

A.E. Platts Vs. the State

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Court : Kolkata

Decided On : Jul-08-1952

Reported in : AIR1953Cal108,56CWN706

Judge : K.C. Chunder, J.

Acts : Dock Labourers Regulations, 1948 - Regulations 2, 44, 54 and 55; ;[Dock Labourers Act, 1934](#) - Section 2 and 5(3)

Appeal No. : Criminal Revn. Case No. 434 of 1952

Appellant : A.E. Platts

Respondent : The State

Advocate for Def. : Nirmal Chandra Sen, Adv.

Advocate for Pet/Ap. : S.C. Talukdar and ;Tulsi Charan Nath, Adv.

Judgement :

ORDER

K.C. Chunder, J.

1. This Rule was issued at the instance of the Manager of the Calcutta Landing and Shipping Co. Ltd. against a conviction and sentence under Regulation 5 of the Indian Dock Labourers Regulation, 1948, for breach of Regulation 55 read with

Regulation 44. The learned Magistrate found that the Company's Cargo Boat No. 2 was placed alongside Section S. Rebeverett on 13-6-51 when the athwart iron beam of the hatch of the boat got displaced as the sling of gunny bales heaved up by the ship's derrick struck the beam. Two workers of the Co. working in the hatch were injured as a consequence. It is alleged that the beam of the hatch of the boat was not adequately secured.

2. Mr. Talukdar has taken us through the evidence on the point whether the boat was alongside the ship and whether the beam in the hatch was adequately secured. In view of the order I am going to pass, it is undesirable that I should express any opinion on the facts. Mr. Talukdar has contended that the word 'boat', namely Cargo Boat No. 2, did not come within the definition of a ship. The learned Magistrate has himself definitely stated that it is not within the definition of a ship. He has pointed out that the liability depends upon the definition of 'process' in the Act and Regulation 2 read with Regulations 55 and 54 of the Regulations. Clearly, anything like a boat from which work of loading and unloading a ship is going on will come within the definition of process if it is alongside the ship and the hatch has not only got to be secured in the ship but also anything so working alongside the ship. Therefore, the learned Magistrate was right in law in holding that if the beam in the hatch was not adequately secured then liability would fasten upon the person responsible for the same.

Under Regulation 44 responsibility is first of the Company. Indeed, Mr. Sen points out to me that the petition of complaint was filed actually against the Company. Secondly, the responsibility is that of the Agent or the employee performing the Work of loading and unloading. In the present case Mr. Platts is not made responsible either as an Agent or as an employee of the Company performing any work. His responsibility, if any, depends upon his being a representative of the Company in the present case who shoulders the liability of the Company. The Manager 'qua' Manager is not under the Companies Act a representative. The question whether Mr. Platts represented the company for the particular purpose of this liability should have been determined by the learned Magistrate and as this has not been done, the order of the learned Magistrate must be set aside and the case sent back to him so that the point may be decided and, if necessary, for the

decision of the point he may take further evidence. It may be pointed out that if the learned Magistrate finds that Mr. Platts is not a representative then the present proceedings must fail and the learned Magistrate will be at liberty to take fresh proceedings against such person as may be shown to be the proper representative.

3. The Rule is made absolute and the case is remanded to the learned Magistrate for further action in the light of this judgment.

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