

M/S. V.B.C. EXPORTS PVT. LTD. AND ANR.

A

v.

COMMANDER S.D. BAIJAL AND ORS.

AUGUST 1, 1996

[M.K. MUKHERJEE AND S.P. KURDUKAR, JJ.]

B

Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 : Sections 5(1)(6), 12 and 17.

Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Rules, 1982 : Rules 8(1)(d)(2) and 16.

C

Foreign vessels—Fishing in maritime zones of India—Violation of conditions of permit—Prosecution for—Liability of chartered Companies and their Managing Directors—Held they are liable for violation of conditions of permit—Mere instructions given by charterers to Masters of Ships to ensure compliance with rules does not absolve the former of their liability.

D

Respondent No. 1, the Commander of Coast Guard Ship 'Vikram', intercepted and seized a number of foreign vessels as they were fishing in the Maritime Zone of India in a depth of less than 40 fathoms of water in contravention of the terms and conditions of the permits granted under Section 5 of the Maritime Zones on India (Regulation of Fishing by Foreign Vessels) Act, 1981. The Trial Court convicted the Companies which owned the vessels and their Managing Directors but acquitted the Charterers-Companies and their Managing Directors. On appeal the Charterer-Companies and their Managing Directors were also convicted and sentenced by the High Court. The Charterer-Companies and their Managing Directors preferred appeal before this Court contending that (i) strict instructions had been given by them to the Master of Vessels not to commit any breach of permit conditions and if the masters of the ships had 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; and (ii) even if the Charterers-Companies were liable for the offence alleged their Managing Directors could not be prosecuted.

E

F

G

Dismissing the appeals, this Court

H

A HELD : 1. From a combined reading of the provisions of the
 Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act,
 1981 and Maritime Zones of India (Regulation of Fishing by Foreign
 Vessels) Rules, 1982 it is manifest that for the alleged offence the
 Charterers have been specifically made liable to be convicted not only
 B 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
 has no manner of application whatsoever. Even if it is assumed that the
 Charterers had no knowledge as to what was going on in the High Court
 Seas, knowledge must be attributable to them for every foreign vessel
 (trawler) is supposed to be equipped with wireless equipment for com-
 C munication 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 coast guard for any communication with
 the trawlers. [237-E-G]

D 2. Section 17(1) of the Act 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
 E the managing Directors herein were responsible to their respective Com-
 panies for the conduct of their business and they 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. [238-B-D]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.
 573-74 of 1987 Etc.

G From the Judgment and Order dated 24.4.87 of the Bombay High
 Court in Crl.A. No. 660 of 1986.

Yashank Adhayaru, Nikhil Sakhandade, R.N. Karanjawala, Ms. Nan-
 dini Gore, Ms. Ruby Ahuja and Manik Karanjawala for the Appellants.

H V.C. Mahajan, P. Parmaswaran and W.A. Quadri for the Respon-
 dents.

S.M. Jadhav and A.S. Bhasme (NP), for the Respondents.

A

The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. 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 :

B

In the month of July 1984, Coast Guard 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 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 (the respondent No. 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.

C

D

E

Against their convictions and the orders of confiscation of the vessels the owners and their Managing Directors filed separate appeals; and the Respondent No. 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 No. 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.

F

G

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

H

A 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 :

D "Shri Bajjal P.W. 1 No. 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 has 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 charterer could do nothing".

E 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 (1) 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 :

G "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

H

be proceeded against and punished accordingly :

A

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".

B

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 Rule 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.

C

D

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. Ahdyaru 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 coast guard 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

E

F

G

H

A expressly says that the *Charterer* (emphasis supplied) shall not fish within the prohibited zone and depth, is conclusively made out.

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.

B 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

C 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.

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

T.N.A.

Appeals dismissed.