

Bimala Kanta Ghosh Vs. the State

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Court : Kolkata

Decided On : Mar-10-1952

Reported in : AIR1952Cal837

Judge : Harries, C.J. and ; S.R. Das Gupta, J.

Acts : Influx from Pakistan (Control) Act, 1949 - Sections 4 and 5; ; [Constitution of India](#) - Article 19(1) and 19(6)

Appeal No. : Criminal Revn. No. 1111 of 1951

Appellant : Bimala Kanta Ghosh

Respondent : The State

Advocate for Def. : Amaresh Chandra Roy, Adv.

Advocate for Pet/Ap. : S.C. Talukdar and ; Arun Prokash Chatterjee, Adv.

Judgement :

Harries, C.J.

1. This is an application to quash certain proceedings now pending against the petitioner.

2. The petitioner who is an Indian citizen went to Pakistan. He was given a permit by the High Commissioner at Karachi to return to Calcutta. The permit was issued

upon the following conditions:

1. The permit-holder must proceed direct to his address given in the permit where the permit should be surrendered to the nearest police station within seven days of his arrival.

2. He must proceed via Air to Delhi Check Post.

3. It is alleged that the petitioner did not proceed direct to Calcutta and did not surrender his permit within seven days of his arrival. He was accordingly prosecuted under section 5 of the Influx from Pakistan (Control) Act (Act XXIII [23] of 1949). Sub-section (1) of section 5 of that Act reads:

'Whoever enters India in contravention of the provisions of section 3, or having entered India contravenes the provisions of any rule made under section 4, or commits a breach of any of the conditions of this permit, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.'

4. The allegation is that the conditions of the permit were broken and prima facie that is an offence under section 5.

5. It is urged however that the Legislature can place no restriction on an Indian citizen once he is in India. It is true that an Indian citizen is entitled to move freely throughout the territories of the Republic of India. But the Constitution recognises that reasonable restrictions can be placed upon that right. It cannot be overlooked that the relationship between India and Pakistan is far from happy and that in the interests of the security of India it may well be that the Indian Government has carefully to watch persons coming into India from Pakistan. Pakistanis might be dangerous, but treacherous Indian citizens would be far more dangerous than any Pakistani. Therefore in the interests of Indian security, it appears to me that reasonable restrictions on the movement of the Indian citizens coming from Pakistan could well be imposed.

6. All that these two conditions require is that the person coming from Pakistan should go straight to his destination and within seven days surrender his permit so

that his entry into this country can be checked up. It seems to me that these conditions are quite reasonable in the interests of the State generally.

7. It is urged that this section is far too wide because it would allow persons to be convicted when they had failed to perform the conditions of the permit without any fault on their part. It appears to me quite clear that as offences under section 5 are punishable with imprisonment which may extend to one year or with a fine which may extend to one thousand rupees or both, this is a class of case where mens rea would be essential. That being so, there could be no conviction unless there was mens rea. If, for example, a person after entering from Pakistan was smashed up in a railway accident and was taken to a hospital and was unable to reach his destination or surrender his permit within seven days there would be no mens rea on his part and therefore he could not be convicted. The section therefore cannot be said to be too wide because it would allow of innocent people being convicted.

8. I do not think therefore that at this stage these proceedings can be quashed. It may be that the accused can show that there was no mens rea on his part and therefore he should not be convicted. That is a matter which will be disclosed in the further proceedings which must take place.

9. The petition therefore fails and the rule is discharged.

S.R. Das Gupta, J.

10. I agree.

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