

V.B.C. Exports Pvt. Ltd. and Another

Vs

Commander S. D. Baijal and Others

Criminal Appeals Nos. 573-74 of 1987 with Nos. 567-72 of 1987

(M. K. Mukherjee, S. P. Kurdukar JJ)

01.08.1996

JUDGMENT

M. K. MUKHERJEE, J. -

1. These appeals have been heard together as they involve common questions of fact and law and this judgment will dispose of all of them. Facts relevant for disposal of the appeals are as under.

2. In the month of July 1984, the coastguard ship 'Vikram' intercepted and seized a number of foreign vessels (trawlers), which were operating on permits granted under Section 5 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 ('Act' for short) to fish in the maritime zones of India, on the allegation that they were fishing in a depth of less than 40 fathoms of water in contravention of the terms and conditions of the permits. For the alleged contravention the Companies which owned the vessels and their Managing Directors as well as the Companies which had chartered them and their Managing Directors were prosecuted before the Additional Chief Metropolitan Magistrate, Bombay on complaints filed by S. D. Baijal (Respondent 1 in all these appeals), the Commander of 'Vikram'. The prosecutions ended in conviction of the owners of the vessels and their Managing Directors and acquittal of the Charterer-Companies and their Managing Directors. Besides, in some of those cases the vessels were also ordered to be confiscated.

3. Against their convictions and the orders of confiscation of the vessels the owners and their Managing Directors filed separate appeals; and Respondent 1, in his turn, filed appeals challenging the acquittal of the Charterer-Companies and their Managing Directors. The High Court dismissed the appeals preferred at the instance of the owners of the vessels but allowed the appeals of Respondent 1 and convicted and sentenced the Charterer-Companies and their Managing Directors. The above orders of conviction and sentence recorded by the High Court against the Charterers and their Managing Directors are under challenge in these appeals.

4. Mr. Adhyaru, the learned counsel appearing on behalf of the appellants, did not assail the concurrent finding of the learned courts below that the vessels were fishing in a depth of less than 40 fathoms of water in contravention of the terms and conditions of the permit. He, however strenuously argued that having regard to the admitted fact that the appellants had given clear instructions to the masters of the ship, in accordance with Section 5(6) of the Act, to ensure compliance with the provisions of the Act, the Rules framed thereunder and the conditions of the permits, the High Court was not at all justified in upsetting the judgment of the trial court so far as the appellants were concerned. He contended that when the vessels were on high sea it was impossible for the Charterers to control their movements and, therefore, if the masters of the ships violated their express command not to fish in the prohibited depth, only the owners of the ships

would be liable for the contravention and not the appellants, as Charterers. To buttress his contention he pressed into service the following findings recorded by the learned Magistrate while acquitting the appellants :

"Shri Baijal PW 1 in para 36 of the evidence has admitted that there is no way to prevent contravention of rule or condition of the permit. In para 37 of the evidence he has admitted that charterers have no physical control over the trawlers when they are on the high sea. The charterer had asked the masters not to commit any breach of rule or condition of the permit. Beyond this the charterer could do nothing."

5. To appreciate the above contention of Mr. Adhyaru it will be necessary to refer to the relevant provisions of the Act, Rules and the conditions of the permit. Sub-section (7) of Section 5 of the Act provides that any Indian citizen, who intends to use any foreign vessel for fishing within the maritime zone of India, is required to obtain a permit for the purpose and sub-section (6) thereof casts an obligation upon the permit-holder to ensure that every person employed by him complies in the course of his employment, with the provisions of the Act, or any Rules or Orders made thereunder and the conditions of such permit. Section 12 lays down the extent of penalty that can be imposed for contravention of the provisions of the permit granted under Section 5 of the Act. The other section which is relevant for our purpose is Section 17(1) of the Act which reads thus :

"17. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence."

6. Coming now to the Rules framed under the Act we find that Rule 8(1), in its different clauses, lays down the terms and conditions to which a permit shall be subjected to. Rule 8(1)(d), with which we are mainly concerned in these appeals, prohibits the Charterer from fishing within a depth of 40 fathoms in the maritime zone of India. Rule 8(2) expressly states that the Charterer shall be bound by all or any of the terms and conditions mentioned in sub-rule (1). Rule 16 speaks of the contravention of the terms and conditions of permits and Rules and it provides that any contravention of the provisions of the Rules shall be punishable with fine which may extend to Rs. 50,000, without prejudice to the penalties which may be awarded under the Act.

7. From the combined reading of the above provisions of the Act and the Rules it is manifest that for the offence with which we are concerned in these appeals, the Charterers have been specifically made liable to be convicted not only under Rule 16 but also under Section 12 of the Act. In view of the plain language of Rule 8(1)(d), Rule 8(2) and Rule 16, Section 5(6) of the Act to which reference has been made by Mr. Adhyaru has no manner of application whatsoever. Even if we proceed on the assumption that the Charterers had no knowledge as to what was going on in the high seas, knowledge must be attributable to them for every foreign vessel (trawler) is supposed to be equipped with wireless equipment for communication in terms of its requirements and it is expected that the Charterer will be in touch with the trawlers wherever they are and for that matter

get assistance from the coastguard for any communication with the trawlers. If Mr. Adhyaru's contention, that once it is proved that strict instructions had been given by the Charterer to the master of the vessel not to commit any breach the former would be absolved of the liability for such breach, is to be accepted then, under no circumstances can a Charterer be successfully prosecuted even if a case of flagrant violation of the terms and conditions of the permit like those of clause 8(1)(d), which expressly say that the Charterer shall not fish within the prohibited zone and depth, is conclusively made out.

8. It was next contended by Mr. Adhyaru that even if the Charterer-Companies were liable for the offence alleged, their Managing Directors could not be prosecuted. This contention is also devoid of any merit. Section 17(1) of the Act, which has been quoted earlier, clearly says that when the offence is committed by a Company, persons responsible to the Company for the day-to-day business will be also liable along with the Company for the offence committed unless, of course, they can prove that the offence was committed without their knowledge or they exercised due diligence to prevent its commission. The evidence on record unmistakably proves that the Managing Directors herein were responsible to their respective Companies for the conduct of their business and they (the Managing Directors) did not bring on record any material to avail of the proviso of the above sub-section and, for that matter, to exonerate themselves from the offences committed by their Companies.

9. For the foregoing discussion we do not find any merit in these appeals which are dismissed.