

(1970) 07 GAU CK 0005

Gauhati High Court (Kohima Bench)

Case No: None

Manohar Ali

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: July 21, 1970

Acts Referred:

- Foreigners Act, 1946 - Section 14

Citation: AIR 1971 Guw 25 : (1971) CriLJ 206

Hon'ble Judges: P.K. Goswami, C.J; M.C. Pathak, J

Bench: Division Bench

Judgement

P.K. Goswami, C.J.

This revision is directed against conviction u/s 14 of the Foreigners Act. The petitioner was sentenced to rigorous imprisonment for six months.

2. The facts briefly are that the petitioner was a police constable under the Government of Assam posted at Silchar in 1947. At the time of partition of India, he opted for Pakistan and he was released from service under the Assam Government with effect from 13-12 1947 and he was directed to report to the Inspector General of Police in Dacca. It is said, that the accused-petitioner entered India on 3-10-1954 with > a Pakistan passport dated 26-11-1953 and Visa dated 6-8-1954 of Category "B". A photograph of the accused was pasted to the passport and the visa. He was thereafter found residing in the village Ramnagar in Cachar in September, 1965 and he was arrested and prosecuted" u/s 14, as mentioned above.

3. Prosecution examined six witnesses and the accused also examined two witnesses. The plea of the accused is that although he had contemplated to opt for the purpose of serving in Pakistan, he never went to Pakistan. He absolutely denied to have served in Pakistan. There was some discrepancy about the name appearing in the register at the checkpost with that of the passport and the visa. The entry in the register shows the name as "Manohar Ali Mazumdar" while the passport and

the visa are in the name of "Manohar Ali Maja Bhuiya". The courts below did not consider this discrepancy as very material in view of the photograph pasted to the passport and the visa. The identity of the "accused" was, therefore, held to be established as the entry Ext. 2 (1) in the register mentions the identical passport and the visa number of the accused. The courts below also have rejected the testimony of the defence witnesses that the accused has all along been in India and that he never went to serve in Pakistan.

4. On the above facts, the question that arises for consideration is whether the accused has committed an offence u/s 14. The charge against, the accused reads as under:◆

That you, on or about the 27th day of September, 1965 at Ramnagar were found to reside in India, being a foreigner, violating the Order under paragraph 7 of the Foreigners Order, 1948, as amended up to date, and thereby committed an offence punishable u/s 14 of the Foreigners Act.

Prosecution has proved that the accused entered India in October, 1954 with a Pakistan passport. On the day of entry, he was not a foreigner under the provisions of the Foreigners Act prior to its amendment in 1957. It is only with effect from 19th January, 1957 that the definition of "foreigner" has undergone a drastic change. "Foreigner", after the 1957-amendment, means "a person who is not citizen of India". Hence, on the date of his entry in 1954, he could not be prosecuted under the provisions of the Foreigners Act. Paragraph 7 of the Foreigners Order, 1948, which is mentioned in the charge, may be read:

Every foreigner who enters India on the authority of a visa issued in pursuance of the Indian Passport Act, 1920 (XXXIV of 1920), shall obtain from the Registration Officer having jurisdiction, either at the place at which the said foreigner enters India or at the place at which he presents a registration report in accordance with Rule 6 of the Registration of Foreigners Rules, 1939 a permit indicating the period during which he is authorised to remain in India and shall, unless the period indicated in the permit is extended by the central Government, deport from India before the expiry of the said period; and at the time of foreigner's departure from India the permit shall be surrendered by him to the Registration Officer having jurisdiction at the place from which he departs.

Rule 6 of the Registration of Foreigners Rules, 1939, provides for procedure for registration and requires, inter alia, a foreigner of three specified descriptions therein to present the registration report to the Registration Officer and various time limits are also prescribed under the said rule. Reading the charge the offence, if any, was committed by the accused on entering India in October, 1954 for violating the provisions of paragraph 7 of the Foreigners Order, read with Rule 6 of the Registration of Foreigners Rules, although the latter has not been specifically mentioned in the charge. Yet the charge specifically indicates that he committed the

offence on 27th September, 1965. Evidently, therefore, this is a case of a foreigner residing in India overstaying the period allowed to him in his visa.

There is no fresh order or direction given to the accused under the provision of the Foreigners Act, which the accused is said to have disobeyed or violated, in which case even though he was not a foreigner at an earlier stage he could have been dealt with as a foreigner under the provisions of the Foreigners Act after 19th January, 1957. The accused, therefore cannot be convicted u/s 14 of the Foreigners Act on the facts established by the prosecution.

5. Our attention is drawn to a Single Bench decision of this Court in Criminal Revn. No. 73 of 1968 (Assam) where also the same view was taken, relying on the Supreme Court's decision in Fida Hussain Vs. State of Uttar Pradesh, We are, however, with respect, unable to agree with the learned Chief Justice's observation in the above Single Bench decision that a visa and a permit are the same. We are of opinion that a permit which a foreigner is required to obtain under paragraph 7 of the Foreigners Order, 1948, is different from a visa, on the authority of which he enters India. This is clear from Paragraph 7 itself.

6. The facts of the present case do not attract the ratio decidendi of the decisions of the Supreme Court in Fateh Mohd Vs. Delhi Administration, and Ibrahim Vs. State of Rajasthan, relied upon by Mr. R. C. Choudhuri, appearing n behalf of the State.

7. In the result, the revision is allowed and the conviction and sentence are set aside. This acquittal will not prevent the authorities from dealing with the accused in accordance with the appropriate provisions of the law.

M.C. Pathak, J.

8. I agree.