

ALLAHABAD HIGH COURT

State

Vs.

Yakub

Government Appeal No. 1602 of 1959. , against order of Sessions Judge, Moradabad,

(V.D. Bhargava and J.N. Takru, JJ.)

30.04.1959. 28.07.1960

JUDGMENT

Takru, J.

1. This appeal by the State is directed against an appellate order of acquittal passed by the learned Sessions Judge of Moradabad. The facts giving rise to it are not in dispute, and, stated briefly, are as follows.

2. Yaqub, the respondent, was originally a resident of Moradabad. In 1947 he went away to Pakistan where he remained till his entry into India on the 12th May, 1954, on the authority of a Pakistan Passport No. 168008 dated the 30th January 1954 and Indian Visa of the 'C' category - No. 25804 dated 5th May 1954 - which permitted him to stay in India for three months. Subsequently that period was extended upto the 10th January 1956. The respondent, however, did not leave India by that time with the result that a notice was served on him on the 2nd October 1957 requiring him to leave India within 30 days. The respondent did not comply with that notice either. He was therefore, prosecuted under Section 14 of the Foreigners Act 1946 - hereinafter called 'the Act of 1946' - for the contravention of para 7 of the Foreigners Order, 1948 - hereinafter called "the Order of 1948" - framed under Section 3 of the Act of 1946.

The defense of the respondent inter alia was, that, as he was not a 'foreigner' at the time of his entry into India, his case did not fall under para 7 of the Order of 1948 and hence he could not be convicted for the alleged contravention thereof. The trial court repelled all his pleas and convicted and sentenced him under Section 14 of the Act of 1946 to imprisonment and fine. On appeal the learned Sessions Judge reversed that order and acquitted the respondent. Hence this appeal by the State.

3. Mr. Bhatt, learned counsel for the State, advanced two-fold contentions in support of this appeal. His first contention was that as soon as the amended definition of 'foreigner' came into

effect by virtue of Section 2 (a) of the Foreigners Laws (Amendment) Act 1957 - hereinafter called 'the Amendment Act of 1957 - the respondent - whatever his status previous to that date might have been became a 'foreigner' to whom the provisions of para 7 of the Order of 1948 were attracted : so that if he committed breach of any of the provisions contained therein, he was liable to prosecution and conviction under Section 14 of the Act of 1946.

His second contention was, that since the respondent in his application to the Pakistan Government for the issue of a passport to him, had described himself as a Pakistani citizen he must be deemed to have voluntarily given up his citizenship as from the date of the said application and so also he became a 'foreigner' for the purposes of the Act of 1946 and the Order of 1948. In order to properly appreciate these contentions a reference to the various enactments and orders bearing thereon is necessary at the very outset. The first enactment to which reference has to be made is the Act of 1946. Section 2 of that Act defines "foreigner" as a person who inter alia :

"(1) is not a national born British subject as defined in Sub-Sections (1) and (2) of Section 1 of the British Nationality and Status of Aliens Act 1914, or provided that any British subject who under any law for the time being in force in British India ceased to be a British subject shall thereupon be deemed to be a foreigner."

4. Sub-Sections (1) and (2) of Section 1 of the British Nationality and Status Act read as follows :

"1 - (1) The following persons shall be deemed to be natural born British subjects, namely :

(a) Any person born within His Majesty's dominions and allegiance : and

(b) Any person born out of His Majesty's dominions, whose father was a British subject at the time of that person's birth and either was born within His Majesty's allegiance or was a person to whom a certificate of naturalization had been granted; and

(c) Any person born on board a British ship whether in foreign territorial waters or not :
Provided that the child of a British subject whether that child was born before or after the passing of this Act, shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage sufferance, or other lawful means, His Majesty exercises jurisdiction over British subjects.

(2) A person born on board a foreign ship shall not be deemed to be a British subject by reason only that the ship was in British territorial waters at the time of his birth."

5. The aforesaid Act of 1946 was followed by the Order of 1948 framed under Section 3 thereof. Paragraph 7 of the said Order runs thus :

"7. Restriction on sojourn in India - Every foreigner who enters India on the authority of a visa issued in pursuance of the Indian Passport Act, 1920, (XXXIV of 1920), shall obtain from the Registration Officer having jurisdiction at the place at which the said foreigner

enters India a permit indicating the period during which he is authorized 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 paid period; and at the time of the foreigner's departure from India the permit shall be surrendered by him to the Registration Officer having jurisdiction at the place from which he departs."

6. It is undisputed fact that the respondent was a natural born British subject as defined in Section 2 (1) of the Act of 1946. There is nothing on the record to show that the proviso to that section applied to him at any relevant time. Hence on a plain reading of the aforesaid provisions of law it is incontestable that the respondent was not 'a foreigner' on the date of his entry into India.

7. The law relating to foreigners remained untouched till 1957. In that year Parliament passed the Amendment Act of 1957, amending the definition of 'foreigner' so as to mean "a person who was not a citizen of India". So far as para 7 of the Order of 1948 is concerned, it, however, continued as before, and the point which we are consequently required to decide is whether it applies to the respondent or not? After considering the relevant provisions of law and hearing the learned counsel for the parties, we are, unhesitatingly of the view that it does not. In our opinion the words, which furnish the key to the true meaning and intent of that paragraph are to be found in the opening words thereof, viz., "Every foreigner who enters India." The fact that the verb used there is in the present tense appears to us to clearly indicate that the persons who are sought to be brought within the scope and ambit thereof are persons who at the time of their entry into India are foreigners, i.e., are not citizens of India. We have not the slightest doubt in our minds that if the intention of Parliament had been to make that paragraph applicable to all persons, who, though not foreigners when they entered into India, became so by the Amendment Act of 1957, then the verb 'entered' would also have been used in the alternative after the word 'Foreigner'.

8. We are accordingly satisfied that the respondent, though he became 'a foreigner' on the date of the Amendment Act of 1957, was not a foreigner when he entered into India, i.e. on the 12th May 1954. Accordingly we are of the opinion that para 7 of the Order of 1948 does not apply to him and he is not liable for the alleged contravention thereof.

9. The point involved in the present appeal also came up for decision before two learned Single Judges of this Court, who however took different views thereon. The earlier case is that of *Ali Sher v. State*¹, in which Mathur, J. took the view that para 7 of the Order of 1948 applied even to those persons, who though not foreigner; when they entered India, became so by the Amendment Act of 1957. The later case is of *Mohd. Hanif Khan v. State*², in which Desai, J. expressed a contrary opinion. We have already indicated what our own view on the matter is. In our opinion - and we state it with the - greatest respect to Mathur, J. - the language of para 7 of the Order of 1948 is not capable of bearing the 'interpretation, which has been put upon it by him, The main consideration which led him to take that view was the fact that as the Order of 1948 was made under Section 3 of the Act of 1946 which gave power to the Central Government to make

provisions by orders either general or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner for prohibiting, regulating or restricting

¹ AIR 1960 All 431

² AIR 1960 All 434

the entry of foreigners into India or their departure there from or their presence or continued presence therein, paragraph 7 of that Order was 'a valid order which every foreigner must comply'. Mathur, J. then goes on to say that :

"Where the Central Government has issued a general order directing every foreigner who entered India on the authority of a visa to leave the country before the expiry of the period of permit, namely, of visa, contravention of such direction would be an offence punishable under Section 14 of the Foreigners Act. Admittedly, both the applicants had entered India with a Pakistan passport and on the authority of a visa issued by the Central Government. It was, therefore, necessary for them to leave the country before the expiry of this period.

The Foreigners Act, 1946, and the Foreigners Order 1948, applied to Pakistan nationals after the passing of the Foreigners Laws (Amendment) Act 1957, when the definition of foreigner as contained in Section 2 (a) of the principal Act was amended to include all persons who were not citizens of India. In other words after the commencement of the Amending Act, both the Foreigners Act and the Rules made there under become applicable to Pakistan nationals who entered under the authority of visa issued by the Central Government, irrespective of whether they entered India before or after such date."

10. The question whether para 7 of the Order of 1948 is a valid order or not was not only not canvassed before us, but the arguments proceeded on the basis and in our opinion very rightly so than it was a valid order which applied to all persons who are foreigners when they enter India. Consequently to that part of Mathur, J's. observations we have nothing to add.

11. The fallacy which in our opinion underlies the reasoning of Mathur, J. and we again say so with the greatest respect to him is the fact that he equated the word 'enters' in paragraph 7 with the word 'entered'. This, in our opinion, he was not justified in doing either on a plain reading of that paragraph or on the history of that Order. We have already said above that para 7 has remained unchanged since its promulgation in 1948. The opening words of that paragraph, which have always been 'Every foreigner who enters India.'. clearly show that that paragraph, when the order containing it was first promulgated, could not have been anything "but prospective in its application. The word 'enters' therefore must continue to bear the same meaning, unless there is anything in the context to warrant a different construction being placed on it. We have carefully perused the various paragraphs of the order of 1948 but find nothing therein to justify that word being given a re-prospective meaning. Besides one of the provisions of para 7 is impossible of application to a person who entered India when he was not a foreigner under the definition of that

word as it then stood.

For example, paragraph 7 requires a foreigner on entry to obtain from the Registration Officer having jurisdiction at the place at which the said foreigner enters India a permit indicating various things which are not necessary to be detailed here. It is obvious that a person who entered India when that paragraph did not apply to him cannot get such a permit at the time mentioned in that paragraph, viz., at the time of his entry into India. For all these reasons we find ourselves unable to accept the first contention of Mr. Bhatt and reject it.

12. The second contention, of Mr. Bhatt can be summarily disposed of, for the declaration made by the respondent in his application to the Pakistan. Government would, at the best, have the effect of making him a Pakistani national. But a Pakistani national was not a foreigner in India under the Act of 1946. The second contention of Mr. Bhatt has also therefore to be rejected.

13. Both the contentions urged on behalf of the appellant having been found untenable, the appeal fails and is hereby dismissed.

Appeal dismissed.