

Sameer Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-11-1988

Reported in : 1989CriLJ1163; 1988(2)WLN303

Judge : Navin Chandra Sharma, J.

Appellant : Sameer

Respondent : State of Rajasthan

Judgement :

ORDER

Navin Chandra Sharma, J.

1. On the basis of the provisions contained in Section 9(2) of the Citizenship Act, 1955 and the decision of their Lordships of the Supreme Court in State of Gujarat v. Yakub Ibrahim : 1974 CriLJ597 the learned Counsel for the petitioner contends that a question had arisen as to whether, when or how the petitioner had acquired the citizenship of Pakistan and this question could only be determined by competent authority prescribed under the said provision.

2. Article 5 of the Constitution provides that at the commencement of the 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, be a citizen of India. Article 6 of the Constitution is an exception to Article 5 and it makes those persons also citizen of India who had migrated to the territory of India from the territory included in Pakistan if the conditions mentioned in two sub-clauses thereof are satisfied. Article 7 is another exception both to Articles 5 and 6 and it makes a person who had after the 1st day of March, 1947 migrated from the territory of India to the territory included in Pakistan not to be a citizen of India unless he obtains a permit of resettlement under proviso to Article 7.

3. For the applicability of Section 9 of the Citizenship Act, 1955 the foremost and basic condition is that the person concerned should be citizen of India and the question should arise whether by naturalisation, registration or otherwise, he had voluntarily acquired at any time between 26th January, 1950 and the commencement of the Citizenship Act, 1955, the citizenship of another country. This basic condition was satisfied in the case before their Lordships of the Supreme Court in *State of Gujarat v. Yakub Ibrahim* 1974 Cri LJ 597 (supra). The reported facts of that decision would go to show that the accused had produced credible evidence to prove that he was born at Dhandhuka in the state of Gujarat on 14th May, 1936; that he was living in that village and attended school there until 1952 when he moved to Ahmedabad with his father and that he had gone to Pakistan in a state of anger while he was a minor after a quarrel with his father. These findings of fact were arrived at by the Courts. Clearly therefore, the basic conditions that the person concerned should be citizen of India as envisaged by Section 8 of the Citizenship Act 1955 were satisfied.

4. It is clear from the provisions contained in Section 9 of the Foreigners Act, 1946 that the onus of proving that the person concerned is not a foreigner lies upon the person asserting it. The onus, therefore, lay upon the petitioner in the instant case to establish by credible evidence that he was born in the territory forming part of India before the Constitution of India came into force and that he had migrated or had gone to Pakistan after the commencement of the Constitution of India, In the instant case no such credible evidence has been produced. The version of the petitioner is that he had some agricultural land in village Navatala. No Revenue record has been produced to establish this fact. It is also his case that his

agricultural land was acquired by the Central Government for purpose of Field Firing Range. No documentary evidence regarding such an acquisition has been produced by him. It is also not established that he was born in India. In such circumstances, the petitioner has utterly failed to discharge the onus which rested upon him to prove that he was no foreigner. The petitioner having failed to establish that he was citizen of India, no question arises of the applicability of Section 9(2) of the Citizenship Act, 1955.

5. No other point was pressed. However, the learned Counsel for the petitioner has urged that the petitioner has already remained in Jail for a total period of 7 days from 8-10-72 to 12-10-72 and from 4-8-80 to 6-8-80. The learned Counsel for the petitioner urges that the sentence awarded to the petitioner may be reduced to that already undergone. The petitioner has been sentenced only to 15 days simple imprisonment. The sentence is not at all excessive and no reduction is called for. The revision petition is dismissed.

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