

PETITIONER:
CAPTAIN SUBASH KUMAR

Vs.

RESPONDENT:
PRINCIPAL OFFICER, MERCANTILE MARINE DEPARTMENT, MADRAS

DATE OF JUDGMENT 22/02/1991

BENCH:
SAIKIA, K.N. (J)
BENCH:
SAIKIA, K.N. (J)
PUNCHHI, M.M.

CITATION:
1991 AIR 1632 1991 SCR (1) 742
1991 SCC (2) 449 JT 1991 (1) 658
1991 SCALE (1) 262

ACT:

Merchant Shipping Act, 1958: Section 363-Initiation of enquiry proceeding into charges of incompetency or misconduct of Captain of Ship.

HEADNOTE:

The appellant was the Master of the Merchant ship, M.V. Eamaco, when it sank in the high seas nearly 232 nautical miles away from India. The appellant was holder of a Master's certificate issued by the Director General of Shipping, Calcutta. The ship was owned by a Singapore company and was flying Panamanian flag.

The first respondent filed a complaint in the Court of 14th Metropolitan Magistrate, Egmore, Madras against the appellant for initiation of enquiry proceedings under section 363 of the Merchant Shipping Act, 1958 complaining about the negligence of the appellant while he was the Master of the ship and further stating that the shipping casualty had occurred due to sheer negligence and gross incompetence of the Master when he failed to launch the life boats and life crafts which resulted in loss of the ship, the cargo and valuable lives of sailors.

The appellant filed a Criminal Miscellaneous Petition in the High Court under section 482 of the Cr. P.C. stating that the proceedings were by an abuse of process of the court and the Court had no jurisdiction to proceed with the complaint against the appellant when there was no negligence on his part.

The High Court rejected the petition and held that the Shipping Act was applicable to the instant case and the action of the petitioner amounted to sheer negligence and called for investigation and inquiry under the Act. The appellant has appealed to this Court.

In this court it was inter alia contended on behalf of the appellant that (i) the negligence complained of having occurred in respect of a foreign ship, flying foreign flag, at a place 232 nautical miles away from India, and as such, outside the territorial waters of India, the Act was

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not applicable; (ii) even if the Act was applicable it would not amount to a shipping casualty as envisaged in part XII

of the Act; and (iii) even assuming that Chapter XII applied the complaint could not have been filed by the appellant in the court of the 14th Metropolitan Magistrate, Egmore under Section 363 of the Act.

On behalf of the respondent it was contended that the shipping casualty having occurred within the territorial waters of India which extended up to 200 nautical miles, the Act would be applicable. It was further submitted that the certificate of competence issued under the provisions of Part VI of the Act was a valuable certificate and if the holder of such a certificate of competency was alleged to have committed misconduct or acts of incompetency there was no reason why an inquiry into that misconduct or incompetency could not be ordered by the Central Government to a court competent to exercise jurisdiction under section 361 of the Act.

Allowing the appeal, setting aside the judgment of the High Court, and quashing the complaint and the proceedings against the appellants, this Court.

HELD: (1) The ship was not a ship owned wholly by persons each of whom was a citizen of India or by a company satisfying the description under clause (b) or (c) of sub-section (2) of Section 2 of the Act. The ship being a Panamanian ship registered in Panama would come within the purview of the Act only while it was within India including its territorial waters. [749C-D]

(2) By a notification of the Government of India dated 15th January, 1977 the exclusive economic zone of India had been extended upto a distance of 200 nautical miles into the sea from the shore and other maritime zones, under the 40th Constitution Amendment Act, 1976. [750H-751A]

(3) The concepts of territorial waters, continental shelf and exclusive economic zone are different concepts and the proclamation of exclusive economic zone to the limit of 200 nautical miles into the sea from the shore baseline would in no way extend the limit of territorial waters which extends to 12 nautical miles measured from the appropriate baseline. [751B]

(4) Admittedly the ship at the time of the casualty was at a place beyond the territorial waters of India and even the exclusive economic zone of India. If this be the position, the ship would not be covered by the provisions of section 2 of the Act and consequently the provisions of

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the Act would not apply to the instant casualty. [751C]

(5) The Act itself having not been applicable, Chapter XII being a part of the Act will also not be applicable. [751D]

(6) What is envisaged under section 361 is a formal investigation into a shipping casualty and not a preliminary inquiry. Similarly section 262 does not envisage inquiring into any charge of incompetency or misconduct otherwise than in the course of the formal investigation into a shipping casualty. [753H-754B]

(7) Prima facie, the complaint does not disclose the ingredients required under section 363 of the Act. It nowhere mentions that it was a transmission of the statement of a case to the court by the Central Government; it also nowhere mentions that the reason to believe had been founded otherwise than in the course of a formal investigation into the shipping casualty. On the other hand in para 2 it says that the complainant is the Principal Officer who is competent person appointed under the Act to complain about the negligence of the accused. There is however no doubt that he is not so empowered under section 363. [757G,E-F]

(8) The High Court correctly observed that section 363 enabled the Central Government to transmit a case to the court which had jurisdiction under section 361 to make an inquiry against master, mate or engineer into the charges for incompetency or misconduct otherwise than in the course of formal investigation into shipping casualties, but the High Court failed to notice that the complainant himself had no power under section 363. [758C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Civil Appeal No. 135 of 1991.

From the Judgment and order dated 16.6.1989 of the Madras High Court Crl. M.P. No. 2717 of 1988.

T.S. Krishnamoorthy Iyer, K. Rajeswara, N.D.B. Raju and K.R. Chaudhary for the Appellant.

K.K. Lahiri, R.K. Jain (NP), Sreekant, N. Terdal, Mrs. Sushma Suri and A Subba Rao for the Respondent.

The Judgment of the Court was delivered by

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K.N.SAIKIA, J. Special leave granted.

The appellant Captain Subhash Kumar was the Master of the Merchant ship M.V. Eamaco owned by Eamaco Shipping Co. (P) Ltd. Singapore, hereinafter called 'the ship'. On 12.8.86 the ship went into distress due to the vessel's hold Nos. 2 & 3 taking in water, the pumping operations being insufficient and though initially the appellant sent radio message for help he failed to launch the life boats and life crafts and to abandon the ship to enable M.V. Shoun World to pick them up and due to the failure of motor life boats and life crafts, when the ship sank, only 11 out of 28 persons were rescued resulting in loss of life to the remaining persons. At about 18.25 Hrs. that day Madras Radio, which was the communication centre between the land and seafaring ships, informed the office of the Principal Officer, Mercantile Marine Department, Madras, District Madras, hereinafter called as 'Principal Officer', that an urgent message had been received by the said Radio from the appellant and from that communication it was clear that the ship under the command of the appellant was posted at position 11 degrees 08 minutes North, 83 degrees 41 minutes East on 12th at 11.30 Greenwich meantime. The said message further indicated that the vessel's hold Nos. 2 & 3 were taking in water and the pumping out operation was not sufficient and it called the assistance from all ships in the vicinity. At 20.28 Hrs. the Madras Radio again contacted the Principle officer and said that the Radio had received SOS message (distress message) and he took necessary steps.

The Principal Officer filed a complaint in court of 14th Metropolitan Magistrate, Egmore, Madras-8 against the appellant for initiation of an inquiry proceeding under section 363 of the Merchant Shipping Act, 1958 (Central Act No.4 of 1958), hereinafter called 'the Act', complaining about the negligence of the appellant while he was the Master of the ship as aforesaid; and that at that time he was residing at Laxmi Niwas, 41, Marshal Road, Egmore, Madras-8 and further stating that the shipping casualty had occurred due to sheer negligence and gross incompetence on the part of the appellant in commanding the ship and the crew; and that the very fact that the life boats and life floats were not used and not even lowered so as to make use of that indicated that the appellant had not even thought

about that which a Captain of the ship should have done, resulting in loss of the ship, the cargo and valuable lives of the sailors who had at no time doubted about the competency of the Master or revolted against him. The complaint accordingly said that the Magistrate's Court by the provisions of section 363 had got powers to make inquiry into the charges of

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incompetence or of misconduct of the appellant therein. It also said that the inquiry be commenced in accordance with the provisions of the Act so as to cancel the certificates of competency of the Master, namely, the appellant, which had been granted by the Central Government; and that cancellation might be recommended under the Act after holding the aforesaid inquiry. The complaint also said that the appellant rendered himself liable to be proceeded against under the provisions of part XII of the Act which envisaged various modes of investigation and inquiry; and under section 363 the court had powers to make an inquiry into the charges of incompetency or misconduct of the appellant.

On 25.3.1988, the appellant received a notice stating that the inquiry proceedings were instituted against him before the 14th Metropolitan Magistrate under section 363 of the Act. The appellant thereupon filed Cr. M.P. No.2717 of 1988 in the High Court under section 482 of the Cr.P.C. stating that the proceedings were by an abuse of process of the court and the Court had no jurisdiction to proceed with the complaint against the appellant when there was no negligence on his part. It was also stated that the fact that the appellant was a holder of a Master certificate issued by the Director General of Shipping, Calcutta would not attract the provisions of the Act inasmuch as the ship was a foreign ship and the Master certificate had been issued by a foreign country and the casualty had occurred in the high seas nearly 232 nautical miles away from India and being in open sea the ship was subject to the jurisdiction and also to the protection of the State under whose maritime flag it sailed. The appellant was, it was further stated, to be in command of the ship by virtue of the certificate issued by the Panamanian Government, the flag of the ship was of Panama and, therefore, the provisions of the Act would not at all apply, much less its section 363. In other words the proceedings were allegedly intended to harass the appellant without jurisdiction and it amounted to an abuse of process of court.

The learned Single Judge who heard the petition rejected the contention that in view of the language of section 2 of the Act it would not be applicable and that it would not be a shipping casualty as defined in section 358 of the Act, and held that the Act was applicable in the instant case and the action of the petitioner amounted to sheer negligence and called for investigation and inquiry under the Act. Hence this appeal.

Mr. T. Krishnamurthy Iyer, the learned counsel for the appel-

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lant, submits, inter alia, that the negligence complained of having occurred in respect of foreign ship flying foreign flag at a place 232 nautical miles away from India, and as such, outside the territorial waters of India the Act would not be applicable; and that even if it was applicable it would not amount to a shipping casualty as envisaged in part XII of the Act; and lastly that even assuming that chapter XII applied, the complaint could not have been filed by the

Principal Officer in the court of the 14th Metropolitan Magistrate, Egmore, Madras-8 under section 363 of the Act.

Mr. K. Lahiri, the learned counsel for the respondents submits that the shipping casualty having occurred within the territorial waters of India which extended up to 200 nautical miles, the Act would be applicable and the complaint was rightly filed under section 363 of the Act; and that the High Court under section 482 of the Code of Criminal Procedure rightly refused to quash the proceedings.

Three questions, therefore, are to be decided in this appeal. First, whether the Act would at all be applicable in the facts and circumstances of the case; secondly, if the Act was applicable whether part XII of the Act would apply; and thirdly, if both the Act and part XII were applicable whether the complaint made by the Principal Officer under section 363 of the Act would be maintainable.

Taking the first question first, the Act is one to foster the development and ensure the efficient maintenance of India Mercantile Marine in the manner best suited to serve the national interest and for that purpose to establish a National Shipping Board and Shipping National Fund to provide for registration of India ship and the law relating to Merchant shipping. Section 2 of the Act deals with its application and says;

"(1) Unless otherwise expressly provided, the provisions of this Act which apply to-

- (a) any vessel which is registered in India; or
- (b) any vessel which is required by this Act to be so registered; or
- (c) any other vessel which is owned wholly by persons to each of whom any of the descriptions specified in clause (a) or in clause (b) or in clause (c), as the case may be, of

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section 21 applies, shall so apply wherever the vessel may be.

(2) Unless otherwise expressly provided, the provisions of this Act which apply to vessels other than those referred to in sub-section (1) shall so apply only while any such vessel is within India, including the territorial waters thereof."

In the instant case the ship was not registered in India and was not required by this Act to be so registered. Clause (c) refers so clauses (a), (b) and (c) of section 21 which defines Indian ships, and says:

"For the purposes of this Act, a ship shall not be deemed to be an Indian ship unless owned wholly by persons to each to whom any of the following descriptions applies:-

- (a) a citizen of India; or
- (b) a company which satisfies the following requirements, namely:
 - (i) the principal place of business of the company is in India;
 - (ii) at least seventy-five per cent of the share capital of the company is held by citizens of India;

Provided that the Central Government may, by notification in the official Gazette, alter such minimum percentage, and where the minimum percentage is so altered, the altered percentage shall, as from the date of the notification, be deemed to be substituted for the percentage specified in this sub-clause;

- (iii) not less than three-fourths of the total

number of directors of the company are citizens of India;
(iv) the chairmen of the board of directions and the managing director, if any, of the company are citizens of India;
(v) the managing agents, if any, of the company are citizens of India or in any case where a company is the managing agent, the company satisfies the requirements specified in sub-cl. (i), (ii), (iii) and (iv). or

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(c) a co-operative society which satisfies the following requirements, namely:-
(i) the co-operative society is registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law relating to co-operative societies for the time being in force in any State,
(ii) every individual who is a member of the co-operative society and where any other co-operative society is a member thereof, every individual who is a member of such other co-operative society, is a citizen of India."

The ship was not a ship owned wholly by persons each of whom was a citizen of India or by a company satisfying the descriptions under clause (b) or (c). Sub-section (2) of section 2 makes the provisions of the Act applicable to vessels other than those referred to in sub-section (1) only while any such vessel is within India, including the territorial waters thereof. The ship a Panamanian ship registered in Panama would come within the purview of the Act only if it is within India including the territorial waters.

This leads us to the question as to the extent of territorial waters of India. The Territorial Waters, Continental shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976) is an Act to provide for certain matters relating to the territorial waters continental shelf, exclusive economic zone, and other maritime zones of India. Section 2 of the Act defines "limit" in relation to the territorial waters, the continental shelf, the exclusive economic zone or any other maritime zones of India to mean the limit of such waters shelf or zone with reference to the mainland of India as well as the individual or composite group or groups of islands constituting part of the territory of India. Section 3 deals with sovereignty over, and limits of, territorial waters and says:

"(1) The sovereignty of India extends and has always extended to the territorial waters of India (hereinafter referred to as the territorial waters) and to the seabed and subsoil underlying, and the air space over such waters.

(2) The limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.

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(3) Notwithstanding anything contained in sub-section (2), the Central Government may whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the territorial waters.

(4) No notification shall be issued under sub-

section (3) unless resolutions approving the issue of such notification are passed by both Houses of Parliament."

Thus sub-section (2) clearly provides that the limit of the territorial waters is a line every point of which is at a distance of 12 nautical miles from the nearest point of the appropriate baseline. Under Article 297 of the Constitution of India things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union. It says:

"(1) All lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union.

(2) All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union.

(3) The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zone, of India shall be such as may be specified, from time to time, by or under any law made by Parliament."

Sub-section (3), thus, empowers the Central Government if it considers necessary so to do having regard to the International Law and State practice, alter, by notification in the Official Gazette, the limit of territorial waters. Under sub-section (4) no such notification shall be issued unless resolutions approving the issue of such notification are passed by both Houses of Parliament. A proclamation was made by the President of India published on September 30, 1967 in the Gazette of India Extraordinary, Part III, section 2 Notification of the Government of India in the Ministry of External Affairs No. FL/III (1) 67.

By a Notification of the Government of India dated 15th 751

January, 1977 the exclusive economic zone of India has been extended upto a distance of 200 nautical miles into the sea from shore and other maritime zones, 1976 under the 40th Constitution Amendment Act, 1976.

The concepts of territorial waters, continental shelf and exclusive economic zone are different concepts and the proclamation of exclusive economic zone to the limit of 200 nautical miles into the sea from the shore baseline would in no way extend the limit of territorial waters which extends to 12 nautical miles measured from the appropriate baseline. The submission that territorial waters extends to the limit of 200 nautical miles by virtue of the notification extending exclusive economic zone to 200 nautical miles has, therefore, to be rejected. Admittedly the ship (M.V.Eamaco) at the time of the casualty was at a place beyond the territorial waters of India and even the exclusive economic zone of India. If this be the position, the ship would not be covered by the provisions of section 2 of the Act and consequently the provisions of the Act would not apply to the instant casualty.

Taking the second question it is obvious that the Act itself having not been applicable Chapter XII being a part of the Act will also not be applicable. This Chapter deals with investigations and inquiries and contain sections 357 to 389. Section 357 defines "coasts" to include the coasts of creeks and tidal rivers. Section 358 deals with shipping casualties and report thereof and says:

"(1) For the purpose of investigations and inquiries under this Part, a shipping casualty

shall be deemed to occur when-

- (a) on or near the coasts of India, any ship is lost, abandoned, stranded or materially damaged;
- (b) on or near the coasts of India, any ship causes loss of material damage to any other ship;
- (c) any loss of life ensues by reason of any casualty happening to or on board any ship on or near the coasts of India;
- (d) in any place, any such loss, abandonment, stranding, material damage or casualty as above mentioned occurs to or on board any India ship and any competent witness thereof is found in India;

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(e) any Indian ship is lost or is supposed to have been lost and any evidence is obtainable in India as to the circumstances under which she proceeded to sea or was last heard of.

(2) In the cases mentioned in clauses (a), (b) and (c) of sub-section (1), the master, pilot, harbour master or other person in charge of the ship, or (where two ships are concerned) in charge of each ship at the time of the shipping casualty, and

in the cases mentioned in clause (d) of sub-section (1), where the master of the ship concerned or (except in the case of a loss) where the ship concerned proceeds to any place in India from the place where the shipping casualty has occurred, the master of the ship,

shall, on arriving in India, give immediate notice of the shipping casualty to the officer appointed in this behalf by the Central Government."

Clause (d) envisages shipping casualty in any place but occurring to or on board any Indian ship whether the Master of the ship concerned (except in the case of a loss) where the ship concerned proceeds to any place in India from the place where the shipping casualty of the ship has occurred, the Master of the ship. Thus this provision will not cover the ship. The conclusion, therefore, is inescapable that the casualty in the instant case would not be a shipping casualty envisaged in section 358. Subsequent sections, namely, 359, 360, 361 and 362, relate to shipping casualties as envisaged in section 358.

The impugned complaint was ex facie made under section 363 of the Act which deals with power of Central Government to direct inquiry into the charges of incompetency or misconduct, it says:

"(1) If the Central Government has reason to believe that there are grounds for charging any master, mate or engineer with incompetency or misconduct, otherwise than in the course of a formal investigation into shipping casualty, the Central Government.

(a) if the master, mate or engineer holds a certificate under this Act, in any case;

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(b) if the master, mate or engineer holds a certificate under the law of any country outside India, in any case where the incompetency or misconduct has occurred on board an Indian ship; may transmit a statement of the case of any court having jurisdiction under section 361 which is at or nearest to the place where it may be convenient for the parties and witnesses to attend, and may direct that court to make an inquiry into that

charge.

(2) Before commencing the inquiry, the court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement transmitted by the Central Government."

From the above provisions it appears that section 359 envisages the officers referred to in sub-section (2) of section 358. Receiving the information that a shipping casualty has occurred and reporting in writing the information to the Central Government and his proceeding to make a preliminary inquiry into the casualty and sending a report thereof to the Central Government or such other authority as may be appointed by it in that behalf. Under section 360 the officer, whether he has made a preliminary inquiry or not, may, and, where the Central Government so directs, shall make an application to the court empowered under section 361 requesting it to make a formal investigation into any shipping casualty and the court shall thereupon make such investigation. Thus the officer himself may or when directed by the Central Government shall make an application to the court requesting it to make a formal investigation into any shipping casualty. Section 361 empowers the court to make a formal investigation under Part XII. A Judicial Magistrate of the first class specially empowered in this behalf by the Central Government and a Metropolitan Magistrate shall have jurisdiction to make formal investigation into any shipping casualty under Part XII. What has to be noted in this section is that the court on an application of the officer makes a formal investigation into shipping casualties and not a preliminary inquiry which could have been done by the officer referred to in sub-section (2) of section 358, and under section 359 send a report to the Central Government. Section 360 also envisages making of application to court by the officer whether he had made preliminary inquiry or not, requesting it to make formal investigation into any shipping casualty. Thus under section 361 what is being envisaged is a formal investigation into a shipping

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casualty and not a preliminary inquiry. Section 362 deals with only formal investigation and says that while making such investigation into a shipping casualty the court may inquire, into any charge of incompetency or misconduct arising, in the course of the investigation, against any master, mate or engineer, as well as into any charge of a wrongful act or default on his part causing the shipping casualty. Under sub-section (2) a statement of the case has to be furnished to the Master, mate or Engineer. Section 362 does not envisage inquiring into any charge of incompetency or misconduct otherwise than in the course of the formal investigation into a shipping casualty. Section 363 (1) envisages the Central Government, when it has reason to believe that there are grounds for charging any master, mate or engineer with incompetency or misconduct, otherwise than in the course of a formal investigation into shipping casualty, (b) if he holds a certificate under the law or any country outside India, in any case where the incompetency or misconduct has occurred on board an Indian ship, and the transmitting of the statement of the case to any court having jurisdiction under section 361 where it may be convenient for the parties and witnesses to attend, and the Central Government may direct that court to make an inquiry into that charge. Under clause (a) the Central Government may exercise the power if the Master, mate or Engineer holds a certificate under the Act, in any case. Thus under this

section the Central Government must have reason to believe that there are grounds for charging any master etc. with incompetency or misconduct, otherwise than in the course of a formal investigation into shipping casualty, in case of a master of a foreign ship who holds a certificate under the Act "in any case". It also envisages the transmitting the statement of the case to any court having a jurisdiction under section 361. The question is what would be the meaning of the words "in any case". Would it mean any case of shipping casualty, or it would mean any case irrespective of shipping casualty. In other words, under the above provisions if the appellant was the master of the ship and the casualty was outside the territorial waters of India and the ship involved was a foreign ship would the expression "in any case" cover the instant case? If the preceding sections of Part XII dealt with only Shipping casualty, will it be permissible to interpret the words "in any case" irrespective of shipping casualty and anywhere outside the territorial waters of India and whoever is the owner of the Vessel? Will not the ejusdem generis rule apply? Again when the Act itself is not applicable to a case, can these words be given a meaning beyond the applicability of the Act? Verba secundum materiam subjectam intelligi nemo est qui nesciat. There is no one who does not know that words are to be understood according to their subject matter. The subject matter of

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Part XII is investigations and inquiries into shipping casualty. Would "in any case" then mean in any case of shipping casualty? We have read the other relevant provisions of the Act. Nemo aliquam partem recti intelligere potest, antequam totum interum atque iterum parlegerit. No one can properly understand any part of a statute till he had read through the whole again and again. We find that Part VI of the Act deals with certificates of officers, namely, Masters, mates and Engineers, Section 76(1) provides:

"Every foreign-going Indian ship, every home-trade Indian ship of two hundred tons gross or more when going to sea from any port or place in India and every ship carrying passengers between ports or places in India shall be provided with officers duly certificated under this Act according to the following scale, namely:

- (a) in every case, with a duly certificated master;
- (b) if the ship is a foreign-going ship or a home-trade passenger ship of one hundred and fifty tons gross or more, with at least one officer besides the master holding a certificate not lower than that of first mate in the case of a foreign-going ship and of mate in the case of a home-trade passenger ship;
- (c) if the ship is a home-trade ship, not being a passenger ship, of four hundred and fifty tons gross or more, with at least one officer besides the master holding a certificate not lower than that of mate.
- (d) if the ship is a foreign-going ship and carries more than one mate, then with the second mate duly certificated."

Section 79 deals with examination for, and grant of, certificate. Section 82 provides that a note of all orders made for canceling, suspending, altering or otherwise affecting any certificate of competency, in pursuance of the powers contained in this Act, shall be entered on the copy

of the certificate kept under section 81. Section 87 empowers the Central Government to make rules, inter alia, to (f) prescribe the circumstances or cases in which certificates of competency may be canceled or suspended.

Section 363 of the Act does not refer to Part VI and the rules for

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suspension or cancellation of certificates. This would be consistent with the view that section 363 confines itself to cases of misconduct or incompetency associated with a shipping casualty.

Assuming that it covers a case of a foreign ship on high seas, it would only be to make an inquiry into that charge and not into the shipping casualty itself.

The question then arises, as has been submitted by Mr. Krishnamurthy Iyer, when the entire Act is not applicable to there instant casualty would it be consistent with the extent of applicability of the Act to pick up three words, namely, "in any case" and apply it to the prejudice of the appellant. Mr Lahiri submits that the certificate of competency issued under the Act by the appropriate authorities under part VI are valuable certificates and if the holder of such a certificate of competency issued under the provisions of Part VI is alleged to have committed misconduct or acts of incompetency there is no reason why an inquiry into that misconduct or incompetency cannot be ordered by the Central Government to a court competent to exercise jurisdiction under section 361 of the Act.

Section 363 does not envisage the court acting on a statement transmitted by the Central Government to conduct a formal investigation into the shipping casualty but only the courts' making an inquiry into the charge of incompetency or misconduct. Section 364 provides giving of opportunity to the person to make defence. Section 365 empowers the court to regulate its proceedings. Section 369 provides that the court shall, in the case of all investigations or inquiries under this Part, transmit to the Central Government a full report or its conclusions which it has arrived at together with the evidence. Under sub-section (2) of that section where the investigation or inquiry affects master or an officer of a ship other than an Indian ship who holds a certificate under the law of any country outside India, the Central Government may transmit a copy of the report together with the evidence to the proper authority in that country. Section 370 deals with power of court as to certificates granted by Central Government. A certificate can be canceled or suspended under clause (a) by a court holding formal investigation and under clause (v) by a court holding inquiry under this part into the conduct of the master, mate or engineer if the court finds that he is incompetent or has been guilty of any gross act of drunkenness, tyranny or other misconduct or in a case of collision has failed to render such assistance or gave such information as is required by section 348. Under sub-section (3), where the court

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cancels or suspends a certificate, the court shall forward it to the Central Government together with the report which it is required by this Part to transmit to it. Thus, this section deals with power of the court while holding a formal investigation into a shipping casualty under clause (a) and while holding an inquiry into the conduct of the master, mate or engineer i.e. otherwise than while holding a formal investigation into shipping casualty. If the expression "In any case" is interpreted to cover a foreign ship by a

foreign master but holding an Indian certificate having a shipping casualty outside the territorial water sections 363 and 370b) may be applicable. If on the other hand the words "in any case" is not allowed to be interpreted to include such a master of such a ship and in such a casualty it may not be covered.

The question then is whether the instant complaint can be construed as a statement of the Central Government as envisaged in section 363. One of the requisites of section 363 is that the Central Government must have reason to believe that there are grounds for charging any master etc. with incompetency or misconduct; and such reason to believe must have been arrived at otherwise than in the course of a formal investigation into the shipping casualty and it is the Central Government who why transmit the statement of a case to a court having jurisdiction under section 361. We have to examine whether the complaint is ex facie under section 363. It nowhere mentions that the Central Government had such reason to believe. It nowhere mentions that it was a transmission of the statement of a case to the court by the Central Government. It also nowhere mentions that reason to believe had been found otherwise than in the course of a formal investigation into the shipping casualty. On the other hand in para 2 it says that the complainant is the Principal Officer who is competent person appointed under the Act to complain about the negligence of the accused. There is no doubt that he is not empowered under section 363. In para 6 the complaint says that the court under section 363 has got powers to make an inquiry into the charges of incompetency or misconduct of the accused and para 8 mentions: "The inquiry so as to cancel the certificate of the competency of the master namely the accused which has been granted by the Central Government may be recommended under this Act after holding the above said inquiry and thus render justice." Therefore, prima facie the complaint does not disclose the ingredients required under section 363.

We enquired of the respondents as to whether there have been earlier instances of such an inquiry having ever been made; and the

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answer is in the negative. We feel that had such interpretation been given earlier the Act being an old one of 1958, some instances ought to have been available.

However, the instant appeal is from an order of the High Court refusing to quash the complaint and the proceedings. Quashing of the complaint could have been done, if taken on its face value it failed to disclose any ingredient of the offence.

The High Court found as fact that the appellant had two certificates issued under section 78 of the Act from the Director General of Shipping, Calcutta and Bombay respectively. The High Court correctly observed that section 363 enables the Central Government to transmit a case to the court which has jurisdiction under section 361 to make an inquiry against master, mate or engineer into the charges for incompetency or misconduct otherwise than in the course of formal investigation into shipping casualties but the High Court failed to notice that the complainant himself had no power under section 363. High Court has not considered the extent of applicability of the Act and whether all ingredients required under section 363 were satisfied in the impugned complaint.

We accordingly set aside the Judgment of the High Court, quash the complaint and the proceedings before the

14th Metropolitan Magistrate, Egmore, Madras-8, but make it clear the it shall still be open for the Central Government to act under s. 363 of the Act according to law if it so decides. Appeal allowed.

R.S.S.

Appeal allowed.

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JUDIS