

1953

Present : H. A. de Silva J.

V. S. SREENIVASAM, Appellant, and S. SITTAMPALAM
(Authorised Officer, Department of Immigration and Emigration),
Respondent

S. C. 557—M. C. Colombo, 24,649/B

Immigrants and Emigrants Act, No. 20 of 1948—Control of entry into Ceylon of persons other than citizens of Ceylon—Residence permit—Holder's right to re-enter and remain in Ceylon beyond prescribed period—Sections 2, 8, 10, 11, 14, 15, 30, 31, 45 (1) (a)—Citizenship Act, No. 18 of 1948, s. 2.

An Indian national, who was a British subject resident in Ceylon for less than five years prior to the date on which the Immigrants and Emigrants Act came into operation and who with a valid passport has obtained a temporary residence permit under section 14 (1) (b) of that Act, contravenes the provisions of section 15 (b) if, after visiting India thereafter, he re-enters and remains in Ceylon beyond the period for which he is authorised to remain in Ceylon by the permit, and thereby commits an offence punishable under section 45 (1) (a).

Obiter : Even if such person had been in Ceylon for more than five years preceding the date on which the Act came into operation, Part III, section 8, of the Act would be equally applicable to him.

APPEAL from a judgment of the Magistrate's Court, Colombo.

N. K. Choksy, Q.C., with *C. Shanmuganayagam* and *K. Rajaratnam* for the accused appellant.

Boyd Jayasuriya, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

January 23, 1953. H. A. DE SILVA J.—

The accused-appellant in this case appeals against a conviction entered against him in the Magistrate's Court of Colombo.

The point that arises for consideration in this case is the construction of certain sections of Immigrants and Emigrants Act, No. 20 of 1948.

The charge against the accused runs thus :—

“ That he being a person to whom Part III of the Immigrants and Emigrants Act, No. 20 of 1948, applies, being the holder of a Temporary Residence Permit No. CX 4631 issued by the Controller of Immigration and Emigration, Colombo, on the 27th day of October, 1950, the said Temporary Residence Permit being valid up to the 27th day of October, 1951, did in contravention of the provisions of section 15 (b) of the said Act remain in Ceylon after the expiry of the period of which he was authorised to remain in Ceylon by the said Temporary Residence Permit and did thereby commit an offence punishable under section 45 (1) (a) of the said Act.

After trial the learned Magistrate found him guilty and imposed upon him a fine of Rs. 30.

The following were the admissions made :—

- (1) The accused is a British subject and an Indian national.
- (2) He was in Ceylon prior to the 1st November, 1949.
- (3) The Act came into operation on the 1st of November, 1949.

The accused took up the position at the trial that he has been in Ceylon since June, 1943, but the learned Magistrate after considering the evidence led for the prosecution and for the defence found as a fact that the accused was not in Ceylon prior to 1946 or 1947. The accused's counsel who argued the appeal before me did not canvass that finding of fact. After the perusal of the evidence led in this case I see no reason to dissent from that finding. The accused admittedly obtained a Temporary Residence Permit No. CX 4631 for a period of one year commencing from the 27th October, 1950. The date of expiry of this Temporary Residence Permit is 27th October, 1951. This Temporary Residence Permit has been endorsed by the Controller of Immigration and Emigration on Pass No. 51083 dated 20th September, 1950,—P2 issued by the High Commissioner for India in Ceylon. This Pass expires on the 19th September, 1954. I may mention that this Pass has been issued by the High Commissioner for India at Colombo. The following endorsements appear on this Pass : “ Arrived from Ceylon 28th October, 1950. Signed illegibly for Protector, Emigration, Dhanushkodi ”. Amongst other endorsements there are the following : “ Endorsement Permitted to land, 22nd November, 1950. Signed illegibly. Authorised Officer, Colombo Port, Ceylon ”. “ Endorsement Permitted to land, 15th August, 1951. Signed illegibly. Authorised Officer, Colombo Port, Ceylon ”.

This Pass issued on behalf of the Government of India by the High Commissioner for India in Colombo is made valid only for direct travel between India and Ceylon. The Pass also says that the possession of this Pass does not exempt the holder from compliance with the Immigration regulations of Ceylon. It is admitted that the accused left Ceylon on the 28th October, 1950, and returned on the 22nd November, 1950, to Ceylon. He again left Ceylon on the 6th July, 1951, and came back to Ceylon on the 15th August, 1951. The accused thereafter continued to remain in Ceylon; thus, according to the prosecution, the accused has contravened the conditions of the Temporary Residence Permit issued to him which expired on the 27th of October, 1951.

The point that has been raised by learned Counsel for the accused is that the Immigrants and Emigrants Act has no application to those non-nationals who were in Ceylon prior to the date on which the Act came into operation, namely, 1st November, 1949. The fact that the accused-appellant elected to obtain a Temporary Residence Permit does not debar him from raising the point that is taken now. It was not obligatory on his part to have applied and obtained a Temporary Residence Permit. He has not forfeited his rights under the Act to remain in Ceylon by reason of his having obtained the Temporary Residence Permit. It is also argued that when this Act came into force there were a large number of persons who were not citizens of Ceylon, and that their right to remain in Ceylon was by no means affected by the Act. I may also at this stage refer to an observation made by learned Counsel for the accused. He stated that in the charge framed against the accused the word "enter" is not mentioned but he (counsel) did not want to take advantage of the omission of the word "enter" in the charge with a view to getting an acquittal.

Learned Counsel for the accused conceded that his client had to obtain a valid Passport from the High Commissioner for India in Ceylon for him to travel between India and Ceylon. He contends that Part III of the Act has no application to the accused who was admittedly in Ceylon prior to the 1st of November, 1949, the date on which the Act came into operation. Part III of the Act relates to the control of entry into Ceylon of persons other than citizens of Ceylon. Section 8 which falls within Part III runs thus:—"This part shall apply to every person seeking entry into or entering Ceylon unless—(a) he is a citizen of Ceylon; or (b) by virtue of any Order under Part I for the time being in force, he is exempted from the provisions of this Part".

The argument of learned Counsel for the accused is that Part III of the Act has no application to a person who is seeking re-entry into Ceylon or re-entering Ceylon. His argument is that the accused was not coming to Ceylon for the first time after this Act came into operation, but he having gone back to India was coming back to Ceylon. It is true that armed with the Pass issued to him by the High Commissioner for India in Ceylon which was valid for a period of five years for travel between India and Ceylon, the accused went back to his home country armed with a Temporary Residence Permit to which I have already referred.

One of the conditions upon which the High Commissioner for India issued this Pass to him was that he (accused) had to comply with the Immigration regulations of Ceylon. The learned Crown Counsel who appeared on behalf of the learned Attorney-General has argued that the accused was a person to whom Part III of the Act applied and that he, by reason of his remaining in Ceylon after the 27th October, 1951, has violated the provisions of section 15 of the Act. Section 15 runs thus:— “ No person to whom this Part applies and who enters Ceylon (a) if he is not the holder of a *visa*, permanent Passport or Temporary Residence Permit, remain in Ceylon after the expiry of the period for which he is authorised to remain in Ceylon by the endorsement granted to him at the time of his entry ; or (b) if he is the holder of any such *visa* or permit, remain in Ceylon after the expiry of the period for which he is authorised to remain in Ceylon by that *visa* or permit, as the case may be ”. Section 50 (1) of Act No. 20 of 1948 states that a citizen of Ceylon “ means a citizen of Ceylon under any law for the time being in force ”.

The Citizenship Act, No. 18 of 1948, makes provision for citizenship of Ceylon and for matters connected therewith. This Act came into operation on the 15th November, 1948, by proclamation in *Government Gazette* No. 9,919 of the 15th November, 1948. This was admitted by learned Counsel for the accused. Section 2 (1) lays down that with effect from the appointed date, there shall be a status to be known as “ the status of a citizen of Ceylon ”. Section 2 (2) reads thus:— “ a person shall be or become entitled to the status of a citizen of Ceylon in one of the following ways only :—(a) by right of descent as provided by this Act ; (b) by virtue of registration as provided by this Act or by any other Act authorizing the grant of such status by registration in any special case of a specified description ”.

It will be seen that when the Immigrants and Emigrants Act came into force on the 1st November, 1949, there were three categories of persons inhabiting Ceylon, namely, (1) citizens of Ceylon by descent or registration, (2) British subjects who were not citizens of Ceylon, and (3) persons who were neither British subjects nor citizens of Ceylon. Learned Crown Counsel states that the argument of learned Counsel for the accused is that this Act (Immigrants and Emigrants Act) does not apply to any of these three categories of people who were resident in Ceylon on the 1st November, 1949. He also argues that the only persons who have an absolute right to remain in Ceylon are the citizens of Ceylon. He refers to Part 6 of the Act which deals with deportation from Ceylon of persons other than citizens of Ceylon. Section 30 which falls within Part 6 states thus :— “ This Part shall apply to every person unless—

(a) he is a citizen of Ceylon ; or

(b) by virtue of any Order under Part I for the time being in force, he is exempted from the provisions of this Part. ”. *Vide* section 31.

He further argues that when this Act was passed those persons who were not citizens of Ceylon were permitted to remain in Ceylon. There is no provision in the Act to deport all persons who were not Ceylon nationals on the appointed date, namely, 1st November, 1949.

The question for determination is whether or not Part III of the Act applied to those persons leaving Ceylon after the 1st November, 1949.

The accused was admittedly a person, who is a non-national of Ceylon, and who was in Ceylon on 1st November, 1949. He obtained a Passport from the representative of his Government in Ceylon—a Passport to travel between India and Ceylon. His was a valid Passport. Section 50 defines a valid Passport in relation to any person who is not a citizen of Ceylon as one issued to him by or on behalf of any Government recognised by the Government of Ceylon. The accused armed with this valid Passport obtained a Temporary Residence Permit from the Controller of Immigration and Emigration. The Immigrants and Emigrants Act No. 20 of 1948 thus provides “ an Act to make provision for controlling the entry into Ceylon of persons other than citizens of Ceylon, for regulating the departure from Ceylon of citizens and persons other than citizens of Ceylon, for removing from Ceylon undesirable persons who are not citizens of Ceylon, and for other matters incidental to or connected with the matters aforesaid ”. Section 2 exempts various classes of persons from the operation of Parts 3, 4, 5, 6, and 7 of this Act to such extent or subject to such conditions or restrictions as may be specified by Order of the Minister. Section 2 (1) also provides that an order under this subsection may be either a special order in respect of any person or group of persons, or a general order applicable to any class or description of persons, being in either case persons referred to in this sub-section. *Vide* section 2 (2) of the Act.

Section 10 of the Act provides that any person to whom Part III applies shall not enter Ceylon unless he has in his possession (a) a valid Passport which bears an endorsement in the prescribed form granted to him by an authorised officer under this Part; and if so required by regulations made under this Act a *visa* granted to him under such regulations or a permanent Passport or Temporary Residence Permit issued to him under such regulations.

Section 11 of the Act requires that no endorsement under Part III shall be granted by an authorised officer to any person unless that person has in his possession (a) a passport which is a valid passport; and (b) if so required by regulations made under this Act, a *visa*, a permanent residence permit or temporary residence permit granted or issued to him under such regulations. Regulations were made under the various provisions of this Act by the Minister of Defence and External Affairs—*Vide Government Gazette* No. 10,039 of October 28th, 1949. Section 14 makes provision (a) for the granting of a *visa* for a period, not exceeding six months, as may be specified in the *visa*; (b) issue of a Temporary Residence Permit for such definite period, exceeding six months, as may be specified in the permit; (c) issue of a permanent residence permit for an indefinite period. Section 14 also makes provision for the extension of the period of a *visa* or permit above referred to.

It is in pursuance of section 14 (1) (b) that the accused was granted a Temporary Residence Permit for a period of one year after the authorities were satisfied that he (accused) had a valid passport. Now section 14 (3) runs thus,

“ No permanent residence permit shall be refused—(a) in the case of the spouse or a dependent child of a citizen of Ceylon ; or

(ii) in the case of any other dependant of a citizen of Ceylon, if the Minister is satisfied that the maintenance of such other dependant is assured, or a bond is entered into by such citizen in accordance with regulations made under this Act. Section 14 (3) (b) runs thus,

“ No temporary permit shall be refused in the case of a person who, being a British subject, was ordinarily resident in Ceylon for a period of at least five years immediately preceding the appointed date.”

At this stage it will be relevant to advert to the attempt made by the accused to prove that he has been in Ceylon since June, 1943. That attempt in all probability was to prove that he had been in Ceylon for a period of over five years before this Act came into operation on the 1st of November, 1949. So that if he came within section 14 (3) (b) he would have been entitled as a matter of right, to obtain a Temporary Residence Permit. Even though he had been in Ceylon from June 1943; yet in my opinion he comes clearly within Part III, section 8 of the Act. Section 14 (3) (b) lends support to the argument adduced by learned Crown Counsel that even a person who had been at least five years resident in Ceylon before the Act came into force had to obtain a Temporary Residence Permit. Section 14 (3) (b) is an effective answer to the contention made by learned Counsel for the accused-appellant that this Act has no application to British subjects and who are non-nationals who were in Ceylon on the 1st of November, 1949. If the legislature had in contemplation the non-applicability of this Act to British subjects who are non-nationals and who were residents in Ceylon, on the 1st of November, 1949, there would have been no difficulty for the legislature to have said so in clear and unambiguous terms. As I said before, the object of the legislature in enacting this piece of legislation is clearly and unequivocally laid down in the preamble to the Act.

Now section 2 of the Act makes provision for the Minister to make an order exempting persons or any class or description of persons from the operation of this Act. The Minister has under section 2 of the Act made order published in *Government Gazette* No. 10,039 of October 28, 1949—*Vide Government Gazette* notification—exempting certain persons, or group of persons or class of persons. Paragraph 9 of that order runs thus,

“ Indian estate labourers proceeding to India and returning from India to Ceylon shall, until further notice, be exempt from the requirement of possessing a valid passport and a *visa* or a Residence Permit, if they possess an Immigration certificate issued to them under the Estate Labour

(Indian) Ordinance, No. 41 of 1943". The accused admittedly does not come within this category. It is therefore abundantly clear that the accused is not one of the persons exempted from the operation of this Act.

I do not think that anything turns on the words "enter" or "re-enter". The accused comes within the provisions of this Act. He undoubtedly was in Ceylon when the Act came into operation. He is a British subject and a non-national of Ceylon. He had to obtain a valid passport from the representative of his Government in Ceylon to travel between India and Ceylon. He obtained that passport. It was granted to him subject to his observance of the regulations made under this Act. Prior to the enactment of the Act No. 20 of 1948 there was no requirement in the law of this country that a person, whether he is a national or non-national, should be armed with a valid passport to enable him to travel between India and this country. The Act made it compulsory for both nationals and non-nationals of Ceylon to have a valid passport for travel between Ceylon and India. In the case of a national of Ceylon he had to obtain a valid passport from the officers appointed by the Ceylon Government for that purpose, and in the case of a non-national from his Government or the accredited representative of his country in Ceylon.

The accused, therefore, when he wanted to return to his country obtained a valid passport from the High Commissioner for India in Ceylon. He had further to obtain a Temporary Residence Permit from the officer of the Government of Ceylon, to enable him to remain in Ceylon for one year. Once he went back to India there was no obligation on his part to come to Ceylon again. He may have remained in his country if he so desired. If he chose to come to Ceylon again armed with his Passport, which was valid for five years, and the Temporary Residence Permit, he was undoubtedly entering Ceylon within the meaning of Part III of the Act.

In the case of a national of this country, if he travels abroad with a Ceylon passport, he will have to return to Ceylon within the period mentioned in the passport or within the period of extension, if he had been granted one. A person normally goes back to the country from which he came. The accused did precisely that. Thereafter he came to Ceylon again with the passport granted to him.

I am unable to agree to the restricted meaning that is sought to be given to the words "entry into or entering Ceylon" in Part III of the Act as applicable only to persons who had not been in Ceylon prior to the 1st November, 1949, on which date the Act came into force. That in short is the contention of Counsel for the accused.

That contention, if upheld, would be repugnant to the object, the scheme and the wording of this Act.

I therefore hold that the verdict of the learned Magistrate is correct. The sentence imposed is not excessive.

The appeal is dismissed.

Appeal dismissed.