

V

(Writ Petition (Civil) No. 135 of 2012 etc.)

APRIL 26, 2013

[ALTAMAS KABIR,CJI., ANIL R. DAVE AND
VIKRAMAJIT SEN , JJ.]

International Law - Incident of killing of two fishermen by two marines of Italy - At the distance of 20.5 nautical miles from the Indian sea-coast, off the coastline of the State of Kerala - Initiation of Criminal proceedings against the marines by the State of Kerala - Writ Petition by Republic of Italy and SLP by the two marines questioning the jurisdiction of Republic of India and the State of Kerala to investigate and try the case - Supreme Court disposed of the Petitions holding that the State of Kerala had no jurisdiction to investigate and try the case and Union of India had jurisdiction to proceed with the investigation and trial until it was proved that Article 100 of UNCLOS, 1982 was applicable to the case - Direction was given to Union of India to set up Special Court to try the case and to dispose of the same in accordance with the provisions of the Maritime Zones Act, 1976, IPC, Cr.P.C. and provisions of UNCLOS, 1982 - Matter mentioned before supreme Court stating that Government of India received a communication from the Embassy of Italy which indicated that the Government of Italy had decided not to return the accused marines to India to stand trial - Court after giving certain directions enquired as to what steps were taken to constitute the Special Court - The Court was informed that National Investigation Agency was appointed to take-over the investigation - Handing-over the investigation to the National Investigation Agency was opposed by the accused marines - Held: Supreme Court cannot be called upon to decide as to

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which would be the agency to investigate - It is for the Central Government to take decision in the matter - As the Central Government has duly taken steps in terms of the directions given in the main judgment, it is left to the Central Government to take further steps in the matter.

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 135 of 2012.

Under Article 32 of the Consitution of India.

WITH

SLP (C) No. 20370 of 2012.

Goolam E. Vahanvati, AG, Siddharth Luthra, Mukul Rohatgi, Suhail Dutt, Diljeet Titus, Viplav Sharma, Jagjit Singh Chhabra, Ujjwal Sharma, Ninad Laud, Achint Singh Gyani, Sulabh Sharma, S.A. Haseeb, Anoopam Prasad, B. Krishna Prasad, Rekha Pandey, S.S. Rawat, Supriya Juneja, Arjun Diwan, D.S. Mahra, Ramesh Babu M.R., Sushrut Jindal for the appearing parties.

The order of the Court was delivered by

O R D E R

ALTAMAS KABIR, CJI. 1. These proceedings are an offshoot of the judgment delivered by this Court on 18th January, 2013, disposing of Writ Petition (Civil) No.135 of 2012 filed by the Republic of Italy through its Ambassador in India and the two marines who had been arrested by the Kerala Police in connection with the killing of two Indian fishermen on board an Indian fishing vessel at a distance of 20.5 nautical miles from the Indian sea-coast off the coastline of the State of Kerala. While the Special Leave Petition was filed by the two marines challenging the dismissal of their Writ Petition No.4542 of 2012 by the Kerala High Court rejecting their prayer for quashing of FIR No.2 of 2012 on the file of the Circle Inspector of Police, Neendakara, Kollam District, Kerala, as being without

A jurisdiction, the Writ Petition (Civil) No.135 of 2012 was also filed for much the same reliefs. Both the matters were, therefore, taken up together for hearing and were disposed of together on 18th January, 2013.

B 2. While disposing of the two matters, this Court held that the State of Kerala had no jurisdiction to investigate into the incident and that till such time it is proved that the provisions of Article 100 of UNCLOS, 1982, applied to the facts of this case, it is the Union of India which alone has the jurisdiction to proceed with the investigation and trial of the Petitioner Nos.2 and 3 in the Writ Petition. We, accordingly, directed the Union of India, in consultation with the Chief Justice of India, to set-up a special Court to try this case and to dispose of the same in accordance with the provisions of the Maritime Zones Act, 1976, the Indian Penal Code, the Code of Criminal Procedure and the provisions of UNCLOS 1982. It was further directed that the proceedings before the Chief Judicial Magistrate, Kollam, would stand transferred to the Special Court to be constituted in terms of the judgment, upon the expectation that the trial would be conducted expeditiously. Liberty was given to the Petitioners to re-agitate the question of jurisdiction once the evidence was adduced on behalf of the parties.

F 3. On 14th March, 2013, the matter was mentioned by the learned Attorney General, on basis of Note Verbale No.89/635 dated 11th March, 2013, received by the Ministry of External Affairs, Government of India, from the Embassy of Italy in New Delhi, whereby it was indicated that the Government of Italy had decided not to return the accused marines to India to stand trial for the offences alleged to have been committed by them. Pursuant to the directions given on that date, the matter was again listed on 2nd April, 2013, and the learned Attorney General was requested by the Court to indicate what steps had been taken for constitution of a separate Court to try the two Italian marines separately on a fast track basis, in order to dispose of the matter as quickly as possible. The matter was

then listed again on 22nd April, 2013, when the learned Attorney General informed the Court that pursuant to the directions of this Court in its judgment dated 18th January, 2013, the Government of India, in the Ministry of Home Affairs, had appointed the National Investigation Agency created under the National Investigation Agency Act, 2008, to take over the investigation on the basis of FIR No.2 of 2012 dated 29th August, 2012, Coastal PS Neendakara, Kollam. The case was re-registered at PS NIA, New Delhi as Case No.RC-04/2013/ NIA/DLI under Sections 302, 307, 427 read with Section 34 of the Indian Penal Code and Section 3 of The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002. The learned Attorney General submitted that the case is under investigation by the National Investigation Agency, and such investigation would be completed shortly.

4. The submissions made by the learned Attorney General were vehemently opposed by Shri Mukul Rohatgi, learned Senior Advocate, on behalf of the accused mainly on the ground that by handing over the investigation to the National Investigation Agency, the Government was also altering the forum before which the matter could be heard. Furthermore, by entrusting the investigation to the National Investigation Agency, the investigating authorities were being permitted to invoke the provisions of the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002, which provides for death penalty in regard to cognizance being taken on any of the scheduled offences. Mr. Mukul Rohtagi, learned Senior Advocate, who appeared for the Petitioners, urged that since the provisions of the aforesaid Act had not been included in the original charge-sheet, the investigating authorities could not be permitted to take recourse to the same, especially when directions had been given by this Court in the judgment dated 18th January, 2013, that the case was to be tried under the provisions of the Maritime Zones Act,

A 1976, the Indian Penal Code, the Code of Criminal Procedure and the provisions of UNCLOS 1982.

B 5. Mr. Rohtagi submitted that since the National Investigation Agency could only try the Scheduled Offences, referred to in the Act, the investigation could not, in any event, be taken up under the National Investigation Agency Act, 2008.

C 6. Having heard the learned Attorney General for India and Mr. Mukul Rohtagi for the Petitioners, we do not see why this Court should be called upon to decide as to the agency that is to conduct the investigation. The direction which we had given in our judgment dated 18th January, 2013, was in the context of whether the Kerala Courts or the Indian Courts or even the Italian Courts would have the jurisdiction to try the two Italian marines. It was not our desire that any particular Agency was to be entrusted with the investigation and to take further steps in connection therewith. Our intention in giving the direction for formation of a special Court was for the Central Government to first of all entrust the investigation to a neutral agency, and, thereafter, to have a dedicated Court having jurisdiction to conduct the trial. Since steps have been duly taken for the appointment of a Court of competent jurisdiction to try the case, the Central Government appears to have taken steps in terms of the directions given in our judgment dated 18th January, 2013. It is for the Central Government to take a decision in the matter.

7. If there is any jurisdictional error on the part of the Central Government in this regard, it will always be open to the accused to question the same before the appropriate forum.

G 8. We, therefore, take note of the steps taken by the Central Government pursuant to the directions given in our judgment dated 18th January, 2013, and leave it to the Central Government to take further steps in the matter.

H 9. In addition to the above, we sincerely hope that the

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investigation will be completed at an early date and the trial will also be conducted on a day-to-day basis and be completed expeditiously as well. A

10. The terms and conditions regarding bail, as were indicated in our Order dated 18th January, 2013, will continue to remain operative in the meantime. B

K.K.T.

Matters disposed of.