

(1960) 09 RAJ CK 0001
In the Rajasthan High Court

Hasan Khan

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-09-1960

Acts Referred:

Citizenship Act, 1955 — Section 9
Constitution of India, 1950 — Article 226
Foreigners Act, 1946 — Section 12

Citation : (1961) CriLJ 283

Hon'ble Judges : D.S. Dave, J;B.P. Beri, J

Bench : Division Bench

Judgement

D.S. Dave, J.—This is a writ application under Article 226 of the Constitution of India by one Hasan Khan.

2. The petitioner's case is, that his parents are residents of Amber in Jaipur district and that he was also born at Amber. In 1955, he was prosecuted in the court of the Sub-Divisional Magistrate, Amber, on the allegations that he had migrated to Pakistan in 1950, that he had become a national of Pakistan, that he had returned to India on a passport and had over-stayed the period for which he was allowed to stay in India, He denied all the allegations made against him and eventually he was acquitted of the offence u/s 3 of the Indian Passport Act of 1920 on 27-9-56 by Magistrate First Class Jaipur District to whom the case was transferred. Thereafter, he was living peacefully with his family members at Amber.

On the morning of 14-9-1959, a constable came to his house and told him that he was wanted by the Station House Officer, Amber. He, therefore, went to the police station. The Station House Officer sent him to the office of the Superintendent of Police, Jaipur, with two constables. When he reached there, he was served with a notice under the signatures of the Superintendent of Police, whereby he was asked to leave India within six hours. In the alternative, he was given a threat of deportation. He intimated the Station House Officer that he was

once acquitted by a competent court and that he never entered India with or without a passport and that the order passed against him was there-tore illegal.

He proceeds to say that no attention was given to his request and then he was taken to Banner by two constables on 15-9-1959. They reached Bar-mer on 16-9-1959, in the morning. From Banner he was taken to police station, Gadra Road, on 17-9-1959, and there he was handed over to the charge of a head constable, who in turn asked one of the constables of the outpost to take him to the border of Pakistan. The constable took him to the border of India and he was left one mile away from the border of Pakistan.

When the constable had. gone away, the petitioner came back to a hamlet in the territory of India and then came to Jodhpur on foot, Ultimately, he went back to Amber and began to reside with his family members, It is alleged by the petitioner that the police has come to know of his return to his house and that it is again trying to arrest and deport him.

It is contended that the order passed by the Superintendent of Police, Jaipur respondent No. 2 on 14-9-1959 u/s 12 of the Foreigners" Act, 1946, was illegal, because he is a citizen of India and has not registered himself as a citizen of any other country. It is prayed by him that a writ in the nature of prohibition or a direction should be issued to the respondents to the effect that he should not be arrested and deported to Pakistan.

3. In the reply which has been filed on behalf of the respondents, it is admitted that the parents of the petitioner am living at Amber. It is also admitted that he was prosecuted in the court of the Sub-Divisional Magistrate, Amber, and that on the case being transferred to the court of Magistrate First Class, Jaipur District, he was acquitted of the charge u/s 3 of the Indian Passport Act, 1920, on 27-9-1956. It is further admitted that respondent No. 2, had served upon the petitioner a notice on 14-9-59 directing him to leave India within six hours and that he was actually deported on 25-9-1959.

The respondents have, however, sought to justify the action taken against the petitioner on the ground that he had migrated to Pakistan in 1950 and that he became a Pakistani national thereafter. It is alleged against the petitioner that he had returned to India on a passport No. 122489 and that although the said passport is not available, this fact is established by an application for a visa dated 27-7-53 a copy of which has been produced and marked as Ext. 2. It is contended that the respondents were authorised to deport the petitioner u/s 5 of the Indian Passport Act, 1920, and that this writ application should be dismissed.

It is further urged that the petitioner may approach the Central Government u/s 9 of the Citizenship Act, 1955, read with Rule 30 of the Citizenship Rules, 1956, and this Court should not interfere in the matter, since the said remedy is open to the petitioner.

4. We have given our earnest consideration to the objections raised on behalf of

the respondents and we have no hesitation in observing at once that the stand taken by the respondents on Section 5 of the Indian Passport Act, 1920 is not correct, The said section runs as follows:

5. Power of removal - The Central Government may, by general or special orders direct the removal of any person from India who, in contravention of any rule made u/s 3 prohibiting entry into India without passport, has entered therein, and thereupon any officer of the Government shall have all reasonable powers necessary to enforce such direction.

A plain reading of the above section would show that it empowers the Central Government to direct the removal of any person from India by general or special orders, if such person has contravened any rule made u/s 3 prohibiting entry into India without a passport. In order to justify the petitioner's deportation or removal under the said section it was necessary for the respondents to show if the petitioner had entered India from outside without a passport. When the petitioner was prosecuted in the court of the Sub-Divisional Magistrate, it was alleged by the respondents themselves that the petitioner had entered India with a passport No. 122489 and therefore it is obvious that Section 5 could not be applicable to him.

It is also clear from the perusal of the judgment of the Magistrate First Class, Jaipur, a copy Ex. PI of which has been filed by the petitioner, that the prosecution was unable to lay its hands on passport No. 122489 on which the petitioner was said to have entered India. His prosecution was sought only on the basis of two entries appearing in the diary of the police station, Amber. The first entry was said to be dated 5-8-53 in which it was noted that the petitioner had come from Pakistan on a passport of the number referred to above. Then, there was another entry dated 29-10-53 whereby it was noted that he had come on a passport No. 1093 dated 3-5-53 and that he had not returned to Pakistan.

The court found that both the entries were contradictory inasmuch as they gave different numbers of the passport on which the petitioner was alleged to have entered India. The court also came to the conclusion that the prosecution was unable to prove if the petitioner had migrated to Pakistan at any time or that he had become a Pakistani national, and therefore he was acquitted. It is also clear that no action was taken against the petitioner thereafter for about 3 years. In the notice dated 14-9-59 which was served upon the petitioner it was not mentioned by respondent No. 2 as to what was his basis for coming to the conclusion that the petitioner had entered India on a passport No. 122489 dated 1-7-53 and that he had become a Pakistani national before that date. The allegation therefore was not well founded. Learned Deputy Government Advocate has no doubt sought to justify the allegation now on the basis of an application for visa (Ex. 2) which is said to have been made by the petitioner.

In the first instance, it may be observed that the original of this document has not been produced before this Court. Moreover, no reason has been given why

this document was not produced before the Magistrate when the petitioner was challaned in the year 1955. Its genuineness is therefore not free from doubt. The petitioner having been acquitted of the charge u/s 3 of the Indian Passport Act by a competent court as early as in 1956, the Court cannot now raise an inference against the petitioner on the basis of Ex. 2 that he is a Pakistani national, or that he had entered India, or that it was he who had got this visa.

The petitioner has stoutly denied in this Court having obtained any visa like Ex. 2. Under these circumstances, it cannot be held that the notice issued by respondent No. 2 dated 14-9-59 against the petitioner was valid or that the action taken by the respondents u/s 5 of the Indian Passport Act against the petitioner was justified.

5. It remains now to consider the point raised by learned Deputy Government Advocate with regard to Section 9 of the Citizenship Act, 1955. It is contended by him that the petitioner ought, to have approached the Central Government under the said section for a certificate before making any application to this Court. In support of his argument he has referred to *Ismail v. State of Rajasthan* 1959 Raj LW 299 : ILR (1958) 8 Raj 761. That case is clearly distinguishable from the present one inasmuch as the petitioner Ismail in that case had himself admitted that he had gone to Pakistan in February 1955 and returned to India under a passport on 25-7-55. Ismail having come on a passport from Pakistan, there was an initial presumption against him that he had acquired the citizenship of that country. In the present case, the petitioner has been denying throughout if he ever went to Pakistan or that he had returned to this country under a passport or visa. Section 9 of the Citizenship Act, 1955, runs as follows.

9. Termination of citizenship - (1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950, and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this Sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

It would also be pertinent to reproduce here Rule 30 of the Citizenship Rules, 1956, on which reliance is placed by learned Deputy Government Advocate, It runs as follows:

30. Authority to determine acquisition of citizenship of another country -- (1) If any question arises as to whether, when or how any person has acquired the

citizenship of another country, the authority to determine such question shall, for the purposes of Section 9(2), be the Central Government.

(2) The Central Government shall in determining any such question have due regard to the rules of evidence specified in Schedule III.

6. A perusal of the said Rule 30 clearly shows that if a question arises as to whether, when or how any person has acquired the citizenship of another country, the authority to determine such question for the purposes of Section 9(2) of the Citizenship Act, 1955, will be the Central Government. Now, in the present case, it is not the petitioner who claims that he has acquired citizenship of another country. On the other hand, he claims to be a citizen of India.

It is the respondents who allege that he has acquired or that he had acquired at one time the citizenship of another country, namely, Pakistan. It was, therefore, for the respondents and not for the petitioner to approach the Central Government and obtain a decision whether the petitioner had really acquired the citizenship of another country.

They ought not to have proceeded to deport him bodily outside this country so long as it was not held by a competent authority if he had acquired the citizenship of another country. In *Mohammad Khan and Others Vs. Government of Andhra Pradesh* where a similar question had arisen, it was observed by the learned Judges of the Andhra Pradesh High Court as follows:

Under Rule 30(2) the Central Government is the authority to determine such a question in accordance with the rules specified in Schedule III. The Act and the Rules framed thereunder created a special tribunal, namely, the Central Government for deciding the said question and a duty is cast on it to do so whenever the question is raised. The respondent, therefore, before making the orders expelling the appellants, should have raised the question before the Central Government and obtained its decision". We respectfully agree with the view expressed above. In the present case also, the respondents ought to have raised the question before the Central Government and obtained its decision if the petitioner had acquired the citizenship of Pakistan before taking proceedings against him with regard to his deportation from this country. Without obtaining such a decision from the Central Government the respondents had no authority to treat the petitioner as a foreigner, specially when there was a decision of a competent court to the contrary in his favour. The action taken by the respondents in deporting the petitioner was not justified.

7. We therefore allow the writ application and quash the notice Ex. P2 dated 14-9-59, issued by respondent No. 2. We further direct the respondents to forbear from deporting the petitioner from this country without taking proper proceedings under the law in the light of the observations made above. The petitioner will get Rs. 50/- as costs from the respondents.