

The Queen-empress Vs. Moore

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Court : Kolkata

Decided On : Jun-12-1893

Reported in : (1893)ILR20Cal676

Judge : Prinsep and ;Trevelyan, JJ.

Appellant : The Queen-empress

Respondent : Moore

Judgement :

Prinsep and Trevelyan, JJ.

1. This is a reference from the Chief Presidency Magistrate of Calcutta. The defendant is charged under Section 35 of the Indian Companies Act, 1882, with having issued certain share warrants without the same having been duly stamped. Section 35 provides as follows: 'If a share warrant is issued without being duly stamped, the Company issuing the same, and also every person who at the time when it is issued, is the Managing Director, or Secretary, or other principal officer of the Company, shall forfeit the sum of Rs. 500.'

2. The questions which we are asked are, first--'Is the issuing of a share warrant, the same not being duly stamped, an offence within the meaning of Act VI of 1882?' Second--'Is the forfeiture provided by Section 35 of Act VI of 1882 a penalty within the meaning of Section 252 of the same Act?' Third--'Having regard

to Sections 35 and 252 of Act VI of 1882, has a Presidency Magistrate jurisdiction to impose a forfeit under Section 35 of the Act?' and Fourth -- 'If a Presidency Magistrate has jurisdiction, has he any discretion empowering him to impose a lesser forfeit than Rs. 500 in case of each share warrant?'

3. The first question argued before us is whether the Presidency Magistrate has any jurisdiction to fine a person issuing a share warrant not duly stamped. It was contended that because the word forfeit 'occurs in Section 35 and the word 'penalty' occurs in other sections of the Act, a distinction must be made between 'forfeit' and 'penalty,' and that although under Section 252 of the Companies Act, a Presidency Magistrate may deal with an offence declared to be punishable by a penalty, he could not do so in a case under Section 35. It was suggested that the remedy was by information under Section 144 of Act X of 1875, and that, having regard to the fact that there was that remedy, the Legislature had omitted to enact a provision similar to Section 26 of the Stamp Act, 1870 (33 and 34 Vic., c. 97), although they had taken from Section 127 of that Act the words contained in the last portion of Section 35 of the Indian Companies Act.

4. This difficulty, if it be one, arises from the Legislature having adopted verbatim a part of the English Statute without adopting the other parts bearing on it, or making it completely correspond in phraseology with the terms of the Indian Bill. It does not appear that the Legislature here really intended to make any distinction between a 'forfeit' and a 'penalty.' In ordinary parlance, those words are usually interchangeable, and in Legislative nomenclature they are sometimes used one for the other. In the Stamp Act, to which we have referred, we find that, although the different sections which inflict a fine upon omissions to comply with the provisions of that Act provide that the offending person shall 'forfeit,' certain sums, Section 26, which provides for the mode of recovering such forfeits, describes them as 'penalties.' If the contention of the learned Counsel here was correct, and if it were that a penalty and a forfeit were not the same thing, Section 26 of the Stamp Act, 1870, would be meaningless and would have nothing to apply to. We think it quite clear that the Presidency Magistrate has jurisdiction under Section 252 to deal with a charge of the kind in this case.

5. It is not necessary for us to consider whether there be also a remedy by information under Section 144 of the High Court's Criminal Procedure Act, 1875.

6. There is no doubt that the omission to stamp a share warrant is an offence under the Indian Companies Act, and it is, as we have shown, an offence declared punishable by a penalty. The Magistrate has jurisdiction.

7. In this way we answer the first three questions referred to us.

8. The learned Magistrate refers to Section 32*, Code of Criminal Procedure. That section gives him power only to fine up to Rs. 1,000. We do not think that that section affects the present case. Section 35 of the Indian Companies Act inflicts a penalty of Rs. 500 in respect of each share warrant issued without being duly stamped. The issue of each share warrant not duly stamped is a separate offence. The fact that several offences may have been committed, and therefore his power to fine would extend to more than Rs. 1,000, is not affected by Section 32, Code of Criminal Procedure.

9. The last question is not, we think, a difficult one. Sections 68 and 69, 71, 75, &c., provide for penalties not exceeding certain sums. This distinction of words, we think, makes it quite clear, if it were not otherwise made so, that the Magistrate has no discretion at all. The words of Section 35 are imperative. They provide that if warrants are issued without being duly stamped, the company and every person, &c., shall forfeit the sum of Rs. 500. This is an express penalty fixed by the Statute for the offence. The Magistrate, if the offence is proved, is bound to impose a fine of Rs. 500 in respect of each offence. It is for the Revenue authorities to determine whether they would enforce such penalties.

* Sentences which Magistrates may pass.

[Section 32.--The Courts of Magistrates may pass the following sentences, namely:

(a) Courts of Presidency Magistrates and of the Magistrates of the first class: Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law; fine not exceeding one thousand rupees;

whipping.

(b) Courts of Magistrates of the second class : Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law fine not exceeding two hundred rupees; whipping.

(c) Courts of Magistrates of the third class. Imprisonment for a term not exceeding one month; fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.]

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