
(1968) 12 CAL CK 0006
In the Calcutta High Court
Case No : Criminal Revision No. 1275 of 1968

Imtiazuddin Khan alias Prafulla Kumar Das	APPELLANT
Vs	
The State	RESPONDENT

Date of Decision : 06-12-1968

Acts Referred:

Constitution of India, 1950 — Article 258
Foreigners Act, 1946 — Section 12, 14, 3, 3(2), 9

Citation : (1969) 1 ILR (Cal) 489

Hon'ble Judges : Bagchi, J; Amaresh Roy, J

Bench : Division Bench

Advocate : S. Ataunnabi and Santi Ranjan Goswami, for the Appellant; S.N. Banerjee, Deputy Legal Remembrancer, for State, for the Respondent

Judgement

Amaresh Roy, J.—The Petitioner Imtiazuddin Khan, alias Prafulla Kumar Das, has made this application for Revision against an order of a Presidency Magistrate in Calcutta by which he has been convicted of an offence u/s 14 of the Foreigners Act, 1946, and sentenced to simple imprisonment for one month and to pay a fine of Rs. 30, in default, to undergo simple imprisonment for seven days. In that order, awarding punishment upon conviction, the learned Magistrate also directed that the accused be deported out of India after he serves out the sentence. The allegations upon which this Petitioner was prosecuted were that he was a Pakistani national and had entered India on December 19, 1965, and continued to stay at Calcutta without any valid travel document.

2. By making this application the whole of the order of the Magistrate was impugned by contending that the decision on the question of facts was wrong and the order of conviction and imposition of sentences were also illegal and erroneous. The last part of the order by which the learned Presidency Magistrate had directed deportation after the sentence imposed would be served out was also challenged as illegal and without jurisdiction.

3. The Rule was issued only upon the ground directed against deportation part of

the order. No Rule was issued in respect of the other part of that order by which the Petitioner has been convicted of an offence u/s 14 of the Foreigners Act, because we were of the view that that order of conviction and also sentences imposed were unassailable. The learned Magistrate had correctly held that u/s 9 of the Foreigners Act, 1946, the burden of proving that he is not a foreigner is on the accused. In the present case, the accused had made no attempt to discharge that onus either by adducing oral or documentary evidence. Prosecution has proved by the testimony of P.W. 1 Sudhir Kumar Sarkar, who is a Sub-Inspector of Police, and also documents proved in the case the elements of the offence alleged against this accused. P.W. 3 M.K. Das Burman, Inspector of Police, who arrested this accused and also P.W. 9 Anil Mohan Roy, a Sub-Inspector of Police, who accompanied P.W. 3 at the time of that arrest) provided clear evidence that the accused could not produce any valid travel document for his stay in India and had admitted that he had no passport at all. Those witnesses were not cross-examined even.

4. Regarding the deportation order made by the Magistrate, on which ground only this Rule was issued, the learned Presidency Magistrate, who had made that order, has shown cause by saying that, as the accused was found to be a foreigner, it was ordered that he should be deported out of India after he serves out the sentence. This is not a cause shown but only reiteration of the very point the legality of which is, the subject-matter of this Rule.

5. Appearing on behalf of the State the learned Deputy Legal Remembrancer Mr. S.N. Banerjee has made it clear that he will not endeavour to support that part of the order of the Magistrate by which the Magistrate made the deportation order. In the whole of the Foreigners Act there is no power given to a Magistrate, upon conviction u/s 14, to make a deportation order. That was pointed out as early as in 1949 by a judgment of a Division Bench presided over by Harries, C.J. and S.R. Das, J. That judgment has been reported in *B.A. Shervashidze Vs. Govt. of West Bengal and Another*, . u/s 3 of the Foreigners Act, 1946, the Central Government may by order make provision 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 therefrom or their presence or continued presence therein. In Sub-section (2), Clause (c) of that section it has been provided that order made under that section may provide that the foreigner shall not remain in India or in any prescribed area therein. This power of the Central Government has been delegated u/s 12 of the Foreigners Act to the State Government and such delegation is quite valid in view of the provision in Article 258 of the Constitution of India.

6. That being the law, the power to make an order of deportation is in the authority mentioned u/s 3 and the authority to which that power has been delegated. The Supreme Court has laid down the law in this respect in the case of *The Government of Andhra Pradesh Vs. Syed Mohd. Khan*, . When an enquiry

has been made and a finding arrived at against the person by the appropriate authority regarding citizenship of any person, then only can an order u/s 3(2)(c) of the Foreigners Act be made by that authority. The Foreigners Act make's provision for cases where a foreigner, ordered to leave the country by the proper authority, fails to do so. Section 14 of the Act provides that if any person contravenes the provision of the Act or any order made thereunder or any direction given in pursuance of the Act or such order, he shall be punished with imprisonment for a term which may extend to five years and that he shall also be liable to a fine. When such contravention of a proper order of deportation, made by a proper authority is brought before the Magistrate, the Magistrate can only deal with the case by deciding whether the offence punishable u/s 14 of the Foreigners Act has been established. That does not give power to the Magistrate to make a deportation order on his own, even upon an order of conviction made for an offence u/s 14 of the Act. For this reason it must be held that the order of the Magistrate in so far as he had directed deportation of the Petitioner must be held to have been made without jurisdiction and is therefore illegal and is liable to be set aside.

7. The learned Deputy Legal Remembrancer has informed this Court that, after the conviction was made by the Presidency Magistrate in this case on November 8, 1968, steps have been taken to obtain directions from the appropriate authority how the Petitioner shall be dealt with after he has served out the sentence of imprisonment imposed on him by the learned Presidency Magistrate. It will be for the executive authorities to pursue that matter. At the present stage the Court is not concerned with it. If an order is made by the executive authority and that is not obeyed, then only can the person concerned be prosecuted and brought before the Magistrate to be dealt with u/s 14 of the Foreigners Act. That can only be after the term of imprisonment imposed upon the Petitioner has expired and he has been released from jail.

8. For the reasons above mentioned, we set aside that part of the order of the learned Presidency Magistrate in which he has said the accused be deported out of India after he serves out the sentence and make the Rule absolute.

Bagchi, J.

9. I agree.