

# **BOMBAY HIGH COURT**

State

Vs.

Ibrahim Nabiji, Accused

Criminal Appeal No. 895 of 1958 (with Criminal Appeals Nos. 923, 984, 985, 1002, 1004-06 and 1020 to 1022 of 1958)

(Shah and V.S. Desai, JJ.)

09.12.1958

## **JUDGMENT**

**Shah, J.**

1. The Superintendent of Police, Kaira, served a notice upon the respondent Ibrahim Nabiji dated 20th August 1957 that the respondent who was a foreigner as defined under Section 2(a) of the Foreigners' Act, 1946, as amended by the Foreigners Laws (Amendment) Act, 1957, having entered India on 31-1-1956 through the Barmer Check post on a Pakistan passport No. 374894 dated 3-12-1955 bearing an Indian Visa No. 5993 dated 27-1-56 valid for stay in India till 30-4-56, was un-authorisedly staying in India since 1-5-56 and he was, therefore informed that he should leave India within one month from the date of receipt of the notice and that failing compliance with the notice he will be prosecuted and deported under the Foreigners Act, 1946. The respondent failed to carry out the direction contained in this notice. The Sub Inspector of Police, Petlad then filed a complaint in the court of the Judicial Magistrate, F.C., Petlad against the respondent on 23-10-1957 charging him with having committed an offence under Section 14 of the Foreigners Act, 1946. It was stated in the complaint that the respondent was 3 foreigner within the meaning of the Foreigners - Laws (Amendment) Act, 1957 and had not obtained under rule 7 of the Foreigners' Order. 1948, the necessary residential permit and had thereby infringed the provisions of Section 14 of the Foreigners' Act.

2. Before the Judicial Magistrate, the respondent claimed that lie was not a foreigner but was a citizen of India. He admitted that he had gone to Pakistan in 1951 but he contended that he had not accepted the citizenship of Pakistan. He submitted that even though in his Passport his domicile was shown as "Pakistan", that statement was untrue. The learned Judicial Magistrate acquitted the respondent. In his view as the respondent was born in the territory of India and there was no evidence, to show that he had renounced his citizenship of India, or that he had

voluntarily acquired by naturalization, registration or otherwise, at any time between 26-1-1950. and 30-12-1955, citizenship of Pakistan, by virtue of the presumption contained in Article 10 of the Constitution, the respondent must be deemed to be a citizen of India. The learned Magistrate observed that the respondent by "physically migrating to Pakistan", did not lose his Indian Citizenship and the respondent was, therefore, not a foreigner and had not infringed the provisions of Section 14 of the Foreigners Act, 1946. Against the order of acquittal passed by the Judicial Magistrate, the State has appealed to this Court.

3. Before us the arguments advanced on behalf of the State have traversed a ground very much wider than the one on which the case was sought to be argued against the respondent before the trial Magistrate. The learned Government Pleader contended that the respondent, who had come armed with a Passport of a foreign country describing him as a national of that country and had obtained a Visa which limited the duration of his stay to the period specified therein, by overstaying the period prescribed by the Visa, must be deemed to have infringed the provisions of Section 14 of the Foreigners Act. It was also contended that as 'the respondent had failed to obtain a permit as he was by law required to obtain, he had infringed rule 7 framed under the Foreigners' Act and on that account also he had violated the provisions of Section 14 of the Foreigners Act. Finally it was urged that even if the respondent was not initially a foreigner within the meaning of "the Foreigners Act since the date on which the Foreigners' Laws (Amendment) Act, 1957, was brought Into operation the respondent became a foreigner and was bound to comply with the directions issued by the District Superintendent of Police and the respondent, by failing to carry out the directions, committed an offence punishable under Section 14 of the Foreigners Act.

4. In order to appreciate these contentions, it is necessary to refer to certain provisions of the Foreigners Act as amended from time to 'time and the rules framed there under. The expression "foreigner" was defined by Section 2(a) of the Foreigners Act XXXI of 1946 as modified by Act 38 of 1947 as follows :

"Foreigner" means a person who -

- (a) is not a natural-born British subject as defined in Sub-Section (1) and (2) of Section 1 of the British Nationality and Status of Aliens Act 1914 (4 and 5 Geo, 5, C 17), or
- (ii) has not been granted a certificate of naturalization as a British subject under any law for the time being in force in India, or
- (iii) is not ruler or subject of an acceding State or
- (iv) is not a native of the Assam tribal areas : provided that any British subject who, under any Jaw for the time being in force in India, ceases to be a British subject shall thereupon be deemed to be a foreigner;"

By this definition it is evident that all natural born British subjects and persons who had obtained certificates of naturalization as British subjects under any law for the time being in force in India

were not foreigners within the meaning of the Act. There is no dispute that the respondent was born in India and under the Foreigners Act (Act No. XXXI) of 1946, being a natural born British subject he was not a foreigner. The definition of the word "foreigner" was amended by the Adaptation of Laws Order, 1950 when the Constitution of India came into operation and clauses (iii) and (iv) and the proviso of the original definition were deleted and substituted by a new clause in the following words : "is not a citizen of India". Even after this amendment made by the Adaptation of Laws Order, 1950, natural born British subjects and persons holding certificates of naturalization as British subjects under any law for the time being in force, could not be regarded as foreigners. By Section 3 of the Foreigners Act, power was conferred upon the Central Government to make order, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or, description of foreigners for prohibiting, regulating or restricting the entry of foreigners into India or their departure there from or their presence, or continued presence therein. In exercise of that authority, the Government of India issued the Foreigners' Order, 1948 and by rule 7 thereof it was provided :

"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 either at the place at which the said foreigner enters India or if he has entered India otherwise than on the authority of a transit visa or as tourist, as defined in the Registration of Foreigners Rules 1939 at the place at which he resides in 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 said period. ....,....."

By Section 14 of the Foreigners Act, persons contravening the provisions of the Act or of any order made thereunder, or any direction given in pursuance of the Act or such order, were liable to be punished with imprisonment for a term which may extend to five years.

5. Evidently, under the Foreigners Act as originally enacted and even after it was amended by the Adaptation of Laws Order, 1950, the respondent could not be deemed to be a foreigner. Rule 7, which we have already referred to places restriction on sojourn in India by foreigners who enter India on the authority of a visa issued in pursuance of the Indian Passport Act 1920 and requires them to obtain from the Registration Officer having jurisdiction either at the place at which the said foreigners enter India or if they had entered India otherwise than on the authority of a transit visa or as tourists, a residential permit. But the respondent was not a foreigner and by failing to obtain a permit from the Registration Officer or overstaying the period prescribed by the permit, if one was obtained the Respondent could not be deemed to have infringed rule 7, because one of the conditions precedent to the application of rule 7 is that the person sojourning must be a foreigner. Even if, a natural born British subject entered India in pursuance of a visa, he was under no obligation to obtain 3 permit from the Registration officer. Nor was he required to leave the country within the period prescribed by the permit granted to him. In any event, if he failed to

carry out the provisions of rule 7, he could not be penalised under Section 14 of the Foreigners Act. But since the year 1957, the position is fundamentally altered. Section 2, Clause (a) of the Foreigners Act, 1946 has been amended by Act 11 of 1957 and a foreigner is defined as a person who is not a citizen of India.

6. It is evident that persons who, before the date on which the Act No. 11 of 1957 was enacted, were entitled as British subjects to claim that they were not foreigners in India must since the date on which the Act came into force, be deemed, to be foreigners if they are not citizens of India.

7. The notice served upon the respondent in terms expressly refers to the status of the respondent as a foreigner by virtue of the provisions of Section 2(a) of the Foreigners Act, 1946 as amended by the Foreigners' Laws (Amendment) Act, 1957. The circumstance that the respondent being originally a British subject was not a foreigner within the meaning of that expression as used, in the Foreigners' Act, 1946, before it was amended, will not come to his aid. Since the amendment of the Act he has to establish that he holds the status of a citizen of India before he can resist enforcement of an order validly passed against him in exercise of the authority conferred under Section 3 of the Foreigners Act. Prima facie, when a person enters India under a Passport issued by a foreign country and under a visa obtained by him on an application submitted by him claiming that he was a national of a foreign country and that he desired to visit India for a limited period, it may be assumed that he is not a citizen of India. If after entering India such a person claims the status of a citizen, by virtue of rule 30 of the Citizenship Rules of 1956 issued under the Citizenship Act, (Act 57) of 1955, the question whether, when or how he has acquired the citizenship of another country, is to be determined for the purposes of Section 9(2), by the Central Government.

8. In the present case, the respondent did claim the status of a citizen of India and but for a defect in the notice which we will presently advert to we may have remanded this case to the trial court giving an opportunity to the State to obtain an adjudication from a competent authority as to whether the respondent had acquired the citizenship of another country. But we do not think, that, it is necessary in this case to pursue that course. As we have already observed the Superintendent of Police has issued the notice requiring the respondent to leave, India, whereas under Section 3 of the Foreigners Act, the power to make an order either against an individual or against a class generally, is conferred upon the Central Government. It is true that under Section 12 of the Foreigners Act the power to make orders under Section 3 may be delegated to a subordinate authority subject to such conditions as may be contained in the authorisation and the learned Government pleader has invited our attention to a Notification issued by the Government of India on 17th October 1955, No. 949/46/68/409A, whereby power has been conferred under Section 3, Sub-Section (2) clause (c) of the Foreigners Act, 1946 in respect of foreigners and enemy foreigners upon the State Governments including the Government of Bombay. By virtue of this notification the power may be deemed to be conferred upon the State Government. But the

learned Government Pleader has not been able to invite our attention to any order issued by the Central Government or competently by the State Government which has delegated the authority under Section 3 Sub-Section (2) clause (c) of the Foreigners Act upon the Superintendent of Police. The order passed by the District Superintendent of Police on 20th August 1957 must, therefore, be regarded as unauthorized and failure to carry out the requisition contained in that order cannot, in our judgment, be penalized under Section 14 of the Foreigners Act.

9. We are, therefore, of the view that the respondent has not infringed rule 7 of the Foreigners' Order. At the date when he entered India, he was not a foreigner and was by law not required to obtain a permit; and by overstaying the period prescribed by the Visa, also did not infringe rule 7. The respondent cannot be held otherwise guilty of the infringement of the provisions of Section 14 because there is no lawful direction issued against him requiring him under Section 3, Sub-Section (2) d. (c) of the Foreigners Act to leave India even if the respondent is a foreigner under the Foreigners Act as amended under the Foreigners' Laws (Amendment) Act, 1957.

10. On that view of the case, the order passed by the learned trial Magistrate must be confirmed and the appeal dismissed.

11. For the reasons aforementioned the companion appeals in which the same question falls to be determined are also dismissed.

Appeals dismissed.