

Marcel Rodrick Vs. the State

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Court : Kolkata

Decided On : Dec-15-1960

Reported in : 1961CriLJ468

Judge : S.C. Lahiri, C.J. and ;H.K. Bose, J.

Appellant : Marcel Rodrick

Respondent : The State

Judgement :

S.C. Lahiri, C.J.

1. The petitioner who has been convicted under Section 14 of the Foreigners Act, 1946, for infringement of paragraph 7 of the Foreigners Order, 1948, by the Presidency Magistrate, Seventh Court, Calcutta, and whose application for revision under Section 439 of the Code of Criminal Procedure has been summarily dismissed by a Division Bench of this Court asks for a certificate under Article 134(l)(c) of the Constitution for a further appeal to the Supreme Court.

2. The facts as found by the Trying Magistrate which are not in dispute are that the petitioner entered India on September 2, 1957, on a passport issued from Dacca on May 30, 1957, and 'C' category visa valid for a period of three months. On June 13, 1959, a complaint was lodged by the Special Branch of Police to the Officer in Charge of Taltola Police Station within the jurisdiction of which the petitioner was residing that the petitioner's stay in India was unauthorised and was in

contravention of paragraph 7 of Foreigners Order, 1948. Upon that complaint the petitioner was placed on his trial, and he was convicted by the Trying Magistrate under Section 14 of the Foreigners Act read with paragraph 7 of the Foreigners Order, 1948, and sentenced to rigorous imprisonment for four weeks and also to a fine of Rs. 50/-, in default, to suffer rigorous imprisonment for six weeks,

3. The point which the petitioner intends to raise before the Supreme Court is that upon the findings arrived at by the learned Magistrate he cannot be said to have violated the provisions of paragraph 7 of the Foreigners Order, 1948. The material portion of that paragraph after omitting unnecessary details is follows:

Every foreigner who enters India on the authority of a Visashall obtain from the Registration Officer having jurisdiction...a permit indicating the period during which he is authorised to remain in India and shall depart from India before the expiry of the said period....

4. This paragraph contemplates two distinct offences. The first offence is the omission to obtain from the Registration Officer a permit indicating the period during which he is authorised to remain in India, and the second offence is his failure to depart from India after the expiry of the period granted by the permit. In this case, upon the findings arrived at by the Trying Magistrate, the petitioner is clearly guilty of the first offence contemplated by paragraph 7 of the Foreigners Order, 1948, because it has been found by the Trying Magistrate, and that finding is not disputed before us, that after his entry into India, the petitioner has not taken out a permit indicating the period during which he is authorised to remain in India.

5. Mr. Das Gupta appearing in support of the petition intends to argue before the Supreme Court that the only offence contemplated by paragraph 7 of the Foreigners Order, 1948, is the foreigner's failure to depart from India before the expiry of the period fixed by the permit, and as there has been no permit in the present case, the petitioner cannot be held to be guilty of contravention of paragraph 7 of the Foreigners Order, 1948. In support of this contention, Mr. Das Gupta intends to rely upon a decision of a single Judge of the Allahabad High Court in the case of *Md. Hanif Khan v. The State* : AIR1960 All434 . That case has not the slightest resemblance to the facts of the present case. There it was found

that the convicted person was not a foreigner, and therefore, was under no obligation to take out a permit under the first part of paragraph 7 of Foreigners Order, 1948, and as he was under no legal obligation to take out such permit, he could not be convicted of staying beyond the period granted by the permit. Desai, J. stated in the course of his judgment that if there is no evidence of any permit, there is no evidence of the period limiting the stay of the accused in India or before the expiry of which he was bound to depart from India. The charge against the accused in that case was his failure to depart from India even after the expiry of the period limited by the visa, and it was pointed out that the overstay of the period of visa was not contemplated by paragraph 7 of the Foreigners Order, 1948. As I have said already, this case has not the slightest resemblance to the present case. The petitioner in this case was admittedly a foreigner, and he was under a legal obligation to take out a permit under the first part of paragraph 7 of the Foreigners Order, 1948, and his failure to do so brings him within the mischief of Section 14 of the Foreigners Act, 1946. In my opinion, the point proposed to be raised before the Supreme Court does not make this case a fit case for further appeal to the Supreme Court.

6. I would accordingly dismiss this application.

H.K. Bose, J.

7. I agree.

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