

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WP(C).No. 20888 of 2007 (J)

PETITIONER(S):

K.C.GEORGE, KUTTUMMEL HOUSE,
KANAM, KOTTAYAM DISTRICT, KERALA.

BY ADVS.SRI.VIJU ABRAHAM
SRIJOY C. PAUL
SRI.DOMINIC JOHNSON

RESPONDENT(S):

1. UNION OF INDIA, REPRESENTED BY THE
PRINCIPAL SECRETARY TO THE MINISTRY OF SHIPPING &
SURFACE TRANSPORT, NEW DELHI.
2. THE DIRECTOR GENERAL OF SHIPPING,
JAHAZ BHAVAN, WALCHAND H MARG, MUMBAI - 400001.
3. M/S SHIV MARKETING LTD., 211,
T.V.INDUSTRIAL ESTATE, BEHIND GLAXO, PRABHADEVI
MUMBAI - 400025.

R1&2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE COPY OF LETTER DATED 17.03.2000 RECEIVED BY PETITIONER FROM THE 3RD RESPONDENT
- EXT.P2 : TRUE COPY OF LEGAL NOTICE DATED 3.4.2000 CAUSED TO BE ISSUED BY THE PETITIONER TO THE 3RD RESPONDENT
- EXT.P3 : TRUE COPY OF THE LETTER DATED 19.05.2000 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER'S COUNSEL
- EXT.P4 : TRUE COPY OF ORDER DATED 29.1.2001 OF DIRECTOR GENERAL OF POLICE.
- EXT.P5 : TRUE COPY OF COMMUNICATION DATED 26.12.2000 OF DIRECTOR GENERAL OF POLICE KERALA TO THE GOVERNMENT
- EXT.P6 : TRUE COPY OF JUDGMENT DATED 22.1.2002 OF THIS HON'BLE COURT IN OP NO. 14099 OF 2000
- EXT.P7 : TRUE COPY OF REPORT DATED JUNE 2004 FILED BY THE CENTRAL BUREAU OF INVESTIGATION
- EXT.P8 : TRUE COPY OF LETTER DATED 28.06.2000 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER NUMBERED AS No.23 (10) CR/2000
- EXT.P9 : TRUE COPY OF LETTER DATED 27.07.2000 ISSUED BY THE 1ST RESPONDENT
- EXT.P10 : TRUE COPY OF THE LETTER DATED 17.08.2000 NUMBERED AS FILE NO.56(E)21/2000/6506 ISSUED BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT
- EXT.P11 : TRUE COPY OF REPRESENTATION ISSUED BY THE PETITIONER TO THE 1ST AND 2ND RESPONDENTS
- EXT.P12 : TRUE COPY OF ACKNOWLEDGEMENT CARD IN PROOF OF RECEIPT OF EXHIBIT P11 BY THE 2ND RESPONDENT

RESPONDENTS' EXHIBITS:

- EXHIBIT R1 : A PHOTOSTAT COPY OF THE REPLY FROM THE SHIPPING MASTER, MUMBAI VIDE LETTER NO.53/S&D/21/2000/146 DATED 20.5.2010
- EXHIBIT R1(a) : A PHOTOSTAT COPY OF THE RECORDS OF STEPS TAKEN IN FURTHERANCE OF CBI REPORT

//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C) No.20888 of 2007-J

Dated this the 31st day of July, 2015

JUDGMENT

The petitioner, a distressed father, from the depths of anguish, to which he has been plunged by the death of his son, seeks to mitigate the loss with the above writ petition. Briefly stated, the petitioner's son - a seaman went overboard from a sea bound vessel in which he was working as Junior Engineer. The petitioner by the above writ petition seeks for further clarity of the incident in which his son went missing and expedition of further action on the report of the Central Bureau of Investigation. The petitioner also seeks compensation for the death of his son and the outstanding wages and other emoluments from the 3rd respondent. Such compensation has been sought from the 3rd respondent, who has not yet been served notice; though not by the fault of the petitioner.

2. The incident occurred during the voyage of a Tug by name "M.T. Ginyo" between Mumbai and Chennai, near to the port at Chennai, but in the international waters. The Master of the ship is said to have informed the coastguard and the Indian Navy who, according to the Master, initiated rescue operations. In any event, when the Tug reached Chennai Port on 21.02.2000, the Manager of the 3rd respondent, was informed of an incident in which one of the crew members went overboard. The Manager of the 3rd respondent consulted the Executive Director of the 3rd respondent and directed the Master of the ship not to inform the authorities at the Chennai Port but to do it at Thirukkadaiyur; to which Port the cargo was to be shipped. The decision had been taken allegedly due to the apprehended detention of the ship at Chennai, if the fact of missing of a crew member is reported at Chennai. The Tug logs were also meddled with, to indicate that the petitioners' son had gone overboard between Chennai and Thirukkadaiyur.

3. A CBI enquiry had been initiated on the basis of a direction of this Court in OP No.4375/2003, the report of which is produced at Ext.P7. The petitioner had sought for a probe only in the circumstance of his son's name having not been included in the crew list at Chennai on arrival from Mumbai on 21.02.2000 and before the ship left for Thirukkadaiyur on 11.03.2000. The petitioner's son's name however was found in the crew list submitted on 15.03.2000 at Thirukkadaiyur when the Tug entered the said port. The petitioner also apprehended that, his son who was an expert in marine engineering was handed over to the LTTE for ransom, by the Master of the ship and the 3rd respondent.

4. The enquiry conducted by the CBI revealed that the crew list submitted on the arrival of the Tug from Mumbai on 21.02.2000 at Chennai and before departure on 11.03.2000 did not contain the name of the petitioner's son, lending credence to the suspicion of the petitioner. The petitioner's son's name appeared in the crew list on the entry of the Tug at Thirukkadaiyur Minor Port on 14.03.2000. It was at Thirukkadaiyur that the fact of the

missing crew member was reported. The incident of the missing crew member was reported to the authorities as having taken place between Chennai and Thirukkadaiyur. The enquiries also revealed that no information was passed on to the Indian Navy or Coastguard by the Master of the ship. The said authorities denied having commenced or initiated any rescue operations.

5. However, the CBI having examined the crew members who had accompanied the petitioner's son on the voyage was able to establish that the petitioner's son went overboard near the Indian Coast, on the international waters, before approaching the Chennai Port. The enquiry revealed that the suspicion regarding the handing over of the petitioner's son to the LTTE was unfounded. The examination of those crew members, who could be traced by the CBI also revealed that the mishap occurred in the international waters and the same was a sheer accident, in which none of the crew members were involved nor was it actuated by any human force or intervention.

6. On the receipt of the enquiry report of the CBI, the

Government of India, Ministry of Shipping had also taken action as is revealed from Ext.R1(a). The Ministry also found that the crew member going overboard and having gone missing in deep sea was not by reason of any human intervention which would constitute an offence and the same was only an accidental fall into the sea. The Merchant Shipping Act, 1958 empowers the Central Government to get the casualty investigated into. It is also indicated that further action as per the provisions would be taken, but however, such a direction seems to be superfluous at this stage, since the CBI has already conducted a detailed enquiry and though it was revealed that the Master of the ship and the officers of the owner, the 3rd respondent, did not act in good faith, in having suppressed the fact of a missing crew member at the first instance; no offence as such could be made out. The crew member fell overboard by reason only of an accident. As to the non-reporting of the incident to the officer notified under the Merchant Shipping Act, 1958 and the deliberate omission in the crew list submitted at the Chennai port, resulting in furnishing of

a wrong information; attracts the provisions of Section 176 and 177 of the IPC. Ext.R1(a) also requires a complaint to be prepared before a competent Magistrate for taking cognizance of the said offences; which is stated to have been proceeded with.

7. The counter affidavit filed by the official respondents also indicate that the Tug was not an Indian flag vessel and the Indian Merchant Shipping Act, 1958 cannot be enforced, especially, when the vessel is not available in any of the Ports in India. The notice directed to be served on the 3rd respondent even through the official respondents being the 1st and 2nd respondents did not materialise despite the official respondents having taken steps as is revealed from documents number 2 and 3 filed along with a memo dated 17.07.2015.

8. The issue of compensation and outstanding wages and other emoluments due from the 3rd respondent, definitely cannot be addressed in a writ petition filed under Article 226; especially when the 3rd respondent remains unserved. The

enquiry into the incident which led to the missing of the petitioner's son, has come to a logical conclusion and the Central Government has also taken steps with respect to the allegations levelled against the Master of the ship. It is also to be noticed that the petitioner's son was found missing in the year 2000 and the above writ petition is filed in the year 2007. This Court is unable to pursue the matter for reason of the 3rd respondent being outside the purview of the extra ordinary jurisdiction exercised by this Court and the enquiries conducted having not revealed anything beyond an accident.

In such circumstance, the writ petition would stand dismissed. No costs.

Sd/-
K. VINOD CHANDRAN,
Judge

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