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Court : Gujarat

Decided On : Aug-05-1964

Reported in : 1966CriLJ210

Judge : V.B. Raju, J.

Appellant : The State of Gujarat

Respondent : Muniruddin, Shabhuddin

Judgement :

V.B. Raju, J.

1. This is an appeal by the State against the acquittal of the respondent, who was prosecuted under Section 14 of the Foreigners Act, 1946. The prosecution case was that the respondent was a foreigner and he had stayed in India beyond the time granted in a Residential Permit, which was issued to him, permitting him to stay in India upto 20th June, 1962, The Residential Permit has been produced. In view of the provisions of Section 9 of the Foreigners Act, the burden of proving that a person is not a foreigner is on the person who says that he is not a foreigner, namely, on the respondent. Foreigner, as defined in the Foreigners Act means a person, who is not a citizen of India. Therefore, the respondent had to prove that he was a citizen of India. In order to prove that he is a citizen of India, the respondent relied on a birth certificate of 1926, showing that a son was born to Shahbuddin Allauddin on 7th November 1926 at Borsad. There is evidence to

show that the birth certificate relates to the respondent. Therefore, there is evidence to show that the respondent was born at Borsad on 7th November 1926. But that is not sufficient to prove citizenship at the date of the prosecution or at the date of the commencement of the Constitution of India. Article 5 of the Constitution reads as follows:

At the commencement of this Constitution, every person who has his domicile in the territory of India and--

(a) Who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

Under this Article, therefore, two things must be proved, namely, that the person has his domicile in the territory of India at the commencement of the Constitution, and secondly one of the things referred to in Clauses (a) or (b) or (c). The second requirement has been satisfied in this case. But the respondent has not proved that he had his domicile in the territory of India at the commencement of the Constitution. He relied on an entry in a School Register, but this relates to the year 1938, because it is stated in the certificate that the respondent left the school on 1st December 1938. The respondent also relied on an entry in the electoral-roll of 1961. The entry relating to the year 1961 is irrelevant for the purpose of Article 5 of the Constitution. The name in the electoral roll is also different. The qualifications to be a voter may be different from the qualifications for acquiring a domicile. The respondent has not relied on any other documentary evidence. Even the oral evidence relied upon by him does not show that he had his domicile in the territory of India at the date of the commencement of the Constitution. Therefore, the respondent has failed to prove one of the requirements of Article 5 of the Constitution, namely, that the respondent had his domicile in the territory of India at the commencement of the Constitution. The respondent has, therefore, failed to prove that he was a citizen of India at the commencement of the Constitution. He has not led any evidence to prove that he was a citizen of India at the time of the

prosecution. There cannot be oral evidence on the point of citizenship, although there can be oral evidence as to the place of birth, residence etc. The finding of the lower Court that the respondent has proved that he is not a foreigner is erroneous. The fact that he had over stayed the permit is admitted. As a matter of fact, on the first question we must also consider the statement made by the respondent in the Pakistani Passport that he was a Pakistani citizen. It is true that it is a reputable presumption. But for the reasons already given, the respondent has not proved one of the requirements of Article 5 of the Constitution.

2. I, therefore, hold that the respondent has not proved that he was not a foreigner. The acquittal order is, therefore, wrong and is set aside. The respondent is convicted under Section 14 of the Foreigners Act for contravening the order issued under Section 3 of the said] Act and is sentenced to rigorous imprisonment for six months and a fine of Rs. 200/- (two hundred rupees) in default two months rigorous imprisonment.

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