

1951
March 2

D. STEPHENS

v.

NOSIBOLLA.

[SAIYID FAZL ALI, MEHR CHAND MAHAJAN,
MUKHERJEA and CHANDRASEKHARA AYYAR JJ.]

Criminal Procedure Code, 1898, ss. 417, 439—Revision against order of acquittal—Interference—Guiding principles—Indian Merchant Shipping Act, XXI of 1923, ss. 25, 26—Supply of seamen—Constitution of Board by owners of ships and seamen for recruitment of seamen—Levy of one rupee from each seaman towards expenses of Board—Whether contravenes ss. 25, 26—Giving of muster card permitting appearance at muster—Whether amounts to “engaging or supplying” seamen.

The revisional jurisdiction conferred on the High Court under s. 439 of the Code of Criminal Procedure is not to be lightly exercised when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of appeal under s. 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or misappreciated the evidence on the record.

Shipowners had an organisation in Calcutta called the Calcutta Liners' Conference and the seamen had an organisation

called the Joint Supply Office. As a result of a collective agreement between the owners of the ships and the seamen's representatives, the Calcutta Maritime Board which contained an equal number of members representing the Calcutta Liners' Conference and the Joint Supply Office was established. The seamen presented themselves before this Board and were given muster cards which permitted them to appear at the musters where the captains of the ships engaged seamen. For meeting the office expenses of the Board the owners used to pay Rs. 2 per seaman engaged and after engagement each seaman paid Rs. 1 to the owner as his contribution towards these expenses. The accused was the secretary of the Liners' Conference and an *ex officio* honorary joint secretary of the Maritime Board, and a seaman filed a complaint against him that, as he had collected Re. 1 from him for the issue of a muster card he had committed an offence under s. 26 (2) of the Indian Merchant Shipping Act :

Held, that the seamen to whom the muster cards were given by the Maritime Board were not "engaged or supplied" by the Board or by any of its officers, nor was the sum of Re. 1 which was levied out of the seaman's wages after he signed an agreement of employment, remuneration received for providing the man with employment, and the accused was not guilty of any offence under s. 25 or s. 26 of the Act.

CRIMINAL APPELLATE JURISDICTION : Appeal (Criminal Appeal No. 19 of 1950) against the orders of the High Court of Judicature at Calcutta dated 21st January, 1949, and 29th August, 1949, in Criminal Revision Cases Nos. 1007 of 1948 and 527 of 1949.

S. P. Sinha (*S. N. Mukherjee*, with him) for the appellants.

B. Sen for the respondent.

1951. March 2. The judgment of the Court was delivered by

CHANDRASEKHARA AIYAR J.—This appeal comes up before us on special leave granted by His Majesty's Order in Council and it is directed against orders made by the Hon'ble Mr. Justice Sen of the High Court of Judicature at Fort William in Bengal, directing a retrial of the appellant *D. Stephens*, who had been acquitted by the Chief Presidency Magistrate of contravening the provisions of section 26 of the Indian Merchant Shipping Act.

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The facts that gave rise to this prosecution are correctly set out in the following two paragraphs which are quoted from the judgment of the learned Chief Presidency Magistrate :—

“The owners of the ships have an organisation known as the Calcutta Liners’ Conference. The seamen have an organisation known as the Joint Supply Office. Since 1940-41 the licensed broker system for engagement of seamen had been abolished. The Calcutta Maritime Board was established as a result of a collective agreement between the owners of the ships and seamen’s representatives for recruiting seamen. It is a joint negotiating machinery between the owners and the seamen for direct engagement of seamen by the owners. The Joint Supply Office does not supply the seamen. The Calcutta Maritime Board also does not supply nor engage seamen. The engagement is made by the Captains of the Ships. The Calcutta Maritime Board, at the relevant time, was formed of equal members representing the Calcutta Liners’ Conference (the owners) and the Joint Supply Office (the seamen). At the present moment the Government of India have two representatives in the Calcutta Maritime Board. There are two Joint Chairmen and two joint Secretaries, one each from each group of the owners’ and seamen’s representatives. Accused Stephens is the Secretary of the Calcutta Liners’ Conference and is a paid officer. His salary is paid by his employers, the Calcutta Liners’ Conference, with contributions obtained from the owners of the ships whose association the Conference is. The accused is one of the Joint Secretaries of the Calcutta Maritime Board in his capacity as the Secretary of the Calcutta Liners’ Conference. The Joint Secretaries of the Calcutta Maritime Board hold honorary posts and receive no remuneration.”

“The procedure for recruitment now is that the seamen present themselves before the Calcutta Maritime Board. They are given muster cards which permit them to appear at the musters where the Captains of the ships engage the seamen. The Board

endeavours to lay down a procedure for the Captains of the ships while engaging seamen. There is an excess of supply of seamen over the demand. This had brought in corruption.* To fight out corruption, the Calcutta Maritime Board was conceived to find out a procedure for the owners of the ships for employing seamen by rotation. For meeting the office expenses of the Calcutta Maritime Board the owners, at the relevant time, used to pay Rs. 2 per seamen engaged. After signing on, each seamen pays back the owners Re. 1 as his contribution towards office expenses of the Calcutta Maritime Board. None of the facts stated above was contested for the complainant."

The complainant Nosibolla alleged that the accused as Joint Secretary of the Board collected an illegal charge of Rupee one from him for issue of a muster card and thus contravened section 26 of the Indian Merchant Shipping Act and that he was, therefore, guilty of an offence within the meaning of sub-clause (2) of that section. The Chief Presidency Magistrate acquitted the accused of the charge but on revision the High Court at Calcutta directed a retrial, holding that the accused clearly contravened the provisions of section 25 of the Act, and that if the complainant was to be believed when he said that the accused received Re. 1 before registration, he was also guilty under section 26 of the Act; and both parties were allowed to adduce additional evidence. This second trial again ended in an acquittal by the Chief Presidency Magistrate who came to the conclusion that the accused did not supply or engage seamen, that he did not receive any payment of Re. 1 for issuing the muster card to the complainant and that Re. 1 which is collected from the seamen by the shipowners after employment by way of deduction from wages is paid not as remuneration to the accused or any one else, but is really a contribution towards the expenses of the Joint Supply Office working under the Calcutta Maritime Board. There was again a revision petition taken to the High Court against this order of acquittal and it was heard by the same learned Judge as before. He differed from

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the Chief Presidency Magistrate on all the material points and sent the case back again for a fresh trial in a judgment which contains findings almost amounting to a direction to the Chief Presidency Magistrate to convict the accused. In the learned Judge's view the issue of a muster card to seamen amounted to the "supply" of seamen within the meaning of section 25 of the Act. The receipt of Re. 1 was a demand for remuneration within the meaning of section 26, even if it was ultimately spent for expenses of the running of the Joint Supply Office and that a demand for payment would by itself constitute the offence, whether the money was actually received or not.

It is against this interference in revision that the present appeal was lodged before the Judicial Committee of the Privy Council on the ground that the jurisdiction to direct a retrial was so exercised in the case as to constitute an infringement of the essential principles of justice.

Before entering into a short discussion of the question whether the view taken by the High Court is right or wrong, it would be useful to set out the relevant sections of the Merchant Shipping Act.

"24. (1) The Central Government or any person duly authorised by the Central Government in this behalf may grant to such persons as may be deemed fit licences to engage or supply seamen for merchant ships in British India.

(2) Any such licence shall continue for such period and may be granted and revoked on such terms and conditions as the Central Government thinks proper.

25. (1) A person shall not engage or supply a seaman to be entered on board any ship in British India unless that person either holds a licence under this Act for the purpose, or is the owner or master or mate of the ship, or is *bona fide* the servant and in the constant employ of the owner, or is a shipping-master.

(2) A person shall not employ, for the purpose of engaging a seaman to be entered on board any ship

in British India, any person unless that person either holds a licence under this Act for the purpose, or is the owner or master or mate of the ship, or is *bona fide* the servant and in the constant employment of the owner, or is a shipping master.

(3) A person shall not receive or accept to be entered on board any ship any seaman if that person knows that the seaman has been engaged or supplied in contravention of this section.

(4) If a person acts in contravention of this section, he shall for each seaman in respect of whom an offence is committed be liable to a fine which may extend to one hundred rupees, and, if a licensed person, shall forfeit his licence.

26. (1) A person shall not demand or receive directly or indirectly, from any seaman, or from any person seeking employment as a seaman, or from any person on his behalf, any remuneration whatever for providing him with employment other than the fees authorised by this Act.

(2) If a person acts in contravention of this section, he shall for each such offence be liable to pay a fine of fifty rupees, and, if a licensed person, shall forfeit his licence."

On the facts as admitted or proved in the evidence, it is difficult to see what offence the accused has committed. Neither the Calcutta Maritime Board, nor the Calcutta Liners' Conference supply the seaman. The registration entitles the seamen to get muster cards which enable them to appear at the musters, and there, the Captains of the ships select and engage the seamen. It is after this selection and engagement that the body of shipowners, called the Calcutta Liners' Conference, pay Rs. 2 to the Calcutta Maritime Board out of which Re. 1 is their own contribution and Re. 1 is the contribution by the seaman which is deducted from his wages. There is therefore no supply of a seaman within the meaning of section 25 of the Act. A number of seamen offer themselves for employment and they are all gathered together at a

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place, so that the shipowner or Captain of the ship may select whomsoever he pleases. There is no obligation on the owners of the ships to select any particular person, nor is any such selection made by the Maritime Board either directly or through its servants for the benefit of the owners and for employment under them. The Calcutta Maritime Board of which the accused is an honorary Joint Secretary is an institution that was created in the end of 1947, with the knowledge, if not the approval, of the Government of India as a liaison body or institution to bring the owners and the seamen together, with reference to the engagement of seamen for ships. The labour corps is brought into contact with the owners by the Maritime Board through the Joint Supply Office but the seamen are engaged by the shipowners or the Captains. To a certain extent, the recruitment is regulated by the Maritime Board, but it is a misnomer to say that the seamen are supplied to the owners by the Board or by any of its officers. In his written statement found at page 28 of the printed book the accused has stated, and it is not controverted anywhere, that the system of selection of crew through the agency of Serangs was brought to an end owing to the opposition of the seamen themselves, who alleged that it resulted in widespread corruption as the Serangs recruited only those who paid them heavily.

It is fantastic for the prosecution to suggest that Re. 1 levied out of the seaman's wages after he signs the agreement of employment amounts to remuneration received for providing the man with employment. The remuneration paid to the accused which is over Rs. 2,000 a month is by way of salary from the Calcutta Liners' Conference under whom he is a paid Secretary. The Calcutta Maritime Board receives Re. 1 per seaman from the shipowners' association, but this is by way of contribution towards the expenses of the Joint Supply Office of the Board. This is made perfectly clear in the evidence given on commission by Mr. C. P. Srivastava, Officer on Special Duty, Ministry of Commerce, New Delhi, and of

Mr. Dikken examined on the side of the prosecution who says that the contribution is made to meet the running expenses of the Joint Supply Office and Maritime Board. Mr. Goldwell of James Finlay & Co., sixth witness for the defence, has stated that the Calcutta Maritime Board and the Joint Supply Office are financed by the Liners and that the accused has nothing to do with the engagement of the seamen. There is also a finding of the Chief Presidency Magistrate, which has not been set aside, that the allegation of the complainant that the accused received Re. 1 from him prior to registration of his name in the Joint Supply Office, has not been substantiated.

It is evident on the facts that the accused does not engage or supply any seamen and does not demand or receive directly or indirectly any remuneration for providing any person with employment as a seaman. The facts leave no room for any doubt that the prosecution has failed to establish its case.

Mr. Justice Sen says "I fully realise that, ordinarily this Court ought not to interfere with orders of acquittal. It should do so only on exceptional grounds." It is a matter of some regret that this realization by him of the very limited nature of the revisional jurisdiction was not carried into effect but resulted in an order directing the retrial of a man for a third time for offences which could not be said to have been made out even *prima facie*.

The revisional jurisdiction conferred on the High Court under section 439 of the Code of Criminal Procedure is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal against which the Government has a right of appeal under section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or misappreciated the evidence

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on record. As already pointed out, there has been no such error in the present case; on the other hand, it seems to us that on both the previous occasions, the Chief Presidency Magistrate was right in holding that the accused was not guilty of any offence under sections 25 and 26 of the Indian Merchant Shipping Act.

The order of the High Court is set aside and that of the Chief Presidency Magistrate is restored. The accused will stand acquitted of the charge.

Order set aside.

Agent for the appellant : *P. K. Chatterjee.*

Agent for the respondent : *I. N. Shroff* for *P. K. Bose.*
