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**(1915) 04 BOM CK 0006**

**Bombay High Court**

**Case No:** None

Emperor

APPELLANT

Vs

A. Goodhew

RESPONDENT

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**Date of Decision:** April 30, 1915

**Acts Referred:**

- Merchant Shipping Act, 1958 - Section 114(3)

**Citation:** 30 Ind. Cas. 137

**Hon'ble Judges:** Macleod, J; Beaman, J

**Bench:** Division Bench

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### **Judgement**

1. The applicant has been convicted by the Chief Presidency Magistrate of the offence u/s 53 of the Merchant Seamen Act and sentenced to one day's simple imprisonment and to forfeit two days' pay, He has applied to this Court and a Rule was issued by Heaton and Shah, JJ. We take it then that we are dealing with this case in revision. It was contended that the applicant had a right of regular appeal; but in view of what has already passed and the applicant's Counsel being unable to support his contention by reference to any section in the Code of Criminal Procedure, it is clear that this was not the view of Heaton and Shah, JJ., and the present contention cannot be sustained.

2. Now the material facts are that the applicant signed the usual articles of agreement with the Captain of the Steamship " Arcadia " for a term of one year's service. In addition to the stereotyped form certain clauses were added under which, inter alia, the applicant agreed to accept a transfer from that to any other of the P. and C. Company's steamships. These additional terms have been challenged in the course of this argument as being ultra vires. Having regard, however, to Section 114, Clause (3), of the Merchant Shipping Act and to the fact that they have been initialled by an officer of the Board of Trade, we cannot accede to that contention. We have no doubt that the terms were inter vires and that they were subscribed by the applicant with full knowledge.

3. That being so, the next question which arises is whether or not, when the ship "Arcadia "had been disposed of by the P. and C. Company and this member of the crew was ordered by the Marine Superintendent to tranship to the Salsette," that order was one which he was bound to obey u/s 83. He has been convicted of disobedience of a lawful order, and the only question, in our opinion, of any importance here is whether or not the order given by the person and in the circumstances stated is such a lawful order as was contemplated in the section. Of the liability of the applicant to tranship under the clause we can entertain no doubt whatever, but looking to the language of that agreement, it appears that the applicant bound himself to obey the Master of the Ship, his successor in office, should any such be appointed, and the other superior officers for such we take to be the meaning of the "words their superior officers") of the ship. This would not ordinarily comprise the Marine Superintendent and had the order been given by the Marine Superintendent alone, it might reasonably have been contended that the applicant was under no obligation to obey such an order or recognize the authority of that individual. This point has not been made as clear as it should have been in the Chief Presidency Magistrate's Court, considering the importance attached to the case by the P. and C. Company. This much, however, is clear that when the order was given by Captain Daldy to the applicant, the Chief Officer of the Arcadia" was standing by. It has been stated to us on behalf of the Company that what in fact happened was that the Marine Superintendent had sent his orders for the transhipment of this member of the crew of the Salsette to the Chief Officer and that the Chief Officer had given that order to the applicant. The applicant refused to obey it, in consequence of which the Marine Superintendent in the presence of the Chief Officer repeated the order. Unfortunately these statements are not supported by any evidence. It appears clear, however, on the virtually admitted fact that the order was given in the presence of the Chief Officer, that the applicant could have been under no real misunderstanding as to the authority behind it. We think, therefore, that the contention is little better than quibbling and no substantial effect ought to be given to it.

4. All the requirements of Section 83 have been sufficiently complied with. The applicant was liable to be transhipped. He was ordered to tranship if not actually by, still in the presence of, the Chief Officer and obviously with his sanction and approval. And we take it that he knew perfectly well that the order came to him weighted with that authority which, by his own agreement, he was bound to acknowledge and obey.

5. We are, therefore, satisfied that no injustice has been done to the applicant and that the conviction and sentence which are made the subject of this revisional application ought not to be disturbed. We therefore, discharge the Rule.