
(1961) 04 GAU CK 0004
In the Gauhati High Court

Assan Ulla

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 19-04-1961

Acts Referred:

Passports Act, 1967 — Section 3, 4, 6

Citation : (1964) CriLJ 74

Hon'ble Judges : T.N.R. Tirumalpad, J.C.

Bench : Single Bench

Judgement

T.N.R. Tirumalpad, J.C.

1. This is indeed a most atrocious case and disclosed an utter travesty of justice and this poor petitioner before me has been convicted and sentenced by the Magistrate for no other reason than that he had been to be a Muslim living in the Village of Chamban which is near the Pakistan border . I am only sorry that the learned Sessions Judge Shri S. C. Talukdar, dismissed the revision petition filed by the petitioner before him without making any attempt to see if the case against the petitioner has been proved or not.

2. The petitioner was arrested on 7-10-50 u/s 4 of the Indian Passport Act by P. W. 2, the Circle Inspector of Police on the ground that he was a Pakistan national who had no landed property in this country and that he entered into India without any Passport or visa as transpired on enquiry made by "the said officer. In the report submitted by P. W. 2 to the Court, it was stated that the petitioner was an employee of a contractor Shri Ganesh Singh of Udaipur and that he was living with his relative Nur Mahamad at Chamban and that he may be prosecuted u/s 6(A) of the Indian Passport Act for contravention of the provision of Section 3(3) of the Passport Act. On this report, the Magistrate registered the case u/s 3(3) of the Indian Passport Act. Even the section of the law cited in the Police report was wrong. It is seen from the Magistrate's judgment that, he also did not understand under what provision of law the petitioner was being charged. Actually, the correct provision of law is Rule 3 of the Indian Passport Rules, 1950

read with Rule 6(a) of the said Rules framed u/s 3(3) of the Indian Passport Act. Even the learned Sessions Judge has wrongly mentioned it as Rule 6(A). There is no such Rule as Rule 6(a) in the Indian Passport Rules.

3. Rule 3 of the Indian Passport Rules, 1950 is as follows:

3. Save as provided in Rule 4, no person, proceeding from any place outside India, shall enter, "or attempt to enter, India by water, land or air unless he is in possession of a valid passport conforming to the conditions prescribed Rule 5.

Rule 6 of the Indian Passport Rules is as follows:

6. Any person who:

(a) contravenes or abets the contravention of the provisions of Rule 3, or

(b) does, or attempt to do, any act in contravention of any condition prescribed under Sub-rule (2) of Rule 4 shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

I have discussed the provisions of Sections 3 and 4 of the Indian Passport Act and Rules 3 and 6 of the Indian Passport Rules in very many judgments of mine in this Court and I have made it clear that Rules 3 and 6 of the Indian Passport Rules did not make any distinction between an Indian national and a foreign national as far as entry into India from outside without a valid passport was concerned. Thus, the question whether the petitioner was a Pakistan national or an Indian citizen did not matter at all, as far as prosecution, under the Indian Passport Rules 3 and 6(a) is concerned. What the prosecution had to prove in a prosecution under Rule 3 read with Rule 6(a) was that the person concerned entered India from outside without a valid passport. I have pointed out in my decisions that a person cannot be arrested inside India and prosecuted under the Indian Passport Rules on the ground that he was a Pakistan national and that he must have entered India after the Indian Passport Rules came into force in 1952. In any prosecution under Rules 3 and 6(a) of the Indian Passport Rules, there must be clear evidence that the person concerned entered India from outside without a valid Passport. What the lower Courts had therefore to see was not whether the petitioner was a Pakistan national, but whether there was evidence that he entered India from outside. It is regrettable that neither the Magistrate nor the Sessions Judge bestowed any attention on this matter.

4. 5 prosecution witnesses were examined for the prosecution. P. Ws. 1 to 3 were Police Officers and they had no personal knowledge that the petitioner entered India from outside. None of them had seen the petitioner enter India from outside. For that matter the two other witnesses P. Ws. 4 and 5, from whom P. W. 2 is said to have got the information that the petitioner entered India from outside did not say that they saw him enter India from outside. What P. W. 4 stated was that the petitioner came over 3 years ago and has been working with Ganesh Singh, Contractor, living in the house of Nur Mahammad (D. W. 2) He did not say that the petitioner came over from Pakistan. What the witness said was

that when the Inspector questioned the petitioner, on his being produced before the said Inspector by his father-in-law D. W. 3, he said that his home was at Chandpur in Pakistan. P. W. 4 further said that he had a quarrel with D, W. 3 the father-in-law of the petitioner and that it was for this reason that he gave information about the petitioner to the Circle Inspector. As for P. W. 5 he stated that it was about 3 years since the petitioner came over to this country and began working for Ganesh Singh, Contractor, staying in the house of Nur Mahammed D. W. 2. This witness also did not say that the petitioner came from Pakistan though he said that sometimes the petitioner would stay in Pakistan and sometimes he would come over to India. It however transpired from the evidence of these witnesses that he and P. W. 4 and many other persons made an application to the. Inspector of Police against the Pakistan people, who were in Chamban village. Thus, it is clear that P. Ws. 4 and 5 were the persons who gave information to the Police about the petitioner. It was: again clear that P. Ws. 4 and 5 had not seen the petitioner enter India from outside. This was all the evidence against the petitioner.

5. On this evidence no Court of law could have convicted the petitioner of having entered India from outside. All that the evidence showed was that the original home of the petitioner was in Chandpur in Pakistan and that for 3 years past P. Ws. 4 and 5 had been seeing him at Chamban Village. This evidence is certainly not sufficient to prove that the petitioner entered India from outside. There are lakhs of people - Hindus and Muslims in Tripura whose original home was Pakistan and who had come over to India at sometime or other. If this kind of evidence is, considered to be sufficient to convict a person under Rules 3 and 6 of the Indian Passport Rules, almost every person in the border villages will have to be held guilty under those Rules. Even P. W. 4 admitted in his evidence that he permanently came over to India from Pakistan which was his original home. I have no doubt in my mind that this poor petitioner has been victimised by persons like P. Ws. 4 and 5 on account of grudge against him taking advantage of the fact that he was a Muslim. I am only sorry that the Inspector of Police P. W. 2 should have aided them in this nefarious purpose and that even the Courts below acted so perversely in convicting the petitioner with absolutely no evidence against him for his having entered India from outside, for no other reason than that he happened to be a Muslim.

6. The learned Sessions Judge has stated in his judgment that it was significant that the original home of the petitioner was in Pakistan and further that if the accused was really living in India for so many years as claimed by him, it cannot be understood why he had not acquired any property up-till now as lands were available merely for the asking in those days. No more perverse statement can be made by a Court than" this. There are millions of persons living in our country, who have come over from Pakistan and have not been able to acquire any lands in our country. Such a statement clearly showed that the Sessions Judge was completely prejudiced in viewing the evidence in this case.

7. The defence set up they the petitioner appeared to me to be a very frank and true one. It is surprising that in spite of 5 witnesses being examined by him in support of the said defence, the lower Courts for no reason whatsoever disbelieved the evidence of the said 5 witnesses. They dealt with the case as if the burden was on the petitioner to prove that he was not a Pakistani. One is inclined to think that the lower Courts rejected the defence evidence because the petitioner happened to be a Muslim. The sooner our Courts stop doing this the better it will be. Courts should never make any distinction between man and man whatever may be his religion, race, caste or community. Our Constitution has laid this down in no uncertain terms. Our country is happily a secular State, unlike our neighbour Pakistan.

8. The petitioner is a young man, aged 22 years. He said that his original home was in Chandpur in Pakistan and that he lost his father and mother -when he was very young and that he was brought to India when he was 7 or 8 years old by his mother's sister's husband Nur Mahammad D. W. 2 and that ever since then he has been living with Nur Mahammad. All the 5 witnesses examined by him including Nur Mahammad and the petitioner's father-in-law D. W. 3 supported Him., He got married in India and his wife is also living with him in the house of Nur Mahammad. In spite of this positive evidence on the petitioner's side, one fails to understand how the lower Courts could have punished the petitioner when there was no prosecution evidence at all, even without any positive evidence to convict the petitioner. All the five defence witnesses gave a consistent version.

9. I have no hesitation in coming to the conclusion that the judgment of the Magistrate convicting the petitioner as well as the order of the Sessions Judge Sri S. C. Talukdar confirming the conviction are so utterly perverse that it will amount to a very serious miscarriage of justice if I do not interfere in this revision. The revision petition is allowed and the conviction and sentence of the petitioner are set aside.