

State of U.P. Vs. Mohammad Yasin

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Court : Allahabad

Decided On : Jan-25-1965

Reported in : AIR1967All320; 1967CriLJ833

Judge : H.C.P. Tripathi, J.

Acts : [Foreigners Act, 1946](#) - Sections 2 and 14; Foreigners (Amendment) Act, 1957; [Foreigners Order, 1948](#)

Appeal No. : Government Appeal No. 1619 of 1963

Appellant : State of U.P.

Respondent : Mohammad Yasin

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : S.G. Haider, Adv.

Disposition : Appeal dismissed

Judgement :

H.C.P. Tripathi, J.

1. This is an appeal against an order of acquittal passed by a Magistrate, First Class, Aligarh. on the 11th of April, 1963, in a case under Section 14 of the Foreigners Act.

2. The facts of the case lie in a short compass:

Opposite party Mohammad Yasin entered India on the 15th of October, 1953, on the strength of a Pakistani passport dated the 2nd of October, 1953, and an Indian category C Visa dated the 7th of October, 1953 which was to remain valid up to the 6th of January, 1954. He however, continued to stay in India even beyond that period without getting the prescribed period extended in a proper manner. Consequently he was arrested on the 20th of July, 1962, at about 10 a.m. in the city of Bareilly and was sent up for trial for having contravened paragraph 7 of the [Foreigners Order, 1948](#), by his over stay and thus having made himself punishable under Section 14 of the Act.

3. At the trial the opposite party pleaded not guilty to the charge. His case was that he was an Indian national having been born in India and had gone to Pakistan for a short time on account of the disturbed condition in this country. He did not, however, state as to when he had gone to Pakistan from this country. He produced two persons in support of his case both of whom have stated that he had left India in 1950.

4. The case of the prosecution was unfolded by Sub Inspector Harjeet Singh who stated on the basis of the entries made in his register and also in the passport and Visa that Mohammad Yasin had entered India in 1953 and was staying after the expiry of the prescribed period and had thus contravened paragraph 7 (2) of the Foreigners Order. In cross-examination he stated that he does not know whether after the expiry of the prescribed period any notice had been served on the opposite party to leave this country.

5. The learned Magistrate on the basis of defence evidence held that as the opposite party had crossed over to Pakistan in the year 1950 he continued to be an Indian national because the question of his having lost the Indian citizenship had not been decided in accordance with Citizenship Act, 1955. He, therefore, acquitted him.

6. I have heard the learned counsel for the parties.

7. It is no doubt true that in his Visa the opposite party has mentioned his time of migration as the year 1949 and in his statement before the court also he did not assert that he had migrated from this country after the enforcement of the Constitution. In face of the admission made by him in his visa, the testimony of his two witnesses that he had left India for Pakistan in 1950 was not such on which any reliance could be safely placed. There, is, however, another reason on account of which his acquittal cannot be disturbed in this appeal.

8. The opposite party admittedly entered India in the year 1953. According to the definition of a Foreigner as it stood in the Act of (in ?) 1953 before the amendment of 1957, any person born within His Majesty's dominion and allegiance was a citizen of India. Therefore it must be held that on the date of entry in this country even on a Pakistani passport, opposite party was a citizen of this country. The amending Act which effected a change in the definition of a 'Foreigner' came into force from January 19, 1957 Therefore although he could not be convicted for an act done by him before the amendment on the basis that he was a foreigner, such as his entry in India and overstaying here, he could be convicted after January 19, 1957, for disobeying any order or condition issued to him under the provisions of the Foreigners Act as it stood after the amendment In other words if after January 19, 1957, an order has been served on him by the authorities directing him to leave India within a certain, period and if he had contravened that order, it can be said that because of the amendment in the Act he had become a foreigner and had contravened an order passed in pursuance of the Act, and as such he was punishable under Section 14 of the Act. : AIR 1963 SC1035 . Fateh Mohammad v. Delhi Administration. In this case, however, there is no evidence that any order has been passed by the authorities after January 19, 1957, directing the opposite party to leave India within a particular period. In the circumstances the question of contravention of any order under the Act which can be punished under Section 14 does not arise.

9. It may be noticed here, that as has been indicated earlier, the opposite party was not a foreigner on the date of his entry in this country. Paragraph 7 of the [Foreigners Order, 1948](#), did not apply to him and therefore no question of any contravention of that order arises in the case. It will be, however, open to the

authorities to serve an order in accordance with law on the opposite party for leaving the country and to prosecute him if necessary for the contravention of that order.¹⁰ This appeal has no force and is dismissed.

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