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Mohammad Shafi Vs. State

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Court : Allahabad

Decided On : Feb-18-1952

Reported in : AIR1952All921

Judge : Raghubar Dayal and Agarwala, JJ.

Appeal No. : Criminal Revn. No. 1938 of 1949

Appellant : Mohammad Shafi

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Jagnandan Lal, Adv.

Disposition : Application allowed

Judgement :

Agarwala, J.

1. This is an application in revision by Mohammad Shafi who has been convicted under Section 4, read with Section 3 of Ordinance 17 (xvn) of 1948--Influx from West Pakistan (Control) Ordinance, 1948.

2. Mohammad Shafi who alleges himself to be a resident of Kandala in the district of Muzaffar-nagar seems to have gone to West Pakistan and while there he

intended to come back to India He was granted a temporary permit on 2-8-1948. The permit described the duration of the visit as one month and was to commence from 2-8-1948. The date of expiry of the permit was not noted. It may be assumed for the purpose of this case that the permit was to expire on 2-9-1948. After having come to India he overstayed beyond 2-9-1948 and did not go back to Pakistan. He was arrested by the police on 1-10-1948, prosecuted under Section 4 of Ordinance XVII [17] of 1948, and convicted by the Magistrate and sentenced to six months' rigorous imprisonment. The conviction was affirmed in appeal by the Sessions Judge, Muzaffarnagar.

3. The Influx from West Pakistan (Control) Ordinance XVII [17] of 1948 which came into force on 19-7-1948, did not itself provide a penalty for overstaying beyond the limits mentioned in the permit. Section 3 merely prohibited the entry of a person into India from any place in West Pakistan unless he was in possession of a permit etc. Section 4 provided for a penalty for any person who contravened the provisions of Section 3, or of any rule made thereunder. The first rules framed under this Ordinance were published in the Gazette dated 7-8-1948. In these rules also there was no rule which prohibited overstay in India after the expiry of the term of the permit.

This omission was remedied in the rules which were made on 7-9-1948. These rules were called 'Permit System Rules' of 1948. Rule 12 of these Rules provided that no person holding a temporary permit would stay in India after the date of expiry of such permit. But, as already stated, this rule was not in existence before 7th September. In the case of the applicant the term of the permit expired on 2-9-1948. He did not, therefore, commit any offence when he overstayed after 2nd of September, at any rate, upto 6-9-1948, before Rule 12 was made. The question, therefore, is whether he can be held guilty of an offence under Section 4 of Ordinance XVII [17] of 1948 because of the coming into force of Rule 12 of 7-9-1948.

4. It was urged by the learned Assistant Government Advocate that as soon as Rule 12 came into force the overstay of the applicant became illegal. We do not think that this contention is correct. Rule 12 speaks of the date of the expiry of the

permit. Ordinarily an Act operates only on cases and facts which come into existence after the statute is passed--vide Bourke v. Nutt, (1894) 1 Q. B. 725. This is on the general principle that a statute is not retrospective in operation anddoes not affect vested rights. When the rule speaks of the expiry of a temporary permit, it is intended that the expiry should occur after therule had come into force. In the present case, as the expiry had occurred before the rule came into force the rule has no application to the case.We, therefore, hold that the applicant was not guilty of any offence.

5. We, therefore allow this application, set aside the conviction of the applicant and quash the sentence passed against him. He is on bail.He need not surrender.

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