

**Motilal Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/773376](http://sooperkanoon.com/773376)

**Court :** Rajasthan

**Decided On :** Jul-14-1950

**Reported in :** AIR1951Raj119

**Judge :** Gupta, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 342

**Appeal No. :** Criminal Ref. No. 161 of 1950

**Appellant :** Motilal

**Respondent :** The State

**Advocate for Def. :** Sumerdan, Asst. Govt. Adv.

**Advocate for Pet/Ap. :** Baba Lal, Adv.

**Disposition :** Revision dismissed

**Judgement :**

ORDER

**Gupta, J.**

1. This is a reference by the Dist Mag, Jodhpur, recommending that the judgment of the City Mag, Jodhpur, dated 22-8-1949, convicting one Vazira under the Influx from Pakistan Control Ordinance, 1948, & sentencing him to two months' R. I., be

set aside.

2. The learned Asst Govt Advocate, be it said to his credit, frankly admitted that there is no evidence on the record to show that Vazira came to India from Pakistan. He further admitted that the only witness who could depose to Vazira coming from Pakistan was Budhsingh & he has not been produced on behalf of the prosecution. Under the circumstances, he conceded, Vazira's conviction could not be supported. He thus, supported the reference.

3. It may be observed that the offences under the Influx from Pakistan Ordinance were triable as warrant cases. In spite of the fact that there was no evidence whatsoever on the record to show that Vazira had entered into India from Pakistan, the learned City Mag questioned Vazira, recorded his statement that he had come from Khokrapar - a station in Pakistan & took the same into consideration for convicting him. The learned Horwill J. of the Madras H. C. has observed in the decision reported in 'In re Sarabhayya', AIR (30) 1943 Mad 408: (44 Cr LJ 541) :

'If there were no circumstance appearing against accused 3 in the evidence, then unquestionably the learned Ses J. should not have put any questions at all; because Section 342 says that the Ct shall put questions to the accused for the purpose of enabling the accused to explain any circumstance appearing in evidence against him. Any statement made by the accused person as a result of questions improperly put to him could not, therefore, be taken into account against him. That means that there was no case against accused 3 & he should have been acquitted.'

4. The only witness, German, who appeared for the prosecution in the case could not & did not say that Vazira had entered India from Pakistan in contravention of the law. Thus, there was no circumstance appearing in the prosecution evidence to explain which Vazira could be examined. He should not have been examined at all but should have been acquitted forthwith. His examination by the Mag was improper & any statement made by him could not have been taken into consideration for convicting him. The judgment of the learned City Mag, Jodhpur, cannot be sustained & is, therefore, set aside & the reference is accepted.

