

MASSIMILANO LATORRE AND OTHERS

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v.

UNION OF INDIA AND OTHERS

(Special Leave Petition (Civil) No.20370 of 2012)

(I.A.NO.58644/2020)

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JUNE 15, 2021

[INDIRA BANERJEE AND M. R. SHAH, JJ.]

*Penal Code, 1860 – ss.302, 307, 427 and 34 – United
Nations Convention on the Law of the Sea, 1982 (UNCLOS) – C
Annex VII – On 15.02.2012, two fishermen who were onboard the
boat registered in India, were fired at from a passing ship (an Italian
vessel) due to which both the fishermen died – FIR was registered –
Two Italian Marines- Petitioner no.1 & 2 were apprehended by the
police – A writ petition was filed by the Marines before the High
Court challenging the jurisdiction of the State and the Circle
Inspector of Police – Meanwhile, the Chief Judicial Magistrate
committed the case to the Court of Sessions – The writ petition was
dismissed by the High Court – Aggrieved, the Marines-petitioners
preferred the Special leave petition – It is the case of the petitioners
that India and Italy having signed and ratified the 1982 United
Nations Convention on the Law of the Sea (UNCLOS) agreed to
settle the dispute concerning the incident in question, in terms of
the binding dispute resolution mechanism provided under Annex
VII of the UNCLOS – International Tribunal for the Law of the Sea
(ITLOS) required both Italy and India to suspend all court
proceedings and recorded agreement of both the parties for the
same – Thereafter, award dated 21.05.2020 was delivered by the
Annex VII Arbitral Tribunal – That under the award, the Republic
of Italy had agreed to the amount of Rs.10 crores to be paid by Italy
as total compensation, excluding the amount of INR 21.7 million
already paid by Italy to the families of the victims – The State
Government proposed to disburse Rs.4 crores to the dependents of
each deceased and Rs.2 crores to the owner of the boat – The legal
heirs of each deceased and the owner of the boat have agreed to
the proposal and consented in writing to accept the amount of
compensation – In the light of these development, it is prayed to* G

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- A *dispose of these proceedings and quash criminal proceedings u/ Art.142 of the Constitution – Held: Republic of Italy, Union of India, State of Kerala and the heirs of the deceased fishermen and the owner of the boat have agreed to accept the award dated 21.05.2020 of the Arbitral Tribunal – Also considering the fact that the Arbitral Tribunal constituted under Annex VII of UNCLOS has delivered its award dated 21.05.2020 under which the Republic of Italy has agreed to pay the compensation of Rs. 10 crores, over and above the amount of ex-gratia amount already paid and that the Arbitral Tribunal has also duly recorded Republic of Italy's commitment that following the award Italy will resume its criminal investigation into*
- B *the incident of 15.02.2012 – The amount of compensation over and above the ex-gratia amount of compensation already paid to the heirs of the deceased fishermen is satisfactory – It is a fit case to close all the proceedings in India including criminal proceedings in exercise of powers u/Art. 142 of the Constitution – Thus, the registered FIR is quashed and all the pending matters before the Supreme Court are disposed of – Further, the Union of India, Republic of Italy and the State of Kerala are directed to cooperate with each other in pursuit of that investigation relating to incident dated 15.02.2012.*
- C *the incident of 15.02.2012 – The amount of compensation over and above the ex-gratia amount of compensation already paid to the heirs of the deceased fishermen is satisfactory – It is a fit case to close all the proceedings in India including criminal proceedings in exercise of powers u/Art. 142 of the Constitution – Thus, the registered FIR is quashed and all the pending matters before the Supreme Court are disposed of – Further, the Union of India, Republic of Italy and the State of Kerala are directed to cooperate with each other in pursuit of that investigation relating to incident dated 15.02.2012.*
- D *the incident of 15.02.2012 – The amount of compensation over and above the ex-gratia amount of compensation already paid to the heirs of the deceased fishermen is satisfactory – It is a fit case to close all the proceedings in India including criminal proceedings in exercise of powers u/Art. 142 of the Constitution – Thus, the registered FIR is quashed and all the pending matters before the Supreme Court are disposed of – Further, the Union of India, Republic of Italy and the State of Kerala are directed to cooperate with each other in pursuit of that investigation relating to incident dated 15.02.2012.*

E CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No.20370 of 2012

From the Judgment and Order dated 29.05.2012 of the High Court of Kerala at Ernakulam in W.P. (C) No.4542 of 2012.

F Suhail Dutt, Sr. Adv., Diljeet Titus, Jagjit Singh Chhabra, Ujjwal Sharma, Baljit Singh Kalha, Ninad Laud, Akshat Bhatnagar, Ms. Ananya Mazumdar, Saksham Maheshwari, Advs. for the Petitioners.

G Tushar Mehta, SG, Aman Lekhi, ASG, S. A. Haseeb, Suhashini Sen, Rajat Nair, B. V. Balaram Das, G. Prakash, Jishnu M. L., Ms. Priyanka Prakash, Ms. Beena Prakash, C. Unnikrishnan, A. Karthik, Ms. Smrithi Suresh, Ms. Sreepriya K., Arsh Khan, Advs. for the Respondents.

The Order of the Court was passed by

M. R. SHAH, J.

H 1. In an unfortunate incident which took place on 15.02.2012, two fishermen who were onboard the boat “St. Antony” registered in India,

namely, Valantine @ Jelestine, aged 44 years and Ajeesh Pink, aged 20 years, while fishing off the coast of Kerala, were fired at from a passing ship (an Italian Vessel M.V. Enrica Lexie), due to which the aforesaid two fishermen died. An FIR being Crime No. 2 of 2012 came to be registered against petitioner nos. 1 & 2 herein for offence punishable under Section 302 IPC and other offences under IPC. That the aforesaid vessel which was registered in Italy was reportedly sailing from Singapore to Egypt. That during the investigation two Italian Marines – petitioner nos. 1 & 2 herein were identified as the ones who had fired at the fishing boat. Petitioner Nos. 1 & 2 were apprehended by the police and produced before the learned Chief Judicial Magistrate, Kollam. Petitioner Nos. 1 & 2 challenged the jurisdiction of the State of Kerala and the Circle Inspector of Police, Kollam, District Kerala to register the FIR, to conduct the investigation or to arrest and produce the Italian Marine Naval officials before the Magistrate by filing Writ Petition No. 4542 of 2012 before the High Court of Kerala at Ernakulam. That the petitioners filed Writ Petition No. 135 of 2012 under Article 32 of the Constitution of India before this Court seeking directions to respondent no.1 to take all steps to secure the interest of petitioner nos. 1 & 2 herein – Italian Military Naval officials and makeover their interest to petitioner no. 3 herein. That petitioner no.3 herein – Republic of Italy made ex-gratia payment of compensation to the legal heirs of the deceased persons in the month of April, 2012. This Court also passed an order in S.L.P.(Civil) No. 11942 of 2012 dated 2.5.2012 allowing the vessel to sail away, subject to certain terms and conditions along with all 24 crew members. Vide order dated 9.5.2012, this Court in Article 32 writ petition passed an order directing the State of Kerala to consider the representation of the Republic of Italy concerning the shifting of petitioner nos. 1 & 2 Military Naval officials to a safe house. Thereafter chargesheet came to be filed against petitioner nos. 1 & 2 herein on 18.05.2012 for the offences punishable under Sections 302, 307, 427, 34 of the Indian Penal Code and Section 3 of Suppression of Unlawful Activities Act. The learned Chief Judicial Magistrate committed the case to the learned Court of Sessions, Kollam. Thereafter, by the impugned judgment and order dated 29.05.2012, the learned Single Judge of the High Court dismissed Writ Petition No. 4542 of 2012, inter alia, upholding the assumption of the jurisdiction by the State of Kerala and the concerned Circle Inspector of Police at Kollam.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Kerala at Ernakulam in dismissing

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- A Writ Petition No. 4542 of 2012, the chargesheeted accused – Italian Marine officials and the Republic of Italy have preferred the present special leave petition.
3. It is the case of the petitioners that India and Italy having signed and ratified the 1982 United Nations Convention on the Law of the Sea (UNCLOS) agreed to settle the dispute concerning the incident in question, in terms of the binding dispute resolution mechanism provided under Annex VII of the UNCLOS.
- In consequence of the Provisional Measures Order dated 24 August 2015 passed by the International Tribunal for the Law of the Sea (ITLOS) requiring both Italy and India to suspend all court proceedings, this Court by its order dated 26.08.2015, as modified by order dated 2.9.2015, recording the agreement of both the parties, stayed till further orders all proceedings in the pending matters. By its order dated 6.3.2017, this Court required that the award passed by the Arbitral Tribunal constituted under Annex VII of the UNCLOS be placed on the record of this Court. That thereafter Annex VII Arbitral Tribunal has delivered its award dated 21.05.2020, importantly the Arbitral Tribunal in its award dated 21.05.2020 has duly recorded Republic of Italy's commitment that following the award, Italy will resume its criminal investigation in the events of 15.02.2012 and that both India and Italy will cooperate with each other in pursuit of that investigation. That under the award, the Republic of Italy had agreed to the amount of INR 100,000,000 (INR 100 million) to be paid by Italy as total compensation under all the four heads of compensable loss identified by the Arbitral Tribunal's award, excluding the amount of INR 21.7 million already paid by Italy to the families of the victims. It appears that during the course of the proceedings, the Ministry of External Affairs, Government of India vide its Note Verbale No. WI(A)/415/06/2012 dated 26.11.2020 emphasised the implementation of the award dated 21.05.2020 of the Arbitral Tribunal constituted under Annex VII of the 1982 UNCLOS concerning the incident in question.
- G 4. The Union of India has filed I.A. No. 58644 of 2020 for an appropriate direction to dispose of the proceedings in conformity with the award dated 21.05.2020. The aforesaid application came up for hearing before this Court on 9.4.2021. Learned counsel appearing on behalf of the Republic of Italy submitted that amount of compensation payable in terms of the award dated 21.05.2020 will be deposited by the

Republic of Italy with the Union of India in the particular account to be specified by the Ministry of External Affairs. This Court directed that after the amount is received by the Union of India, the same shall be deposited in this Court within a period of one week. It is reported that thereafter the Republic of Italy deposited the amount of Rs.10,00,00,000/- (Rupees Ten Crores only) with the Republic of India. It is reported that thereafter the Union of India has transferred a sum of Rs. 10,00,00,000/- (Rupees Ten Crores only) into the bank account of the Registry of this Court. That pursuant to the order passed by this Court, the heirs of the deceased fishermen are also impleaded in the present proceedings. The Government of Kerala has also placed on record the letter addressed to the Foreign Secretary of Ministry of External Affairs, Union of India that the Government of Kerala have consulted the dependents/victims of the Enrica Lexie incident through the District Collectors concerned and informed that the Italian Government has offered a compensation of Rs. ten crores out of which State Government proposes to disburse Rs. four crores to the dependents of each deceased and Rs. Two crores to the owner of the boat – St. Antony. It was also mentioned in the said letter that the legal heirs of each deceased and the owner of the boat have agreed to the proposal and consented in writing to accept the amount of compensation offered to them. In light of the above, it is prayed to dispose of the present proceedings and to quash the criminal proceedings in exercise of the powers under Article 142 of the Constitution of India.

5. We have heard Shri Tushar Mehta, learned Solicitor General of India, Shri Sohail Dutta, learned senior counsel appearing on behalf of the Republic of Italy and the petitioners, Shri K.N. Balagopal, learned senior counsel appearing on behalf of the State of Kerala and Shri Unnikrishnan, learned counsel appearing on behalf of the heirs of the deceased.

5.1 Learned counsel appearing on behalf of the respective parties have stated at the bar that their respective clients – Republic of Italy, Union of India, State of Kerala and the heirs of the deceased fishermen and the owner of the boat have agreed to accept the award dated 21.05.2020 of the Arbitral Tribunal. All of them have prayed to dispose of the present proceedings and quash the criminal proceedings in the larger interest of the victims and the heirs of the deceased, more particularly when the long-drawn dispute is being settled amicably.

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- A 6. Having heard the learned counsel appearing on behalf of the respective parties and considering the fact that the Arbitral Tribunal constituted under Annex VII of UNCLOS has delivered its award dated 21.05.2020 under which the Republic of Italy has agreed to pay the compensation of Rs. Ten crores, over and above the amount of ex-gratia amount already paid and that the Arbitral Tribunal has also duly recorded Republic of Italy's commitment that following the award Italy will resume its criminal investigation into the incident of 15.02.2012 and now the Republic of Italy has deposited the amount of Rs. Ten Crores with the Union of India and thereafter the Union of India has transferred the said amount to the Registry of this Court and the State of Kerala as well as the heirs of the deceased fishermen and even the owner of the boat which was damaged have agreed to accept the award and even the Union of India has also accepted the award dated 21.05.2020 passed by the Arbitral Tribunal constituted under Annex VII of UNCLOS and when the long-drawn proceedings are coming to an end and we are satisfied that the amount of compensation of Rs. Ten Crores over and above the ex-gratia amount of compensation already paid to the heirs of the deceased fishermen offered and deposited by the Republic of Italy, deposited pursuant to award dated 21.05.2020 passed by the Arbitral Tribunal can be said to be a reasonable amount of compensation and can be said to be in the interest of heirs of the deceased, we are of the view that this is a fit case to close all the proceedings in India including criminal proceedings in exercise of powers under Article 142 of the Constitution of India.

- However, at the same time, while disbursing the amount of compensation to the heirs of the deceased fishermen, i.e, Rs. Four Crores to the dependents/heirs of each deceased, their interest is also required to be protected so that the amount of compensation paid to them is not frittered away, by investing the amount in the name of the dependents/heirs of each deceased in a Fixed Deposit in a nationalised bank for some time and they will be paid the periodical interest accrued thereon.

- G 7. In view of the above and for the reasons stated above and in exercise of the powers under Article 142 of the Constitution of India, we dispose of/close the present proceedings by directing as under:

- H (a) FIR No.2/2012 of Coastal PS, Neendakara, Kollam, Kerala re-registered as FIR No. R.C. No. 04/2013/NIA/DLI dated 4 April 2013, under Sections 302, 307, 427 read with Section

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- 34 of the Indian Penal Code, 1860 and Section 3 of the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 registered by the National Investigation Agency, New Delhi, and all proceedings emanating therefrom including the proceedings pending before the Ld. Special Designated Court, Patiala House Courts, New Delhi are hereby quashed;
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- (b) The Bail-Bonds dated 2 June 2012 executed by Chief Master Sergeant Massimiliano Latorre and Sergeant Major Salvatore Girone as also Mr. Vishal Talwar and Mr. Vikas Talwar who stood as Sureties, in connection with the aforementioned FIR before the Ld. Special Designated Court, Patiala House Courts, New Delhi and the Ld. Registrar General of this Court are hereby discharged;
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- (c) The Ld. Registrar General of this Court shall release the original Bank Guarantees bearing Nos.0071IGFIN000618 and 0071IGFIN000418, both dated 11 June 2018 for Rs. Two Crores each, issued by the UCO Bank, Kollam Branch, extended through Letters of Extension Nos. UCO/KOLLAM/BG/02/2020-21 and UCO/KOLLAM/BG/01/2020-21 dated 28 May 2020, given on behalf of the two Sureties, Mr. Vikas Talwar and Mr. Vishal Talwar;
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- (d) All pending matters before this Hon'ble Court including (1) the Special Leave Petition (C) No. 20370 of 2012, (2) Writ Petition (C) No. 236 of 2014, (3) Writ Petition (C) No. 919 of 2014 and all pending I.As in the said proceedings are disposed of with no order as to costs.
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- (e) As per the award dated 21.05.2020 and even as agreed by the learned senior counsel appearing on behalf of the Republic of Italy, learned Solicitor General appearing on behalf of the Union of India and the learned senior counsel appearing on behalf of the State of Kerala, now the Republic of Italy shall resume its criminal investigation in the events of 15.02.2012 and it is further directed that the Union of India, Republic of Italy and the State of Kerala shall cooperate with each other in pursuit of that investigation.
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- A 8. We also further direct that the amount of Rs. Ten Crores now lying with the Registry of this Court be transferred to the High Court of Kerala, out of which Rupees Four Crores be paid to the heirs of each deceased and Rs. Two crores be paid to the owner of the boat – St. Antony. We request the Hon'ble Chief Justice of the Kerala High Court to nominate a Judge to pass appropriate order of disbursement/investment of the amount to be paid to the heirs of each deceased (Rupees Four Crores each) so as to protect the interest of the heirs and ensure that the compensation is duly received by the heirs and not diverted/misappropriated. The order of disbursement/investment be passed after hearing the heirs of each deceased and appropriate order be passed,
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- C protecting the best interest of the heirs of each deceased. The remaining amount of Rs. Two Crores be paid to the owner of the boat – St. Antony by an account payee cheque.

Ankit Gyan

Proceedings disposed of with directions.