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**State Vs. Hamidkhan**

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**Court** : Madhya Pradesh

**Decided On :** May-04-1956

**Reported in** : 1956CriLJ1326

**Judge** : Nevaskar and ;Samvatsar, JJ.

**Appellant** : State

**Respondent** : Hamidkhan

**Judgement** :

**Samvatsar, J.**

1. This Is an appeal filed by the State of Madhya Bharat against an order of the Additional District Magistrate, Mandsaur by which he acquitted the respondent Hamidkhan.

2. The facts of the case are that the accused-respondent Hamidkhan, who is alleged to be a Pakistani national, came to India under a passport No. 252641 dated 3-1-55 and 'C category Visa No. 15705 dated 17-3-55. As per conditions of the Visa he was to leave India before 16-6-1955. It is alleged that on 10th June, 1955, he made a report at the Mandsaur police station that he was leaving India but did not act accordingly. On 14-9-1955, he was found at Mandsaur and was therefore arrested and put up for trial under Section 3 of the Indian Passport Act read with Rules 5 and 6 made thereunder.

3. The accused-respondent admitted overstaying but the learned Magistrate acquitted him holding that by overstaying in India after the period of the passport had expired, no offence was committed by the accused. It is against this order of acquittal that the present appeal is preferred by the State.

4. It was contended that the view taken by the Magistrate was wrong and that the accused-was guilty because he had overstayed after the period mentioned in the passport and the Visa had expired.

5. The question to be considered therefore, is, whether the accused by remaining in India after the period of the passport had expired, has committed an offence under the Indian Passport Act or rules framed thereunder.

6. Section 3 of the Indian Passport Act confers on the Central Government power to make rules requiring that persons entering in India shall be in possession of passports and for all matters ancillary and incidental for that purpose. The-Central Govt. have pursuant to this power framed rules which are known as the Indian Passport. Rules.

7. By Section 3(3) powers are conferred on the Central Government to provide that any contravention of the rules or of any orders issued tinder authority of such rules shall be punishable with a term of imprisonment upto three months or with fine or both.

8. Section 3(4) provides that all the rules framed under this Section shall be published in the Gazette and shall have effect as if enacted in this Act.

9. For determining whether there is any contravention of the provisions of the Passport Act and if so, whether such a contravention is punishable with imprisonment specified in Section 3(3), we have to look to the rules framed by the Government. There is nothing in the Act which is material for this purpose.

10. Rule 6 of the Indian Passport Rules deals with punishments. This rule is as follows:

Any person who-

(a) contravenes or abets the contravention of Rule 3, or

(b) does or attempts to do, any act in contravention of any condition prescribed under Sub-rule (2) of Rule 4,

shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

11. What is punishable under this rule is therefore a breach of Rule 3 or breach of conditions prescribed in Sub-rule (2) of Rule 4. A plain reading of R, 3 shows that it was intended to prevent any person from entering the Indian territories without a valid passport under conditions prescribed in Rule 5.

12. There is nothing in this rule, therefore, which makes overstaying after the period limite by the passport an offence punishable under the passport rules. The learned Magistrate was therefore justified in holding that the act of the accused did not constitute any offence and he cannot be convicted under the passport rules.

13. In 'The State v. Mohommad Ismail' Criminal Appeal No. 84 of 1955 (A), a Division Bench of this Court had considered a similar case. In that case also the accused overstayed in India after the expiry of the time prescribed by the passport. He was prosecuted before the Additional District Magistrate Ujjain but was acquitted by him and the State had preferred an appeal. It was held that the accused had not contravened any of the provisions of the rules framed by the Government under Section 3 of the Indian Passport Act.

14. A similar view had also recently been taken by the High Court of Allahabad in 'Chhanga Khan v. The State of Uttar Pradesh' : AIR1956 All69 . That was also a case in which the accused had overstayed after the period prescribed in the passport had expired. He was therefore prosecuted under Section 3 of the Passport Act. It was held that in the Passport Act and the rules framed under Section 3, there is no provision of law which provides a punishment for overstaying in India if the passport is valid.

15. In this view of the case I do not think there is any substance in the appeal and it is therefore dismissed.

**Nevaskar, J.**

16. I agree.

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