

**Abdul Haleem Vs. State**

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**Court :** Allahabad

**Decided On :** Apr-26-1961

**Reported in :** 1962CriLJ414

**Judge :** J.N. Takru, J.

**Appellant :** Abdul Haleem

**Respondent :** State

**Judgement :**

ORDER

**J.N. Takru, J.**

1. Abdul Haleem has filed this revision application against an order of the learned Sessions Judge of Rampur whereby he affirmed in appeal an order of a first class Magistrate of the place convicting the applicant Under Section 14 of the Foreigners Act 1946, but reducing his sentence from 18 months R. I. and a fine of Rs. 200/- to one year's R. I. and a fine of Rs. 50/-. The facts giving rise to this revision are as follows :

2. The applicant came to Rampur on the authority of a Pakistani Passport dated the 7th January 1955 and an Indian Visa of Category 'C' dated the 30th January 1957 which entitled him to stay in India for a period of three months. The applicant entered India on the 10th February 1957. His Visa was subsequently extended

Upto the 19th June 1957. The applicant, however, did not leave India by that date and continued to stay on. Consequently on the 26th June 1957 a notice was served on him requiring him to leave India within 30 days of its' service. The applicant even then did not leave the Indian border with the result that after the expiry of those 30 days he was prosecuted under Sec. 14 of the Foreigners Act for 'he contravention of the provisions of Clause 7 of the Foreigners Order .1940.

3. the defence of the applicant was that he was not a citizen of Pakistan .but was ft national of India, that he had gone to Pakistan 'temporarily and as (here was no other means of returning to India, he obtained a Pakistani Passport and came to India where he had been living ever since.

4. The trial court after considering the evidence led by the parties rejected the applicant's defence and holding the prosecution case proved convicted and sentenced him Under Section 14 Of the Foreigners Act 1948, On appeal by the applicant the learned Sessions Judge affirmed his conviction, though he reduced his sentence as mentioned in the opening .paragraph of this judgment.

5. Founding his argument on the recent decision of this Court in State v. Yakub : AIR1961 All428 learns counsel for the applicant submitted that as the applicant was not a foreigner on the date of his entry in India, i. e. the 10th February 1957, he could not be prosecuted for the contravention of the provisions of Clause 7 of the Foreigners Older 1946. On behalf of the State that argument was countered on the ground that the case relied on by the applicant was distinguishable on facts and hence the rule laid down in it had no application to the present case. According to the learned Counsel for the State the respondent in : AIR1961 All428 had entered India on the 12th May 1954 when the amended definition of 'foreigner' as contained in Section 2 (a) of he Foreigners Laws (Amendment) Act 1957 had not come into force, which in the present case the applicant entered India after the amended definition had come into operation.

learned Counsel for the applicant met that argument by submitting that as the Foreigners Laws (Amendment) Act of 1937 received the assent of the President on the 2nd April 1957 it could not 'apply to persons who had entered India before that date, and the provision in that Act which gave retrospective effect, to it from

the 19th January 1957 was void as it violated Article 20(1) of the Constitution of India. The controversy in the present case is thus a very limited one, and centres round the question whether the retrospective effect given to the definition of the word 'foreigner' in the Amending Act of 1957 is valid or not? In my opinion the answer to that question must clearly be given in the negative.

6. Article 20(1) of the Constitution of India relied on by the applicant's learned Counsel lays down that;

No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

7. Now on a plain reading of the aforesaid Article it would appear that the Constitution makers clearly wanted to prohibit export facts laws which, in any way operated to the detriment of one accused of & crime committed prior to the enactment of such laws. In other words, to use the language of their Lordship of the Supreme Court in the case of Shiv Bahadur Singh v. State of V. P. : 1954 CriLJ1480 .

This article in its broad import has been enacted to avoid convictions and sentences under ex-post facto laws....

and after discussing the various foreign authorities on the point, their Lordships state:

But in Article 20 of the Indian Constitution the language used is in much wider terms and what is prohibited is the conviction of a person or his subjection to a, penalty under ex-post-face laws....

8. It follows therefore that the Amendment of the definition of the word 'foreigner' by the Amending Act of 1957 which has the effect of making a person 'foreigner' who was not a foreigner at the time of his entry in India, thus making him liable to prosecution Under Section 14 of the Foreigners Act 1946 for the contravention of the provisions of Clause 7 of the Foreigners Order 1949, must be held to be struck

down by the aforesaid provision of the Constitution of India. And of course, once that is held the rule in : AIR1961 All428 applies with all force to the present case.

9. The result therefore is that the conviction and sentence of the applicant cannot be sustained and his application has to be and is hereby, allowed. The applicant is on bail. He need not surrender and his bonds are hereby discharged. The fine, if paid, shall be refunded to him.

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