

Nossibolla Vs. D. Stephens

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Court : Kolkata

Decided On : Jan-21-1949

Reported in : AIR1952Cal339

Judge : Sen, J.

Acts : Merchant Shipping Act, 1923 - Sections 25, 26 and 26(1)

Appeal No. : Criminal Revision No. 1007 of 1948

Appellant : Nossibolla

Respondent : D. Stephens

Advocate for Def. : S.C. Talukdar, Adv.

Advocate for Pet/Ap. : A.C. Sarkar and ; N.C. Mitter, Adv.

Judgement :

ORDER

Sen, J.

1. This Rule has been obtained by one Nossibolla against an order acquitting the opposite party D. Stephens.

2. The case of the petitioner briefly is as follows : He is a seaman. He wished to get engaged on board a ship & for this purpose he had to approach a body known

as the Calcutta Maritime Board to give him what is known as a Muster Card. He applied to the opposite party D. Stephens for this purpose & Stephens gave him a Muster Card but demanded payment of one rupee for this. The contention of the petitioner is that Stephens has contravened the provisions of Sections 25 & 26, Merchant Shipping Act. This case was tried together with another case of a similar nature namely the case of 'Nasurulla v. Stephens'. The evidence was recorded by the learned Chief Presidency Magistrate. He was transferred & his successor has passed the present judgment acquitting Stephens.

3. The decision of this case will depend mainly upon the construction of Sections 24, 25 & 26, Merchant Shipping Act. The sections are as follows:

24(1) 'The Governor General in Council or any person duly authorised by the Governor General in Council in this behalf may grant to such persons as may be deemed fit licenses to engage or supply seamen for merchant ships in British India.

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 license under this Act for the purpose, or is the owner or master or mate of the ship, or is bona fide the servant & in the constant employ of the owner, or is a shipping-master.

26(1) A person shall not demand or receive, either 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.'

26(2) 'If a person acts in contravention of this section, he shall for each such offence be liable to a fine of fifty rupees, &, if a licensed person, shall forfeit his license.'

It is quite clear from these sections that a person shall not supply a seaman for employment in any ship unless he has a license granted under the Act for this purpose, or unless he:

'is the owner or master or mate of the ship, or is a bona fide the servant & in the constant employ of the owner, or is a shipping master.'

As provided in Section 25(1) of the Act. Although it was specifically alleged that the opposite party had no license, there is no evidence to show that there was any such license. I take it therefore that Stephens had no license granted under the Act. He cannot rely on the operation of the latter part of Section 25(1) as he is neither the owner nor master nor mate of the ship, nor is he a bona fide servant in the constant employ of the owner, nor is a shipping-master. Learned Advocate appearing for Stephens contends that he is a servant of all shipping companies because the Maritime Board is a Board consisting of the owners of ships & representatives of seamen. In my opinion, there is no force in this argument. The word 'servant' is used in quite a different sense. He must be the servant & in the constant employ of the owner. The mere fact that the owners employ him for the purpose of supplying seamen or engage the organisation of which he is the Secretary to supply seaman does not make him a servant within the meaning of Section 25(1) of the Act. This is perfectly clear from the provisions of Section 25(2), Merchant Shipping Act which prohibits any person from employing another to supply seamen unless such other person holds a license or is himself the owner, the master or mate of the ship or is bona fide servant & in the constant employ of the owner or is a shipping-master. The subsection makes it quite clear that the mere engagement of a person to supply seamen does not make that person a servant within the meaning of Section 25 of the Act. Thus upon the evidence as it now stands Stephens has clearly contravened the provisions of Section 25.

4. Next, the allegation is that Stephens took one rupee from the complainant for the issue of the Muster Card. These cards are issued to seamen who assemble at a certain place & it is only such seamen who have cards that are engaged for serving on the ship. Now, the payment of this one rupee seems to me illegal & does amount to re numeration for providing the complainant with employment. It is true that the payment is demanded before a man is employed & the payment does not guarantee that he shall be employed, but the payment is taken for the purpose of providing him with employment, & as such it amounts to remuneration within the

meaning of Section 26(1) of the Act. Thus if the evidence given by the complainant is believed, Stephens is also guilty under Section 26 of the Act.

5. It seems, however, that the legal position was not clearly understood by the parties or by the learned Magistrate & that it is for this reason, perhaps, that Stephens did not adduce any evidence on his behalf. I therefore wish to emphasise that the opinion which I have given regarding whether Stephens is a servant or whether he received one rupee is not binding on the Magistrate. It is an opinion given on the evidence as it now stands. As I am sending the case back for retrial it will be open to the learned Magistrate to form his own opinion on these questions on such evidence as is before him.

6. I set aside the order of acquittal & direct that the case be retried by the learned Magistrate in the light of the observations made above. Both parties shall be entitled to adduce such evidence as is necessary for their cases. The Rule is made absolute.

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