

State Vs. Mukhtar Ahmad

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Court : Allahabad

Decided On : Sep-08-1960

Reported in : 1961CriLJ333

Judge : V.D. Bhargava and ;J.N. Takru, JJ.

Appellant : State

Respondent : Mukhtar Ahmad

Judgement :

J.N. Takru, J.

1. These three appeals by the State are directed against an appellate order of the learned Sessions Judge of Allahabad and two appellate orders of the learned Civil and Sessions Judge of Rampur acquitting Mukhtar Ahmad in the first appeal and Guchhan and Ibban Khan in the second and third appeals respectively under Section 14 of the Foreigners' Act, 1946 - hereinafter called the Act of 1946 - for the contravention of para 7 of the Foreigners' Order of 1948 - hereinafter called the Order of 1948, As all these appeals raise the same question of law, it will be convenient to dispose of them by a single judgment. The facts, strictly relevant for the decision of these appeals, are not in dispute and, stated briefly, are as follows:

2. Mukhtar Ahmad, the respondent in G. A; No. 2216 of 1959, was formerly a citizen of India. In 1948 he went away to Pakistan. After residing there for a Few

years lie applied for, and was grant-ed, a Passport by the Pakistan Government on the 2nd of December, 1954. Thereafter on the 22nd December, 1954 he obtained an Indian Visa which was valid for a period of three months to begin with. He entered the territories of India on the 4th of January 1955 and arrived in Allahabad three days later.

Subsequently he obtained an extension of his Visa till the 20th of December, 1955. He however did not leave India by the 20th December, 1955, Thereafter on the 15th of August, 1957 he was served with a notice requiring him to leave this country within a month. He however did not comply with that notice either, with the result that he was prosecuted under Section 14 of the Act of 1946 for the contravention of para 7 of the Order of 1948.

3. Ibban Khan, the respondent in G.A. No. 2472 of 1959 entered the territories of India on the 11th of March, 1955 on the basis of a Pakistan Passport dated the 3rd of January, 1953 and an Indian Visa dated the 10th of March 1955 which was valid up to the 9th of June 1955. He however did not leave India before the expiry of the said period, with the result that he was prosecuted under Section 14 of the Act of 1946 for the contravention of para 7 of the Order of 1948.

4. Guchhan, the respondent in G. A. No. 2473 entered the territories of India on the 31st of March 1954 on the basis of a Pakistan Passport dated the 12th February 1954 and Indian Visa, dated the 29th March 1954 which was valid upto 30th of May 1954. He did not leave India before the expiry of the said period, with the result that on the 8th of November, 1958 he was served with a notice requiring him. to leave India within thirty days. He however did not leave India within the aforesaid period of grace allowed to him and hence he was prosecuted under Section 14 of the Act of 1946, for the contravention of para 7 of the Order of 1948.

5. In all these three cases, the respondents were convicted and sentenced by the trial court but were acquitted by the lower appellate court on the ground that as they were not 'foreigners' on their respective dates of entries into India, they could not be held guilty for contravening the provisions of para 7 of the Order of 1948.

6. From the aforesaid recital of facts it will be apparent that the only question of law involved in these appeals is whether the respondents thereof can be held to be foreigners within the meaning of para 7 of the Order of 1948. Now, normally, this question, in view of our recent decision in *State v. Yaqub*, Govt. Appeal No. 1602 of 1959, D/- 28-7-1960: : AIR1961 All428 would not have required any fresh consideration by us. Mr. Bhatt, learned counsel for the State, however contended that the said decision required reconsideration as it had omitted to take into account the amendment made in the definition of the word 'foreigner' by the Adaptation of Laws Order 1950 - hereinafter called the Order of 1950.'

According to him as a result of the said amendment a new category, comprising of people who were not citizens of India, was added to that definition as from the 26th January, 1950, and as all these respondents had failed to prove that they were citizens of India on their respective dates of entries into this country, they must be held to be 'foreigners' who were liable to prosecution under Section 14 of the Act of 1946 for the contravention of para 7 of the Order of 1948.

7. Before we consider the merits of this contention it is necessary to state that the appeal of the *State v. Yaqub* : AIR1961 All428 (supra), was also argued before us by Mr. Bhatt and the Order of 1950 on which reliance is now being placed was not brought by him to our notice then, nor did we find any reference to it in either of the two decisions of this Court which were cited before us at that time. The decision of that case, therefore, proceeded upon the definition of the word 'foreigner' as it stood before the Order of 1950. It has, consequently, become necessary for us to re-examine that question in the light of this amended definition. This we shall proceed forthwith to do.

8. The order of 1950 which came into effect from the 26th of January 1950, made an amendment in the definition of the word 'foreigner' as it stood under the Act of 1946. As a result of this amendment - which remained in force till the Foreigners (Amendment) Act of 1957 came into force - the word 'foreigner' was defined as a person who-

(1) is not a natural born British subject is-defined in Sub-sections (1) and (2) of Section 1 of the British Nationality and Status of Aliens Act, 1914, or

(2) has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in India, or

(3) is not a citizen of India.

9. A plain reading of the aforesaid provision appears to us to create three categories of persons, who are exempt from the definition of the word 'foreigner'. In other words, so long as a person could prove himself, to fall in any one of these categories, he could not be termed a 'foreigner'. The contention of the learned counsel for the State, if it were accepted, would have the effect of narrowing and confining that definition to persons falling within the third category only - a contention which on the clear language of that definition we cannot countenance, apart from the fact that it would have the effect of rendering the first two sub-clauses of that provision wholly redundant and meaningless. On the principle of harmonious construction the provisions of an enactment have to be so construed, as far as possible, so as to make them reconcile with each other. This is possible only if the construction which we have placed above on the definition of the; word 'foreigner' is accepted.

10. In the present cases, learned counsel for the State has had to concede that the respondents fell within the first category which has been except-ed from the definition of the word 'foreigner'. It was, therefore, not necessary for them to have also proved that they were citizens of India when they entered the territories of that country. None of them can therefore, be held to have been a 'foreigner' on the date of his entry into this country and none of them was therefore liable to prosecution under Section 14 of the Act of 1946 for tile contravention of para 7 of the Order of 1948. All of them were therefore rightly acquitted.

11. The result therefore is that all these three appeals fail and are hereby dismissed.