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(2013) 01 DEL CK 0359

Delhi High Court

Case No: Criminal Rev. P. No. 367 of 2006 and Criminal M.A. No. 5194 of 2006

Mumtaz Parveen APPELLANT

Vs

State RESPONDENT

Date of Decision: Jan. 28, 2013

Acts Referred:

- Citizenship Act, 1955 - Section 9, 9(2)
- Constitution of India, 1950 - Article 5(a)
- Foreigners Act, 1946 - Section 14

Citation: (2013) 3 JCC 2223 : (2014) 1 RCR(Criminal) 45

Hon'ble Judges: Pratibha Rani, J

Bench: Single Bench

Advocate: Seema Gulati, for the Appellant; Rajdipa Behura, APP and Vijay Singh, S.I. P.S. I.P. Estate, for the Respondent

Judgement

Pratibha Rani, J.
Feeling aggrieved by the dismissal of her appeal, vide which she challenged her conviction and sentence awarded by learned MM in case FIR No. 582/1997, u/s 14 of Foreigners Act, PS I.P. Estate, this criminal revision petition has been filed by the petitioner Mumtaz Parveen impugning the order convicting her for committing the offence punishable u/s 14 of Foreigners Act and sentence awarded to her thereunder. The main grievance of the petitioner is that she could not have been prosecuted and convicted for committing the offence punishable u/s 14 of Foreigners Act till the question as to whether she has lost her Indian citizenship, is determined by the Central Government u/s 9 of the Citizenship Act, 1955. Thus, the impugned order convicting her for committing the offence u/s 14 of Foreigners Act and to undergo SI for one month for the said offence, being without jurisdiction is liable to be quashed.

2. In brief, the case of the petitioner is that she was an Indian citizen by birth and her natural parents are also Indian citizens by birth. She was born in Meerut, U.P. and her

name also appeared in the Voter List. The petitioner got married to Mohd. Sultan on 17.09.1978. She gave birth to three children and they were born in Meerut. Her first marriage with Mohd. Sultan was dissolved by way of divorce.

3. Second marriage of the petitioner was performed in the year 1988 with Abdul Wahab Khan, who is a Pakistani national. The petitioner, after her second marriage, accompanied her husband to Pakistan. However, the second marriage was also unsuccessful for various reasons including concealment by her second husband of he being already having wife and children. While petitioner was in Pakistan, her travel documents including passport were taken away by her second husband Abdul Wahab Khan. As the petitioner was not willing to stay with her second husband, she being not fully literate (educated upto primary level) she returned from Pakistan to India on the travel documents provided by Abdul Wahab Khan, her second husband i.e. on a Pakistani passport with visa from Indian Government.

4. Ms. Seema Gulati, Advocate for the petitioner has submitted that the question of determination of Indian Citizenship by voluntarily acquiring Pak citizenship could only be determined by an appropriate authority as per Section 9(2) of the Indian Citizenship Act. It has been further submitted that the Apex Court has settled the principle of law in this regard in the case State of U.P. Vs. Rehmatullah, wherein referring to the decisions given in Shuja-ud-din vs. UOI 1961 Cri. LJ 573 , Abdul Sattar Haji Ibrahim Patel Vs. State of Gujarat, and Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another, by Constitutional Bench, legal position was reiterated as under:

On appeal this Court held that neither the Magistrate nor the Sessions Judge was competent to come to a finding of his own that the respondent, an Indian national, had disowned his nationality and acquired Pakistan nationality for u/s 9(2) of the Citizenship Act that decision could only be made by the prescribed authority. The respondent in that case, according to this Court, had become an Indian citizen under Article 5(a) of the Constitution when it came into force and there being no determination by the Central Government that he had lost his nationality thereafter, the order of the High Court acquitting him was upheld.

11. In Shuja-Ud-Din v. The Union of India and Anr. C.A. No. 294 of 1962 decided on Oct. 30, 1962 this Court speaking through Gajendragadkar, J. as he then was said:

It is now well settled that the question as to whether a person who was a citizen of this country on January 26, 1950, has lost his citizenship thereafter, has to be determined under the provisions of Section 9 of the Citizenship Act, 1955 (No. LVII of 1955). There is also no doubt that this question has to be decided by the Central Government as provided by Rule 30 of the Rules framed under the Citizenship Act in 1956. The validity of Section 9 as well as of Rule 30 has been upheld by this Court in the case of Izhar Ahmad Khan and Ors. v. Union of India and Ors. It has also been held by this Court in The State of Madhya Pradesh v. Peer Mohd. and Anr. (Crl. Appeal No. 12 of 1961 decided on Sept.

28, 1962) that this question has to be determined by the Central Government before a person who was a citizen of India on January 26, 1950. could be deported on the ground that he has lost his citizenship rights thereafter u/s 9 of the Citizenship Act. Unless the Central Government decides this question, such a person cannot be treated as a foreigner and cannot be deported from the territories of India.

12.. In Abdul Sattar Haji Ibrahim Patel v. The State of Gujarat Cr. A. No. 153 of 1961 decided on Feb. 17, 1964, Gajendragadkar, C.J., speaking for a bench of five Judges approved the decisions in the cases of Izhar Ahmed Khan [1962] Su. 3 S.C.R. 235 and The Government of Andhra Pradesh Vs. Syed Mohd. Khan, , it being emphasized that the decision of the Government of India is a condition precedent to the prosecution by the State of any person on the basis that he has lost his citizenship of India and has acquired that of a foreign country. That an inquiry u/s 9 of the Citizenship Act can only be held by the Central Government was again re-affirmed by this Court in Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another, .

13. In view of these decisions it seems to us to be obvious that till the Central Government determined the question of the respondent having acquired Pakistan nationality and had thereby lost Indian nationality, he could not be treated as a foreigner and no penal action could be taken against him on the basis of his status as a foreigner, being national of Pakistan.

5. Learned counsel for the petitioner has referred to the circumstances in which the petitioner had been compelled to travel from Pakistan to India. She submitted that at that time, the only concern of the petitioner was to somehow return to her country and had no option but to travel on the documents provided by her second husband, who had already taken her Indian passport and compelled her to return to India on Pakistani passport with Indian visa. She just received the passport and visa provided to her, without any intention to surrender her Indian citizenship voluntarily. Rather, she was forced to travel on the documents provided to her by her Pakistani husband and in the circumstances, it is difficult to infer that she had voluntarily obtained Pakistani passport.

6. Ms. Seema Gulati. Advocate has referred to the Supreme Court decision reported as Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another, wherein this aspect has been dealt with and it was observed as under:

But obtaining of a passport of a foreign country cannot in all cases merely mean receiving the passport. If a plea is raised by the citizen that he had not voluntarily obtained the passport, the citizen must be afforded an opportunity to prove that fact. Cases may be visualized in which on account of force a person may be compelled or on account of fraud or miss-representation he may be induced, without any intention of renunciation of his Indian citizenship, to obtain a passport from a foreign country. It would be difficult to say that such a passport is one which has been "obtained" within the meaning of Paragraph 3 of Sch. III and that a conclusive presumption must arise that he has acquired voluntary

citizenship of that country.

7. While relying upon the decision of Supreme Court in Bhagwati Prasad Dixit "Ghorewala" Vs. Rajeev Gandhi, , learned counsel for the petitioner has submitted that Section 9 is a complete code as regards the termination of citizenship on the acquisition of the citizenship of a foreign country.

8. Ms. Seema Gulati, Advocate for the petitioner has submitted that since it is not within the jurisdiction of this Court to adjudicate on the question as to whether the petitioner has acquired citizenship of some other country and whether this act was voluntary or involuntary and the effect thereof, the issue whether petitioner has lost her Indian citizenship on obtaining a Pakistani passport with Indian visa has to be adjudicated upon by Central Government. Learned counsel for the petitioner has relied upon the observation made by Division Bench of this Court in K.L. Modi Vs. Union of India, wherein, after referring to the various pronouncement of the Supreme Court, it was observed:

This Court is not inclined, and indeed is not competent, in these proceedings on the existing pleadings to make any order direction (sic) the respondents to permit the petitioner to enter and stay in the territories of India. It is not for this Court to adjudicate on the question of the petitioner"s citizenship in writ proceeding on the material on this record. The question of voluntary or involuntary Acquisition of citizenship of some other country is also not for this Court is not in a position, as a matter of law, on the existing material to hold that the petitioner is an Indian citizen. The question whether the petitioner has lost his citizenship of India and acquired citizenship of some other country is to be decided by the Central Government and not by this Court in the person proceedings.

9. Learned counsel for the petitioner has submitted that in view of the legal position that the issue regarding citizenship of the petitioner whether she has ceased to be a citizen of India on acquiring Pakistani passport, has to be adjudicated upon by the competent authority, pending such adjudication, the conviction and sentence of the petitioner may be kept in abeyance as well the direction given by learned Trial Court to deport the petitioner to Pakistan may be stayed.

10. Learned counsel for the petitioner has also relied upon State of Gujarat Vs. Yakub Ibrahim, , Abdul Sattar Haji Ibrahim Patel Vs. State of Gujarat, , The Government of Andhra Pradesh Vs. Syed Mohd. Khan, , S. Mohsfii Shah Vs. The Union Govt. of India and others, , S. Nalini Srikaran Vs. Union of India (UOI), , and Hajee M. Mohamed Kassim and others Vs. The Sub Inspector of Police, Kottar Police Station, Nagercoil, , in support of her contentions.

11. On behalf of State, Ms. Rajdipa Behura, learned APP, while admitting the legal position as laid down in various pronouncements relied upon by learned counsel for the petitioner, has submitted that the question whether the petitioner has lost her Indian

citizenship has to be adjudicated upon by the Central Government under the provisions of Section 9(2) of the Citizenship Act, 1955 read with Rule 30 of the Citizenship Rules, 1956. Learned APP for the State has submitted that vide impugned order, while upholding the conviction of the petitioner u/s 14 of Foreigners Act and sentencing her to undergo SI for one month, the orders have also been passed for her deportation to Pakistan. Thus, pending adjudication as to whether she ceased to be an Indian citizen by virtue of the fact that she travelled from Pakistan to India on Pakistani passport with Indian visa, her deportation to Pakistan may be stayed and her conviction and sentence may be kept in abeyance.

12. Undisputedly, the petitioner was Indian citizen by birth till she married a Pakistani national and accompanied him to Pakistan. She travelled to India on Pakistani passport with Indian visa. The question whether this act amounts to losing Indian citizenship has to be adjudicated upon by the Central Government in accordance with the provisions of Section 9(2) of the Citizenship Act, 1955 read with Rule 30 of the Citizenship Rules, 1956.

13. In view of above discussion, the conviction and sentence awarded to the petitioner is kept in abeyance. The operation of the order directing the authorities to deport the petitioner to Pakistan is stayed till the issue of citizenship is determined by the Central Government.

14. This revision petition is adjourned sine die with liberty to either of the parties to get it revived after the issue of citizenship of the petitioner is adjudicated upon by the Central Government. The petitioner is directed to approach the Central Government within six weeks from the date of this order under intimation to the Registry and State.

15. The petitioner shall inform the SHO, PS I.P. Estate and Registry about her present address and contact number. In case, the petitioner changes her address and contact number, she shall inform the same to the SHO, PS I.P. Estate. Copy of the order be given dasti to both the parties under the signature of Court Master.