(2014) 07 MAD CK 0259

In the Madras High Court

Case No : Crl. R.C. (MD) No. 204 of 2014, M.P. (MD) Nos. 1 and 2 of 2014 and Crl. O.P. (MD) No. 6719 of 2014, M.P. (MD) Nos. 1, 2, 3 and 4 of 2014

Mariya Anton Vijay APPELLANT

Vs

State RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Arms Act, 1959 — Section 10, 25(1A), 25(1B)(a), 25(1B)(a), 25(1B)(f)
Criminal Procedure Code, 1973 (CrPC) — Section 161(3), 161(3), 482
Essential Commodities Act, 1955 — Section 10(C), 3(2)(d), 3(b), 3(ii)(d), 7
Income Tax Act, 1961 — Section 271
Merchant Shipping Act, 1958 — Section 331, 457, 458
Penal Code, 1860 (IPC) — Section 120(B), 120B, 120B, 4(2), 81
Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 — Section 3, 4, 4(1)

Citation : (2015) CriLJ 107 : (2014) 2 LW(Cri) 545 : (2014) 3 MLJ(Cri) 139

Hon'ble Judges : P.N. Prakash, J

Bench : Single Bench

Judgement

P.N. Prakash, J.—Crl. O.P. (MD) No. 6719 of 2014 has been filed by A3 to A37 to quash the final report in P.R.C. No. 1 of 2014 on the file of the Judicial Magistrate No. I, Tuticorin and Crl. R.C. (MD) No. 204 of 2014 has been filed by A38 challenging the cognizance taken by the Judicial Magistrate No. I, Tuticorin, in P.R.C. No. 1 of 2014 on the final report filed by the respondent police. The factual matrix in this case as disclosed in the final report filed by the police is as follows:

1.1. On 12.10.2013, the Indian Coast Guard Station Ship "Naikidevi" sensed the presence of a vessel in the Indian waters of the Bay of Bengal and established communication links with the said vessel. The name of the said vessel was disclosed as "M.V. Seaman Guard Ohio". When the Indian Coast Guards questioned them, M.V. Seaman Guard Ohio admitted that they were in possession of firearms in the ship. The Indian Coast Guard Station Ship Naikidevi ultimately located "M.V. Seaman Guard Ohio" which was anchored at Latitude 08 52'' North and Longitude 078 26.7'' East. The said location is about 10.8 Nautical

Miles from "Vilangusulli Island, Thoothukudi District" and 3.8 Nautical Miles from the baseline promulgated by the Ministry of External Affairs Notification S.O. 1197(E), dated 11.05.2009. Therefore, according to the prosecution (which is disputed by the accused) the place where "M.V. Seaman Guard Ohio" was anchored was very much within the territorial waters of India.

1.2. The Coast Guard Ship directed M.V. Seaman Guard Ohio to weigh anchor (which means to lift the anchor) and proceed to Tuticorin Port for further investigation by the Indian authorities. The vessel was piloted by Captain K.P.P. Kumar, a member of the Indian Coast Guard along with three armed guards of the Indian Coast Guard Station and was taken into Tuticorin Port at about 13.25 hours on 12th October, 2013. Thereafter, various investigating agencies were alerted and a Joint Interrogation Team was constituted for interrogating the Captain and the Crew of the ship. The Joint Interrogation Team comprised officials from Indian Coast Guard, Customs, Intelligence Bureau, Superintendent of Police, Tuticorin, Q-Branch (a special unit of the State Police which deals with terrorists and extremists), Directorate of Revenue Intelligence and Marine Police. The Interrogation Team has recorded a Minutes dated 12th October, 2013 which forms part of the police report. It may be relevant to extract the minutes verbatim:

Minutes of Joint Interrogation on M.V. Seaman Guard Ohio

12 OCT 2013

1400 Officers/Representatives from various security agencies assembled onboard MV Seaman Guard Ohio for joint interrogation.

1410 Joint Interrogation started. The Master, Chief Officer and 2nd Officer of the ship, representatives of Indian Coast Guard, Customs, IB, Police including the SP of Tuticorin, Q Branch, DRI and Marine police attended the interrogation. Following points were ascertained.

(a) Master informed that the vessel had come to the position on instructions from the company to top up provisions. There was no agent in Tuticorin and the ship only received phone numbers of persons who were contacted.

(b) Master and crew informed that the ship has received approximately 1.5 KL fuel in 10 drums from a fishing boat. They also confirmed that the due to rough sea conditions, the boat did not come alongside and the fuel drums were tied to ropes, dumped in water and pulled collected by the vessel.

(c) Chief security guard explained the method of embarkation/disembarkation of sentries as well as arms/ammunition from ports and armories respectively. The company Advanfort owns 03 vessels. Ohio is positioned in the East, Arizona in the west and third vessel is in dock. The arms come from the UK. Sentries and arms are embarked/disembarked on client vessels as per the schedule given by the company. However the authorisation/license to hold arm and ammunition onboard was not held. The guard informed that efforts are being made to obtain the same from the company.

(d) Police proceeded to muster the arms and ammunition onboard against the Record of Arms and Ammunition handed over by the Chief security guard.

(e) Immigration representatives checked and verified all passports and Seaman identity cards of the 10 crew and 25 guards.

(f) Other documents were checked by IB, Customs and police.

(g) The various representatives also visited the compartments of the ship for examination/inspection.

1600 Representatives of Indian Navy arrive.

1700 Dispersal of attendees started.

1.3. During the course of interrogation, it came to light that the ship had received 1.5 KL of fuel from a fishing boat while it was in anchor. The Joint Interrogation Team continued interrogation on 13.10.2013 and the Central Agencies perhaps felt that they had no substantial role to play and therefore, they handed over the case to the local police. A minute was also drawn on 13.10.2013 in which it was noted that the vessel was carrying arms for which they did not have any authorisation.

1.4. On 13.10.2013 Shri. R. Narendran, Assistant Commandant Boarding Officer, Indian Coast Guard Ship Naikidevi lodged a written complaint with the Tharuvaikulam Marine Police Station, Tuticorin, stating the manner in which the vessel was located by the Indian Coast Guard while it was found drifting at position Latitude 08 52'' North and Longitude 078 26.7'' East on 12th October, 2013 at 03.30 hours. The complaint disclosed the presence of arms and ammunition in the vessel and also the names of the Captain and Crew with their national identities and passport details. The Station House Officer received the complaint and registered a case in Crime No. 18 of 2013 at 18.00 hours on 13.10.2013 for offences under Section 25(1B)(a) and (f) of the Arms Act, 1959 and Section 3(b) r/w. 7(1)(a)(ii) of the Essential Commodities Act, 1955 and Section 2(m)(5) of Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1990. Mr. R. Nanda Kumar, Assistant Commandant handed over the vessel to the Inspector of Police, Marine Police Station along with the Crew and Guards for further investigation.

1.5. By proceedings dated 15.10.2013, the Director General of Police, Tamil Nadu, transferred the investigation of the case from Tharuvaikulam Marine Police Station to the Q-Branch C.I.D. The Inspector of Police, Q-Branch C.I.D., Tuticorin, took up the investigation of the case on 16.10.2013 and seized 35 firearms, 5682 ammunition and 102 magazines that were kept in the vessel without any document for such possession. On 18.10.2013, the Inspector of Police, Q-Branch C.I.D. arrested Accused 4, 6 to 37 and accused 3 (Captain of the Ship) and 5 were allowed to be in the vessel for its maintenance as per their request. On

19.10.2013, A3 (Captain of the Ship) and A5 were also arrested and later on remanded to judicial custody. The seized arms were sent to the Ballistics Expert of Tamil Nadu Forensic Sciences Department and a certificate was obtained that they are prohibited arms as classified by the Arms Act, 1959. The Investigating Officer also seized the Deck Log Book, GPS Log Book, the CUP Digital Recorder from the vessel for the purpose of further investigation.

1.6. Even during the joint interrogation and subsequently also the Captain and Crew of the ship accepted that they have received fuel from a fishing boat on 11.10.2013. It may be relevant to state here that even in the G.P.S. Log Book that was seized from the ship which forms part of the document relied upon by the prosecution, it is mentioned in page 246 as follows:

19.00 hours Fishing vessel stayed 10 meters away with one mooring rope fastened as torn.

20.40 hours Received 10 drums of diesel Oil and fishing vessel cast off.

1.7. The Police also seized one litre of diesel from the ten barrels that were kept on the deck. Therefore, the Q-Branch police wanted to find out who were the persons who had provided fuel to this vessel and investigation was taken up in that direction. During the course of investigation, the police tracked down one Mariya Anton (A38) who is the owner of a company by name Ashok Marine Exclusive Ship Repairs (Ship Repair and Ship Chandelier) in Tuticorin and who is a shipping agent for a few vessels that visit Tuticorin Port. According to the police, one Munithevan (A43) who is the owner of Vikaline Marine Company in Chennai and his brother Vimal (A44) had contacted Mariya Anton (A38) and had requested him to send provisions and fuel to a foreign ship stranded at Tuticorin coast. Mariya Anton (A38) demanded Rs. 10,00,000/- for this operation for which Munithevan (A44) came forward to make payment through HDFC bank. Mariya Anton (A38) did not have an account with HDFC Bank but his employee Murugesan (A41) was having an account with HDFC bank. Therefore, Mariya Anton requested his employee to give the details of his account in the HDFC Bank so as to facilitate Munithevan (A43) to transfer Rs. 10,00,000/- for purchasing provisions and fuel for the ship. On 9th October, 2013 a sum of Rs. 10,00,000/- was transferred from Munithevan''s account into the account of Murugesan (A41) from whom Mariya Anton (A38) collected Rs. 7,00,000/- for purchasing provisions and fuel. Mariya Anton (A38) being in the shipping line, himself contacted one Selvam (A42) who is a fisherman in that area to transport provisions to the ship. Mariya Anton (A38) purchased vegetables, fruit juices, chicken, mutton and fish and handed over the same on 10.10.2013 to Selvam (A42) who took the same in his fishing boat in search of the ship. Selvam (A42) was not able to locate the ship and therefore he returned to the shore on 11.10.2013 with the foodstuffs. Since the vegetables and fruit juices carried by Selvam (A42) became wet during the seafaring journey they had to be abandoned and 20 Kg of mutton, 60 kg of fish and 200 numbers of chicken were collected by Mariya Anton (A38) and was kept in Raku ice and cold storage in

Tuticorin. As there was continued pressure from Munithevan (A43) to send fuel to the ship, Mariya Anton purchased ten barrels of diesel from M.V.S. Muthuvel and Sons, Tuticorin and requisitioned the services of another fisherman by name Vijay (A39) to deliver the fuel to the ship. Vijay (A39) wanted to know the exact location of the ship. Vimal (A44) the younger brother of Munithevan (A43) wanted an e-mail ID for him to send the particulars as to the location of the ship. Since Vijay (A39) was a rustic fisherman and did not have e-mail ID, he requested his elder brother Ranjithkumar (A40) to give his e-mail ID. Ranjithkumar (A40) gave his e-mail ID in which the location of the ship was communicated. Vijay (A39) collected ten barrels of diesel from Mariya Anton on 11.10.2013 and proceeded into the sea along with Vinodh (A45) who is the brother of Mariya Anton (A38) into the sea in search of the ship. There were also other fishermen in the boat whose names or identities are not known. The fishing boat of Vijay (A39) located the ship around 19.00 hours on 11.10.2013 and the barrels were transferred from the fishing boat to the ship by rope-rail method. Thereafter, Vijay (A39) and Vimal (A44) returned to the shore. While Mariya Anton (A38) was contemplating delivery of foodstuffs to the ship, he received information that the Coast Guard have taken control of the ship and that it may not be necessary for him to send the provisions. The police arrested Mariya Anton (A38), Vijay (A39) his brother Ranjithkumar (A40), Murugesan (A41) the employee of Mariya Anton, Selvam (A42) who went on an aborted mission to give foodstuffs. Munithevan (A43), Vimal (A44) and Vinodh (A45) absconded and it is now reported that they have surrendered before the Court.

2. The police completed the investigation and filed a final report against 45 accused for offences under Sections 33, 35 and 3 r/w. Section 25(1B)(a), Section 7 r/w. 25(1A), Section 10 r/w. Section 25(1B)(f) of the Arms Act, 1959 and Section 3(2)(d) r/w. 7(1)(a)(ii) of the Essential Commodities Act, 1955 and Order 2(e)(v)(vi) of Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1998 and Section 120(B) of Indian Penal Code, 1860. Advanfort Company, the owner of the Vessel is the first accused and one Frajallah, the owner of the Company is the second accused. A3 to A13 are the Captain and Crew of the Ship. A14 to A37 are the Security Guards who were present in the Ship. A38 to A45 are persons in India who supplied food and fuel to the Ship. In short, the prosecution case is that A1 to A45 had entered into a criminal conspiracy pursuant to which A1 to A37 were in possession of prohibited firearms without license within the territory of Indian sea and further A38 to A45 had illegally supplied foodstuffs and fuel to the ship in violation of Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1998 punishable under Section 7 of the Essential Commodities Act, 1955.

3. The final report was filed before the Judicial Magistrate No. I, Tuticorin, who took cognizance of the offences that are stated in the final report challenging which Mariya Anton (A38) has filed Crl. R.C. (MD) No. 204 of 2014. When the accused were produced before the Magistrate, copies of the final report and

documents were furnished to them and thereafter, A3 to A37 have filed Crl. O.P. (MD) No. 6719 of 2014 under Section 482 Cr.P.C. for quashing the prosecution.

4. Heard the learned counsel for the petitioners and the learned Additional Advocate General for the Government.

5. Mr. E.K. Nandakumar, learned Senior Advocate representing the counsel on record for A3 to A37 made the following submissions:

a) that M.V. Seaman Guard Ohio is a Flag Ship registered with Sierra Leone even according to the prosecution. Therefore, it is not a pirate ship or a vessel which was into any illegal activity within Indian Waters;

b) that the ship was not within the Indian territorial waters so as to attract the provisions of Indian laws for prosecuting the Crew;

c) that the concept of innocent passage is also recognized by Section 4 of The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, which reads as under:

4.(1) Without prejudice to the provision of any other law for the time being in force, all foreign ships (other than warships including submarines and other underwater vehicles) shall enjoy the right of innocent passage through the territorial waters.

Explanation-For the purpose of this section, passage is innocent so long as it is not prejudicial to the peace, good order or security of India.

d) even assuming without admitting that it was in the Indian waters, the ship had run out of provisions and fuel and therefore, had drifted into the place where it was anchored and hence, the ship is entitled to protection under the right of innocent passage clause recognized by Article 18 and 19 of United Nations Convention on the Law of the Sea (UNCLOS) which reads as under:

Section 3. Innocent Passage in the Territorial Sea

Sub Section A. Rules Applicable to all Ships

Article 17

Right of innocent passage

Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

Article 18

Meaning of passage

1. Passage means navigation through the territorial sea for the purpose of:

(a) traversing that sea without entering internal waters or calling at a roadstead of port facility outside internal waters; or

(b) proceeding to or from internal waters or a call at such roadstead or port facility.

2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Article 19

Meaning of innocent passage

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:

(a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

(b) any exercise or practice with weapons of any kind;

(c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;

(d) any act of propaganda aimed at affecting the defence or security of the coastal State;

(e) the launching, landing or taking on board of any aircraft;

(f) the launching, landing or taking on board of any military device;

(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;

(h) any act of willful and serious pollution contrary to this Convention;

(i) any fishing activities;

(j) the carrying out of research or survey activities;

(k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;

(l) any other activity not having a direct bearing on passage.

e) that Section 45(a) of the Arms Act clearly states that the Act will not apply to Arms and ammunition on board any sea-going vessel.

45. Act not to apply in certain cases-Nothing in this Act shall apply to-

(a) arms or ammunition on board any seagoing vessel or any aircraft and forming part of the ordinary armament or equipment of such vessel or aircraft.

f) that the Circular dated 28.09.2011 issued by the Director General of Shipping, Government of India, alleged to have been violated by the vessel has not been issued under any statute so as to visit the alleged violators with penal consequences under the Arms Act;

g) the said circular refers to Section 45(a) of the Arms Act which exempts arms and ammunition onboard a ship;

h) even according to the final report, the Crew and the Security Guards in the ship have not used the weapons in any manner and the weapons were merely in the ship''s deck for which they cannot be prosecuted under the Arms Act;

i) that the ship and Crew went out of provisions and fuel and were waiting for instructions from their principal who, through a shipping agent had arranged for supplying fuel through a fishing boat. Hence, there was no intention to commit any offence under the Essential Commodities Act.

6. Reliance was placed on the Constitution Bench judgment of the Hon''ble Supreme Court in Tolaram Relumal and Another v. State of Bombay AIR 1954 SC 496 to drive home the point that penal statutes must be strictly construed and that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. On similar lines, the learned Senior Counsel cited a judgment of the Hon''ble Supreme Court in Virtual Soft Systems Ltd. Vs. Commissioner of Income Tax, Delhi-I, in which, while interpreting Section 271 of the Income Tax Act, the Supreme Court has said that a penal provision has to be construed strictly and narrowly and not widely. These two judgments were cited by the learned counsel to drive home the point that Section 45 of the Arms Act should have to be construed in a strict manner and a wide interpretation of it should not be given. As regards the circular issued by the Director General of Shipping, the learned counsel relied upon the judgment of the Hon''ble Supreme Court in Sheikh Abdul Rashid and Others Vs. State of Jammu & Kashmir and Others, wherein the Supreme Court has held that executive orders cannot be in derogation of statutory provisions. In R. Kalyani Vs. Janak C. Mehta and Others, the strict construction of the penal statutes principle has been reiterated by the Supreme Court.

7. Mr. R. Anand, learned counsel appearing for Mariya Anton Vijay (A38) made the following submissions:

a) that Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1998, under which A38 is charged was repealed and in its place the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 has come.

Therefore, the petitioner cannot be prosecuted under the law which is not in force.

b) even going by the final report and the documents relied upon by the prosecution, this petitioner cannot be charged for the offences under the Arms Act just because he had supplied some foodstuffs and fuel to a ship which was stranded in the mid-sea.

(c) the ''doctrine of necessity'' contemplated by Section 81 IPC protects A-38 from prosecution because if he had not supplied fuel and foodstuff there is a possibility of the ship sinking and the crew marooning.

8. Refuting the arguments advanced by the defence, the learned Additional Advocate General submitted as follows:

(a) He relied upon the judgment of the Hon''ble Supreme Court in R.S. Raghunath Vs. State of Karnataka and another, and especially relied upon paragraph 103 of the said judgment which reads as under:

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

b) He relied upon the following lines from the judgment of the Supreme Court in the State of Karnataka Vs. M. Devendrappa and Another, :

9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: Janata Dal Vs. H.S. Chowdhary and Others, , and Dr. Raghubir Sharan Vs. The State of Bihar, . It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a

proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: Dhanalakshmi Vs. R. Prasanna Kumar and Others, , State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, , State of Kerala and Others Vs. O.C. Kuttan and Others, , State of U.P. Vs. O.P. Sharma, , Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada, , Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another, and Rajesh Bajaj Vs. State NCT of Delhi and Others, .

(c) He relied upon the following paragraph from the judgment of the Supreme Court in the State of Madhya Pradesh v. S.B. Johari and Others (Indian Kanoon http://indiankanoon. org/doc/1312750):

In our view the aforesaid exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether accused are guilty or not. It was done without considering the allegations of conspiracy relating to the charge under Section 120-B. In most of the cases, it is only from the available circumstantial evidence an inference of conspiracy is to be drawn.

(d) that the ship was within 12 Nautical Miles and hence, it was very much within the Indian territorial waters when it was intercepted by the Coast Guard.

Therefore, in the absence of any license under the Arms Act for keeping prohibited arms, the Captain and the Crew will be liable for prosecution under the Arms Act.

(e) The learned Additional Advocate General took me through the police confessions of some of the accused to show that the ship was not registered as an "Anti-piracy Vessel" but only as a "Utility boat" and also as a "Research vessel" and therefore, they cannot claim the Arms were legitimately held by them.

(f) He relied upon the 161(3) statement of Captain K.R. Sundaram, and J.V.S. Bharathi of Mercantile Marine Department, Chennai 9, and contended that the ship should be used only as a ''utility vessel'' and it should not be used as a ''floating armoury''.

(g) The learned Additional Advocate General relied upon Section 35 and 36 of the Arms Act which reads as under:

35. Criminal responsibility of persons in occupation of premises in certain cases.- Where any arms or ammunition in respect of which any offence under this Act has been or is being committed are or is found in any premises, vehicle or other place in the joint occupation or under the joint control of several persons, each of such persons in respect of whom there is reason to believe that he was aware of the existence of the arms or ammunition in the premises, vehicle or other place shall, unless the contrary is proved, be liable for that offence in the same manner as if it has been or is being committed by him alone.

36. Information to be given regarding certain offences.-(1) Every person aware of the commission of any offence under this Act shall, in the absence of reasonable excuse the burden of proving which shall lie upon such person, give information of the same to the officer in charge of the nearest police station or the magistrate having jurisdiction.

(2) Every person employed or working upon any railway, aircraft, vessel, vehicle or other means of conveyance shall, in the absence of reasonable excuse the burden of proving which shall lie upon such person, give information to the officer in charge of the nearest police station regarding any box, package or bale in transit which he may have reason to suspect contains arms or ammunition in respect of which an offence under this Act has been or is being committed.

The learned Additional Advocate General submitted that by virtue of Section 35 of the Arms Act, when an offence under the Act has been committed every person in the joint occupation of the vessel will be liable for the offence in the same manner as if it had been committed by one person alone. Therefore, the entire Crew and the Guards in the ship will be liable in terms of Section 35 of the Arms Act. As regards Section 36, the learned Additional Advocate General submitted that the Crew had failed to notify the nearest police station about the presence of the arms in the deck of the vessel.

(h) In reply to the arguments advanced by the defence that the Arms Act will not be applicable in view of Section 45(a) of the Arms Act, the learned Advocate General submitted that the Section will apply only to a sea going vessel and this ship is not one.

(i) The learned Additional Advocate General placed reliance upon para. 7.3 of the Circular dated 28.09.2011 issued by the Director General of Shipping, which states that all Indian vessels visiting Indian ports shall provide information to the jurisdictional port authority and other authorities, which should inter alia mention about the number and details of firearms and ammunition and the details of the licence covering the firearms. The learned Additional Advocate General contended that para. 7.5 of the said Circular states that all foreign vessels are required to follow the reporting and declaration requirements as stipulated in para. 7.3 above. Based on this paragraph, the learned Additional Advocate General submitted that the Ship should have complied with the requirements stated in para. 7.3 of the Circular and as they had failed to comply with it, they are liable for prosecution under the Arms Act in India.

(j) The learned Additional Advocate General relied strongly upon the 161(3) statement of Mr. G. Senthil Kumar, Deputy Director, MMD, VOC Port, Tuticorin and also the notification dated 20.04.2012 issued by the Ministry of Shipping in exercise of powers under Section 457 of Merchant Shipping Act, 1958 and contended that the Ship has not been classed with a Classification Society which is a member of the International Association of Classification Societies.

(k) Lastly, the learned Additional Advocate General submitted that the issues raised by the petitioners can be done at the time of framing of charge and not at this stage.

9. The principles laid down by the Supreme Court in State of Haryana and Others v. Bhajan Lal and Others (supra) for quashing an FIR which stands as a beacon light till date, would apply on all fours in quashing a final report also. Therefore, the High Court while exercising its power under Section 482 Cr.P.C., should loath to stifle 482 Cr.P.C. for stifling a prosecution, unless there are very strong grounds thereof. Initially, this Court did not want to even admit this quash petition and cross the Lakshman Rekha in view of the caution sounded by the Supreme Court in the aforesaid judgment. But, the following aspects prompted this Court to break away from the self imposed barrier and peep to see if there is any legitimacy in the prosecution.

? Even according to the Police, M.V. Seaman Guard Ohio is a Flag Ship registered in Sierra Leone, a U.N. Member State.

? The FIR lodged by Nandakumar, Assistant Commandant of the Indian Coast Guard states that the ship was drifting.

? The majority in the ship''s crew are Indian nationals with Indian passports, which is disclosed in the FIR and the Final Report. They are:

(1) A6-Lalithkumar Gurung (Maharashtra)

(2) A7-Radhesh Dhar Dwivedi (Uttar Pradesh)

(3) A8-Naveen Rana (Himachal Pradesh)

(4) A9-Dinesh Narayanan (Kerala)

(5) A10-Ramesh Kumar (Himachal Pradesh)

(6) A11-Rajan Thandpani (Tamil Nadu)

(7) A12-Abijit Ashok Sawani (Maharashtra)

(8) A13-Jagdish Prasad (Chief Cook from Uttaranchal)

? The chief cook who hails from Uttaranchal State has also been joined in the conspiracy and made accused along with the others;

? As regards the Security Guards, the following are Indians amongst them:

(1) A31-K.V. Prakashan (Kerala)

(2) A33-Sudheer (Kerala)

(3) A34-Unnikrishnan (Kerala)

(4) A37-Harijeet Singh (Punjab)

? The Central Agencies like Intelligence Bureau, DRI etc., got involved on 12th and 13th October and thereafter, they handed over the matter to the State Police to be investigated as any other ordinary municipal offence;

? The Q Branch CID of the Tamil Nadu Police is an elite investigating unit and has got a very good track record of cracking down terrorists and extremists. After their investigation, they were able to file a Final Report only for possession Simpliciter of prohibited firearms and for violation of Control Order under the Essential Commodities Act and nothing more. In other words, the final report does not even show any needle of suspicion about the involvement of the crew and Others in the ship in any crime that is prejudicial to the interest of this Country.

Therefore, for the aforesaid reasons, this Court ventured to go into the final report and the accompanying documents to find out, even if by accepting the entire averments found therein as gospel truth, would it attract a prosecution under the Arms Act and the Essential Commodities Act?

10. The learned counsel for the defence submitted that the ship was not within the Indian territorial sea. In my considered opinion, this is a disputed question of fact which cannot be looked into while dealing with a petition under Section 482 Cr.P.C. Therefore, this Court will go under the premise that the ship was within 12 Nautical Miles and was in the territorial sea of India.

11. Now the line of enquiry is, can the crew and the guards in the ship be prosecuted for possession of prohibited arms under the Arms Act?

12. It will be legitimate for this Court to take judicial notice of certain notorious facts and those facts are as follows:

? Merchant vessels all over the world are not permitted to carry arms.

? Piracy in and around Indian Ocean, especially by Somali Pirates, is a fact which has been taken note of by the Government of India, as could be seen from the Preamble to the circular dated 28.09.2011 issued by the Director General of Shipping, Ministry of Shipping, Government of India (which is also a document relied upon by the prosecution and supplied to the accused), which runs as under:

The menace of piracy continues unabated in spite of increased naval presence in the Gulf of Aden region and merchant ships being asked to comply with best management practices which includes establishment of "Citadel".

? The Hon''ble Supreme Court has also taken note of this, as could be seen from the judgment in Republic of Italy thr. Ambassador and Others Vs. Union of India (UOI) and Others, :

The past decade has witnessed a sharp increase in acts of piracy on the high seas off the coast of Somalia and even in the vicinity of the Minicoy Islands forming part of the Lakshadweep archipelago.

? The Government of India has recognised the fact that there are private maritime security companies that provide security for merchant vessels while they traverse through pirate infested locations. This is evident from the circular dated 28.09.2011 issued by the Director General of Shipping, which is referred to above and is being strongly relied upon by the prosecution.

Apart from taking judicial notice of the aforesaid facts, this Court is constrained to bear in mind the following two facts that are admitted by the prosecution.

? Even according to the prosecution, M.V. Seaman Guard Ohio is a ship, registered with Sierra Leone and Registration Certificate is part of the final report and is one of the documents that is relied upon by the prosecution.

? It is not the case of the prosecution that M.V. Seaman Guard Ohio is an unregistered vessel or a pirate vessel.

13. The learned Additional Advocate General submitted that M.V. Seaman Guard Ohio was registered with Sierra Leone as a "Utility Ship" and not as an "Anti-piracy vessel". But the State is not able to show any Rule that the vessel engaged in Anti-piracy operation should be registered as an Anti-piracy vessel. The registration of Sierra Leone as Utility Vessel does not in any way affect its use as an Anti-piracy vessel. The very name M.V. Seaman Guard Ohio would itself show that it has something to do with guarding. The prosecution relies upon the Deck Log Book and GPS Register that has been seized from the ship and has been filed along with the final report. On a cursory reading of the Deck Log Book it is apparent that, the operations of the ship is to provide security guards to various merchant ships that pass through pirate infested areas in the high seas. For example, the entry dated 09.10.2013 in the Dock Log Book is extracted hereunder:

14. In Shipping parlance, ''Zodiac'' means a small boat in a large vessel, which will be used as a go between. When a ship is anchored at a far off place, the Zodiac will be lowered and it will transport men and materials to a nearby ship or to the shore. A reading of the aforesaid entries show that, on 09.10.2013 the Zodiac was lowered and three guards disembarked from another ship "Khadiza Jahan" and "Halit Bey". The Captain of the ship has explained to the Joint interrogation team on 12.10.2013, as to how the guards in the ship embark into the client ships for providing protection and disembark there from. This has been recorded in the minutes of the Joint Interrogation Team and which is extracted above.

15. Even according to the prosecution, the ship had 11 crew members, of whom 8 are Indians and it had 24 security guards, of whom four are Indians with permanent addresses and Indian passports. It is not the prosecution case that these people are pirates or they are working for a nation that is enimical to India. For example, A31-K.V. Prakashan, S/o. K.V. Krishnan, Nandilam, Ammanapura Poyil P.O. Taliparamba, Kannur District, Kerala; A33-Sudheer, S/o. Sreedharan, Manakkattil Veedu, Murukukum Puzha P.O., Trivandrum, Kerala; and A34- Unni Krishnan, S/o. U. Chellappan, Pavithram, Pavithresuram P.O., Kollam District hail from Kerala State and A37-Hari Jeet Singh, S/o. Dalbir Singh, Jethuwak P.O., Amritsar District hails from Punjab. All these people are Indian passport holders who have joined the first accused Company as security guards. It is not the prosecution case that these people are working for a nation that is enimical to India. Therefore, I have no doubt in my mind that M.V. Seaman Guard Ohio is a ship registered in Sierra Leone and is into Anti-piracy business.

16. The next line of enquiry is does the Indian Arms Act apply to the presence of prohibited arms on board the Flag Ship M.V. Seaman Guard Ohio?

17. One can profitably look into Section 4(2) of the Indian Penal Code in this regard. Section 4(2) is extracted hereunder:

4. Extension of Code to extra-territorial offences.

The provisions of this Code apply also to any offence committed by:

(1) ....

(2) any person or any ship or aircraft registered in India wherever it may be.

18. A bare reading of this provision shows that Indian Penal Code extends to any ship which is registered in India, wherever it may be. The corollary of it is, Indian Penal Code cannot extend into any ship which is not registered in India, even if it is found within Indian waters, unless there has been a spill over effect. The concept of ''a Flag Ship being a Floating Island of a Flag State'' is a recognised one under the International Maritime Law, though it is not an absolutely inviolable principle. Even very recently this principle came into consideration in Republic of Italy through Ambassador and Others v. Union of India and Others (supra), wherein in para. 105, the Supreme Court has held as follows:

105. In the 9th Edn. of Oppenheim''s International Law, which has been referred to in the judgment under consideration, the nationality of ships in the high seas has been referred to in Para. 287, wherein it has been observed by the learned author that the legal order on the high seas is based primarily on the rule of international law which requires every vessel sailing the high seas to possess the nationality of, and to fly the flag of, one State, whereby a vessel and persons on board the vessel are subjected to the law of the State of the flag and in general subject to its exclusive jurisdiction. In Para. 291 of the aforesaid discourse, the learned author has defined the scope of flag jurisdiction to mean that jurisdiction in the high seas is dependent upon the maritime flag under which vessels sail, because, no State can extend its territorial jurisdiction to the high seas. Of course, the aforesaid principle is subject to the right of "hot pursuit", which is an exception to the exclusiveness of the flag jurisdiction over ships on the high seas in certain special cases.

This principle was not extended to the Italian mariners there, because of the spill over effect inasmuch as the Italian Mariners had shot at a fisherman and caused his death. In the case on hand, there is no such allegation against the crew and security guards in M.V. Seaman Guard Ohio.

19. Now this takes me to "UNCLOS, 1982" to which India is a signatory and she is obligated to respect its provisions as held by the Supreme Court in the Italian Mariners case. In para. 107 of the Italian Mariners case, it is stated thus:

107. In my view, since India is a signatory, she is obligated to respect the provisions of UNCLOS, 1982 and to apply the same if there is no conflict with the domestic law. .....

20. Article 27 of UNCLOS, 1982 recognise the proposition of Floating Island Theory with certain exceptions. It may be relevant to extract Article 27 of the UNCLOS, 1982 verbatim:

Article 27

Criminal jurisdiction on board a foreign ship

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

(a) if the consequences of the crime extend to the coastal State;

(b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;

(c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular office of the flag State; or

(d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship''s crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or in what manner an arrest should be made, the local authorities shall have due regard to the interests of navigation.

5. Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

21. As noted by the Supreme Court, India is obligated to follow UNCLOS, 1982 and vide Article 27, the provisions of Arms Act cannot be extended on board the Flag Ship M.V. Seaman Guard Ohio, as even according to the prosecution, it was simply found anchored in the sea and it is not alleged to have committed any of the violations enumerated in Article 27(1)(a) to (d) of the Act. Therefore, I hold that the crew and the guards of M.V. Seaman Guard Ohio cannot be prosecuted for the offence under the Arms Act for possession simpliciter of prohibited arms on board their vessel.

22. Now this issue can be looked at from another angle as submitted by the learned Senior Counsel for the accused. The Deck Log Book and GPS Register is being relied upon by the prosecution and they form part of the Final Report. Both sides do not question the genuineness of these two records. In fact, the prosecution also relies upon these documents to show that the ship was within the Indian territorial waters. Therefore, this Court can rely upon the entries therein to show that the ship was drifting from 08.10.2013 onwards. Ultimately, the ship sailed to the Outer Port Limits (OPL) of Tuticorin Port and dropped anchor at 14.30 hrs on 10.10.2013 and the relevant entry in the Dock Log Book is as follows:

23. Thereafter, continuously the Deck Log Book shows "Vessel at anchor Awaiting for provisions stores and bunker". In shipping parlance, ''bunkering'' means putting fuel for the ship. The GPS Register that has to be maintained by the ship on an hourly basis also reflects that anchor was dropped at 1430 hours and the

position of the ship was 08? 52.0 N 078? 26.7'' (E).

24. The Final Report also shows that the ship was found anchored at 08? 52.0 N 078?26.7'' (E) based on the Deck Log Book and GPS Log Book. Therefore, it is obvious that the ship had ran out of provisions and fuel and it came into the Indian territorial waters and anchored at the aforesaid position. The Ship never tried to sail away and when the Coast Guards established communications, it disclosed that there are fire-arms on board, as could be seen even from the Final Report filed by the police. Under this fact situation, the argument of the learned Senior Counsel for the defence that under Section 4(1) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zone Act, 1976 (which is already extracted above), the Parliament has recognised the right of ships other than war ships and submarines of innocent passage through the territorial waters requires to be answered.

25. The expression "Innocent passage" has been explained beneath Section 4(1) which shows that, passage is innocent so long as it is not prejudicial to the peace, good order or security of India. In this case, even according to the prosecution, the accused herein are not charged for violating the peace, good order or security of India. It was only on the instructions of the Coast Guard the anchor was lifted and the ship was brought into the Tuticorin Port. It is not the prosecution case that the ship attempted to flee and there was a hot pursuit.

26. Article 18(2) of UNCLOS which has been extracted above clearly states that, ''passage'' includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

27. In this case, the facts show that on account of distress, for want of provisions and fuel, the ship anchored at the given place. Even according to the prosecution, Selvam (A42) carried 20 kg of mutton, 60 kg of fish and 200 nos of chicken, vegetables and fruit juices to the ship, but he had to return back as he was not able to locate the ship in the sea. For this aborted attempt, Selvam (A42) has been charged with conspiracy for keeping prohibited arms on the board of the ship along with others which is indeed startling and undoubtedly pricks my judicial conscience. Similarly, the prosecution of Ranjithkumar (A40), for lending his e-mail ID, and Murugesh (A41), for permitting his employer Mariya Anton (A38) to use his HDFC Bank Account for getting money from Munithevan (A43), with the aid of 120B IPC, as if there was a grandeur conspiracy between these local fisher folks and those on board the ship for possession of firearms is indeed too harsh.

28. To sum up, I hold that the anchoring of M.V. Seaman Guard Ohio within our territorial sea was out of necessity and their action is saved by the principle of ''innocent passage'' contemplated by Section 4(1) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zone Act, 1976

and Article 18 and 19 of UNCLOS and therefore, the Crew and the Security Guards cannot be prosecuted for an offence under the Arms Act.

29. With regard to the arguments advanced by the learned Additional Advocate General by placing reliance upon paragraphs 7.3 and 7.5 of the Circular dated 28.09.2011 issued by the Director General of Shipping, Government of India, I have no doubt in mind that any foreign ship visiting Indian ports should comply with the requirements of reporting about firearms stipulated in para. 7.3 the said Circular. Normally, whenever a foreign ship visits Indian Port, the shipping agent in the shore will co-ordinate with the Port Authorities and all other authorities and comply with all the legal requirements, including the requirements stipulated in the said Circular. This Circular has not been issued under the provisions of the Arms Act, but they are guidelines that have been issued by the Ministry of Shipping and the violation of that, if any, will not automatically attract the provisions of a penal statute. The said Circular itself says that Indian Ship owners can deploy armed security guards in pursuance of Section 45(A) of the Indian Arms Act, 1959. (The Circular cites Section 45(A) which should actually read as Section 45(a), because there is no Section 45(A) in the Arms Act). That apart, this Circular would apply only to a foreign ship visiting Indian port. In this case, I have given a finding that the said Ship was drifting and out of necessity it had come into the Indian waters and had anchored at the Outer Port Limits (OPL) of Tuticorin Port. This Ship never had the intention of visiting the Indian Ports, because the Captain was waiting for further instructions from its owners as to what the next move should be for getting provisions and fuel. When the Coast Guard questioned them over wireless communication, they did not hide the presence of arms on board and the anchor was lifted only on the orders of the Indian Coast Guard and further it was the Indian Coast Guard which piloted the vessel from the Outer Port Limits of Tuticorin into the berth in the Port. Hence, I am of the opinion that the Ship has not violated the requirements adumbrated in the said Circular issued by the Director General of Shipping.

30. The learned Additional Advocate General relied upon the 161(3) statement of Mr. J. Senthil Kumar, Deputy Director, MMD, V.O.C. Port, Tuticorin, who has stated as follows:

I am working as the Dy. Director, MMD, VOC Port, Tuticorin, from 2nd October 13. I have inspected the Vessel MV Seaman Guard Ohio on 27th October and found the following facts. As per the Sierra Leone Flag Marine Notice 11-2004 dt. Oct 12th 2011 any cargo vessel, while carrying armed guards for whatsoever reason are advised to follow the guidelines as given in the MSC. 1/Circ. 1406/ Rev. 1 and their own flag guidelines Marine notice 11-2004. According to the registry, the vessel is registered as only a utility vessel. If it intends to change the status, it should have got guidelines from the flag stage.

31. Assuming for a moment that the Ship which has been registered as an "Utility Vessel" in Sierra Leone has changed its status, can the Captain, Crew and Others on board the ship, be prosecuted in India for the violation of the

registration granted by Sierra Leone? The answer is an obvious "No". If they have violated the conditions of registration, it is only the Sierra Leone which can take action against them either by cancelling the registration or taking any other penal action in accordance with their law. This alleged violation cannot confer powers on the Investigating Agencies to prosecute them under our Laws. Mr. J. Senthil Kumar has further stated as follows:

Any vessel, while arriving with armed weapons into territorial waters of India are required mandatory to report to the Indian Navy, Coast guard, Customs authorities, which is stated in the DG shipping circular NT/ISPS/Circular No. 1 of 2011. Any vessel to enter Indian waters is to have classed with a classification society which is a member of International Association of Classification Society (IACS). This vessel is not classed with IACS member society. This is as per Merchant shipping regulation of entry into ports government gazette GSR 311(E) dt. 20/04/12.

32. The Notification dated 20.04.2012 is part of the documents relied upon by the prosecution. The said Notification has been issued by the Ministry of Shipping, in exercise of the powers conferred by Section 457 of the Merchant Shipping Act, 1958. It is titled Merchant Shipping (Regulation of Entry of Ships into Ports, Anchorages and Offshore facilities) Rules, 2012. Rule 3 and 4 of these Rules state as follows:

3. Any vessel of three hundred tons gross or more, other than Indian ship, entering into or sailing out of ports, terminals, anchorages or seeking port facilities or Indian offshore facilities in Indian territorial water shall be in possession of the insurance coverage against maritime claims and established policies and procedures for their supervision.

4. If such vessel, is

(i) an oil product or chemical tanker more than twenty years old; or

(ii) a general cargo ship or bulk carrier or offshore support vessel or passenger vessel or any other type of cargo vessel more than twenty five years old; or

(iii) a liquefied natural gas or liquefied petroleum gas tanker more than thirty years old;

it shall be classed with a classification society which is a member of the International Association of Classification Societies or with a recognised organisation duly authorised by Indian maritime administration.

33. On a bare perusal of these Rules, it is clear to my mind that it will apply only to a Ship entering into or sailing out of Ports in India. As held by me earlier, this Ship had made a distress entry into our waters in search of food and fuel. It anchored at the Outer Port Limit of Tuticorin Port and was waiting for supplies. When the Coast Guard questioned them, they admitted straight away that there were arms and ammunitions on board the Ship. The Ship was brought into the

Tuticorin Port for further investigation by the Indian Coast Guards. After having brought them into our Port for investigation, they cannot be prosecuted for violation of the said Notification. Assuming for a moment that they have violated the said Notification, what is the consequence? The answer to it is provided by Section 458 of the Merchant Shipping Act, 1958.

458. Provisions with respect to rules and regulations.--(1) All rules and regulations made under this Act shall be published in the Official Gazette.

(2) In making a rule or regulation under this Act, the Central Government may direct that a breach thereof shall be punishable--

(a) in the case of a rule made under Section 331 or Section 344-I with imprisonment which may extend to two years, or with fine which may extend to ten thousand rupees, or with both;

(b) in the case of any other rule or regulation made under any other provision of this Act, with fine which may extend to one thousand rupees; and in either case if the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which the breach continues.

The maximum punishment is Rs. 1,000/- for the violation of this Notification. Violation of this Notification cannot lead to the inference that they have committed offences under the Arms Act.

34. The last argument of the learned counsel for the accused is that Section 45(a) of the Arms Act clearly states that the provisions of the Arms Act will not be applicable to arms on board in a sea-going vessel.

35. In reply to this argument, the learned Additional Advocate General submitted that M.V. Seaman Guard Ohio is not a sea-going vessel. In support of his argument, he submitted that the Ship was registered as an "Utility Boat" and he read the confession of some of the accused who have stated that they thought that the Ship was a "Research Vessel." He also relied upon the 1613)(Cr.P.C. statements of Captain K.R. Sundaram and JVS Bharathi. On a reading of the 161(3) Cr.P.C. statements of these two prosecution witnesses, they sound like opinion evidence. The question of interpretation of the provisions of Section 45(a) of the Arms Act cannot be left to be decided via the opinion of persons. The expression "seagoing" has not been defined in the Arms Act. It is a general term which would include any sea faring Flag Ship. I have held above that, the Arms Act, 1959 cannot be invoked by the Indian authorities on board Flag Ship M.V. Seaman Guard Ohio, as there is no spill over effect even according to the prosecution in this case. Assuming for a moment that the Arms Act, 1959 would be applied on board the Flag Ship, the provisions of Section 45(a) of the Arms Act will protect the crew and the guards from being prosecuted.

36. Now coming to the involvement of Mariya Anton (A38), since I have held that the provisions of the Arms Act cannot be applied in the facts and circumstances of this case for prosecuting A3 to A37, the natural follow up of it is that, A38 who

had supplied food stuffs and fuel to the ship cannot be charged for this offence.

37. Coming to the charge of conspiracy against Mariya Anton (A38), I have no hesitation in my mind to hold that he cannot be prosecuted for any offence under the Arms Act on the reasoning that he had entered into a conspiracy with the captain and crew of the ship for possessing arms. The ship already had arms and it had entered the territorial sea and had anchored there. Only thereafter, A38 has supplied fuel to it. By no stretch of imagination, can A38 be prosecuted for the presence of prohibited fire arms in the ship with the aid of Section 120B IPC. Mariya Anton (A38) is a I typical business man who wanted to make hay when the sun was shining and so he got into the venture of supplying food and fuel to the ship for handsome price of Rs. 10 lakhs.

38. Even according to the prosecution, M.V. Seaman Guard Ohio did not have any shipping agent in Tuticorin and they were desperately contacting their principals for arranging food and fuel. In that circumstances, Munithevan (A43) Proprietor of Vikaline Marine Company in Chennai and his brother Vimal (A44) had contacted Mariya Anton (A38) and paid him Rs. 10 lakhs to deliver food stuff and fuel to the ship. The police have gathered enough materials to show that Mariya Anton (A38) had purchased 10 barrels of fuel and had transported it with the help of Vijay (A39) to the ship. In the GPS Register maintained by the ship, the following entry at 1900 hrs on 11.10.2013 says "Fishing vessel stay 10 mtrs away with one moving rope fastened astern." The Captain and the crew of the ship also admitted that they received 10 barrels of fuel from some persons who came in a fishing boat. Though Mariya Anton (A38) cannot be prosecuted under the Control Order of 1998, he can be prosecuted under the Control Order of 2005, because quoting a wrong provision of law in the final report will not absolve the accused from liability.

39. As regards the contention of Mr. Anand, the learned counsel for Mariya Anton (A38), that Mariya Anton (A38) is protected by Section 81 of IPC by applying the principle ''Doctrine of Necessity'', the explanation to Section 81 says that it would be a question of fact, whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm. This exception is a question of fact and that may help the buyer and not a seller for consideration. If Mariya Anton (A38) had ventured to supply food and fuel free of cost to the ship in distress, then the question of Section 81 IPC can be considered. But that is not the case here.

40. Similarly the Captain of the Ship (A3) will also be liable for obtaining fuel in such a manner from A38. As a Captain of the ship, it was his duty not to have entertained such transactions, however innocent it may appear to be. The other crew members and the guards in the ship cannot be prosecuted for this offence, as they have to abide by the directions of the Captain. The learned counsel for the defence submitted that the Captain had been sending communication to his Principals for fuel and in that circumstance, when a fishing boat came and

delivered 10 drums of fuel, the mere acceptance of it cannot lead to the prosecution of the Captain for an offence under the Essential Commodities Act as he had no mens rea. At the first blush, this argument did sound attractive, but under Section 10(C) of the Essential Commodities Act, there is a presumption of culpable mental state. This presumption can be dislodged only during the course of trial by proving beyond reasonable doubt that he did not have the guilty mind. In the light of this statutory presumption, I am unable to concur with this argument of the learned counsel for the defence. Therefore, I hold that Dudinik Valentyn (A3) the Captain of M.V. Seaman Guard Ohio, will be liable for abetting Mariya Anton (A38) for the offence under the Control Order 2005 read with Section 7(1)(a)(ii) of the Essential Commodities Act.

41. This Court is aware of the legal position that the offences disclosed in the Final Report by the police is not "on all and end all" of the case, because the Final Report is merely the opinion arrived at by the Investigating Officer based on the materials collected by him. Therefore, the Court can go through the materials in order to find out if they disclose the commission of grave offences prejudicial to the peace, order and interest of India like offences under the Unlawful Activities (Prevention) Act, 1967 etc. On plodding through the evidence collected by the Police, I do not find any material in this regard. Though police confessions are inadmissible in evidence, in order to satisfy my conscience, I went through the police confessions also and found no materials to even vaguely suggest that this Ship had come into the territorial waters of this Country for ulterior purpose.

42. In fine, I find that the prosecution of the accused for the offences under the Arms Act, 1959 is not maintainable. Hence, the prosecution of the petitioners in both petitions under the Arms Act, 1959 is quashed.

? Mariya Anton (A38) will be liable for prosecution for violating the Control Order, 2005 punishable under Section 3(ii)(d) r/w 7(1)(a)(ii) of the Essential Commodities Act, 1955.

? Dudinik Valentyn (A3), the Captain of the Ship will be liable for abetment of the offence committed by Mariya Anton (A38) under the Essential Commodities Act within the Indian territorial waters.

? The cognizance taken by the learned Judicial Magistrate for offences under the Arms Act is set aside.

Accordingly, the Criminal Original Petition and the Criminal Revision Case stand partly allowed. Consequently, M.P. Nos. 1 & 2/2014 in Crl. R.C. (MD) No. 204/2014 and M.P. Nos. 1, 2 & 4/2014 in Crl. O.P. (MD) No. 6719/2014 are closed.

43. This petition has been filed by one Thavarajah, Front Office Manager of Hotel ''Shelter'', for intervening in the quash petition filed by A3 to A37.

44. It is the case of the petitioner that after the accused were released on bail, they were accommodated in Hotel Shelter in Chennai, and they have not paid the

hotel dues amounting to Rs. 8,10,102/-. It is his apprehension that, if the quash petition is allowed, the accused will move away from the hotel and he may not be able to recover the dues.

45. This Court is of the opinion that this cannot be a ground to permit the intervenor to oppose the quash petition. His remedy is to file a civil suit for the recovery of dues, if any, by the guests of the hotel. Hence, with liberty to approach the appropriate forum in respect of the dues, this petition stands dismissed.

