

HIGH COURT OF SOLOMON ISLANDS

THE QUEEN -V- MAOFAITA SHIPPING AND PAUL PARASI

Criminal Case No. 119 of 2004

Honiara:

Date of Hearing: 21/22 March 2005

Date of Judgment: 22 March 2005

R. Talasasa, of DPP office for Crown
Paul Parasi in person

Trial:

On Information by Director of Public Prosecutions alleging an offence
contra. S.78 (1) of the Shipping Act.

Brown J: I propose to adjourn to Tuesday. There is no representative of the complainant, the Superintendent of Marine. There is no representative of the Shipping Company here.

The Prosecutor has no Shipping Act in front of him, under which he purports to prosecute. He tells me the Principal Marine officer dealing with this is one, Allen Indu (amongst the "list of witnesses" on the Information) who has not been served with a summons to witness yet he appears to be the "authorized officer" of the Superintendent of Marine's office, able to lay such complaints, for Mr. Talasasa says, he attended the Magistrates Court with the Superintendent of Marine on the committal. Yet nobody from the Superintendent's office is here today.

I am not prepared to go ahead with the hearing of this case, when it seems either the Superintendent does not know that it is on, or the proper officer, Mr. Allen Indu has not made arrangements for a representative of the complainant to come to court to oversee this most serious charge.

This shipper, Maefaitae Shipping Company and its skipper Paul Parasi have been alleged to have carried 248 passengers on board MV Sa'alia on the 24th October 2003, some 171 passengers more than his marine certificate allowed.

Clearly this most serious allegation reflects the dangers to which the passengers about the Solomons face, where overloaded vessels go to sea, risking a capsize and sinking.

When I look at the Shipping Act 1998, I see, S.210 sets out the procedure for prosecution of offences.

"All proceedings brought against a person for an offence under this Act or Regulation shall be commenced by the laying of an information in writing and;

- 1. Such information for any offence under the Act or Regulation shall be laid by the Superintendent of Marine.*
- 2. (a) every information for an offence shall be laid within 12 months from the date on which the offence is alleged to have been committed."*

By virtue of S.209, this High Court is invested with jurisdiction in all Marine and Admiralty matters and in all matters pertaining to the Act and the procedures set out in the Criminal Procedure Code.

So, having regard to the sections of the Act to which I have alluded or referred, the Information laid by the then Director of Public Prosecutions on the 5th July 2004 which alleged a breach of the Shipping Act contra. S.78(1) (under which these various summons to witness have been laid and under which Mr. Paul Parasi has come to court today), would seem to have been issued contrary to the procedure set out in S.210. For the power to lay Information alleging a breach of the Act, an offence under the Act; is with the Superintendent of Marine.

Whether any proper Information was laid, came before the Magistrates Court, or was laid and filed in the High Court within the 12 month period prescribed, is not apparent in the information given me by Mr. Talasasa.

This needs to be properly prosecuted by counsel conversant with the law. On the face of this information laid by the former DPP none of these issues I have raised, issues of procedure set out in the Shipping Act have been explained by Mr. Talasasa.

I adjourn the proceedings to Tuesday 22nd March at 11am.

Reasons for decision

The notice to attend court pursuant to which these proceedings now come before me was headed;

"Summons to Defendant" (Criminal Procedure Code s. 78)

In the Magistrates Court for the Central District
To Maefaeti Shipping Company.

I presume a similar summons was given Mr. Parasi. The summons was signed by the Registrar of High Court and it bears a seal of this court.

s. 78 provides;

"(1) Notwithstanding the others requirements of this Code, it shall be lawful for any police officer to serve personally upon any person who is reasonably suspected of having committed any offence to which this section applies a notice in the prescribed form requiring such person to attend court in answer to the charge stated thereon at such place and on such date and time...

(4) The offences to which this section applies are:

- (a) any offence under the Traffic Act ...
- (b) any offence under the provisions of the Bicycles Act; and
- (c) any offence under the Trespass and Branding Act

The section falls in Part IV -**Provisions relating to all criminal investigations and proceedings** and is found in the reprinted laws – revised Edit to 1995.

In 1998 the Shipping Act came into force. It received assent on 3rd September 1998.

The Act says, in s.209 that this High Court shall have jurisdiction in relation to all matters under the Act. It does not speak of the Magistrates Court.

In s.210 the procedure for prosecution is specifically set out. It brooks of no variation by virtue of earlier legislation.

Clearly this summons to witness does not rely on the Shipping Act for its efficacy since it does not rely on any information by the Superintendent of Marine but purports to rely on s.78 of the Code.

It asserts an offence in the body of the summons but does not avert to any information laid by the Superintendent.

Offences created by statute must strictly follow the law, to be successfully prosecuted. There would seem to be no common law offence or offence created by the Criminal Code or it would be alleged and may come within the purview of the Director of Public Prosecutions. But this is alleged to be an offence under the Shipping Act 1998.

The procedure adopted to prosecute does not accord with the Shipping Act 1998.

The Constitution cannot be called into play in the fashion averted to by Mr. Talasasa for until the coming into operation of the Shipping Act, this offence alleged did not exist. The Act created it.

I do not propose to call on the defendants for they appear before me unrepresented.

I'm not satisfied the information by the DPP on the 5th July 2004 is correctly laid.

It is beyond power which resides with the Superintendent of Marine.

The Information is struck out. The defendants are free to go.

BY THE COURT