

Supreme Court of India

Anees Noorani vs Jadav Dava Gholia And Anr. on 25 February, 1987

Equivalent citations: JT 1987 (1) SC 699, 1987 Supp (1) SCC 70

Author: B Ray

Bench: B Ray, S Natarajan

ORDER B.C. Ray, J.

1. Special leave granted.

2. In spite of the notice issued by this Court stating that the matter will be disposed of at the hearing stage none appears on behalf of the respondents though notice was duly served.

3. We have heard learned Counsel appearing on behalf of the appellant. The complaint was filed by respondent No. 1 to the effect that on the date of occurrence, that is, on 24-2-1982, the boat of the complainant went for fishing near Dwarka and at about 5.30 a.m. they laid nets for catching fish. At that time one Taiwan Trawler, namely, Jiuh-Long-I came to that place and the said trawler came near the nets spread by the complainant and they cut about 40 nets worth Rs. 40,000/- and also took away fish caught in the said nets worth about Rs. 10,000/-. It has also been alleged that one Chandrakant, the Tandel of the boat went to the Taiwan Trawler and talked with the officers of that trawler when he was given 200 American dollars and his signatures were taken on stamp papers and he was driven out. The trawler left from the territorial waters of India. On the aforesaid allegation the complaint was filed. That complaint was dismissed and the accused persons were discharged under Section 249 of the Cr.P.C. as on two dates neither the complainant himself nor his lawyer was present in the Court. A second complaint on same allegation was filed before the Judicial Magistrate Ist Class, Dwarka. On this complaint process was issued in respect of the Criminal Case No.1119 of 1984 against the appellant. The appellant then approached the High Court of Gujarat under Section 482 of the Cr.P.C. for quashing the second complaint. The High Court of Gujarat has observed as under:

It may be stated that these facts clearly connect the vessel owned by the agent. Now, whether the accused was present or not is not clearly stated in the complaint, but it would be for the defendant to establish that he was not present and therefore, he has not committed any offence.

The High Court has also further observed that the court discharged the accused under Section 249 of the Cr.P.C, it would not operate as a bar on second complaint on the same facts by the same complainant.

4. It appears to us that the name of the appellant does not appear anywhere in the complaint, neither he was present at the time of the occurrence in the trawler concerned nor he was the captain of that trawler. In our considered opinion, it can at best be a civil liability and the respondent-opposite party has already filed a civil suit. Considering all the relevant facts and circumstances of the case, the just and proper order to pass would be to set aside the order of the High Court and to quash the criminal proceedings. We, therefore, allow the appeal, set aside the order of the High Court and quash the criminal proceedings in Crl. case No.1119/84 pending before

the learned Judicial Magistrate, Ist Class, Dwarka. A sum of Rs. 3000/- deposited by the appellant pursuant to the order of this Court towards the costs of the respondents to appear in this Court may be withdrawn by the appellant.