

the above conclusion of the learned Additional District Judge, Quetta is in any manner arbitrary or fanciful. Raja Muhammad Afsar, the learned counsel for the petitioners has also not been able to show before me as to what irreparable loss would be caused to the petitioners in case the injunction is not granted. The admitted position is that the petitioner had themselves induced the respondent Abdul Waris for a consideration of Rs. 10 per day. That being so, if they succeed in the suit they can be compensated monetarily for the loss as it would be measureable in terms of money. There can be no dispute with the principles of law that the loss which is measureable in terms of money cannot be called irreparable. I have already pointed out in this judgment that the application made by the plaintiffs/petitioners was not in conformity with the provisions of Order XXXIX, rules 1 and 2, C. P. C.

9. Having given due consideration to the case I am of the opinion that no case is made out for the interference by this Court in the orders of the Additional District Judge, Quetta in the exercise of the revisional jurisdiction. It has been very aptly pointed out by Mr. Munawar Ahmad Mirza, the learned counsel for the respondent Abdul Waris that a mere presence of a *prima facie* case or arguability thereof as considered by the learned Senior Civil Judge will not by itself be a ground for issuing a temporary injunction. It is by now well-settled that all the three conditions viz. the existence of a *prima facie* case the irreparability of loss and balance of convenience must co-exist before the temporary injunction would be allowed in the matter. The appellate Court has found that no irreparable loss would be caused to the petitioners and the balance of convenience was found in favour of the respondent Abdul Waris. This finding does not appear to be arbitrary or fanciful and in the circumstances of the case the discretion exercised by the Additional District Judge, Quetta in disallowing the application for sealing the shop is not violative of any principles of law and is manifestly in consonance with the principles laid down governing the controversy, and does not call for any interference in the revisional jurisdiction of this Court. The revision is, therefore, dismissed with costs.

M. Y. M.

*Petition dismissed.*

P L D 1983 Quetta 97

*Before Abdul Qadeer Chaudhary and Muftakhiruddin, JJ*

JURNAIL SING—Petitioner

versus

THE SUPERINTENDENT, CENTRAL JAIL, MACH

AND ANOTHER—Respondents

Constitutional Petitions Nos. 2 to 9 decided on 25th April, 1983.

Foreigners Act (XXXI of 1946)—

— S. 11, Pakistan (Control of Entry) Act (LV of 1946), Ss. 3 & 4—Provisional Constitution Order (I of 1981), Art. 9—Foreigners—Inauthentic entry—Authority properly invested to enforce order to deport, held, can keep foreigners in necessary custody as step towards securing compliance with orders of deport from country—Such step neither punitive nor preventive nor otherwise illegal and foreigners only kept as internees for repatriation to their country with no object to keep them in custody—Release of such foreigners, held, uncalled for in circumstances. [pp. 99, 100] A, B & C



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*Petition dismissed.*

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W. N. Kohli for Petitioner.

Munawar Ahmed Mirza, A.-G. for Respondents.

Date of hearing : 10th April, 1983.

#### JUDGMENT

MUFTKHIRUDDIN, J.—By this judgment all these eight Constitutional Petitions would be disposed of as identical facts and common points of law are involved in these petitions. The petitions arise in the following circumstances.

1. Petitioners Siam Sing son of Sokh Dev Sing, Ram Sabarna son of Lach Ram and Narangan Sing son of Gian Sing (petitioners in C. P. Nos. 2, 3 and 6 of 1983) were apprehended on 26-10-1982 at Pak-Iran Border Taftan) for unauthorised entry into Pakistan without valid travel documents. They were prosecuted and convicted under section 3/4 Pakistan (Control of Entry) Act, 1952 by the District Magistrate, Chagai and sentenced to 15 days' rigorous imprisonment which sentence expired on 30-11-1982.

The petitioners Shingara Sing son of Tulsi Ram, Baldev Sing son of Baksis Sing, Tarsem Sing son of Ratan Sing, Mehandar Sing son of Kartara and Jurnail Sing son of Alasa Ram (petitioners in C. P. Nos. 4, 5, 7, 8 and 9 of 1983) were also apprehended in the similar circumstances. They were prosecuted under section 3/4, Pakistan (Control of Entry) Act, 1952 convicted and sentenced to one month's rigorous imprisonment by the District Magistrate, Chagai. Their sentences expired on 7-9-1982.

All these eight persons being Indian Nationals were to be deported to their country of origin and for that purpose were brought in Quetta. Since their deportation could not be arranged, they are entered in Pakistan and are being kept in Mach Jail, in the Province of Baluchistan.

2. According to the averments in the petition these foreigners (Indian Nationals) had initially proceeded to Iran under a tourist visa issued to them by the Iranian Government and after the expiry of that visa were found in Iran and therefore were ousted and expelled by the Iranian Security Force and pushed into Pakistan territory where they were apprehended by the Pakistan authorities at Taftan.

3. It is alleged in the petitions that since they have served out the sentences their further detention is without any lawful authority and the Pakistan Government are bound to hand over their custody to the Indian Government at Wagha Border. It is prayed that :—

(i) a declaration to the effect that the detention of the petitioner is illegal, and without lawful authority;

(ii) direct the respondents (Province of Baluchistan) that the petitioners be set at liberty forthwith or in the alternative hand over them to the custody of Indian authorities at Wagha.

4. The respondents in the parawise comments have stated that these petitioners are being kept till their repatriation to India which is being arranged by the Federal Government through Indian Embassy at Islamabad, and the learned Advocate-General, Baluchistan has placed on record a telex message from the Ministry of Interior, Islamabad addressed to Home Secretary, Quetta which is reproduced below :—

“Reference your telex message No. H. POL. (2) (220) A-71, dated 20th March, 1983(.) All eight Indian detainees mentioned therein are



available for repatriation. Ministry of Foreign Affairs have been requested to make arrangements for their repatriation to India. Indian Government has made reference regarding three detainees viz. Niranjana Singh, Sham Singh and Ram Swarna. M/O Foreign Affairs are being requested to make arrangements for repatriation of these three detainees. The remaining five may be repatriated as soon as Indian Authorities agree to accept them."

5. The learned counsel for the petitioners has raised two-fold contentions (i) that the petitioners cannot be detained indefinitely, (ii) even if the petitioners can be detained under Foreigners Act, that detention after expiry of 3 months becomes unlawful unless their case is placed before a Board as contemplated in proviso to section 3(a) of the Foreigners Act.

This second contention of the learned counsel for the petitioners can be immediately disposed of as it fails to take notice of the provisions contained in Article 9 of the Laws (Continuance in Force) Order, 1977 (C. M. L. A.'s Order No. 1 of 1977) which is reproduced below :—

"Any provision in any law, providing for the reference of a detention order to a Review Board shall be of no effect."

It may be mentioned in this context that the Laws (Continuance in Force) Order issued by the C. M. L. A. has expressly dispensed with the provision relating to the reference of detention order to the Board and the safeguard of the reference to an Advisory Board in the event of a detention in excess of a period of three months stands abolished. In other words the detaining authority can pass an order of detention for any period of time to which the maximum limit of three months prescribed in Proviso to section 3(G) of the Foreigners Act is no longer applicable. The contention of the learned counsel therefore does not require to be taken any serious notice of and is therefore repelled.

6. Now there remains only the first contention to be dealt with. There is no denial that all these petitioners are foreigners as defined in section 2(a) of the Foreigners Act, 1946 as they are not citizens of Pakistan and as such their departure from Pakistan can be effected *only by such route and subject to the observance of such conditions* as may be prescribed. The relevant provisions to that effect is section 3(2)(b) of the Foreigners Act are reproduced below :—

\*Italics is mine

"3(1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into Pakistan or their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner —

(a) . . . . .

(b) shall not depart from Pakistan or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed."

Section 11 of the Act authorises the prescribed authority to give effect to the order and directions and for securing compliance. The authority properly,



invested to enforce orders to deport could keep the foreigners in necessary custody as a step towards securing compliance with the orders to deport from this country. The learned Advocate-General has explained that the deportation of Indian Nationals is now regulated by an agreement. It is also apparent from the telex message mentioned in para. 4 of the judgment that the orders for the deportation of the petitioners have already been passed and their departure depends upon the consent of the Indian Government and it is only a matter of arrangement as to how these petitioners are deported from Pakistan to India. The Indian Nationals cannot be deported outright. Their deportation is arranged by the Federal Government in consultation with the Indian Government. In the meantime till their deportation is agreed and arranged by the Indian Government they have to be kept in Pakistan. The question therefore bears on the policy aspect of the deportation and it must be determined upon a consideration of matters in which this Court is not competent and has no authority to enter. We therefore hold that steps taken for securing compliance with an order to deport the petitioners from Pakistan would be neither punitive nor preventive nor otherwise illegal and the petitioners are only kept as internees for repatriation to India and the sole object is their restoration to their own country and there is no intention to keep them in custody.

For the reasons given above the release of the petitioners as prayed for would be uncalled for and the infructuousness would be inherent in the situation. The petitions are therefore dismissed with no order as to costs.

M. Y. H.

*Petitions dismissed.*

P L D 1983 Quetta 100

*Before Muhammad Jaffar Naim, J*

**BAWA ISARDAS CHELA OF KISHINDAS—Appellant**

*versus*

**KISHINDAS AND ANOTHER—Respondents**

Regular First Appeal No. 2 of 1981, decided on 3rd May, 1983.

(a) Specific Relief Act (I of 1877)—

— S. 42 read with Dastoorul Amal Diwani, Kalat, Ss. 7 & 11—Suit for declaration and permanent injunction — Deputy Commissioner, as Court of first instance, required to entertain suit, call for written statement, frame issues and refer matter to Qazi for decision under law—Dismissal of suit after calling for written statement—*Held*, not within competence of Deputy Commissioner. [p. 101] *A et seq*

*Mirza Khan v. Ch. Mohan Das* 1982 C L C 2258 *ref.*

(b) Dastoorul Amal Diwani, Kalat—

— S. 20—Suit for declaration and injunction—Valuation for purpose of jurisdiction—Deputy Commissioner possessing jurisdiction in suits valuing more than Rs. 10,000—Order of Deputy Commissioner entertaining and dismissing suit valued at Rs. 400—*Held*, without jurisdiction and void.—[Jurisdiction]. [p. 102] *B et seq*

*Narain Das Kapoor* for Appellant.

*Munawar Ahmed* for Respondent. No. 1.

Date of hearing : 26th April, 1983.