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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 100 OF 1997**

U.K. Das,
Deputy Director (Safety)
Inspector Dock Safety, BPT OCS,
Building, Indira Docks, 3rd Floor,
East Wing, P.D'Mello Road,
Bombay – 400 038,

... Appellant

V/s.

1. Ardeshir Bomanji A Dubash
Managing Director, M/s. A.B. Cursetjee
and Sons Pvt. Ltd,
6, K. Dubash Marg,
Bombay – 400 023.

2. M/s. A.B. Cursetjee and Sons Pvt. Ltd.
6, K. Dubash Marg, Bombay 400 023.

3. The State of Maharashtra

... Respondents

Mr. Deepak Thakre, APP for the State.

Mr. Naresh Rathani, i/b Ashwin Ankhad & Associates for the
Respondents.

Coram : P.N.DESHMUKH, J.

Date : 8 May 2017

ORAL JUDGMENT

1. This appeal takes exception to judgment passed by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai dated 27th April 1995 acquitting the Respondents of the offences punishable under Sections 14(2) (a) of the Dock Workers (Safety, Health and Welfare) Act, 1986, No.54 of 1986 for breach of Regulation 66(1), 73(1), 85(8) (a), 91(3) and 117 read with Regulation 7(4) (b) of the Dock Workers (Safety, Health and Welfare) Regulation, 1990. The record shows that none appeared for the Appellant since several days and on 4th April 2017 Appeal thus came to be fixed for final hearing as a last chance.

2. Even today none present for the Appellant. Heard, the learned counsel Mr. Rathani, for both Respondents.

3. In view of ration laid down in the case of ***Bani Singh & Ors Vs State of U.P.***¹ appeal is duly heard as in this case

¹ AIR 1996 Supreme Court 2439.

considering scope of Section 386 of Code of Criminal Procedure. It is laid down that Court is not bound to adjourn the case but should dispose of appeal on merits and shall not dismiss the Appeal *simplicitor* for non prosecution. In that case on the appointed day neither of the Appellants or there counsel was present. In that view of the matter heard learned counsel for the Respondent who has contended that from the evidence on record there is nothing to establish that Respondents were in any manner responsible for taking safety measures of deceased worker who died on docks accidentally in an incident involved in present case.

4. Facts in brief needed to be recorded for understanding the controversy involved in this Appeal are as follows:-

Complaint was filed by the Inspector, Dock Safety for the port of Bombay against present Respondents working as Stevedores alleging that on 2nd May 1990, while the process of loading and unloading of the container was going on the ship berthed at 5, Victoria Docks, one person Manikam Velu met with an

accident while he was loading the container and it is alleged that the Respondents are responsible for causing such death as they failed to take care and safety while carrying work of loading and unloading of containers from the ship. Perusal of evidence on record reveals that at the material time the deceased was allowed to work on the top of container and he was not provided with personal equipments such as Gloves, Helmet, Safety, Shoes, etc. by his employer. The evidence of PW No.2 further reveals that in fact no worker should be allowed to stand on the container while the process of lifting or lowering down of the containers was in progress. According to Regulation no employer will do anything that will endanger his life. Though it is come in evidence of PW No.2 Ahmed Raza Beg, Assistant Manager of Bombay Dockyard Board, that these Respondents have not informed about death of deceased Manikum Vellu in writing and are therefore prosecuted. In his cross examination it is admitted that the letter dated 20th September 1993 informing death of Vellu was received by his office. It has come on record that the deceased was employed by the Bombay Dock Labour Board and the Bombay Dock Labour had informed about

the death of the deceased Vellu. However PW 2 did not exactly remember the date as to when this information was received. From the evidence of PW No.2 it is further revealed that deceased was employed by Bombay Dock Yard Board. Admittedly PW No.2 was not present at the time of incident in question and has deposed on the strength of information received from his office.

5. The evidence of PW No.2 Ahmed Raza Beg also establish fact of deceased worker having being provided by Bombay Dock Labour Board. He has deposed that at the time of incident they had provided 16 workers to work on this particular ship and they had given these 16 workers from their role and they were their *bonafide* workers. He has further admitted that when such workers are provided by the board, the board is responsible for the safety of the workers. In view of the aforesaid evidence, therefore, it is found that the deceased worker was provided by Bombay Dock Labour Board with whom all these workers are registered. The board is also required to deposit their wages, levy and welfare fund with the board. The Assistant Manager has also

admitted that the registered employees of the board are not making any direct payment to the registered labourer and the board is responsible for the workers.

6. The Respondent No.1 appears to be Managing Director of Respondent No.2 Company and as such engaged in activities of loading and unloading ships and no way found concerned with providing of workers for that purpose which are provided by the Bombay Dock Labour Board.

7. The evidence of PW No.3 Riyaz Ahmed Mohd who is a Crane Driver needs no much consideration as his evidence only establishes fact of accidental death of deceased Vellu. Having considered aforesaid discussed evidence, it is primarily noted that Respondents are in no way concerned in providing safety measures to workers since they are not provided by them. Moreover, the crane which was being used for lifting the containers was on the ship itself and the deceased worker was working in the Bombay Dock Labour Board and as such no responsibility can be casted

upon the Respondents for any reason as from the above discussed evidence it is found that Respondents are not responsible for providing safety measures to the workers provided by board.

8. Having considered above discussion and considering the fact that scope of interference in an Appeal against acquittal is very limited, and unless the view taken by the Trial Judge is found to be impossible or perverse, there can be no interference in it. The learned Judge by well reasoned order has found that the complainant has miserably failed to prove the charge levelled against the Respondents.

9. In that view of the matter as there appears no reason to interfere with the Appeal. Same is liable to be dismissed, hence following order:-

The Appeal is dismissed.

(P.N.DESHMUKH, J.)