Chhanga Khan vs The State on 4 May, 1955

Equivalent citations: AIR1956ALL69, 1956CRILJ20, AIR 1956 ALLAHABAD 69

ORDER

Mulla, J.

1. This is a reference made by the learned Sessions Judge, Kheri, recommending that the order of Sr. K. M. All, a first class Magistrate of Lakhimpur, convicting Chhanga Khan under Section 3, Passport Act be quashed.

2. The facts of the case are that Chhanga Khan came to India with a passport, which was issued to him on 19-11-1952. This passport was valid for five years, i. e., upto 19-11-1957 Chhanga Khan, when he came to India, had to secure visas on this passport. Several visas were made on this passport and the last visa is dated 21-4-1954. In this visa Chhanga Khan was permitted to stay in India upto 9-7-1954.

It is apparent from this that Chhanga Khan has been all along trying to extend the period of his stay in India and this period was being extended repeatedly. This time, however, the period was not extended and Chhanga Khan was arrested on 28-7-1954 at Lakhimpur. He was prosecuted under Section 3, Passport Act and the learned Magistrate convicted him. Chhanga Khan went up in revision before the Sessions Judge and the Sessions Judge has made this reference.

3. I have been assisted in this case by the Additional Government Advocate, who has placed the law relating to the matter before, me. I find that Section 3, Passport Act cannot be invoked against the applicant, because it provides only against the entry of a person in India, but makes no provision for over-staying in India.

I have gone through carefully into all the provisions of the Indian Passport Act and the rules made under Section 3 of the Act and I find that there is no provision 'of law which provides a punishment' for over-staying, if the passport is valid. It cannot be doubted that the passport of Chhanga Khan is valid upto 19-11-1957.

4. It was contended by the learned Additional Government Advocate that in the circumstances of this case I should act under the provisions of Sections 236 and 237, Criminal P. C., and convict the 'applicant under Section 5, Influx from Pakistan (Control) Act, 1949. In my, opinion, it is not possible for me to do so. Firstly, the provisions of Sections 236 and 237, Criminal P. C., in my opinion, cannot be applied to offences which fall within two different penal Acts. It is obvious that the penal clause in these two Acts would require different facts to be given prominence and the same contravention will not be penal under the two provisions. Apart from this, the applicant would naturally be prejudiced, if he is not permitted to face and explain the definite accusation under

which he is convicted. Apart from this, I find that the Influx from Pakistan (Control) Act, 1949 was repealed on 26-12-1952, and it was preceded by Ordinance 7 of 1952.

It, therefore, could not operate as it has ceased to be an existing law. The offence, if any, was committed by the applicant after 9-7-1954, and at that time the Influx from Pakistan (Control) Act, 1949, was a dead letter. I, therefore, hold that the applicant cannot be convicted under that Act.

5. The learned Magistrate in his explanation has stated that because the applicant continued to remain in India after 9-7-1954, without any valid passport, his stay amounted to an entry into India after that date. I am unable to accept this interpretation. Entry into India is not synonymous with remaining in India. . If the meaning of the word "entry" was to be so extensive, there was nothing to prevent the Legislature to define the word 'entry' used in Section 3, Passport Act.

In interpreting the words of a Statute, their natural meaning should be given, unless there is some special meaning given to it by the Legislature, which it has clearly expressed. In my opinion the word 'entry' can by no stretch of imagination mean continuance of stay. I, therefore, find that all that can be said against the applicant is that he over-stayed in India after the time limit, given to him by the last visa, had expired. As over-staying in India under these circumstances has not been made an offence under any provision of law for no such law has been, shown to me the applicant cannot, be convicted by importing a meaning in a penal Statute, which does not exist there.

It is for the state to consider whether a penal remedy should be prescribed for such a situation or not. So long as that remedy is not provided, the law cannot be distorted to provide that remedy.

6. I, therefore, accept the reference made by the learned Sessions Judge and set aside the order of conviction passed by the Magistrate in this case. Chhanga Khan is, therefore, acquitted. The fine, if paid, should be refunded.