

ALLAHABAD HIGH COURT

Mohd. Hanif Khan

Vs.

State (Allahabad)

Criminal Revn. No. 1124 of 1958. against decision of 2nd Addl. S.J. Muzaffar-nagar,

(M.C. Desai, J.)

24.06.1958. 08.09.1959

ORDER

M.C. Desai, J.

The applicant has been convicted under Section 14 of the Foreigners Act for contravention of Rule 7 of the Foreigners Order, 1948. He was born in British India and his parents were residents of British India. He was employed in the Indian Army and after the partition of India, he went to Karachi with his platoon. He resigned from the Army in 1948 and came to India under a passport obtained as a Pakistani national in 1954. Under the visa he was entitled to stay in India up to 20-8-1954. He did not depart from India for Pakistan on or before 20-8-1954 and has been convicted by the courts below under Section 14 of the Foreigners Act for the alleged contravention of Rule 7 of the Foreigners Order, 1948.

2. Under Section 14 of the Foreigners Act, a person is punished for contravening the provisions of the Act or of any Order made there under. The " Foreigners Older. 1948 was made by the Central Government in exercise of the powers conferred by Section 3 of the Act. Rule 7 of the Order reads as follows :

"Every foreigner who enters India on the authority of a Visa x x x x shall obtain x x x x x permit indicating the period during which he is authorized to remain in India and shall x x x x x x x x x x depart from India before the expiry of the said period :

Provided that this requirement shall be deemed to have been complied with by a foreigner who enters India as a Tourist and is granted a certificate of Registration in Form D x x x x x x".

3. Now the applicant is said to be guilty of infringement of Rule 7 by not departing from India on

or before 20-8-1954. There is no evidence that he entered India as a tourist; his case is, therefore, not covered by the proviso. There is no evidence that he obtained any permit in compliance with Rule 7. and if there is no evidence of any permit, there is no evidence of the period limiting his stay in India Or before the expiry of which he was bound to depart from India. Rule 7 requires a foreigner to depart from India on the expiry of the period mentioned in the permit and not on the expiry of the period mentioned, if at all, in the visa. The period mentioned in the visa is irrelevant and no offence of infringement of Rule 7 is committed by his not departing from India before its expiry. He certainly continued to stay in India after the expiry of the period mentioned in the visa but this act is not prohibited by R 7 and does not render him punishable under Section 14 of the Act. A 'permit' is different from a 'Visa' and whatever is laid down in Rule 7 in respect of a permit cannot be applied to a visa. In the absence of proof of the period fixed for his stay in a "permit he could not be convicted under Section 14. There is an explanation for his not obtaining a permit because as I shall show presently he was not governed by Rule 7 when he came to India.

4. There is another reason also for setting aside the applicant's conviction and it is that when he entered India in 1954, he did not enter as a foreigner. According to the definition of a foreigner in Section 2 of the Foreigners Act, as it was in force in 1954, he was not a 'foreigner' because he was a natural born British subject. Rule 7 of the Foreigners Order applies to a person, who is a foreigner at the time of entry into India, and not to a person who was not a foreigner at the time of entry but becomes a foreigner by a subsequent change in the law. The definition contained in Section 2 of the Foreigners Act was amended in 1957 and under the amended definition any person who is not a citizen of India, is a foreigner. It may be assumed that the applicant had migrated from India and therefore, was not a citizen of India and consequently has become a foreigner under the amended definition but he has become a foreigner only with effect from 1957 when the amendment came into force. Up to 1957 he was not a foreigner and was not governed by the Foreigners Order, 1948. He was not required to obtain a permit on entry into India and if he was not required to obtain a permit on entry into India there was no question of his departing from India on the expiry of the period mentioned in the permit and no question of his being guilty under Section 14 by refraining from so departing. He could not possibly have become subject to the provisions of Rule 7 because that rule could apply only if it was applicable at the time of entry and not otherwise. I was referred to a contrary decision by my brother D. S. Mathur in *Ali Sher v. The State*¹, With great respect, I disagree that a person, who was not a foreigner at the time of his entry into India, came under the obligation of Rule 7 of the Foreigners Order on his becoming a foreigner by amendment of Section 2 of the Foreigners Act and that he was bound to depart from India as soon as he became a foreigner or on the expiry of the period mentioned in the visa. Since the applicant deserves to be acquitted on another ground, I do not think it necessary to refer the case to a Bench for considering whether the case of *Ali Sher v. The State*² was correctly decided or not. I allow the application, set aside the applicant's conviction and sentence and acquit him. His bail bonds are discharged.

Application allowed.

¹ Criminal Revn. No. 347 of 1958 D/- 26-6-1959: (AIR 1960 All 431)

²(AIR 1960 All 431)

