only an instance of such questions.

5. In *Nasir Ahmed v. The Chief Commissioner*, and in *Abdul Rahman v. State of U. P.* : AIR1958 All165 the question that was decided was not of the jurisdiction of a criminal court to decide the question of acquisition of citizenship of Pakistan but of the jurisdiction of the High Court to decide it in a proceeding under Article 226 of the Constitution. A High Court in such a proceeding may not have jurisdiction to decide it, but it does not follow that a criminal court, the jurisdiction of which is

governed by the statutory provisions contained in the Cr. P. C. and the Evidence Act also has not such jurisdiction.

In the Allahabad case it was observed by my brother Mukerji that Section 9(2) has provided for a forum for the determination of the question and that Abdul Rahman, who claimed that he had not acquired the citizenship of Pakistan, should approach the Central Government and not the High Court through a petition under Article 226 of the Constitution. Nothing that I have said above militates against this observation of my learned brother. In the Punjab case, Bishan Narain, J. certainly made some observations which militate against the view taken by me. At page 263 he observed that prior to the enactment of the Citizenship Act,

'there was no machinery provided for determining whether a citizen of this country had lost his citizenship and if so when and how,'

that such a question could be determined previously only by Courts of law and the party who alleged the loss of its citizenship had to prove it, 'that the Citizenship Act has completely changed the position' and that 'it is the Central Government only that has the power to decide it.' The learned Judge was not dealing with the jurisdiction of a criminal court to decide a fact in issue or a relevant fact.

At page 264 he observed that if such a question is raised by a person prosecuted under Section 14 of the Foreigners Act, he should apply to the court to get it decided by the Central Government 'as it is no longer possible for the Courts of law to decide this issue.' I respectfully disagree with this observation of the learned Judge which was by way of obiter. The Central Government certainly has the jurisdiction to give a conclusive or binding decision on the question but it does not follow that a criminal court has not the limited jurisdiction to decide it for the purposes of the case actually before it.

There is no such repugnance between the provisions of Section 9(2) of the Citizenship Act and the provisions of the Cr. P. C. and the Evidence Act as to lead to the inference that Section 9(2) takes away the jurisdiction of a criminal court to decide the question even though it relates to a fact in issue or a relevant fact. If a person wants an authoritative decision, it is open to him to approach the Central

Government, but he cannot prevent a criminal court from deciding it.

6. In re Abdul Khader : AIR 1959 AP241 , Muni Kanniah, J. laid down that a prosecution under Section 14 of the Foreigners Act without the determination of the question of acquisition of citizenship-of Pakistan is premature. No authority has been cited by the learned Judge in support of the view. There is no provision of law which would make a criminal prosecution for the offence of Section 14 of the Foreigners Act premature. If the accused was not a foreigner when he entered into India, he may be acquitted on that ground but it would be for the court trying it to decide whether he was a foreigner or not.

7. I hold that it was for the Magistrate in these cases to decide whether the applicants had acquired the citizenship of Pakistan or not.

8. Even though the Magistrate had jurisdiction, he could stay the proceedings to await the decision of the Central Government on the question which would be binding on him. The matter, however, was within his discretion and he was not bound to stay the proceedings, He refused to exercise the discretion on the ground that the applicants had ample time to move the Central Government to decide the question, if they were so inclined I cannot say that he exercised the discretion erroneously by refusing to stay the proceedings.

9. The application is dismissed. The Magistrate shall resume the proceedings at once.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com