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In Re: Mamu Beari

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Court : Chennai

Decided On : Aug-10-1914

Reported in : AIR1915Mad88(2); 25Ind.Cas.979

Judge : Ayling and ;Tyabji, JJ.

Appellant : In Re: Mamu Beari

Judgement :
ORDER

Ayling, J.

1. The question whether an advance was received in cash as recited in the karar is purely one of appreciation of evidence and is not a point on which this Court is accustomed to interfere in revision.

2. The District Magistrate solicits a ruling as to whether a contract to convey clay, can be regarded as falling within the scope of Act XIII of 1859. It is difficult to see why the conveyance of clay should not be ' work' within the meaning of that Act--provided that the personal labour of the person who undertakes the conveyance is to be utilized: Vide the judgment of Turner, C.J., in Gilby v. Sabbu Pillai 7 M. 100 : 1 Weir 690 which clearly lays down the distinction to be drawn between' a workman or labourer under the Act and a mere non-working contractor.

3. In the present case the defendant under-took to convey clay for the complainant in his (complainant's) boat by means of his own (defendant's) labour and that of another man who' was to be provided free of charge by him (defendant). He was to convey nine boxfuls a day and to receive wages at the rate of 12 annas a day. I consider that this agreement comes within the scope of the Act. The mere fact that another man was also to work does not exclude it. Vide the wording of Section 1 of the Act and the ruling above quoted.

4. The case reported in Caluram v. Chengappa 13 M. 351 : 1 Weir 691 to which the District Magistrate refers is easily distinguishable. There the contract was to convey salt by boat, but the defendant did not bind himself to render personal labour but to convey the salt in his (defendant's) own boat. As the learned Judges say: It was an agreement for the carriage of salt, but we do not think complainant can be termed an employer of labour, or defendant a labourer.'

5. There is, in my opinion, no ground for interference.

Tyabji, J.

6. The District Magistrate of South Canara, under Section 438 of the Criminal Procedure Code, has reported for our orders certain proceedings in which the accused was ordered under the Workmen's Breach of Contract Act, XIII of 1859, to work in accordance with the contract between him and the complainant (Exhibit A). The District Magistrate is not. satisfied as to the correctness of the order. Four requirements are necessary for making the Act applicable, viz., (1) that a contract has been entered into between (a) a master or employer (the preamble mentions manufacturers, tradesmen, and others,' but Section 1 refers to 'a master or employer,' who in the subsequent sections is referred to as 'the complainant') and (6) an artificer, workman, or labourer; (2) that the artificer, workman, or labourer has received from the master or employer or some one acting on his behalf an advance of money for the work; (3) that the advance is on account of any work which the artificer, workman, or labourer has (a) contracted to perform, or (6) to get performed by any other artificers, workmen, or labourers, and (4) that the artificer, workman, or labourer has wilfully and without lawful or reasonable excuse

neglected or refused to perform the work, or get it performed according to the terms of the contract. (In the preamble this is referred to as fraudulent breach of contract for which the remedy by suit in Civil Courts for the recovery of damages is wholly insufficient and which, it is just and proper, should be subject to punishment).

7. The District Magistrate refers, in the first place, to the evidence on which it has been held that the accused was paid the sum of Rs. 47-4-0 by the complainant under the contract. The District Magistrate expresses the opinion that the defence story that no money was received by accused is credible.' If so, then the second requirement mentioned above would not be satisfied. There was, however, evidence on which the Magistrate who tried the case and heard and saw the witnessess, was justified in holding that the accused received the advance, and I agree with my learned brother that this is not a case in which we can interfere in revision with this finding of fact.

8. Secondly, the District Magistrate solicits a ruling on the point whether a contract to convey clay can be regarded as falling within the scope of the Act.'

9. It seems to me that this question is too general to permit of its being answered, satisfactorily as it stands. Some contracts to convey clay would fall within the scope of the Act, others would not;, whether any particular contract would or would not fall within the scope of the Act must depend upon whether the contract fulfils the requirements of the Act as above stated.

10. There are two rulings of this Court to which I must refer in this connection. In Gilby v. Sabbu Pallai 7 M. 100 : 1 Weir 690 the accused was described as a contractor by the complainant himself. The contract was for earthwork--the cutting of a race-course; there was a plan and estimate.' The accused was, not to labour on the race-course. It was held that he was not a workman within the meaning of the Act with reference to the contract for earth-work.' In Calurain V. Chengappa 13 M. 351 : 1 Weir 691 the contract was for conveyance of salt; the accused was not to render personal, labour. It was held that on the one hand the complainant was not a master or employer, and on the other hand the accused was not a labourer.

11. These two cases illustrate the difficulty that may arise in giving full effect to both the requirements of the Act, which are numbered (1) and (3) by me. For, though the contracting party must be an artificer, workman, or labourer under (1) his contract may be to get the work performed by other artificers, workmen and labourers under (3). The decisions establish that (by reason of the first requirement) it is necessary that the work which the accused has agreed actually to do for his employer should be work of such a nature that one doing it may be described as an artificer, workman, or labourer, notwithstanding that under Sections 1 and 2 that work may consist of getting something performed by other artificers, workmen, or labourers. When the work agreed to be done consists of providing labour and supervising the cutting of a race-course or the conveyance of salt in boats without labouring in the race-course or on the boats, then such work has been held not to be that of an artificer, workman, or labourer,

12. Coming now to the contract with which we have- to deal, the accused undertook to convey the clay, which is referred to in the contract, by the complainant's boat, with the assistance of another person, at my (i.e., the accused's) own expense.' Nine boxfuls were to be daily conveyed in this manner and delivered at a tile factory. Twelve annas per day were to be the 'wages' of the accused.

13. With reference to this contract, it is not denied that the complainant is a 'master or employer' see the requirements of the Act numbered (1) above . The question that is raised, however, is whether the accused is 'an artificer, workman, or labourer,'' and whether the work agreed to be performed by him was such as would be performed by an artificer, workman, or labourer.' See the clauses numbered (I) and (2) above.

14. I agree with my learned brother's interpretation of the contract, that under it the accused was to convey the clay by his own labour assisted, by the labour of another; person. The work agreed ' to be done involved the carrying of the clay from the riverside in the six villages referred to in the contract and taking the boat down-to the factory. A person doing this kind of work under the circumstances referred to in the contract may, it seems to me, be described not inaptly as a

labourer. Then does the fact that he is to get the assistance of another person to do this work, and to pay for that other work, remove the accused from the category of a labourer? That question must be answered with reference to the particular work agreed to be done in the particular contract. A contractor supplying labour and materials and supervising the labourers, but not himself labouring, is not himself a labourer, as held in the cases above cited; but when a person is both a supplier of labour and a labourer himself, it must depend upon the terms of the contract whether the character of work as a whole is or is not that of work done by a workman or labourer.

15. In the case before us it seems to me that the trying Magistrate, was justified in holding that the accused was a workman or labourer within the meaning of the Act, with reference to the contract in question. I would, answer the reference accordingly.

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