(1922) 05 CAL CK 0004

Calcutta High Court

Case No: O.C.S. No. 1 of 1921

J.R.B. Morrier		APPELLANT
	Vs	
Lala Raghumul and another		RESPONDENT

Date of Decision: May 15, 1922

Judgement

C.C. Ghosh, J.

In this case the plaintiff, who until lately was Master of the steamship Singaporean now lying in the dry docks in the Hooghly, sues for the recovery of a sum of Rs. 6,744-4-11 for his wages and messing and other expenses incurred by him on account of the ship in the course of his employment as Master during the period commencing from the 1st July, 1921, and ending with the 6th November, 1921, and for the wages and messing of the Chief Engineer and other seamen and for other liabilities incurred by the plaintiff on account of the ship as such Master during the said period. Particulars of the said claim are set out in the statement annexed to the plaint and marked Ex. A. It is alleged that before the institution of this suit, accounts were furnished to the defendants and monthly portage bills with full details and vouchers were duly delivered, but that notwithstanding demands, the defendants have failed and neglected to pay to the plaintiff the said sum of Rs. 6,744-4-11 or any part thereof. In the particulars annexed to the plaint, a sum of Rs. 3,081-13-0 is claimed by the plaintiff on account of his wages and messing and on account of traveling expenses and refreshments, and a sum of Rs. 2,617 is claimed on account of the Chief Engineer''s wages and messing ; and three other sums, namely, Rs. 597-12-4, Rs. 33 and Rs. 117-10-10, on account of wages of the deck crew, engine-room crew and dinghy man, aggregating in all to Rs. 6,744-4-11.

2. The defendants are two in number, (i) Rai Bahadur Damodar Dass, and (ii) Lala Raghumull. It is alleged that they were joint owners of the s.s. Singaporean. As against the defendant Rai Bahadur Damodar Dass, the claim has been withdrawn, the defendant Rai Bahadur Damodar Dass not pressing any claim for costs. So far as the defendant Lala Raghumull is concerned, he states in his written statement that sometime in June, 1921, an agreement was arrived at between the plaintiff and Lala

Raghumul under which the plaintiff agreed to receive a sum of Rs. 325 a month till the vessel resumed work. At the Bar, however, Mr. S.C. Bose, on behalf of Lala Raghumull, has stated that the figure should be not Rs. 325 but Rs. 500. In the second place, it is urged that the plaintiff has not rendered any accounts of the various sums which had been paid to him from time to time; and in the third place, it is alleged that on an account being taken, it would be found that a very large sum of money was due and owing to the defendant Lala Raghumull. Lastly, the question of jurisdiction is raised and it is stated that this Court has no jurisdiction to try this suit, which has been filed in the Vice-Admiralty jurisdiction of this Court.

3. The issues settled between the parties are as follows:-

(i) Is the plaintiff entitled to recover the wages and messing charges of the Chief Engineer in this suit ?

(ii)Was there any agreement in June,1921, between the plaintiff and the defendant, that the plaintiff would accept a salary at the rate of Rs. 500 a month, including messing charges and travelling expenses, from the 1st July, 1921, till the vessel resumed work ?

(iii) Was there a similar agreement between the Chief Engineer and the defendant?

(iv) Is the plaintiff entitled to any travelling expenses from the 1st July to the 6th November, 1921?

(v) What sum, if any, is due to the plaintiff ?

4. On behalf of the plaintiff Mr. Ameer Ali has raised the following issues :-

(1) Did the plaintiff fail to render accounts and portage bills as alleged in paragraphs 3 and 4 of the written statement ?

(2) Did the first defendant accept as accurate the portage bills and accounts in respect of the period from February to May, 1921, inclusive and June to November, 1921, inclusive ?

5. The defendant Lala Raghumull has not given any evidence in this case, but on his behalf his constituted attorney and partner, Gopal Das was called for the purpose of proving that so far as the deck crew and engine room crew and the dinghymen were concerned they had all been paid off. In support of this last statement, the witness Gopal Dass has produced before me three receipts showing that a lump sum of Rs. 700 was paid in the presence of a solicitor to the headman of the deck crew, the headman of the engine room crew and the dinghy man on account of their wages for the period mentioned in the account annexed to the plaint.

6. The plaintiff in his evidence states that on the 6th February, 1921, he was appointed Master of the s.s. Singaporean by Messrs. Frederick Gaebele, who were the agents of the owners, on a salary of Rs. 650 per month, and on terms and

conditions appearing in Ex. A. He says at the time of his appointment as Master he was told that the owners of the ship were away from Calcutta. One of the owners was Rai Bahadur Damodar Dass, and the other Lala Raghumull. On the 1st March, 1921, he was introduced to Rai Bahadur Damodar Dass when the latter said that the portage bills should be submitted to him at the end of every month and that payment would be made by the 6th of each month. He also said that as regards travelling expenses, the actual sums spent on account of travelling expenses should be included in the bills The plaintiff states that the agreement entered into with Messrs. Gaebele was such as is usual throughout the shipping world, and that under the agreement, provision was made for his boarding and travelling expenses and entertaining allowance. As regards the portage bills, they were all settled up to 6th April, i.e. he was paid on the 6th March for the February bill; on the 6th April for the March bill. After that there were delays, and in the end he found it difficult to realize the amount of his portage bills from the 1st July down to the 6th November. On this date he resigned, his appointment as Master, but previous to that date the defendant Lala Raghumull had asked him to remain on board the Singaporean as Master thereof on a reduced salary. The plaintiff''s evidence on this point was as follows (Q55):-

I then spoke to the Rai Bahadur and said, Gentlemen, I am quite prepared to enter into an agreement with you to receive Rs. 500 a month from the day the ship goes into the hands of the repairers until she is able to take in cargo, provided of course that the Chief Engineer will have to take the same reduction, because it will be impossible for me to be on board a ship with less salary than the Chief Engineer. I also pointed out to the Rai Bahadur that the agreement should be such that there should be no delays as regards payment: payment should be made regularly, and also if I were to engage myself with him, there should be a car at my disposal and at the disposal of the Chief Engineer while the ship was at Matiabruz, as it was impossible for me to run backwards and forwards between Matiabruz and Harrison Road out of my own pocket.

7. He states further that the Chief Engineer had a similar conversation with the defendant Lala Raghumull, wherein the Chief Engineer pointed out that he was a member of the Engineers Guild and that it was impossible for him to accept a reduced salary, but all he could do was to waive his claim to the messing allowance. Ultimately nothing was settled, and the plaintiff continued to be Master on the terms mentioned in Ex. A, down to the 6th November, 1921, when he resigned. As I have said the plaintiff has included in his bill the wages due to the Chief Engineer for the period 1st July to 6th November, 1921, and the main contest in this suit has been whether the plaintiff was entitled to include in his claim a claim for the wages and for the messing allowance due to the Chief Engineer.

8. The Chief Engineer has given evidence, and he states that according to the custom which prevails among seamen he looked to the Master as being responsible

for the wages due to him. The Chief Engineer corroborates the Captain as regards the conversation he had with the defendant Lala Raghumull with reference to the plaintiff staying on as Master of the Singaporean on a reduced salary. As I have said, no evidence has been called on behalf of the defendants except on the question of payment of the deck crew, the engine crew and the dinghy man.

9. On behalf of the defendant Lala Raghumull it has been contended that in any event there ought not to be any judgment in this suit against the defendant in respect of the wages alleged to be due to the Chief Engineer, and in support of this contention, my attention has been invited to various sections of the Merchant Shipping Act of 1894 and the Merchant Shipping Act of 1906, and the Indian Merchant Shipping Act of 1859 and to the Amending Indian Act of 1883. I shall refer to these sections later on but in the view which I take, it will be seen later that the sections to which my attention has been directed have no real bearing on the question, Prior to the English Act of 1854, it had been said in numerous cases that mariners were the favorites of the law and were placed particularly under its protection, and that the Court was always anxious to protect them against circumvention and error, and that in suits for wages the Court was always anxious that seamen should not be harassed with litigation, and that it was desirable that questions relating to wages due to seamen should be speedily settled. Now, following these principles, it was held in a series of cases, prior to the Admiralty Court Act of 1861, that the Court of Admiralty had jurisdiction in rem or in personam over claims by seamen for any wages earned by them under a special contract, or otherwise, and that the master, ship and the owner were severally liable to a mariner for his wages, and that the mariner was entitled to choose who he would proceed against, and that in some respects a proceeding by a mariner against the Master was more convenient (see the cases collected in Pritchard''s Admiralty Digest, Vol. II). In the case of Jack Park (1802) 4 Robinson 308 (311), it was held by Sir William Scott (who was afterwards to be known under the title of Lord Stowell) that for the wages of the mariners the Master was liable, the ship was liable and the owner was liable. The mariner was entitled to his option, and in some respects perhaps there was less inconvenience occasioned by proceeding against the Master because in that case the ship was not detained. In an American case [Bunde v. Haven (1823) Gilpin Report 592] it is said that seamen have a triple security for their wages, namely, the vessel, the owner and the Master ; and in the case of Salacia (1862) 7 L.T.N. S. 440 : 32 L.J. 41, it is laid down as an established rule, so ancient, that the origin thereof is not known, that seamen may recover their wages by action against the Master. [See also Baily v. Grant (1700) 1 Salk. 33 : 12 Mad. 440 : 1 Ld. Raym. 632 : Holt. 48, Anon (1680) 2 Show. 86, Hook v. Moreton (1698) 1 Ld. Raym. 397, Armstrong v. Smith (1805) 1 N.R. 299]. The principle of these decisions is that although by the law Maritime, the ship is the primary security of the mariner for his wages, and although as long as a plank remains, the seamen is entitled to the proceeds of the plank as security for his wages, the mariner is also entitled at his

option to proceed against the Master or owner. It is observed rather quaintly in an old case that contracts of seamen have always been considered amongst the most important outfit that a ship can have. Her construction may be the best that modern ingenuity may produce; every device of recent invention may be lavished upon her; yet unless she has a brain to direct her course, and skilful Chief Engineers to regulate the pulsation of her engines and manage her numerous complicated machinery, her propeller is paralyzed, her syren is dumb. This is like the human body when the soul has departed. Mere machinery is of little service unless intelligently handled. It is not the gun, but the man behind it who is formidable and in modern as in ancient times the personal equation is still controlling. On this account the utmost encouragement and fullest protection to seamen are the established policy of Admiralty law, and as regards Courts they have been equally liberal in deciding questions as regards statutes relating to seamen and as to who are seamen. The term is not confined to those who actually take part in the navigation of the ship. Every one who is regularly attached to the ship and who contributes to her successful handling is a seamen although he may not know one rope from another."

10. In the present case however it is argued that the facts of the present case are such that it is impossible to hold that the plaintiff is entitled to include in his claim for wages and for messing due to the Chief Engineer. The argument is put in this way: it is said that Ex. 1 proves the direct employment of the Chief Engineer by the owners, and that being so, the defendant Lala Raghumull cannot possibly be held liable to the plaintiff for wages due to the Chief Engineer. The contention raised by the defendant is covered by authority. In the case of Farrel v. Maclea (1788) 1 (U.S.) 391 decided by the Supreme Court of Pennsylvania, the facts were as follows:-It was a claim against the Master of a vessel for payment of the wages of the mate. The mate had been appointed by the owner and had been shipped by the owner with a letter introducing him to the Master. On behalf of the defendant (the Master) it was argued that inasmuch as the employment was by the owner, the Master could not be held liable, and that although by the Law Maritime, the seaman has a triple security for his wages, inasmuch as the employment was by the owner, the case was taken out of the ordinary rule. Counsel for the plaintiff argued that mariners had a threefold security for their wages, they may proceed against the owner; secondly, they may libel the vessel, and thirdly, they may sue the Captain. It was further argued that the Captain was not bound to receive any sailors shipped by the owners because he was not only liable to the owners, but to strangers for any wrong they may do when shipped, but if the Captain did receive them, he made himself liable for the wages. The President of the Supreme Court of Pennysylvania in delivering the judgment of the Court observed as follows:-

It was quite true that the plaintiff (the mate) has been shipped by the owner, but admitting that to be so, in his opinion the Captain was liable, for the law gave the plaintiff a threefold remedy to recover his wages, and unless by some positive act or

word the plaintiff had released, as he might do, one of these remedies, a mere compliance with the solicitation of the owner cannot possibly defeat the plaintiff''s claim.

11. The President said that there was no distinction in this respect between the mate and a common mariner; they were alike subject to the orders of the Captain, who could equally refuse to receive either, or, when received, was equally empowered to dismiss them for his appointment as Captain and Master of the ship gave him the sole, undoubted and exclusive right of choosing every seaman under him, whatever courtesy he might be inclined to show to the recommendation of those by whom he was himself employed. It will be observed that the above is an exact authority on the facts of the present case. No doubt it is an American authority; but where the decision is not based on any consideration of statute law peculiar to America I know of no reason which prevents me from following an American authority, especially on a matter like this. One last remark I have to add. It is not disputed that the Chief Engineer comes within the expression "seaman"; if authority is needed the definition of the word in the English and Indian Acts may be referred to.

12. I now turn to the question whether the authority of the English cases referred to above has in any way been affected by the Merchant Shipping Act of 1894. Like the Act of 1854, it was a consolidating Act and it was not a codification of the law like the Bills of Exchange Act, 1882, or the Partnership Act, 1890, and with trifling exceptions it left the common law and the case law untouched. The Indian Act of 1859 is a copy of some of the sections of the English Act of 1854. Section 58 of the Indian Act, to which my attention has been drawn by Mr. Bose for the defendant, is taken verbatim from section 191 of the English Act of 1854 and it therefore does not contain any such provision as is to be found in sub-section 2 of section 167 of the English Act of 1894. Neither section 58 of the Indian Act nor section 167 of the English Act of 1894 really affords any assistance so far as this case is concerned and I do not propose to set out the sections here. It is also quite clear that there are no ether sections in the two Acts which can be invoked in aid of the defendant in this case. The analogy of the Master being in a position to pledge the credit of the owner in a foreign port and not in a home port does not hold good at all in this case, and nothing more need be said about it.

13. On the authorities, therefore, I must answer the first issue in the affirmative.

14. As regards the second issue, I accept the testimony of Captain Morrier, and I hold that there was no such agreement as is referred to in the issue No. 2.

15. As regards the third issue, the answer is in the negative.

16. As regards the fourth issue, the answer is in the affirmative on the evidence which has been adduced before me.

17. As regards Mr. Ameer Ali''s issue, so far as the first issue is concerned, the answer is No.

18. Now the question arises as to what relief I should award to the plaintiff. The plaintiff is clearly entitled to his wages and to his messing and travelling allowances. So far as the Chief Engineer''s wages and messing are concerned, the plaintiff is entitled to include the same in his claim.

19. Now as regards payments to the engine room crew, the deck crew and the dinghy man, certain receipts have been produced before me showing that they have been paid off. So far as the plaintiff is concerned, his liability to the engine room crew, the deck crew and dinghy-man is, on the authorities mentioned by me, clear and although I am satisfied on the evidence before me that Rs. 700 has been paid to the headmen of the three sets of the crew mentioned above, viz., the engine room crew, the deck crew and dinghy-man, in order fully to protect the plaintiff I propose to make this order : that the plaintiff do recover judgment for the entire amount of the claim with costs on scale No. 2. This judgment will carry interest from date at 6 per cent, till realization. It will, however, be open to the defendant to produce before the Registrar receipts from the individuals composing the engine room crew, the deck crew and the dinghy-man for the period mentioned in the plaint, and on the defendant producing before the Registrar within a fortnight those receipts, the amounts due to these three sets of crew will be deducted from the plaintiff''s claim and he will then only be entitled to execute the decree for the two sums of Rs. 3,081-13-9 and Rs. 2,617 aggregating Rs. 5,698-13-9.