State of Madhya Pradesh

Vs

Peer Mohd. & Another

Criminal Appeal No. 12 of 1961

(CJI B. P. Sinha, J. C. Shah, P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

28.09.1962

JUDGMENT

GAJENDRAGADKAR, J. -

A charge-sheet was presented by the appellant the State of Madhya Pradesh against the respondents Peer Mohammad and his wife Mst. Khatton under s. 14 of the Foreigners Act, 1946 (hereinafter called the Act) read with cl. 7 of the Foreigners Order, 1948 (hereinafter called the Order) in the Court of the Magistrate 1st Class, Burhanpur. The case against the respondents was that they had entered India on May 13, 1956, on the strength of a Pakistani passport and a visa issued in their favour on May 8, 1956, and reached Burhanpur on May, 15, 1956. Even after the period of the visa had expired, they continued to stay in India. Consequently, the District Magistrate, Burhanpur, served a notice on them on May 14, 1957 calling upon them to leave India on or before May 28, 1957. The respondents did not comply with the notice and by their unauthorised and illegal over-stay in India, they rendered themselves liable under s. 14 of the Act and cl. 7 of the Order.

The respondents pleaded that they were not foreigners but were citizens of India. They were born in India at Burhanpur and had been permanent residents of the said place; and so the present criminal proceedings instituted against them were mis-conceived.

The prosecution, however, urged that the respondents had left India for Pakistan some time after January 26, 1950, and under Art. 7 of the Constitution they cannot be deemed to be citizens of India. In the alternative, it was urged that since the respondents had obtained a Pakistani passport, they have acquired the citizenship of a foreign country and that has terminated their citizenship of India under s. 9 of the Citizenship Act, 1955 (LVII of 1955). It appears that before the learned Magistrate, only this latter plea was pressed and the learned Magistrate held that the question as to whether the respondents had lost their citizenship of India under s. 9(2) of the Citizenship Act has to be decided by the Central Government and cannot be agitated in a court of law. Therefore, the learned Magistrate passed an order under s. 249 of the Code of Criminal Procedure, directing that the respondents should be released, and the passport seized from them should be returned to them after the period of appeal, if any.

Against this order, the appellant preferred an appeal in the High Court of Madhya Pradesh, and before the High Court it was urged by the appellant that on a fair and reasonable construction of Art. 7 it should be held that the respondents cannot be deemed to be citizens of India and so, they were liable under s. 14 of the Act and cl. 7 of the Order. This appeal was heard by Shrivastava and Naik, JJ. Shrivastava, J., took the view that Art. 7 did not apply to the case of the respondents who had left India for Pakistan after January 26, 1950, and so, they could not be held to be foreigners on

the ground that they had left India as alleged by the prosecution. Naik, J., however, came to a contrary conclusion. He took the view that since it was proved that the respondents had left India for Pakistan after January 26, 1950, Art. 7 was attracted and so, they must be deemed to be foreigners. Since there was a difference of opinion between the two learned Judges who heard the appeal, it was referred to Newaskar, J. Newaskar, J., agreed with the conclusion of Shrivastava, J., and so, in the light of the majority opinion, it was held that under Art. 7, the respondents could not be held to be foreigners.

In regard to the alternative case of the prosecution that the respondents had obtained a Pakistani passport and so, had lost their citizenship under s. 9(2) of the Citizenship Act, the High Court held that it was a matter which had to be determined by the Central Government and it is only after the Central Government decides the matter against the respondents that the appellant can proceed to expel them from India. It, however, appears that the High Court read the order passed by the trial Magistrate as amounting to an order of acquittal, and so, quashed the said order with liberty to the appellant to institute fresh proceedings against the respondents if and when considered necessary by it. In fact, as we have already mentioned, the order passed by the trial Court was one under s. 249 Cr. P.C. It is against this decision of the High Court that the appellant has come to this Court with a certificate granted by the High Court. At this stage, we may add that there were eleven other cases of a similar nature which were tried by the Magistrate along with the present case and considered by the High Court at the appellant stage. Appeals against the companion matters are pending before this Court, but their fate will be decided by our decision in the present appeal.

Section 14 of the Act provides, inter alia, that if any person contravenes the provisions of this Act or of any order made thereunder, he shall be punished in the manner prescribed by the section. Clause 7 of the Order issued under the said Act prescribes that every foreigner who enters India on the authority of a visa issued in pursuance of the Indian Passport Act, 1920, shall obtain from the Registration Officer, specified therein, a permit indicating the period during which he is authorised to remain in India and shall, unless the period indicated in the permit is extended by the Central Government, depart from India before the expiry of the said period. The prosecution case is that the respondents having entered India with a visa have overstayed in India after the expiration of the visa and the period indicated in the permit and so, they are liable to be punished under s. 14 of the Act and cl. 7 of the Order.

It would be noticed that in order that the respondents should be liable under the said provisions, it must be shown that when they entered India, they were foreigners. In other words, cl. 7 of the order applies to every foreigner who enters India in the manner therein indicated; and that raises the question as to whether the respondents were foreigners when they entered India. The prosecution contends that the respondents were foreigners at the relevant date on two grounds. It is urged that they left India for Pakistan after January 26, 1950, and so, under Art. 7 they cannot be deemed to be citizens of India at the relevant time. The alternative ground is that they have acquired a passport from the Pakistan Government and as such, they lost the citizenship of this country under s. 9(2) of the citizenship Act. It is common ground that the latter question has to be decided by the Central Government, and so, this Court is not concerned with it. The only question which falls for our decision, therefore, is : can the respondents be said to be foreigners at the relevant date under Art. 7, because they left India for Pakistan after January 26, 1950 ? The answer to this question would depend on the construction of Art. 7.

In construing Art. 7, it would be necessary to examine briefly the scheme of the seven Articles that occur in Part II. These Articles deal with the question of citizenship. Article 5 provides that at the

commencement of the constitution, every person who has his domicile in the territory of India and who satisfies one or the other of the three tests prescribed by cls. (a), (b) and (c), shall be a citizen of India. Article 6 deals with persons who have migrated to the territory of India from Pakistan and it provides that they shall be deemed to be citizens of India at the commencement of the Constitution if they satisfy the requirements of clauses (a) & (b). In other words, Art. 6 extends the right of citizenship to persons who would not satisfy the test of Art. 5, and so, persons who would be entitled to be treated as citizens of India at the commencement of the Constitution are covered by Arts. 5 and 6. Article 7 with which we are concerned provides that notwithstanding anything in Arts. 5 and 6, a person who has after March 1, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India. The proviso deals with persons who having migrated to Pakistan have returned to the territory of India under a permit for resettlement or permanent return, but with that class of persons we are not concerned in the present appeal. Article 8 deals with the rights of citizenship of persons of Indian origin who reside outside India. Article 9 provides that no person shall be a citizen of India by virtue of Arts. 5, 6 or 8, if he has voluntarily acquired the citizenship of any foreign State. Articles 10 and 11 then lay down that the rights of citizenship prescribed by Arts. 5 and 6 shall be subject to the provisions of any law that may be made by Parliament; that is to say, the said rights will continue unless they are otherwise affected by any law made by Parliament in that behalf. Article 11 makes it clear that the provisions of Part II will not derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. That, in brief, is the scheme of Part II.

It is urged by Mr. Sen on behalf of the appellant that where the Constitution wanted to limit the scope of the Article by reference to the date of the commencement of the Constitution, it has used appropriate words in that behalf, and in that connection, he relies on the use of the words "at the commencement of the Constitution" which occur in Arts. 5 and 6. Article 7 does not include such a clause, and so, the migration from the territory of India to the territory included in Pakistan to which it refers should not be construed to be limited to the migration prior to the commencement of the Constitution. Just as a person who has migrated to Pakistan from India prior to January 26, 1950 shall not be deemed to be a citizen of India by virtue of such migration, so should a person who has migrated from India to Pakistan even after the commencement of the Constitution be denied the right of citizenship. That is the appellant's case and it is based substantially on the ground that the clause "at the commencement of the Constitution" is not used by Art. 7.

This argument, however, cannot be accepted because it is plainly inconsistent with the material words used in the Article. It will be noticed that a person who shall not be deemed to be a citizen of India is one "who has, after the first day of March, 1947, migrated from the territory of India to the territory of Pakistan." It is true that migration after January 26, 1950, would be migration after March 1, 1947, but it is clear that a person who has migrated after January 26, 1950, cannot fall within the relevant clause because the requirement of the clause is that he must have migrated at the date when the Constitution came into force. "Has migrated" in the context cannot possibly include cases of persons who would migrate after the commencement of the Constitution. It is thus clear that it is only persons who had migrated prior to the commencement of the Constitution that fall within the scope of Art. 7. The use of the present perfect tense is decisive against the appellant's contention and so, the absence of the words on which Mr. Sen relies has no significance. Besides, as the article is worded, the use of the said words would have been inappropriate and having regard to the use of the present perfect tense, such words were wholly unnecessary. The proviso to Art. 7 which deals with cases of persons who having migrated to Pakistan have returned to India under a permit for resettlement, also supports the same conclusion. The migration there referred to appears

to be migration prior to the commencement of the Constitution.

It is relevant to refer to Art. 9 in this connection. This Article deals with cases of persons who have voluntarily acquired the citizenship of any foreign State and it provides that such persons shall not be deemed to be citizens of India by virtue of Arts. 5, 6 or 8. Now, it is clear that the acquisition of the citizenship of any foreign State of which this Article refers is acquisition made prior to the commencement of the Constitution. "Has voluntarily acquired" can have no other meaning, and so, there is no doubt that the application of Art. 9 is confined to the case of acquisition of citizenship of foreign State prior to the commencement of the Constitution. In other words, the scope and effect of Art. 9 is, in a sense, comparable to the scope and effect of Art. 7. Migration to Pakistan which is the basis of Art. 7 like the acquisition of citizenship of any foreign State which is the basis of Art. 9, must have taken place before the commencement of the Constitution. It will be noticed that migration from Pakistan to India as well as migration from India to Pakistan which are the subject-matters of Arts. 6 and 7 deal with migrations prior to the commencement of the Constitution. The Constitution makers thought it necessary to make these special provisions, because migrations both ways took place on a very wide scale prior of January 26, 1950, on account of the partition of the country. Migrations to Pakistan which took place after January 26, 1950, are not specially provided for. They fall to be considered and decided under the provisions of the Citizenship Act; and as we will presently point out, citizens migrating to Pakistan after the said date would lose their Indian citizenship if their cases fall under the relevant provisions of the said Act.

It is true that as Art. 7 begins with a non-obstante clause by reference to Arts. 5 & 6, and there is a little overlapping. The non-obstante clause may not serve any purpose in regard to cases falling under Art. 5(c), but such overlapping does not mean that there is any inconsistency between the two Articles and it can, therefore, have no effect on the construction of Art. 7 itself. Therefore, we are satisfied that Art. 7 refers to migration which has taken place between March 1, 1947, and January 26, 1950. That being so, it cannot be held that the respondents fall within Art. 7 by virtue of the fact that they migrated from India to Pakistan some time after January 26, 1950, and should, therefore, be deemed not to be citizens of India.

In this connection, it is necessary to add that cases of Indian citizens acquiring the citizenship of any foreign State are dealt with by Art. 9, and the relevant provisions of the Citizenship Act, 1955. It the foreign citizenship has been acquired before January 26, 1950, Art. 9 applies; if foreign citizenship has been acquired subsequent to January 26, 1950, and before the Citizenship Act, 1955 came into force, and thereafter, that is covered by the provisions of the Citizenship Act, vide Izhar Ahmed Khan v. Union of India [[1962] Supp. 2 S.C.R. 235]. It is well-known that the Citizenship Act has been passed by the Parliament by virtue of the powers conferred and recognised by Arts. 10 and 111 of the Constitution and its relevant provisions deal with the acquisition of citizenship of India as well as termination of the said citizenship. Citizenship of India can be terminated either by renunciation under s. 8, or by naturalisation, registration or voluntary acquisition of foreign citizenship in any other manner, under s. 9, or by deprivation under s. 10. The question about the citizenship of persons migration to Pakistan from India after January 26, 1950, will have to be determined under these provisions of the Citizenship Act. If a dispute arises as to whether an Indian citizen has acquired the citizenship of another country it has to be determined by such authority and in such a manner and having regard to such rules of evidence as may be prescribed in that behalf. That is the effect of s. 9(2). It may be added that the rules prescribed in that behalf have made the Central Government or its delegate the appropriate authority to deal with this question, and that means this particular question cannot be tried in courts.

The result is that the respondents cannot be said to be foreigners by virtue of their migration of Pakistan after January 26, 1950, and that is the only question which can be tried in courts. If the State contends that the respondents have lost their citizenship of India under s. 9(2) of the Citizenship Act, it is open to the appellant to move the Central Government to consider and determine the matter, and if the decision of the Central Government goes against the respondents is may by competent to the appellant to take appropriate action against the respondents. So far as the appellant's case against the respondents under Art. 7 is concerned, the High Court was right in holding that the respondents were not foreigners within the meaning of cl. 7 of the Order and cannot, therefore, be prosecuted under s. 14 of the Act. The appeal accordingly fails and is dismissed.

Appeal dismissed.

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