

Saghir Ahmad Vs. State

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Court : Allahabad

Decided On : Oct-18-1960

Reported in : AIR1961All507; 1961CriLJ441

Judge : W. Broome, J.

Acts : [Foreigners Act, 1946](#) - Sections 14; [Foreigners Order, 1948](#) - Sections 7; [Citizenship Act, 1955](#) - Sections 8, 9, 9(2) and 10; Citizenship Rules - Rule 30; [Constitution of India](#) - Articles 13(2) and 19(1)

Appeal No. : Criminal Revn. No. 142 of 1960

Appellant : Saghir Ahmad

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : Syed Sadiq Ali and ;Haider Shaukat Abidi, Adv.

Disposition : Revision allowed

Judgement :

ORDER

W. Broome, J.

1. Saghir Ahmad, the applicant in this criminal revision, has been convicted by a first class Magistrate of Gorakhpur for an offence under Section 14 of the Foreigners Act read with Section 7 of the Foreigners Order and has been sentenced to six months' simple imprisonment. His conviction and sentence were confirmed in appeal by the Temporary Civil and Session Judge of Gorakhpur.

2. The facts of the case are as follows. Saghir Ahmad was born in Gorakhpur district in January 1937, but at the time of the communal riots that followed partition in 1947 he was attending school in Delhi and was sent to a refugee camp and from there to Pakistan, without his parents, who remained behind in India, being consulted in the matter. Eventually he got in touch with his parents and came back to India on 15-2-1955 on the basis of a passport issued on 3-11-1954 and a visa in category B valid for two months. He remained on in this country after the period noted in his visa had expired and was deported to Pakistan on 1-12-1956. Thereafter he came back to India without obtaining any passport or visa, and on 10-11-1957 was found living in a village in Gorakhpur district without any permit for his stay there.

3. The applicant was clearly an Indian citizen by reason of his birth and the burden lay on the prosecution to prove that he had in some way renounced or forfeited his Indian citizenship, before he could be convicted for an offence under the Foreigners Act. When he was sent to Pakistan in the first place, he was only 10 years of age and! even when he obtained the Pakistan passport on 8-11-1954, he was still a minor.

As pointed out by me in *Sharafat Ali Khan v. State of U. P.*, 1960 All LJ 461 : (AIR 1980 All 637), a minor cannot change his nationality without action being taken or consent being given by his guardian; and in the present case there is nothing whatsoever to suggest that the applicant's father, who went on living in Gorakhpur, ever wished him to renounce Indian Nationality or to become a Pakistan national. The declaration which he presumably must have made for the purpose of obtaining the Pakistan passport therefore was absolutely invalid and ineffectual and can have no value in the eye of the law, since it was made at a time when he was still a minor and legally incapable of changing his nationality of his own

accord.

It is clear therefore that when the applicant re-entered India on the first occasion on 15-2-1955 he had not validly renounced his Indian citizenship and must be deemed to have still been an Indian national on that date. Thereafter in 1956 he was deported to Pakistan against his will; but this action on the part of the authorities could not possibly have had the effect of depriving him of his citizenship. The methods by which Indian citizenship can be terminated are set forth in Sections 8, 9 and 10 of the Citizenship Act, namely renunciation, deprivation and termination by voluntary acquisition of the citizenship of another country.

In the present case there is no suggestion that the applicant ever renounced his citizenship or was deprived of it in accordance with the procedure referred to in Sections 8 and 10 of the Act; and as regards his alleged requisition of Pakistan nationality (which according to Section 9 would have the effect of terminating his citizenship), I have already pointed out that the declaration which he made in the year 1954 in order to obtain a Pakistan passport could not have any legal effect, in view of the fact that he was a minor at the time.

It follows therefore that the applicant was still an Indian citizen and not a foreigner when he returned to India for the second time in the year 1957; and whatever offence he may then have committed under the Passport Act by entering this country without any passport or permit, he certainly cannot be said to have committed any offence under the Foreigners Act

4. It would therefore seem that the prosecution of the applicant under Section 14 of the Foreigners Act was entirely misconceived. The legal position however is complicated by the fact that during the pendency of the proceedings the learned Magistrate who was trying this case referred the question of the applicant's nationality to the Central Government, which by its order dated 20-8-1959 held that Saghir Ahmad had voluntarily acquired the citizenship of Pakistan.

The reference was made in accordance with Section 9(2) of the Citizenship Act read with R. 30 of the Citizenship Rules, whereby the Central Government has

been declared to be the authority empowered to determine the question of whether, when or how any person has acquired the citizenship of another country'; and it is obvious that the decision was arrived at on the basis of the rules of evidence incorporated in Schedule III of the Citizenship Rules. Clause 3 of the Schedule III runs as follows :

'The fact that a citizen of India has obtained on any date a passport from the Government of any other country shall be conclusive proof of his having voluntarily acquired the citizenship of that country before that date.'

And Clause 5 of the same Schedule contains the following provisions:

'a citizen of India shall be deemed to have voluntarily acquired the citizenship of Pakistan:

(b) if he has obtained any certificate of domicile in Pakistan or declared himself to be a citizen of Pakistan or of Pakistan domicile; or

(d) if he has obtained a temporary permit for entry into India from Pakistan.'

Under these clauses, the mere obtaining of a Pakistan passport or of a temporary permit for entry into India from Pakistan is taken as conclusive proof of the acquisition of Pakistan citizenship; and such acquisition by virtue of Section 9(1) of the Citizenship Act involves automatic termination of Indian Citizenship. The question is, can an Indian citizen be deprived of his fundamental rights (including the right of residing and settling in any part of India, guaranteed by Article 19 of the Constitution) in this arbitrary and wholly unreasonable fashion?

I cannot countenance such a position and in my opinion Clause 3 and Clauses 5(b) and (d) of Schedule III of the Citizenship Rules, which in many cases would result in summarily depriving an Indian citizen of his citizenship by bringing Section 9(1) of the Citizenship Act into play without his ever in actual fact voluntarily acquired any foreign nationality, must be considered null and void by virtue of Article 13(2) of the Constitution.

5. The view taken by me finds support in Mohammad Khan v. Government of Andhra Pradesh, AIR 1957 Andh Pra 1047, in which it was remarked:

'The rule, by the device adopted, completely bars the appellants from establishing that they have not acquired the citizenship of Pakistan. The irrebuttable presumption from the fact, which is not legal evidence of the fact of citizenship, much less of the fact of citizenship obtained otherwise than by voluntary acquisition, has certainly the effect of depriving the appellants' right without the enquiry 'guaranteed by the section, and therefore, amounts to an unreasonable restriction on the fundamental rights of the appellants under Article 19 of the [Constitution of India](#).'

No ruling has been cited before me in which any contrary opinion has been expressed regarding the constitutional validity of the aforesaid Schedule III of the Citizenship Rules.

6. I should not be understood as laying down the proposition that in no case the obtaining of a foreign passport can prove the acquisition of foreign nationality. There may be cases in which the obtaining of a foreign passport may provide prima facie evidence (rebuttable of course) that the person in question has voluntarily acquired the citizenship of another country; but that is a very different matter from treating the passport as conclusive irrebuttable proof, precluding the person in question from leading any evidence or relying on any circumstances that might go to show that in actual fact he never voluntarily acquired foreign citizenship.

7. In the present case the application of the arbitrary rule of evidence introduced by Clauses 3 and 5 of Schedule III would lead to the iniquitous result of depriving the applicant Saghir Ahmad of his rights as an Indian Citizen merely because, while still a minor and legally incapable of changing his nationality, he made a false declaration of Pakistan nationality and thereby obtained Pakistan passport.

This would clearly amount to an unreasonable restriction and abridgment of the applicant's fundamental rights and the clauses in question must be struck down, in view of Article 13(2) of the Constitution. My conclusion therefore is that the

decision given by the Central Government on 20-8-1959 regarding Saghir Ahmad's voluntary acquisition of Pakistan citizenship, being based on the rules of evidence incorporated in the offending clauses of Schedule III of the Citizenship Rules, is void and inoperative and must be altogether ignored.

8. The applicant was never a foreigner and cannot have committed any offence under the Foreigners Act. This application is accordingly allowed, the conviction and sentence of the applicant being set aside.

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