

State Vs. Abdul Majid and ors.

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Court : Rajasthan

Decided On : Feb-23-1959

Reported in : AIR1959Raj131; 1959CriLJ772

Judge : K.K. Sharma and; D.S. Dave, JJ.

Acts : [Foreigners Act, 1946](#) - Sections 2 and 14; Foreigners Laws (Amendment) Act, 1957; [Foreigners Order, 1948](#) - Sections 7; Registration of Foreigners Rules, 1939

Appeal No. : Criminal Appeal Nos. 110, 111 and 112 of 1957

Appellant : State

Respondent : Abdul Majid and ors.

Advocate for Def. : Ranamal, Adv.

Advocate for Pet/Ap. : Kansingh, Dy. Govt. Adv.

Disposition : Appeals dismissed

Judgement :

D.S. Dave, J.

1. The facts out of which the above noted three appeals have arisen are similar and since a common question of law is involved in all of them, they are disposed

of together.

2. The allegation against all the accused was that they are nationals of Pakistan. It was alleged against accused Abdul Majid that he came from Pakistan to Tonk with a Passport No. 249526 and Visa No. 6932. He arrived in India on 14-3-1950. According to the original terms of his Visa and Passport, he should have returned to Pakistan earlier, but since he got the period of stay extended up to 31-1-1957, he ought to have left this country on that date.

3. Against the second accused Mohd. Yusuf, it was similarly alleged that he came from Pakistan to Tonk with a Pass-port No. 090124 and Visa No. 62962. He arrived in India on 4-10-1956. According to the terms of his Visa and Pass-port, he should have left this country on 3-2-1957, but he did not do so.

4. Similarly, it was alleged against accused Mohd. Rafiq that he came to India from Pakistan with a Pass-port No. 202406 and Visa No. 24282 dated 2-4-1956. His Visa was valid for three months from the date of entry. He arrived at Tonk on 25-4-1956. He did not return to Pakistan within the period allowed to him and he was arrested at Tonk on 12-4-1957 on account of his over-stay.

5. All the three accused mentioned above were separately challenged by the police under Section 14 of the Foreigners' Act, 1946 (Act XXXI of 1946) (which will hereinafter be referred as the Act) for contravention of Section 7 of [Foreigners Order, 1948](#) (which will hereinafter be referred as the Order). The Sub-divisional Magistrate, Tonk in whose court the accused were tried, held that the conduct of the accused did not come within the purview of Section 7 of the Order and, therefore, he acquitted all of them of the charge on 20-5-1957.

6. Learned Deputy Government Advocate has urged that the trial court has committed an error in understanding Section 7 of the Order and this Court should therefore set aside the acquittal of the accused and punish them under Section 14 of the Act. The only question for determination before this Court is whether Section 7 of the Order is applicable to the accused and therefore, it would be proper to reproduce it here. It runs as follows:

'7. Restriction on sojourn in India -- Every foreigner who enters India on the authority of a Visa issued in pursuance of the Indian Pass-port Act, 1920 (XXXIV of 1920) shall obtain from the Registration Officer having jurisdiction, 'either at the place at which the said foreigner enters India or if he has entered India otherwise than on the authority of a transit visa or as a tourist as defined in the Registration of Foreigners Rules, 1939, at the place at which he resides in India,' a permit indicating the period during which he is authorised to remain in India and shall, unless the period indicated in the permit is extended by the Central Government, depart from India before the expiry of the said period; and at the time of foreigner's departure from India the permit shall be surrendered by him to the Registration Officer having jurisdiction at the place from which he departs:

Provided that this requirement shall be deemed to have been complied with a foreigner who enters India as a 'Tourist' is granted a certificate of Registration in Form 'D' as provided for in the Registration of Foreigners Rules, 1939.'

7. It may also be pointed out that the definition of a 'foreigner' in the Act as modified by Act 38 of 1947 was as follows:

'2(a) 'Foreigner' means a person who: (i) is not a natural-born British subject as defined in Sub-sections (1) and (2) of S. 1 of the British Nationality and Status of Aliens Act, 1915 (4 and 5 Geo, 5, C. 17), or

(ii) has not been granted a certificate of naturalization as a British subject under any law for the time being in force in India, or

(iii) is not a ruler or subject of an acceding State, or

(iv) is not a native of the Assam tribal areas;

provided that any British subject who, under any law for the time being in force in India, ceases to be a British subject shall there upon be deemed to be a foreigner.'

8. This definition was amended by the Foreigners Laws (Amendment) Act, 1957 and the following definition was substituted:

'2(a) 'Foreigner' means a person who is not a citizen of India.'

9. It has been very frankly conceded by learned Deputy Government Advocate that the accused did not come within the definition of a 'foreigner' as it existed before its amendment by the Foreigners Laws (Amendment) Act, 1957, but it is argued that all the accused are now foreigners after the said amendment and, therefore, they should have obtained a permit from the Registration Officer having jurisdiction according to the provisions of Section 7 of the Order and since they failed to obtain any such permit after the expiry of the period of their Visas, they committed a breach of the said section and so they should be punished under Section 14 of the Act.

10. Accused Mohd. Rafiq is not represented by any counsel in this Court. Learned counsel for Abdul Majid and Mohd. Yusuf has urged, on the other hand, that Section 7 of the Order is not applicable to his clients, because they were not foreigners on the date they entered India. It is contended that the accused were not foreigners within the definition of that word on the date they came to this country and. that since they have not entered India as foreigners, they cannot be punished for breach of the section.

11. We have given due consideration to the arguments advanced from both the sides and we think that the view taken by the trial court is not incorrect. It may be pointed out that Section 7 of the Order may be analysed as follows. It provides in the first instance that every foreigner who enters India on the authority of a Visa issued in pursuance of the Indian Passport Act. 1920 shall obtain from the Registration Officer having jurisdiction, a permit indicating the period during which he is authorised to remain in India and shall, unless the period Indicated in the permit is extended by the Central Government, depart from India before the expiry of the said period.

It further requires that at the time of foreigner's departure from India, the permit shall be surrendered by him to the Registration Officer having jurisdiction at the place from which he departs. It also lays down as to where and when the said permit should be obtained. It says that the foreigner shall obtain the permit.

'(1) either at the place at which the said foreigner enters India, or (2) if he has entered India otherwise than on the authority of a transit visa or as a tourist as

defined in the Registration of Foreigners Rules, 1939, at the place at which he resides in India.'

12. Now, it is conceded by learned Dy. Government Advocate that the first portion, namely either at the place at which the said foreigner enters India, would not apply to the accused, because at the time of their entry, they were not foreigners and, therefore, they could not have thought of obtaining a permit at the place and at the time when they entered India.

The argument of the learned Dy. Government Advocate is that even though the accused were not foreigners at the time when they entered India, they became foreigners after the amendment of the definition of 'foreigner' in 1957 and since they have entered India otherwise than on the authority of a transit visa or as tourists as defined in the Registration of Foreigners Rules, 1939, it became their duty to obtain the permit at the place, they were residing in India, as soon 'as the said legislative change took place in the definition of the word 'foreigner'.

13. We have given due consideration to this issue, and, in our opinion, this construction would not be correct, because the pronoun 'he' in the words 'or if he has entered India otherwise than.....' refers to the term 'foreigner' appearing in the opening clause of the Order. The accused were not foreigners in the legal sense of that term as used till the Foreigners Laws (Amendment) Act, 1957 came into force and in the absence of any express provision or necessary implication arising out of the language of Section 7 of the Order, it cannot be held that this section had retrospective effect.

In our opinion, if the legislature wanted that those persons who were not foreigners before the Amendment Act of 1957, were required to obtain permits under Section 7 of the Order, then some change ought to have been made in the language of this section as well. This section admittedly stands as it was before the Foreigners Laws (Amendment) Act, 1957 came in force and it cannot apply to these accused, because they have not entered India as foreigners.

If the interpretation suggested by learned Dy. Government Advocate is accepted, then, it would mean that the accused had committed a breach of the provisions of

Section 7 even at the time, they entered India and they would be deemed to have committed an offence retrospectively from the date of their entry in India.

14. A similar question arose in Criminal Appeal No. 340/1958 State v. Mahmadv. Navrangkh. decided by a Division Bench of the Bombay High Court on 23-9-1958. A certified copy of that judgment has been produced before us. In that case, the accused was granted a Visa on 3-7-1956 and it was valid for three months from the date of the entry in India. The accused came to India on 12-7-1956 and he did not leave India after 11-10-1956. which was the last date up to which he could stay.

On 21-6-1957, the District Police Superintendent gave him a notice to quit Bharat within a month, but the accused did not leave India in spite of that order. He was, therefore, prosecuted for breach of Section 7 of the [Foreigners Order, 1948](#). He was acquitted by the Magistrate and, therefore, an appeal was filed by the State of Bombay. After referring to Section 7 of the Order, it was held by the learned Judges as follows:

'The wordings of this paragraph makes it clear that before there could be any contravention of the provisions thereof, it must be shown that the person who entered India was a foreigner and that having entered India he failed in the first instance to obtain a permit from the requisite authority and thereafter failed to depart from India before the expiry of the said period. If so. then the question arises, 'Was the respondent a foreigner on 12-7-1956 when he entered India?'

The learned Judges came to the conclusion that he was not a foreigner on the date of his entry in India and the Order of his acquittal was maintained. The view which we have taken is fortified by the above decision.

15. We, therefore, see no good reasons to set aside the judgment of the trial court. All the three appeals are, therefore, dismissed.