

Delhi Administration

Vs

Mohd. Iqbal

Criminal Appeal No. 147 of 1966

(A. N. Ray, J. C. Shah, K. S. Hegde, G. K. Mitter JJ)

30.11.1970

JUDGMENT

RAY, J. -

1. This appeal is by certificate under Article 132 (i) and Article 134(i)(c) of the Constitution against the judgment, dated August 2, 1965, of the Circuit Bench of the Punjab High Court at Delhi. The certificate was given on the principal ground whether the respondent had migrated to Pakistan or was a citizen of India.

2. The respondent Mohd. Iqbal was convicted by the Sub-Divisional Magistrate, Delhi, on July 22, 1964, under Section 14 of the Foreigners Act and sentenced to undergo six months' rigorous imprisonment. The order was upheld on appeal by the Additional Sessions Judge on April 15, 1965. The circuit Bench of the Punjab High Court set aside the conviction and relying on the decision of this Court in Shanno Devi v. Mangal Sen, (AIR 1961 SC 58) held that Mohd. Iqbal had not migrated from India.

3. The respondent being treated as a foreigner of Pakistani national was charged with having entered India on the authority of a visa passport on May 31, 1956 and having further obtained extension of stay in India up to November 30, 1956, from the Delhi Administration and thereafter not having returned to Pakistan and continued unauthorised stay in India in contravention of Rule 7(2) of the Foreigners Orders, 1948 whereby the respondent was required to obtain a residential permit on or before January 5, 1960 from the Registration Officer, Delhi and in contravention of that the respondent continued staying Delhi without obtaining the requisite residential permit on or before January 5, 1960 and was apprehended on October 5, 1961 without possessing any residential permit from the Registration Officer, Delhi and thereby respondent contravened the provisions of Section 7(2) of the Foreigners Act.

4. The prosecution case was that the respondent left India in 1947 and came to India with a Pakistani passport, dated March 27, 1954. The Pakistani passport was valid up to March 26, 1956. On April 27, 1954, the respondent obtained visa at Lahore for entry into India and on May 2, 1954 he applied for extension of the visa up to April 2, 1955. On March 25, 1955 he left India for Pakistan. He came to India for the second time on May 14, 1955 and obtained extension of visa up to May 21, 1956. He went back to Pakistan. He came to India for he third time on May 31, 1956 after having obtained a visa on May 25, 1956. The Delhi Administration returned his Pakistani passport to him in order to enable him to return to Pakistan. He did not leave India. On July 11, 1957 he was arrested for violation of Rules 3 and 6 of the Indian Passport Rules, 1950 for the offence that he had entered India from Pakistan without a passport. On July 31, 1957 he was

acquitted. Thereafter he remained in India.

5. The charge in the present case was framed in the year 1960 and it was on the ground that the was required to obtain the residential permit on or before January 5, 1960 and that in contravention thereof he continued to stay at Delhi without obtaining the requisite residential permit on or before January 5, 1960 and was apprehended on October 5, 1960, without possessing any residential permit. It may be stated here that in 1959 an amendment was made in Paragraph 7(2) of the Foreigners Order of 1948, whereby all foreigners were required to obtain residential permits by January 5, 1960.

6. Counsel for the appellant contended that the respondent came to India on a Pakistani passport in which he was described as a Pakistani national and he overstayed after the expiry of visa and in spite of being required to obtain residential permit from the Registration Officer, Delhi, he continued to stay in this country and thereby contravened the provisions of Section 7 (2) of the Foreigners Act.

7. The respondent on the other hand contended that there was not mens rea and when he was arrested on October 5, 1961, there was no offence on the authority of the decision of this Court in Shanno Devi v. Mangal Sen (supra), because the respondent had not migrated from India, and, finally, that the evidence was overwhelming that he left India in 1953 and therefore there was renunciation of citizenship.

8. This Court in Kulathil Mammoo v. The State of Kerala, ((1966) 3 SCR 706) held that in Shanno Devi's case (supra), the word 'migrated' had received the narrow connotation of going from one place to another with the intention of residing permanently in the latter place, but in its wider connotation it meant going from one place to another whether or not with the intention of permanent residence in the latter place. This Court gave the word 'migrated' in Article 7 of the Constitution that wider connotation and referred to migration to Pakistan after March 1, 1947 in that case.

9. The present case falls within a short compass. The charge is that by failing to obtain a residential permit the respondent contravened the provisions of Rule 7(2) of the Foreigners Order. His failure to obtain the residential permit as well as his contravention of the Foreigners Act suffices to hold that not only he made mens rea but he was guilty of an offence in contravention of Rule 7 (2) of the Foreigners Order, 1948 and Section 7(2) of the Foreigners Act.

10. Counsel for the respondent invited this Court to re-assess the facts and to come to the conclusion that he was in India up to 1953 and therefore he merely renounced the citizenship and that when he returned to India, his citizenship revived. We are unable to hold so on the facts.

11. The Magistrate's Court correctly held on the facts that the respondent had migrated to Pakistan.

12. The appeal is therefore, allowed. The judgment of the High Court is set aside. The decision of the Additional Sessions Judge upholding the conviction is restored. The respondent will surrender to his bail, if any.

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