P L D 1951 Sind 60

(Sessions Court Jurisdiction)

Before Tyabji, C. J

JACOB—Appellant

versus

THE CROWN—Respondent

Jacob v. Crown

Tyabji, C J

Criminal Appeal No. 42 of 1950, decided on 1st August 1950.

(*a*) *Pakistan (Control of Entry) Ordinance (XVII of 1948), Ss. 3 and 4—Plea that contravention was not wilful—Whether tenable.*

The appellant had a valid permit to re-enter Pakistan on or before 6th December 1948, but he arrived in Pakistan on December and 18 held forth the plea that he was arrested by the Indian authorities on December 3, and was only released on December 14, his failure to enter Pakistan by due date was thus not wilful :

Held, that in the first place there are no words such as "voluntarily" or "wilfully" qualifying the word "contravener" in section 4. Further even such words had been there, it is clear that when the appellant, knowing that his permit had expired no matter what the explanation was of his not having re-entered Pakistan earlier re-entered Pakistan without obtaining an extension of his permit, his re-entry was clearly a deliberate, wilful, and voluntary re-entry into Pakistan. There can, therefore, be no doubt that the appellant did contravene section 4 when he re-entered Pakistan on the 18th December, after his permit had expired. [p. 63].

Under these circumstances the conviction under section 4 must be maintained.

(*b*) *Pakistan (Control of Entry) Ordinance (XVII of 1948), Ss. 4 and 6—Rule 18 of rules regarding working of permit system—Magistrate ordering removal of accused, as well as passing sentence of fine*—Ultra vires.

If the intention of Rule 18 of rules regarding working of permit system read with section 6 of Ordinance was to confer any such power on a Magistrate trying an offence under section 4 of the Ordinance, the rule was *ultra vires*. Section 4 of the Ordinance makes it an offence to contravene the provisions of section 3 or any rule made under the Ordinance, and it provides for the punishment for such an offence if proved. The punishment under the terms of section 4 clearly can only be imprisonment for a term which may extend to one year, or a fine, which may extend to Rs. 1,000, or both and nothing else. It is beyond the powers of Central Government, by making any rule, to provide for any punishment for any offence under section 4, other than the punishment provided by section 4. The Magistrate's order, directing the removal of the appellant from Karachi, forming part, as it does, of a judicial decision on a trial of a charge under section 4 of the Ordinance, was *ultra vires*.

Munawar Abbas for Appellant.

Inamullah, Public Prosecutor for the Crown.

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JUDGMENT

TYABJI, C. J.—The appellant, Jacob H. Singh, has been convicted by the First Additional City Magistrate, Karachi, for having contravened the provision of section 3 of the Pakistan (Control of Entry) Ordinance XVII of 1948, in that he entered Pakistan from a place in India on the 18th December 1949 with an invalid permit, and was sentenced to pay a fine of Rs. 50 or in default to undergo one month's simple imprisonment. The Magistrate also ordered the removal of the appellant from Karachi, purporting to act under Rule No. 18 of the rules regarding the permit system framed under the authority conferred by section 7 of the Ordinance.

The appellant admitted that he had entered Pakistan on the date mentioned and that he had no valid permit authorising him to do so on date. It is argued, however, on his behalf that, on the facts and circumstances of this case, there was no wilful contravention of section 3 on his part and that he had, therefore, committed no offence. It is also argued that the order of the Magistrate, directing the removal from Karachi of the appellant, was illegal and in any case not justifiable.

The facts of this case are as follows :—

The appellant, Jacob H. Singh, was employed in the Ordinance Factory at Muradnagar near Delhi before the partition. He opted for Pakistan and arrived in Karachi on the 9th February 1948, and after having been posted in the Ordinance Factories Transit Depot at Karachi for some time he was employed on the H. M. P. S. Dilawar as a clerk in the draughting section of the naval headquarters at Karachi. The appellant, who states that his father was at Rutlam, obtained a permit from the Permit Office of the Pakistan Government, to go to India to return permanently to Pakistan, which was available for the period 7th September to 6th December 1949, *i.e.*, for three months. He thereafter obtained a certificate from Dr. Faruqui the Navy, on the 22nd October 1949, recommending him for a month's leave on the ground that he was suffering from lumbago, and put in an application for a month's leave without stating that he intended to go to India, and left for Bombay by the S. S "Dwarka", along with his wife and son, on the 23rd October. It was necessary for him to have informed his department and obtained their permission before going to India, but he had not done this. The month's leave asked for on the medical certificate was granted to him by the department in which he was serving. Some time thereafter the Draughting Commander, R. P. N. Barracks, discovered that the appellant had proceeded to India without prior official permission, and brought this fact to the notice of the Assistant Naval Provost Marshall who started making enquiries. The appellant's proceeding to India without obtaining the necessary permission was regarded as a matter detrimental to the security of the State. The appellant re-entered Pakistan *via* Khokhraparkar on the 18th December and came back to Karachi, and on the 19th December went to Dr. Faruqui in order to obtain a certificate of fitness with a view to resuming his duties. Dr. Faruqui immediately informed the

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Naval Provost Marshall, and the appellant was arrested by the Naval Police, and certain documents, which were found on his person, were secured, including a diary and a certificate from the Jodhpur Central Jail. On the 20th December the Naval Provost Marshall sent the appellant to the C. I. D. for further investigation. As it was then discovered that the appellant had obtained a permanent return permit from the Pakistan Government, before he went to India, which had expired on the 6th December 1949, and that he had re-entered Pakistan on the 18th December, he was placed before a Magistrate for the offence of overstaying in India and entering Pakistan without a valid permit.

It is pleaded on behalf of the appellant, by Mr. Munawar Abbas, that the appellant did not obtain permission from the Naval authorities before he went to India, because he was aware that it would be very difficult for himf to obtain such permission, and he was anxious to visit his ather who was ill. Such an explanation obviously cannot help appellant. It was also contended by the learned Advocate that as a matter of fact the appellant had left Rutlam in good time to be able to reach Pakistan before the expiry of his permit; that he had actually reached Barhmer on the 3rd December by rail, but that, before he could cross over into Pakistan territory, he was arrested by the Indian Government and taken to Jodhpur, where he was tried on the 14th December and convicted and sentenced to pay a fine of Rs. 50; and that, on being convicted, he paid up the fine, was released and then returned to Pakistan. The learned Advocate showed me an entry made in the diary which has been exhibited in the case, Exh. 6, which shows that the appellant had travelled by a ticket issued at Marwar for Barhmer on the 3rd December, and also mentions the number of the ticket. The learned Advocate further contended that the reason why the appellant was arrested at Barhmer was that he had an Indian permit permitting him to travel to Pakistan by sea and not by rail, and that he was convicted of having contravened the permit by travelling to Barhmer by rail. This particular allegation is obviously a false one, because as long as he remained in India he could commit no offence, by travelling by rail or otherwise within India. When this was pointed out to the learned Advocate, he sought further instructions from the appellant who then stated as a matter of fact and had an Indian permit which entitled him to remain in India only for 40 days from the 14th October, and that he was convicted of the offence of having contravened that permit and having overstayed in India.

The learned Advocate contends that as the appellant had reached Barhmer on the 3rd December, in time to reach Pakistan before the 6th of December, and the reason why he did not enter Pakistan before the 6th of December, was that he was arrested and kept in custody upto the 14th December, he had committed no wilful contravention of section 3 of the Ordinance, and that his offence was only a technical one. But it is impossible to accep this plea. In the first place there are no words such as "voluntarily" or "wilfully" qualifying the word "contravenes" in section 4. Further even if such words had been there, is clear that when the appellent, knowing that

his permit had expired no matter what the explanation was of his not having re-entered Pakistan earlier re-entered Pakistan without obtaining an extension of his permit, his re-entry was clearly a deliberate, wilful, and voluntary re-entry into Pakistan. There can, therefore, be no doubt that the appellant did contravene section 4 when he re-entered Pakistan on the 18th December, after his permit had expired. Further, I am far from being satisfied that the appellant did reach Barhmer by the 3rd December, in time to be able to re-enter Pakistan before his permit expired on the 6th December, though there is no doubt that after he reached Barhmer he was arrested by the Indian Government. The appellant had not proved that he was arrested by the Indian Government on the 3rd December. He has only shown that he was released on the 14th December (Cf. Certificate Exh. 4). He may well have been arrested after the 6th December.

Under these circumstances the conviction under section 4 must be maintained.

In passing his sentence, the learned Magistrate stated :

"The conduct of the accused appears suspicious as he was found in possession of a note book Exh. 6, containing chemical formulas of manufacturing gun-powder and other ammunition. His removal from Karachi, is, therefore, ordered."

The extract from a diary, Exh. 6, which have been relied upon, do not, however, contain any "chemical formulas of manufacturing gun-powder or other ammunition". Mr. Arshad Hussain, the Sub-Inspector, C. I. D., did make a statement while giving evidence that the diary contained such formulae, but it is obvious that he did not understand the entries at all, and did not have them examined by any person knowing anything about "chemical formulas for manufacturing gun-powder and other ammunition." The entries in the diary contain notes regarding ;

(1) the measurements of the stock of a gun suitable for a short person, (2) the material that may be used for bluing on old gun, (3) the varnish that might be used for polishing the stock of a gun, and (4) a suitable oil for cleaning the fouled barrel of a gun. These extracts, it is clear, were copied from an article in the 1937 edition of "The Sportsmen's Manual", under the heading "Improve your gun's appearance by bluing barrel and fittings", and have nothing whatever to do with any chemical formulae of the manufacture of explosives. The ground on which the Magistrate, therefore, considered it necessary to pass the order directing the removal of the appellant from Karachi was clearly based on misconception.

The learned Advocate has also argued that the learned Magistrate had no jurisdiction to pass any order directing the removal of the appellant from Karachi. The learned Public Prosecutor relies on Rule 18 of the rules regarding the working of the permit system framed by the Ministry of the Interior Governmtnt of Pakistan, presumably under the authority conferred by section 7 of the Ordinance. Rule 18 is as follows :—

"The power to remove conferred by section 6 of Ordinance may be exercised by a Magistrate of the First, Second or Third Class."

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Section 6 of Ordinance is as follows :—

"The Central Government, or any public officer empowered in this behalf, by a general or special order direct the removal from any part of Pakistan of any persons or class of persons entering such part in contravention of the provisions of this Ordinance or of the rules made thereunder, and thereupon any such officer as is referred to in subsection (1) of section 5 shall use all means as may, in the circumstances be necessary to effect such removal.

It is argued by the learned Public Prosecutor that the effect of Rule 18, read with section 6 of the Ordinance, was to permit the Magistrate to pass the order passed in the present case. But it seems to me to be clear that, if it was the intention to confer any such power on a Magistrate trying an offence under section 4 of the Ordinance, the rule was *ultra vires*. Section 4 of the Ordinance makes it an offence to contravene the provisions of section 3 or of any rule made under the Ordinance, and it provides for the punishment for such an offence if proved. The punishment under the terms of section 4 clearly can only be imprisonment for a term which may extend to one year, or a fine, which may extend to Rs. 1,000, or both and nothing else. It is beyond the powers of Central Government, by making any rule, to provide for any punishment for any offence under section 4, other than the punishment provided by section 4. The Magistrate's order, directing the removal of the appellan from Karachi, forming part, as it does, of a judicial decision on a trial of a charge under section 4 of the Ordinance, was *ultra vires* and is set aside. The order directing payment of a fine of Rs. 50 and imprisonment in default of the payment of the fine upheld.

Order accordingly.

A. H.

P L D 1951 Sind 64

Before Tyabji, C. J. and Constantine, J

MUZAFFAR MAHMOOD—Petitioner

versus

THE CROWN—Respondent

Criminal Appeal decided on 14th September 1949.

Muzaffar Mahmood v. Crown

Tyabji, C. J and Constantine, J

(*a*) *Sind Maintenance of Public Safety Act (XV of 1948), S. 2—Aim of gang to attack persons carrying monies to and from banks etc.—Activities of gang prejudicial to public safety and maintenance of public order.*

Where the aim of certain gangs was to attack persons carrying monies to or from post offices, banks, and business houses, activities of such a gang must be regarded as prejudicial to the public safety and the maintenance of public order. [p. 65]

(*b*) *Sind Maintenance of Public Safety Act (XV of 1948)—Not* ultra vires *the Provincial Legislature.*

The pith and substance of the Sind Maintenance of Public Safety Act falls within the entries ; 'Public Order', and