
(1996) 04 CAL CK 0028
In the Calcutta High Court

Mrs. Raushan Ara alias Suraiya

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 22-04-1996

Acts Referred:

Citizenship Act, 1955 — Section 9(2)
Citizenship Rules, 2009 — Rule 30
Constitution of India, 1950 — Article 7, 9
Criminal Procedure Code, 1973 (CrPC) — Section 321, 401, 482
Foreigners Act, 1946 — Section 14

Citation : (1997) 1 CALLT 89

Hon'ble Judges : Asish Baran Mukherjee, J

Bench : Single Bench

Advocate : Pradip Kumar Ghosh and Tapandeb Nandi, for the Appellant; A.R. Saha, for the Respondent

Judgement

Asish Baran Mukherjee, J.—This revisional application preferred u/s 401 and 482 Cr.PC has been filed in order to quash the CGR Case No. 3116 of 1995 arising out of section "Y" Case No. 216 dated 19.9.95 as also to set aside the order dated 4.4.96 passed by the learned Sub-Divisional Judicial Magistrate, Alipore in the said case.

2. The case of the petitioner in short is that her father is an Indian Citizen having his permanent place of residence in Calcutta. The petitioner was born in Calcutta on 2.12.71 and as such she is a citizen by birth and was also a permanent resident of Calcutta. Her marriage was celebrated on 9.10.93 with one Pakistani national, Mr. Zahid Ahmed of Karachi and therefore, she left with her husband in Karachi to lead a matrimonial life. She left India on the basis of an Indian passport being C-058173 dated 20.8.87 issued by the Regional Passport Office in Calcutta.

3. While staying at Karachi the petitioner was insisted upon by her in-laws and under severe physical and mental torture by them she had to acquire a Pakistani passport being A-231761 dated 26.9.94 after surrendering the Indian passport.

4. On the strength of that Pakistani passport she visited Calcutta in November, 1994 and stayed for six (6) months and in May, 1995 she returned to Karachi. On reaching there she found that her in-laws had already left for Bahrein and her husband had also arranged to leave for Soudi Arabia for a job. Even after repeated request she was not allowed to accompany her husband who left alone in June, 1995 leaving the petitioner at Karachi. Due to misbehaviour of two adult brothers of her husband, she with the help of some well-wishers at Karachi obtained a new Pakistani passport as the original one was detained by her in laws being passport No. B-013400 dated 18.6.95. After obtaining Visa she come to New Delhi on 12.7.95 and from there to Calcutta on 14.7.95. She also recorded her arrival to the concerned authority. Being asked by FRRO Office, Theatre Road was explained the reason for acquiring a new passport instead of the old one.

5. Her Visa was due to expire on 10.8.95 and as the petitioner wanted to extend her stay in Calcutta, she went to the Visa Extension Office of the Deputy Secretary, Home (Passport) on 31.7.95 for extension of visa. Later she applied for an extension in the prescribed form supplied by the said office. She also approached the Special Officer, Home (Passport) Department for extension of her Visa. Her application reached the said office on 9.8.95. By letter dated 8.8.95 she informed the Deputy Secretary, Home (Political), Government of West Bengal and also several other Government officials including the Commissioner of Police, Calcutta requesting all of them to arrange extension of visa. Since no reply was received, she again sent an application on 28.8.95 supported by documents including Indemnity Bond to the Special Officer Home (Passport), that application was duly received by the authority. But it was not replied. Instead she received a telephone call asking her to see a Police Officer in his office at 34A, Theatre Road on 19.9.95 for a enquiry in connection with long term visa. She accordingly went there, whereupon the section "Y" case No. 216 of 1995 was started and she was put under arrest. She was enlarged on bail by the SDJM, Alipore on the said date. Later another telephonic message asked her to meet another Officer of the Special Branch on 13.10.95. She met him produced all relevant paper but till date result of the enquiry was not communicated to her. On 24.10.95 she wrote to the Home Secretary, Government of West Bengal with the request for a long term visa. She also wrote to the Deputy Commissioner of Police, Special Branch on 17.11.95.

6. In the meantime, there was a change of the circumstances in the house of the in-laws through the intervention of some friends and relatives and her husband and parent-in-law agreed to take her back as soon as possible. The petitioner is also ready and willing to go to Karachi to lead her normal matrimonial life but due to the pendency of the CGR. Case u/s 14 of the Foreigners Act she is unable to leave India as per condition imposed in the bail order.

7. On 4.12.95 she wrote to the Home Secretary requesting him to ignore her application but to allow her to leave India for Karachi by using her Pakistani

passport. Ultimately, Government agreed to withdraw the case against her and on 20.3.96 the APP filed an application u/s 321 Cr.PC before the SDJM, Alipore praying for withdrawal of the present case. The petitioner filed another application also on the same day with the same prayer. On 22.3.96 the APP filed another application u/s 321 Cr.PC but after hearing the APP the SDJM rejected the prayer for withdrawal by order dated 4.4.96.

8. It is alleged that the fact that she applied for extension of visa before the expiry of period mentioned in the earlier visa was not considered by the Court. The fact that at no point of time she was served with a notice by the Central Government for her alleged over-stay in Calcutta was not also considered. It is contended that in the absence of such action on the part of the Central Government the starting of the Criminal Case is not in accordance with law and its continuance is an abuse of process of the Court. It is alleged that her status has not yet been determined by the Central Government in accordance with Section 9(2) of the Citizenship Act. She being an Indian citizen whether in the aforesaid facts and circumstances she has lost the same as a matter to be determined by the Central Government, being the only authority for the purpose and in the absence of such determination no case can be started against her. With this prayers she has preferred the revisional application.

9. I have heard the learned Advocate appearing for the petitioner and also the learned Advocate appearing for the State. On the point of fact learned Advocate appearing for the petitioner has produced xerox copies of number of document to show that since her birth in Calcutta, she is perusing her studies in Calcutta till she left the same for Karachi on her marriage on 9.10.93. It has been argued that the petitioner being an Indian Citizen, the citizenship was not lost merely by her migrating to Pakistan after her marriage. It is contended that mere acquisition of a Pakistani passport under compulsion by her in-laws cannot take away her citizenship in India. It is also argued that the question of petitioner continuing to remain an Indian Citizen or acquiring Citizenship of another country in this case Pakistani can be determined by the Central Government alone in accordance with Section 9(2) of the Citizenship Act read with Rule 30 of the Citizenship Rules. It is contended that such determination has not been made as yet and as such initiation of a case u/s 14 of the Foreigners Act is bad in law. In support of his contention the learned, Advocate amongst others has relied on decisions reported in 1971 Cr.L.J., 1103 and also 1963 Supreme Court Appeals, 649 on the basis of the said decisions it has been argued that in the absence of a determination in accordance with Section 9(2) of the Citizenship Act read with Rule 30 of Citizenship Rules, it cannot be state that she has lost her citizenship in India or she has acquired Citizenship of Pakistan. It has also been contended that she came to India on the basis of a valid passport and visa and before the expiry of the period mentioned in the visa she applied to the proper authority for extension of the same and inspite of repeated sittings no decision was taken or communicated by the enquiring authority to her. On the other hand, she was put under arrest after she was called to attend the office of a Police Officer and a

Criminal Case u/s 14 of the Foreigners Act was started against her. It is contended on the basis of Articles 7 and 9 of the Constitution of India that her citizenship cannot automatically come to an end in the facts and circumstances of the case.

10. The learned Advocate appearing for the State while supporting the prosecution could not properly explained his stand vis-a-vis the decision of the Government of West Bengal to withdraw the case against her which prompted the concerned APP to file an application u/s 321 Cr.PC for withdrawal of the criminal case against her. He however, produced the case diary of concerned case which reveals the decision of the Government which prompted APP to pray for withdrawal.

11. After giving my careful consideration to the submissions of both the sides and having regard to the law as laid down by the cited decision it can at once be said without going into the merit of rejection of an application u/s 321 Cr.PC in this particular case, that the initiation of a proceeding under the Foreigners Act against the petitioner is not at all tenable in law. That the petitioner is originally a citizen of India by birth cannot be disputed. It is true, that in October, 1993 she migrated to Pakistan to her matrimonial home following her marriage with a Pakistani national. During her stay in the matrimonial home she visited Calcutta on the strength of a Pakistani passport and visa allowed by the Government of India and stayed in India for six (6) months. In the present case her entrance to India is not a clandestine affair but she came on the strength of a valid Pakistani passport and a visa granted by the Government of India. She applied for extension of the visa before its expiry and fully cooperated with the enquiring authority by producing documents including Ration Cards in her favour. The said authority neither rejected not allowed the prayer for extension but started a case under the Foreigners Act against her and put her behind the bars. There being no determination by the Central Government being the only authority in accordance with Section 9(2) of the Citizenship Act read with Rule 30 of the Citizenship Rules that she has lost Indian citizenship and that she is a Foreign nationals, her Indian citizenship stands good and as such no criminal prosecution can lie against her in accordance with the Foreigners Act. As such the continuance of such a proceeding is absolutely an abuse of process of the Court.

12. The determination by the Central Government as per Rules cited above is a condition precedent before starting of a case under the Foreigners Act. Such a determination even if made during continuance of a criminal proceeding under the Foreigners Act does not satisfy the requirement of law as has been held by the Supreme Court in 1971 Cr.LJ. 1103. As such without going into merits of the rejection of the prayer for withdrawal preferred by the Government of West Bengal through the APP before the Sub-Divisional Judicial Magistrate, Alipore, it is concluded that the prosecution being CGR Case No. 3116 of 1995 pending before the SDJM, Alipore should be quashed.

13. Accordingly, the Criminal Case being CGR Case No. 3116 of 1995 pending

before the learned SDJM, Alipore is quashed. The opposite party, namely State of West Bengal is directed to handed over Pakistani passport on the basis of which the petitioner entered India to the petitioner immediately. The petitioner will be at liberty to leave India within the period of the 30 days from the date of such handing over of the Pakistani passport and her stay during the aforesaid period in India shall be in accordance with law and in course of her stay, her liberty cannot be curtailed by the Government in any manner. The revisional application is accordingly allowed on contest.