

ABDUL RAHIM ISMAIL RAHIMTOOLA

v.

THE STATE OF BOMBAY

(JAFER IMAM and J. L. KAPUR, JJ.)

1959

May 14.

Criminal Trial—Entry into India without passport—Conviction—Interpretation of statute and rules—Reference to constitutional Bench, if and when necessary—Constitution of India, Art. 145(3)—Indian Passport Rules, 1950, rr. 3 and 4—Indian Passport Act (34 of 1920), s. 3.

The appellant an Indian citizen entered India without a passport after and on the basis of the decision of the Supreme Court. The appellant's contention was that s. 3 of the Indian Passport Rules, 1950, were *ultra vires* the Constitution and that on a proper interpretation, the provisions of the section and rules did not apply to an Indian citizen; and that when a case involves a constitutional question, it should be referred to a Bench of five Judges, described as "Constitution Bench."

Held: Where there is a binding decision of the Constitution Bench of this Court on the question of law as to the interpretation of the Constitution, and if the same question is raised in another matter then it cannot be said that any substantial question of law arises regarding the interpretation of the Constitution and the matter need not be referred to a Constitution Bench.

On a reasonable interpretation of s. 3 of the Act and rr. 3 and 4 of the rules, which say that "persons" entering India shall be in possession of a valid passport, there can be no manner of doubt that the provisions apply to all persons entering India including Indian citizen.

The Act of entry into India without a passport was in contravention of the Rules and the appellant was rightly convicted.

Ebrahim Vazir Mavat v. The State of Bombay, [1954] S.C.R. 933, followed.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 182 of 1957.

Appeal from the judgment and order dated July 4, 1957, of the Bombay High Court, in Criminal Application for Revision No. 278 of 1956, arising out of the judgment and order dated the 3rd January, 1956, of the Presidency Magistrate 16 Court, Esplanade, Bombay, in Criminal Case No. 1913/P of 1955.

O. N. Srivastava and *J. B. Dadachanji*, for the appellant.

G. C. Mathur and *R. H. Dhebar*, for the respondent.

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1959. May 14. The Judgment of the Court was delivered by

IMAM J.—The appellant was convicted under r. 6(a) of the Indian Passport Rules, 1950, hereinafter referred to as the Rules, made under s. 3 of the Indian Passport Act, (34 of 1920), hereinafter referred to as the Act, and was sentenced to pay a fine of Rs. 100. The High Court in exercising its revisional jurisdiction upheld the conviction but reduced the sentence to a fine of Rs. 25. It granted a certificate to the appellant that the case was a fit one for appeal to this Court.

It is beyond dispute now that the appellant is a citizen of India. Admittedly he entered the territories of India without a passport. The sole question for determination is whether his act in so entering the territories of India amounted to an offence punishable under r. 6(a) of the Rules.

The Act was passed in 1920 and has been the subject of amendment and modification thereafter. Its preamble states “whereas it is expedient to take power to require passports of persons entering India, it is hereby enacted as follows.” “Passport” has been defined as a passport for the time being in force issued or renewed by the prescribed authority and satisfying the conditions prescribed relating to the class of passport to which it belongs. Section 3 states :

- (1) The Central Government may make rules requiring that persons entering India shall be in possession of passports, and for all matters ancillary or incidental to that purpose.
- (2) Without prejudice to the generality of the foregoing power such rules may—
 - (a) prohibit the entry into India or any part thereof of any person who has not in his possession a passport issued to him ;
 - (b) prescribe the authorities by whom passports must have been issued or renewed, and the conditions with which they must comply, for the purposes of this Act ; and
 - (c) provide for the exemption, either absolutely or on any condition, of any person or class of persons from any provision of such rules.

- (3) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to three months, or with fine or with both.
- (4) All rules made under this section shall be published in the Official Gazette and shall thereupon have effect as if enacted in this Act.

Rule 3 of the Rules states :

“ Save as provided in rule 4, no person, proceeding from any place outside India, shall enter, or attempt to enter, India by water, land or air unless he is in possession of a valid passport conforming to the conditions prescribed in rule 5.”

Rule 4 specifies the persons who shall be exempted from the provisions of r. 3. Clause (b) of r. 4 exempts members of the Naval, Military or Air Forces of India on duty, and members of the family of any such person when accompanying such person to India on a Government transport. Clause (c) exempts persons domiciled in India proceeding from any of the French establishments in India (other than Pondicherry in Kairakal) or from any of the Portuguese establishments in India or Pakistan. Clause (f) exempts persons domiciled in India entering India by land or by air over the Napalese or Tibetan Frontier. Clause (h) exempts bonafide Mohamedan pilgrims returning from Jeddah or Basra and clause (i) exempts other persons or classes of persons specified by general or special orders of the Central Government.

The date of the appellant's entry into India is not known. He was certainly arrested on February 26, 1955, and it is his case that he entered India sometime after the decision of this Court in the case of *Ebrahim Vazir Mavat v. The State of Bombay*.⁽¹⁾ The judgment of this Court in that case was delivered on February 15, 1954. On that basis the appellant entered India sometime after February 15, 1954 and before February 26, 1955. It is unnecessary to specify in great detail the

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movements of the appellant between November 19, 1948, when he went to Karachi for the first time, and his arrest on February 26, 1955, as his movements during this period are not relevant in determining whether the appellant has committed an offence punishable under r. 6(a) of the Rules. The case must be decided on the footing that sometime before his arrest on February 26, 1955, the appellant entered India without a passport.

Two contentions were raised on behalf of the appellant (1) that r. 3 of the Rules and s. 3 of the Act were *ultra vires* the Constitution in so far as they purported to affect the right of an Indian citizen to enter India without a passport and (2) that on a proper interpretation of the provisions of s. 3 of the Act and r. 3 of the Rules, these provisions did not apply to an Indian citizen. They applied only to non-Indian citizens.

As to the first contention it was urged that s. 3 of the Act and r. 3 of the Rules in so far as they purported to relate to an Indian citizen were *ultra vires* the Constitution, as they offended against the provisions of Art. 19(1)(d) and (e). Article 19(1)(d) confers the fundamental right on all Indian citizens "to move freely throughout the territory of India" and Art. 19(1)(e) "to reside and settle in any part of the territory of India." This fundamental right, however, is subject to reasonable restrictions under clause (5) of Art. 19. In the case of *Ebrahim Vazir Mavat v. The State of Bombay* (supra)⁽¹⁾ the majority judgment of this Court held that an Indian citizen visiting Pakistan for any purpose whatsoever and returning to India may be required to produce a permit or a passport as the case may be before he can be allowed to enter India, and this requirement may well be regarded as a proper restriction upon entry. This Court, however, held that it was quite a different matter to say that if he enters India without a permit he may on conviction for such offence be ordered to be removed from India. It was the order directing his removal from India which was held by this Court to be tantamount to taking away his fundamental right guaranteed under Art. 19(1)(e),

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“to reside and settle in any part of the territory of India”. It is clear, therefore, that so far as this Court is concerned it has already decided that to require an Indian citizen to produce a passport before he can be allowed to enter India may be regarded as a proper restriction upon entering India. This decision is binding on us and we must follow the decision of this Court in the case referred to. It was, however, urged that as a constitutional question has been raised this matter cannot be decided by judges less than five in number. Therefore, the case should be referred to what is described as the Constitution Bench. Article 145(3) of the Constitution states that the minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of the Constitution or for the purpose of hearing any reference under Article 143 shall be five. It is clear that no substantial question of law as to the interpretation of the Constitution arises in the present case as the very question raised has been decided by a Bench of this Court consisting of five Judges. As the question raised before us has been already decided by this Court it cannot be said that any substantial question of law arises regarding the interpretation of the Constitution.

As to the second submission made we have no hesitation in saying that the words used in s. 3 of the Act and rr. 3 and 4 of the Rules make it quite clear that they apply to every person including an Indian citizen. Under s. 3(1) of the Act the word “Persons” has been stated without any qualification. Under s. 3(2)(a) the words employed are “any person” and in r. 3 the words employed are “no person”. Clause (b) of r. 4 obviously applies to Indian citizens but those mentioned in that clause have been specifically exempted from the operation of r. 3. Clause (h) of r. 4(1) can apply to Indian citizens who are by religion Mohomedan. They have been exempted. Therefore, on a reasonable interpretation of s. 3 of the Act and rr. 3 and 4 of the Rules there can be no manner of doubt that these provisions apply to all persons including Indian citizens.

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In our opinion, there can be no manner of doubt that the appellant's entry into India without a passport was in contravention of r. 3 of the Rules and therefore punishable under r. 6(a) and the appellant was rightly convicted. The appeal is accordingly dismissed.

Appeal dismissed.

S. GANGOLI

v.

THE STATE OF UTTAR PRADESH
(and connected appeal)

(B. P. SINHA, P. B. GAJENDRAGADKAR and
K. N. WANCHOO, JJ.)

Prevention of Corruption—Railway Servant under the Government—If a public servant under the Act—Prevention of Corruption Act, 1947 (II of 1947), s. 2—Indian Railways Act, 1890 (9 of 1890), s. 137(4)—Indian Penal Code (45 of 1860), s. 21.

The two appellants, who were railway servants under the Government, were put up on trial under s. 120B of the Indian Penal Code and s. 5(2) read with s. 5(1)(c) and 5(1)(d) of the Prevention of Corruption Act, 1947. The Sessions Judge who tried the case found, in agreement with the unanimous opinion of the assessors, the appellants guilty and sentenced appellant No. 1 to rigorous imprisonment for three years and appellant No. 2 to rigorous imprisonment for two years. The High Court on appeal affirmed the order of conviction and sentences passed on the appellants. It was contended on behalf of the appellants in this court that the order of conviction and the sentences passed on them were illegal as they were not public servants under s. 2 of the Prevention of Corruption Act, 1947.

Held, that it was apparent from the words "for any of the purposes of that Code" used by s. 137(4) of the Indian Railways Act, 1890, as it stood prior to its amendment in 1955, that the bar created by that sub-section applied, and was confined, to the purposes of the Indian Penal Code and could not be extended beyond its provisions. In respect of offences other than those under the Code, therefore, neither sub-s. (1) of s. 137, which applied only to offences under Ch. IX of the Code, nor sub-s. (4) of that section could apply and the question whether a railway servant charged with offences under the Prevention of Corruption Act, 1947, was a public servant or not must be decided under s. 2 of that Act.