

1907
 LAXMANA
 v.
 RAMAPPA.

We must, therefore, reverse the order of the District Court and remand the appeal to that Court for disposal according to law. Costs to abide the result.

Order reversed.

R. R.

CRIMINAL REFERENCE.

1907
 August 22.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

EMPEROR v. HAJI SHAIK MAHOMED SHUSTARI.*

Emigration Act (XXI of 1883), section 107—Servant offending under the Act in the course of his master's employment for his master's benefit—Master's liability—Artizan—Engine Driver on board a steamer.

If a servant having been appointed as an agent for a particular business by his master, enters into an agreement in connection with that business every thing which he does within the scope of his employment for that purpose will be binding upon the master and the master will be criminally liable for such act of the servant under the Indian Emigration Act (XXI of 1883). In such a case the master's express knowledge of or consent to the act is not necessary, because by the very fact of the appointment of the servant as an agent in such a business, the master's knowledge of or consent to every act done by the servant or agent within the scope of his employment is implied by law.

A person engaged to drive an engine on board a steamer is an artizan within the meaning of the term as used in section 107 of the Indian Emigration Act, 1883.

THIS was a reference made by A. H. S. Aston, Chief Presidency Magistrate of Bombay, under section 432 of the Criminal Procedure Code (Act V of 1898).

The facts as stated by the Magistrate in his letter of reference were as follows:—

The accused was charged with an offence made publishable by section 111 of the Indian Emigration Act (XXI of 1813), in that he without having first obtained the consent of the Protector of Emigrants, on or about the 26th May 1907, did cause two natives

* Criminal reference No. 51 of 1907.

of India to depart by sea out of British India under an agreement that they should work as engine drivers on board a steamer at Marmora. 1907

EMPOR-

v.

HAJI SHAIK
MAHOMED

The evidence showed that the accused's firm received a letter from Marmora giving certain information. Accused's servant Mahomed Hussan Yusuf Shustari showed the letter to his master, who, he said, read it and returned it to him without any express instructions. Mahomed Yusuf thereupon engaged Mahomed Ismail and Mustafa Ahmed to depart by sea out of British India to work as engine drivers on Rs. 100 a month on board steamships at Marmora.

Chunilal, the Mehta of the firm, bought the tickets and Mahomed Alli under instructions from Mahomed Yusuf saw the men off.

Mahomed Yusuf before entering into the agreements above-named did not obtain the permission of the Protector of Emigrants.

The following questions were referred to the High Court :—

1. Has a Presidency Magistrate jurisdiction to try an offence punishable under section 111 of Act X of 1902 ?
2. Is a master liable under the Indian Emigration Act X of 1902 for an agreement entered into by his servant, in the ordinary course of business, without the master's knowledge or consent ?
3. Is a person engaged to drive an engine on board a steamer at a wage of Rs. 100 a month an artizan within the meaning of the Act ?

R. B. Paymaster and Ratanlal Ranchhoddas, for the accused :—
We say that an engine driver on board a steamer is not an 'artizan' within the meaning of section 107 of the Indian Emigration Act, 1883. The Act originally extended to labourers only : and by an amending Act of 1902, its provisions were applied to artizans and other persons. The term 'artizan' is nowhere defined. It occurs in article 7 of the Limitation Act (XV of 1877), where it is spoken of as 'wages of artizan.'

In other enactments of the Indian Legislature the term 'artificer' is used : see Act XIII of 1859 section 492 of the Indian Penal Code (Act XLV of 1860).

1907
 EMPEROR
 v.
 HAJI SHAIK
 MAHOMED.

The term 'artizan' is mentioned as synonymous with 'artificer' by Stroud : see Judicial Dictionary, Volume I, page 121. The exact significance of each term is described by Chatterji, J. in *Imam-ud-din v. Hurmazjee*⁽¹⁾.

The term 'artizan' appears in Artizans and Labourers Dwellings Act (31 and 32 Vic., c. 170), and Artizans and Labourers Improvement Act (38 and 39 Vic, c. 35). The term 'artificer' is employed in Hosiery Manufacture (Wages) Act (37 and 38 Vic, c. 48).

Thus, we find artizans always associated with labourers and their earnings are spoken of as 'wages.' The test is whether manual labour is involved. An engine driver on board a steamer has no manual labour to perform : his duty consists in directing the men under him.

M. B. Chaudhri (Government Pleader), for the Crown :—The Dictionary meaning of the term 'artizan' is 'one who practises an art or an applied science.' A skilled workman would be an artizan. An artizan must combine some skill and some manual labour. The mere fact that he has men working under him does not alter the fact. An artificer is described as one who *makes* something, as distinguished from one who only *do's* something. (Stroud's Judicial Dictionary, Volume I, page 120.)

The amendment of the Emigration Act in 1902 was passed mainly with a view to bring even those persons within its provisions who were not previously protected. It was extended to skilled workmen. The most obvious meaning of the term 'artizan' is one who is employed in any mechanical work.

PER CURIAM :—Following the Judgment of this Court in Criminal Application for Revision No. 152, *Emperor v. Jeevanji*⁽²⁾, decided on 7th August 1907, our answers to the first and the second question are in the affirmative. We should add with reference to the second question, that, if a servant, having been appointed as an agent for a particular business by his master, enters into an agreement in connection with that business, everything which he does within the scope of his employment for that

(1) (1904) 39 P. R. 71, Cr. (2) (1907) 31 Bom. 611 ; 9 Bom. L. R. 937.

purpose will be binding upon the master and the master will be criminally liable for such an act of the servant under the Indian Emigration Act. In such a case the master's express knowledge of or consent to the act is not necessary, because from the very fact of the appointment of the servant as an agent in such a business, the master's knowledge of or consent to every act done by the servant or agent within the scope of his employment is implied by law.

1907

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MAHOMED.

The third question referred by the Chief Presidency Magistrate is :—

“Is a person, engaged to drive an engine on board a steamer at a wage of Rs. 100 a month, an artizan within the meaning of the Act?”

There is no definition of the term ‘artizan’ in the Act itself, nor, so far as we have been able to look into the cases, is there any definition of it in any other co-temporary Act of the Legislature; we must interpret it in the conventional sense in which it is used. An ‘artizan’ is defined by Webster in his dictionary to be one who is engaged in a mechanical employment. That is the popular meaning and there is no reason to suppose that the Legislature meant to use it in any other sense. Having regard to that meaning of the term, a person engaged to drive an engine on board a steamer would be included within it. It is urged before us by Mr. Paymaster, the learned pleader for the accused, that a person engaged not to work but to superintend and control others engaged in a mercantile employment is not within the meaning of the term as used in the Act. That, however, is not the question referred to this Court. Our answer to the third question referred is also in the affirmative.

R. R.