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Mst. Bashiran Vs. State

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Court : Rajasthan

Decided On : Sep-10-1956

Reported in : AIR1957Raj348; 1957CriLJ1315

Judge : Sharma, J.

Acts : Passport Rules, 1950 - Rules 3, 5 and 6; Code of Criminal Procedure (CrPC) , 1898 - Sections 439

Appeal No. : Criminal Ref. No. 24 of 1956

Appellant : Mst. Bashiran

Respondent : State

Advocate for Def. : B.C. Chatterji, Adv.

Advocate for Pet/Ap. : N.C. Sharma, Adv.

Disposition : Reference accepted

Judgement :
ORDER

Sharma, J.

(1) This is a reference by the learned Sessions Judge, Jhunjhunu recommending that the conviction of Mst. Beshiran and her husband Mollabux under Rule 6 read

with Rule 3 of the Indian Passport Rules, 1950 (hereinafter to be referred to as the Rules) be set aside.

(2) The applicant along with Mollabux are nationals of Pakistan. They came to India under passport No. 328843 on 25th August, 1955. They had a category 'C' visa to visit India and it authorised them to stay in India uptil 18th November, 1955. They, however, did not leave this country on or before that date but over-stayed without getting the period of stay extended by any competent authority.

The police, therefore, challaned both Mst. Bashiran and Mollabux for committing an offence under Rule 6 read with Rule 3 of the Rules. The two accused admitted that they had over-stayed in India. Learned trial court consequently found them guilty under Rule 6 read with Rule 3 and sentenced Mollabux to 10 days S. I, and to Mst. Bashiran to a fine of Rs. 60/- only.

Mollabux did not file any appeal or revision against his conviction but Mst. Bashiran filed an application for revision in the court of the learned Sessions Judge, Jhunjhunu instead of filing an appeal which was open to her. Learned Sessions Judge has held that over-staying in India after the expiry of visa is no offence under the Rules and he has, therefore, recommended that not only the conviction and sentence of Mst. Bashiran but also of Mollakux be set aside.

So far as Mollabux is concerned, he must have by now undergone the entire sentence of imprisonment awarded to him and, therefore, I do not wish to interfere with the judgment of the learned trial Magistrate because it will be of no practical effect. So far, however, as Mst Bashiran is concerned. On a perusal of Rule 3 Of the Rules, the contravention of which has been made punishable under Rule 6, I find that it prohibits a person proceeding from any place outside India from entering or attempting to enter India by water, land or air without a valid passport conforming to the conditions prescribed in Rule 5.

In the present case, it is not denied that the applicant entered India with a valid passport. She, therefore, cannot be said to have contra-vened the provisions of Rule 3. What she has done is simply to over-stay after the expiry of the visa. She may be said to be staying in India illegally but for an illegal act a person can be

punished only if it is made punishable by law.

Reading through the passport rules. I do not find that there is any provision making the overstaying after the expiry of visa punishable. A case like the present came up for decision before the Allahabad High Court. In that case Chhanga Khan v. The State, AIR 1956 All 69 (A), a Pakistani national Chhanga Khan had come to India with a passport valid for five years, that is, upto 19th November, 1957.

Several visas were made on this passport and the last visa was dated 21st April, 1954 by which Chhanga Khan was permitted to stay in India upto 9th July, 1954, Chhanga Khan, however, over-stayed in India after the expiry of the last visa. It was held that Rule 3 cannot be invoked because it provides only against the entry of a person in India, but makes no provision for overstaying in India.

(Note: Section 3 of the Passport Act appears to have been mentioned in place of Rule 3 of the Passport Rules by some over-sight.)

(3) Very recently another case of similar nature came before a Division Bench of the Bombay High Court consisting of Gajendragadkar and Gokhale JJ. The State v. Ibrahim Adam, AIR 1956 Bom 593 (B). In that case also a Pakistani national had come to India under a passport and a visa with category 'C' issued by the Indian High Commissioner at Karachi.

This visa was valid only during the period ending 16th May, 1954. Having entered India with this visa, the accused obtained permission to continue his stay in India upto 6th June, 1954 from the Deputy Commissioner of Police, Special Branch. C. I. D., Bombay. Two further extensions were also granted to him at his request by the Passport Officer to the Government of Bombay and the last extension expired on the 6th July, 1954. The accused, however, over-stayed in India.

He was prosecuted for breach of Rule 3 of the Indian Passport Rules punishable under Rule 6 (a) of the said Rules. It was contended by him that over-staying in India beyond the period permitted by the Passport authorities did not amount to a contravention of Rule 3 and was not punishable under Rule 6 (a) of the Indian Passport Rules. The Magistrate accepted the defence and acquitted the accused.

An appeal was taken to the High Court and the order of acquittal Was maintained.

It was held that over-staying in India after the expiry of visa is not contravention of Rule 3 and was therefore, not punishable under Rule 6 (a) of the Rules. It was observed 'it seems to us difficult, to construe the word 'enter' or the words 'Attempt to enter' as referring to residence either within the period permitted by the visa or beyond it. Giving the words used in Rule 3 their plain grammatical construction, it is, we think, impossible to hold that continued residence of the foreigner, however, wrongful it may be, can attract the provisions of Rule 3 and could be made the basis of his conviction under Rule 6 (a).'

With respect I entirely agree with the view taken by the Allahabad and Bombay High Courts in the above cases and hold that the conviction of the applicant Mst. Bashiran under Rule 6 (a) read with Rule 3 of the Rules and her sentence offine of Rs. 60/- cannot be maintained. True it is that the applicant did not file any appeal which was open to her.

But when it has come to the notice of this Court by way of revision that a clear illegality has been committed by the learned trial Magistrate. I would not be justified in maintaining her conviction and sentence.

(4) The reference is accepted, the conviction and sentence of Mst. Bashiran are set aside and she is acquitted. Pine, if paid, shall be refunded to her.

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