

The learned Additional Advocate-General concedes in view of the fact that the applicant as well as Kaman have pointed out the place from where the dead body was found out at one and the same time. Moreover other two accused whose names were disclosed during the investigation of the case have already been granted bail by the trial Court though their case more or less was similar to that of the applicant.

I have heard the learned counsel for the applicant and State. There is no denial of the fact that the present applicant as well as Kaman have pointed out the place from where the dead body was found at one and the same time. Moreover the F. I. R. has been lodged after about ten days in which only allegation against the applicant was that he was last seen with the deceased. The co-accused who have more or less similar case to that of the applicant have been released on bail. The applicant's case also requires further inquiry as contemplated by section 497 (2), Cr. P. C. Therefore without going into the merits of the case, I grant bail to the applicant, who shall be released on furnishing his solvent surety in the sum of Rs. 20,000 and P. R. bond in the like amount to the satisfaction of the trial Court.

Bail allowed.

1981 P Cr. L J 1008

[Karachi]

Before Sajjad Ali Shah and Z. C. Vallani, JJ

STATE—Appellant

versus

MUHAMMAD SARWAR AND SOTHERS—Respondents

Criminal acquitted Appeals Nos. 140, 220 and 290 of 1980, decided on 1st April 1981.

Criminal Procedure Code (V of 1898)—

— S. 417 read with Pakistan (Control of Entry) Act (LV of 1952), Ss. 3, 4 & 6—Appeal (criminal)—Evidence, appreciation of—Accused, Indian nationals, acquitted of charge of overstaying in Pakistan without valid authority and without reporting their arrival in Pakistan—Offences, accused charged with, however, not made cognizable and Police having no authority to arrest accused without prior written permission of Court or without producing any proper authorization from Central or Provincial Government—Interference with order of acquittal declined, in circumstances.—[Appeal against acquittal]. [p. 1010]A

Muhammad Yakoob v. State 1978 P Cr. L J 812 ref.

Ghulamali Agha for the State.

Mrs. Salima Nasiruddin for Respondents (in Cr. Acquittal Appeal No. 140 of 1980).

G. Mueenuddin Baloch for Respondents. (in Cr. Acquittal Appeals Nos. 290, 220 to 226 of 1980).

Date of hearing : 1st April, 1981.

JUDGMENT

SAJJAD ALI SHAH, J.—These are nine acquittal Appeals filed on behalf of State calling in question two orders passed by Additional City Magistrate, Latifabad, Hyderabad. By order dated 17th November, 1979 he has acquitted six respondents, namely Muhammad Sarwar, Mohd. Kaiser, Mst. Zubeda, Anwar Jahan, Zohra Khatoon and Shah Jahan against which one joint appeal has been filed being Criminal Acquittal Appeal No. 140/1980. By order dated 24th January 1980 he has acquitted other persons, namely Mst. Afroze Jahan, Mst. Anwari Begum, Mst. Mumtaz Begum, Muhammad Qadeer, Muhammad Saleem, Mst. Saira Begum, Mst. Khurshid Begum and Mohd. Raees and against that order the State has filed 8 Criminal Acquittal Appeals bearing Nos. 220 to 226 and 290 of 1980. All these respondents were charged for offences under section 3/4, Pakistan (Control of Entry) Act (hereinafter to be referred as the said Act) and have been acquitted under section 249-A, Cr. P. C. Since all these appeals involve common questions of law and facts, we propose to dispose of them by a single judgment.

Briefly the facts are that the respondents are Indian citizens and entered Pakistan on 1st November, 1977 by check-post Railway Station, Lahore. Subsequently they were arrested from Hyderabad and were charged for having contravened provisions of sections 3 and 4 of the said Act. It is further alleged by the prosecution that the respondents did not inform and get themselves registered with the authorities and also overstayed their visas. Such facts have been mentioned in the F. I. Rs. filed against the respondents. After completing the steps of the investigation, challans were presented in the Court against the respondents. The trial Court has passed the orders of acquittal as stated above under section 249-A, Cr. P. C. which provides that a Magistrate can acquit accused at any stage of the proceedings after hearing prosecutor and the accused for reasons to be recorded, if he considers that the charge is groundless or that there is no probability that the accused persons will be convicted of the offence alleged. The orders of the acquittal passed by the learned Magistrate are speaking orders and he has complied with the requirements of the law and has heard both the parties after application under section 249-A, Cr. P. C. was filed. The grounds considered by the learned Magistrate are firstly that there was a delay and the prosecution did not examine witnesses after the presentation of challans and framing of the charges although several opportunities were given for that purpose. Perusal of the case diaries of the trial Court shows that challans were presented and charges were framed and thereafter several dates were given but no progress could be made as prosecution failed to examine any witness and in such a way a period of about one year had expired. There are some other legal grounds also considered by the trial Court. An objection was raised before the trial Court on behalf of the respondents that section 3 of the said Act specifies offences and section 5 envisages that whoever contravenes any of the provisions of section 3 shall, for every such contravention, be punished with imprisonment which may extend to one year or fine which may extend to Rs. 1,000 or with both. It is further submitted that in respect of above-mentioned offences nowhere in the Act has been stated whether offences under section 3 of the said Act are cognizable or non-cognizable. It is also submitted that under section 6 of the said Act it is provided that any Police Officer, Custom Officer or other officer empowered in this behalf by a general or special order of the Central Government or of the Province

Government or under Rules made under this Act may arrest without warrant any person whom such officer suspects of having contravened any of the provisions of section 3 but the prosecution failed to produce any such authorization of the Central or the Provincial Government empowering the Police Officer to effect arrests of the respondents. On this premise it was contended that the arrests were unauthorized and illegal. It is further submitted that in such case when the Act is silent on this point that whether the offence under section 3 is cognizable or non-cognizable, resort will have to be made to Schedule II of the Code of Criminal Procedure which provides under "Offences against other Laws" that if an offence is punishable with imprisonment for one year and upwards but less than three years, the accused shall not be arrested without warrant. It was urged by the learned counsel that in such circumstances the arrest without warrant was illegal and on the same analogy decision of this court in *Mohammad Yakoob v. State* (1) has been cited in support of that proposition in which proceedings under the Passport Act were quashed for similar reasons which are being advanced in the instant case. It is also contended that in view of the provisions under the said Act the offence alleged is not cognizable and the Police had no right or powers to arrest the respondents without a prior written permission of the Court concerned or producing proper authorization from the Central or Provincial Government. It is also pointed out that according to the challan the allegation against respondents is that they did not report their arrival either at Lahore or at Hyderabad and had overstayed in Pakistan without valid authority, as such they had committed offence under sections 3 and 4 of the said Act while on the other hand in the charge, it is stated that the respondents had not obtained citizenship certificates for the stay in Pakistan, as such they have overstayed without valid authority. The trial Court has considered all these legal aspects of the matter and has passed the orders after hearing both parties and has also given cogent reasons to arrive at such finding. The learned counsel for A.-G. has failed to point out any ground to induce us to make interference with the orders of the learned Magistrate. We, therefore, hold that orders of the learned Magistrate are just and proper and no interference is called for. Appeals are accordingly dismissed.

Appeal dismissed.

(1) 1978 P Cr. L J 812

1981 P Cr. L J 1010

[Lahore]

Before Rustam S. Sidhwa, J

LAHORE MUNICIPAL CORPORATION, LAHORE—Petitioner

versus

SHAUKAT—Respondent

Criminal Revision No. 94 of 1981, decided on 16th June, 1981.

(a) Criminal Procedure Code (V of 1898)—

— S. 439 read with Punjab Local Government Ordinance (VI of 1979), Ss. 161 & 162, Sched. III, Part I, Item No. 3—Revision