

State Vs. Abdul Ghani

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Court : Allahabad

Decided On : Apr-21-1978

Reported in : 1978CriLJ1345

Judge : H.N. Kapoor, J.

Appellant : State

Respondent : Abdul Ghani

Judgement :

H.N. Kapoor, J.

1. This is a Govt. Appeal against the order and judgment dated 7-6-1972 of the Civil and Sessions Judge, Jaunpur in Cr. Appeal No. 1 of 1972 by which he allowed the appeal and set aside the order of the Magistrate convicting the respondent Abdul Ghani under Section 14 of the Foreigners Act and sentencing him to two years' R.I.

2. The facts giving rise to this appeal briefly stated are as follows : - The respondent Abdul Ghani had entered India in 1954 on the basis of a Pakistani passport which was valid for a period of two months. He did not return back. On 3-2-1967 S. I, Ram Chandra Singh arrested him for his over-staying in India and lodged a written report at police station Chandwak on the basis of which the respondent was duly prosecuted. It is not disputed that he was originally a resident

of village Barauti, P. S. and district Jaunpur before the migrated to Pakistan. During the pendency of the trial, a declaration of the Central Government was made under the Citizenship Act by the order dated 14-2-1969 that the respondent had acquired citizenship of Pakistan after 25-1-1950. It has, therefore, got to be emphasised that he had not migrated to Pakistan prior to 25-1-1950. In the application for obtaining passport, he had shown that he had migrated to Pakistan on 2-10-1950. Even this much has been disputed by the respondent. However, the fact remains that he was declared a Pakistani citizen on the definite finding that he migrated to Pakistan after Jan. 25, 1950.

3. The defence was that the respondent was never a Pakistani national and had not migrated to Pakistan and that the prosecution witnesses had deposed against him in this respect due to enmity. He had examined five witnesses in defence to show that he remained in India throughout. The learned Magistrate did not accept the defence case and held that the respondent was a Pakistani national and had committed an offence under Section 14 of the Foreigners Act read with para. 7 of the Foreigners Order, 1948, by over-staying in India.

4. Learned lower appellate court, however, took the view that according to the definition given under the Foreigners Act, 1946, as it stood in 1954, the respondent was not a foreigner and as such he could not be convicted for any such offence. It relied on the case of Fida Hussain v. State of U.P. : [1962]1SCR776 and some other decisions of our High Court and so acquitted the respondent. Feeling aggrieved, the State has filed this appeal.

5. Learned Counsel for the State has argued that the declaration made by the Central Government under the Citizenship Act of 1955 was binding on courts and as such the respondent should have been convicted. He has placed reliance on the case of State of Gujarat v. Yakub Ibrahim : 1974 CriLJ597 and on the case of the State of Assam v. Jilkadar Ali : 1972 CriLJ1441 in support of his contention. In the latter decision, the case of Fida Hussain was distinguished and aid was taken of Article 7 of the Constitution. In my opinion, both these cases are distinguishable. In the case of Jilkadar Ali, the finding was that the accused had migrated to Pakistan before 26th Jan. 1950, and as such Article 7 of the Constitution was

attracted. In the case of Yakub Ibrahim, the finding was that the accused had entered India in 1957, that is, after coming into force of the amending Act when the definition of the foreigner had been changed. In my opinion, the case of State of U. P. v. Rahmatullah : 1971 CriLJ1103 applies on all fours to the facts of the present case. In that case also the findings were that the accused had entered India in Jan. 1955, that is, before the coming into force of the Citizenship Act and he had, however, over-stayed beyond 25th May, 1956 although he had got an extension for staying in India only till 25th of May, 1956. In that case also the Central Government had declared that he had migrated to Pakistan after 25th of Jan. 1950 and had become a citizen of Pakistan before he re-entered India in April, 1955. Their Lordships held that he might have become a foreigner under the Foreigners Act as amended in 1957. But he could not be prosecuted for overstaying in India in 1955 and in 1956 when he could not be treated as a foreigner according to the definition of foreigner as it then stood. The following observations may be reproduced here with advantage; (at p. 1108 of Cri LJ):

The order of the Central Government is clearly final and it has remained unchallenged by the respondent even after he was informed of this order on March, 29, 1965. We have seen the proceedings of the Central Government and we find that the respondent had been given full opportunity of putting forth his case. The binding nature of that order was not, and indeed it could not be, questioned before us. The determination by the Central Government in this case could not have the effect of retrospectively rendering a penal offence an act which was not so at the time of its commission. The respondent even though held to be a Pakistani and therefore a foreigner, before the charge was framed against him is entitled to the protection of our laws.... It will of course be open to the Central Government to take such suitable action against the respondent under the Foreigners Act or under any other provision of the law which may be applicable to him, for the purpose of either deporting him or otherwise dealing with him as is thought fit.

In fact similar view was taken by the Hon. Supreme Court in Fida Hussain's case 1961 (2) Cri LJ 702 that it was still possible for the Government to pass a fresh order under Section 3(ii)(c) of the Foreigners Act, 1957. This would imply that on the basis of a suitable order it may be possible for the State to prosecute the

respondent again for non-compliance with certain direction. But he could not be prosecuted retrospectively for an offence committed in 1954 when he could not be considered to be a foreigner under the definition given in the Foreigners Act. The view taken by the lower appellate Court is, therefore, correct.

6. There is no force in this appeal. It is accordingly dismissed.

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