

State of U.P. Vs. Mohammad Amin

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Court : Allahabad

Decided On : Oct-26-1971

Reported in : 1972CriLJ556

Judge : M.N. Shukla and ;K.N. Seth, JJ.

Appellant : State of U.P.

Respondent : Mohammad Amin

Judgement :

K.N. Seth, J.

1. This is an appeal by the State of U. P. against the order of the learned Session? Judge. Azamgarh, dated 15-7-1968, allowing the appeal of Mohammad Amin and setting aside his conviction and sentence under Section 14 of the Foreigners Act.
2. The respondent, Mohammad Amin was sent up for trial on the allegations that he had voluntarily acquired the citizenship of Pakistan and intentionally disobeyed the order of the State Government to leave India within twenty-four hours and thereby committed an offence punishable under Section 14 of the Foreigners Act.
3. It is apparent from the evidence on record that the question of citizenship of the respondent was determined by the Government of India under Section 9(2) of the Citizenship Act and Rule 30 of the Citizenship Rules by an order dated 20-9-1966.

A copy of the aforesaid order was served on the respondent on 13-10-1966. On 21-11-1966 the prescribed Authority, exercising the delegated power of the Central Government, passed an order under Section 3(2)(c) of the Foreigners Act directing the respondent to leave India within twenty-four hours. This order was served on the respondent on 14-12-1966 and this fact has been admitted by the respondent in his statement under Section 342 of the Criminal Procedure Code. On his failure to obey the directions contained in the notice, he was arrested on 15-12-1966 and a report was lodged at the police station and a case was registered under Section 14 of the Foreigners Act.

4. The respondent denied that he was a Pakistani national and pleaded not guilty to the charges levelled against him. He, however, admitted that a notice was served on him to leave the country within twentyfour hours and that he was arrested after the expiry of the period of notice. He also took the plea that he was once tried and acquitted,

5. The learned Magistrate after considering the evidence produced by the prosecution and on behalf of the defence held that the Government of India had declared the respondent a citizen of Pakistan and that he had over-stayed in India and did not leave the country within twenty-four hours of the service of the order as directed in the order dated 21-11-1966 and was. therefore guilty of the offence punishable under Section 14 of the Foreigners Act. He accordingly convicted and sentenced the respondent to undergo rigorous imprisonment for one year by his order dated 17-10-1967.

6. Mohammad Amin preferred an appeal against his conviction and at the appellate stage filed a certified copy of the order dated 12-3-1965 passed by Sri S. P. Saxena, the Sub-Divisional Magistrate, Sagri, Azamgarh, and on the strength of this order : it was contended that he could not be prosecuted again as he had been acquitted earlier for an offence punishable under Section 14 of the Foreigners Act. The learned Sessions Judge accepted this contention and acquitted the respondent and hence the appeal by the State.

7. A perusal of the order dated 12-3-1965 shows that the respondent was arrested on 27-3-1964 and prosecuted for having committed breach of the provisions of

paragraph 7 of the Foreigners Order 1948 inasmuch as he entered India on 13-3-1957 on a Pakistani passport and an Indian Visa which entitled him to stay in India for a period of three months only. The learned Magistrate trying the case accepted the prosecution case that Mohammad Amin had entered India on a Pakistani passport and an Indian Visa, but came to the conclusion that he was a citizen of India. The learned Magistrate further held that the question whether the accused had renounced the citizenship of India and become a national of Pakistan by obtaining a Pakistani passport could not be decided by him in view of the provisions of Section 9(2) of the Citizenship Act. The learned Magistrate acquitted the accused of the charge framed against him.

8. In order that the earlier trial and acquittal may operate as a bar to the subsequent trial and conviction of the accused, it is necessary that the subsequent trial must be for the same offence or on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, or for which he might have been convicted under section 237 of the Code of Criminal Procedure. This principle is recognised under Section 403 of the Criminal Procedure Code and the same principle is embodied in Article 20(2) of the Constitution of India. The principle would not be applicable if the offence for which the accused is tried subsequently is a distinct offence based on a different set of facts. The earlier trial of the respondent was for violation of paragraph 7 of the Foreigners Order 1948 and at a stage when the question of the respondent's citizenship had not been determined by the Central Government. That case related to the charge of overstaying in India after the expiry of the period for which he was entitled to remain in this country under the Visa granted to him. In view of the fact that the court was not competent to decide the question whether he had acquired Pakistani nationality by obtaining a passport, and the question of his citizenship had not been determined by the Central Government, he could not be convicted for the charges levelled against him. In the present case the Central Government by its order dated 20-9-1966, passed under Section 9(2) of the Citizenship Act and Rule 30 of the Citizenship Rules, determined that the respondent voluntarily acquired the citizenship of Pakistan after 26-1-1950 and before 10-7-1956. Thereafter an order under Section 3(2)(c) of the Foreigners Act was passed directing him to quit India within twentyfour hours. It was for

intentionally disobeying the order of the prescribed Authority to leave India within twentyfour hours that the present prosecution was launched. These facts and circumstances, which gave rise to the present trial, were not even in existence when the respondent was tried at an earlier stage. The offence for which he has been prosecuted now is not the same for which he had been tried and acquitted earlier. The finding arrived at in the earlier case would not operate as *res judicata* in the present case.

9. The view of the learned Sessions Judge that the order of the Central Government dated 20-9-1966 could not change the status of the respondent and he would not cease to be a citizen of India is palpably erroneous. Under Section 9(2) of the Citizenship Act the Central Government is competent to decide the question whether, when or how any person has acquired the citizenship of another country. Once that determination is made by the Central Government, such a person ceases to be a citizen of India. According to the learned Sessions Judge this decision should have been obtained during the pendency of the previous case, but once that case has been decided, it was not open even to the Central Government to decide whether the respondent had renounced the citizenship of India and had become a national of Pakistan. This reasoning of the learned Sessions Judge is devoid of any merits and cannot be accepted.

10. On the basis of the evidence produced in the present case we are satisfied that the respondent is a citizen of Pakistan and he intentionally disobeyed the order passed under Section 3(2)(c) of the Foreigners Act asking him to leave this country within the specified time and thereby committed an offence punishable under Section 14 of the Foreigners Act and the present trial and conviction would not be barred under the principle incorporated in Section 403 of the Code of Criminal Procedure or Article 20(2) of the Constitution of India or the general principles of *res judicata*.

11. The appeal is accordingly allowed and the order of the learned Sessions Judge dated 15-7-1968 acquitting the respondent is set aside. The order of the learned Magistrate date 17-10-67 convicting the respondent under Section 14 of the Foreigners Act and sentencing him to rigorous imprisonment for one year is

restored. The respondent shall be taken into custody forthwith to serve out the sentence awarded to him.

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