

In the Court of the Principal Sessions Judge, Thoothukudi

Present: Thiru. N. Rajasekar, B.Sc., M.L.,
Principal Sessions Judge, Thoothukudi.

Monday, the 11th day of January 2016.

SESSIONS CASE NO. 262/2015

Name of the Committing Magistrate and case number : The Judicial Magistrate Court No.I,
Thoothukudi.
P.R.C No.01/14

Police Station and Crime No. : Tharuvaikulam Marine Police Station,
Cr.No.18/13.

Name of the accused : 1) Dudnik Valentyn (64)
S/o Mikhail.
2) Paul David Dennish Towers (50)
S/o Federic Towers.
3) Sidorenko Valeriy (61)
S/o SD.K. Marsh.
4) Lalitkumar Gurung (48)
S/o Shri Chandra Bahadur
Gurung.
5) Radhesh Dhar Dwivedi, (39)
S/o Ramesh Dhar Dwivedi.
6) Naveen Rana (29)
S/o Sh.Bolwant Singh.
7) Dinesh Narayanan (34)
S/o Narayan Chira House.
8) Ramesh Kumar (24)
S/o Motiram.
9) Rajan Thandapani (25)
S/o Rajan.
10) Abijit Ashok Sawani (32)
S/o Ashok D.Sawani.
11) Jagdish Prasad (43)
S/o Govardan Prasad.
12) Renee Tonissaar (26)
S/o Lembit Tonissaar.
13) Igor Blinkov (47)
S/o Gennadi Blinkov.

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- 14) Raigokustmann (41)
S/o Koit Juri Kustmann.
- 15) Vladislov Korsunov (41)
S/o Viktor korsunov.
- 16) Lauriader (36)
S/o Jaakader.
- 17) Alvar Hunt (41)
S/o Rein Hunt.
- 18) Dennis Sukhenlov (34)
S/o Igor Sukhenlov.
- 19) William Irving (33)
S/o Jim Irving.
- 20) Igortotrov Lev (49)
S/o Lev Totrov.
- 21) Roman Obeitsak (29)
S/o Aleksander Obeitsak.
- 22) Krito Koha (30)
S/o Reintoa.
- 23) Levgen Semenov (32)
S/o Valari.
- 24) Nicholas Simpson (43)
S/o Stephen.
- 25) Raymond John Tindall (38)
S/o Robert Tindall.
- 26) Nicholas James (27)
S/o Dunn.
- 27) John Wilson Armstrong (26)
S/o John Armstrong.
- 28) Aleksei Tutonin (29)
S/o Viktor.
- 29) K.V. Prakashan, (39)
S/o K.V. Krishnan.
- 30) Demitri Pappel (37)
S/o Edward.
- 31) Sudheer (45)
Sreedharan.
- 32) Unnikrishnan (38)
S/o U. Chellappan.

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- 33) Jogiste (47)
S/o Erics.
- 34) Andrej Gortsagov (41)
S/o Nikolai Gortsagov.
- 35) Harijeet Singh (45)
S/o Dalbir Singh.
- 36) Mariya Anton Vijay (28)
S/o Asokan.
- 37) Vijay (29)
S/o Nazarian.
- 38) Ranjith Kumar (33)
S/o Nazarian.
- 39) Murugesh (35)
S/o Thangapandi.
- 40) Selvam (40)
S/o Pushbharaj.
- 41) Munithevan @ Thevan (38)
S/o Ramakrishnan.
- 42) Vimal (30)
S/o Kanagaraj.
- 43) Vinoth (38)
S/o Samynathan.

Charge framed against the accused :

1st charge against A1 to : Criminal conspiracy u/s 120-B IPC.
A35

2nd charge against A1 to : Possession of prohibited Arms in
A35
contravention of section of 7 and
35 of the Arms Act 1959 punishable
under section 25(1-A) of the Arms
Act 1959

3rd charge against A1 to : Possession of Fire Arms without
A35
valid licence in contravention of
section 3 of the Arms Act 1959 and
punishable under section 25(1-B)
(a) of the Arms Act 1959.

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4th charge against A1 to : Entry of vessel which carried arms
A35 into territorial waters of India in contravention of Rule 30 of the Arms Rule 1962 and Section 10 & 35 of the Arms Act 1959 punishable under section 25(1-B)(f) of the Arms Act 1959.

5th charge against A1 to : Possession of Fire arms and
A35 ammunition without intimation to the officer incharge of the nearest police station in contravention to section 36(2) of the Arms Act 1959 punishable under section 30 of the Arms Act 1959 .

6th charge against A1, A3, : Unauthorized purchase of High
A4 & A5 Speed Diesel in contravention the provisions of section 3 of Essential Commodities Act and violation of the order 2(f)(v) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005, dated 19th December 2005 punishable under section 7(1)(a)(ii) of Essential Commodities Act 1955.

7th charge against A36 to : Unauthorized sale of High Speed
A43 Diesel in contravention the provisions of section 3 of Essential Commodities Act and violation of the order 2(f)(vi) of the Motor Spirit and High Speed Diesel

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(Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005, dated 19th December 2005 punishable under section 7(1)(a)(ii) of Essential Commodities Act 1955.

Plea of the accused

: Not guilty

Finding of the Judge.

: A1 to A35 are found not guilty u/s 120-B of IPC, and section 36 (2) r/w 30 of the Arms Act, 1959, A1, A3, A4 and A5 are found not guilty under Order 2(f)(v) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005 r/w 7(1) (a)(ii) of Essential Commodities Act 1955 and A36 to A43 are found not guilty under Order 2(f)(vi) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005.

And A1 to A35 are found guilty u/s 25(1-A) of The Arms Act, 1959, u/s 25(1-B) (a) of The Arms Act, 1959 and u/s 25(1-B) (f) of The Arms Act, 1959.

Sentence or Order of this court :

A1 to A35 are acquitted from the charges u/s 120-B of IPC, section 36 (2) r/w 30 of the Arms Act,

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1959, acquit A1, A3, A4 and A5 from the charge under Order 2(f)(v) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005 r/w 7(1)(a)(ii) of Essential Commodities Act 1955 and acquit A36 to A43 from the charge under Order 2(f)(vi) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005 u/s 235 (1) Cr.P.C, since the prosecution has not proved the said charges. The bail bonds executed by A36 to A43 shall stand canceled automatically after the expiry of appeal time. The amount of Rs.25,00,000/- was deposited by A3 to A35 before the court of the Judicial Magistrate No.I, Thoothukudi as per the orders of the Honourable Madurai Bench of Madras High Court in CRL OP (MD) No.3575/2014, dated 28.03.2014 and the same was kept by the learned Judicial Magistrate No.I at Thoothukudi in Crl.C.D. a/c. Out of the above amount, Rs.7,00,000/- was ordered to be released to the power of attorney holder, namely, Dr.Thushara James,

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Thoothukudi as per the orders of the Honourable Madurai Bench of Madras High Court in CRL RC (MD) No.448 and 17625/2014, dated 24.03.2015 as an interim order. Hence A3 to A35 may be approached the Honourable High Court for any further orders in this regard.

A1 to A35 are convicted and sentenced to undergo rigorous imprisonment for five years each and to pay a fine of Rs.1,000/- each in default rigorous imprisonment for six months each for the offence u/s 25(1-A) of The Arms Act, 1959, to undergo rigorous imprisonment for one year each and to pay a fine of Rs.1,000/- each in default rigorous imprisonment for three months each for the offence u/s 25(1-B) (a) of The Arms Act, 1959 and undergo rigorous imprisonment for one year each and to pay a fine of Rs.1,000/- each in default rigorous imprisonment for three months each for the offence u/s 25(1-B) (f) of The Arms Act.

[Total fine amount Rs.1,05,000/- (A1 to A35 each Rs.3,000/-)].

It is further ordered that the

above sentences imposed for the above sections shall run concurrently and the period of remand already undergone by the accused shall be set off as provided u/s 428 Cr.P.C.

The orders regarding the disposal of the properties remanded and produced in P.R. No.116/15 will be passed during the disposal of the split up case in P.R.C No.28/2015, which is pending before the court of the Judicial Magistrate No.I, Thoothukudi. Further, the properties, namely, M.O.3-sample bottle with diesel was handed over to the Balaji Fuel and Service at Thoothukudi, M.O.4 series-10 empty barrels and M.O.10-TN 69AH 8457 TATA ACE vehicle were handed over to Q Branch CID Office, Thoothukudi, M.O.5-M.V. Seaman Guard Ohio Vessel was handed over to The Chairman, V.O.Chidambaranar Port Trust, Tuticorin which is berthed at VOC Port, Thoothukudi and M.O.6 series-35 firearms, M.O.7 series-102 magazines and M.O.8 series-5682 ammunition were handed over to the Armoury of CISF, VOC

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Port, Thoothukudi for safe custody as per the order of the learned Judicial Magistrate No.I, Thoothukudi and all the above safe custodies are ordered to be continued till the disposal of the split up case in P.R.C No.28/2015. The passports and seaman books of A1 to A35, which were marked as Ex.D2 to Ex.D61 and Ex.P78 series and unmarked passport and seaman book of A42, which were also remanded and produced in P.R.No.116/2015 are ordered to be kept along with the case records.

Counsel for the State : Thiru.S.Shanmugavelayutham,
Public Prosecutor, High Court of Madras and Tr.S.Chandrasekaran,
Special Public Prosecutor

Counsel for the accused :--

A1, A37 & A38	-- Thiru.A.J.Jawahar
A2 to A11	-- Thiru.S.R.Subramaniya Adithyan
A12 to A35	-- Thiru.A.V.Arumugaram
A36	-- Thiru.JB.Jude Ponniah
A39	-- Thiru.D.Syed Ibrahim
A40 & 43	-- Thiru.P.Philips Rajan
A41 & A42	-- Thiru.A.Periasamy

This case coming on 17.12.2015 before me for final hearing in the presence of Advocate

Tr.S.Shanmugavelayutham, Public Prosecutor, High Court of Madras, and Tr.S.Chandrasekaran, Special Public Prosecutor for the State and Advocate Tr.A.J.Jawahar for A1,A37 and A38, Advocate Tr.S.R.Subramaniya Adithyan for A2 to A11, Advocate Tr.A.V.Arumugaram for A12 to A35 , Advocate Tr.JB.Jude Ponniah for A36, Advocate Tr.D.Syed Ibrahim for A39, Advocate Tr.P.Philips Rajan for A40 & A43, Advocate Tr.A.Periasamy for A41 & A42 and upon hearing both side arguments and upon perusing the oral and documentary evidence and material objects, this court delivered the following

J U D G M E N T

1):- Indian Coast Guard received an information on 11.10.2013 that the vessel named M.V.Seaman Guard Ohio with arms, ammunition and guards stationed at 10 N.m from Thoothukudi Port without any permission to enter into the Indian Coast and one unidentified boat from Thoothukudi was suspected to have sailed to that vessel for doing some illegal act. Accordingly Indian Coast Guard acted upon that information by sending Indian Coast Guard Station Ship Naikdevi to intercept the suspected vessel M.V.Seaman Guard Ohio, which was stationed at Latitude 08⁰ 52.0' North and Longitude 078⁰ 26.7' East on 12.10.2013 at 03.30 hours. The location is about 10.8 N.m from Vilangusuli Island, Thoothukudi District and 3.8 N.m from the baseline promulgated by the Ministry of External Affairs Notification

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SO.1197(E), Dated 11th May 2009. The place where M.V.Seaman Guard Ohio stationed was very much within the territorial waters of India. The interception was made through communication facilities given to them and when questioned the men in the vessel and asked them whether they possess any arms, they accepted that it has arms, ammunition and guards on the boat. Then the vessel was directed to weigh anchor and proceed to Thoothukudi Port for further investigation by agencies concerned. The vessel escorted by the Coast guard ship made way to Thoothukudi anchorage piloted by Captain K.P.P.Kumar along with 3 guards of Indian Coast Guard Station, reached the Port at 13.25 hours on 12th October 2013 and secured alongside VOC Port 2nd berth. Thereafter the vessel was boarded by Joint Interrogation Committee comprising representatives of Indian Coast Guard, Customs and other agencies on the same day at 14.00 hours. During interrogation, they found huge quantity of arms and ammunitions kept in the vessel M.V.Seaman Guard Ohio. They verified the Deck Log book entry of the vessel and it tallied with the position of anchored vessel in the Indian Territorial waters. The Joint Interrogation continued on 13.10.2013 also and the minutes of the joint interrogation Committee revealed that the vessel was carrying arms, but did not have any authorisation for the same and that they are supposed to carry valid documents or authorisations for arms. The Master of the vessel could not produce documents or authorisations for

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carrying arms even after 24 hours. The minutes also observed that the vessel has received diesel illegally at Sea from a fishing boat. In accordance with the minutes of the Joint Interrogation Team, the vessel was handed over to the Coastal Security Group, Thoothukudi on 13th October 2013. The Assistant Commandant Mr.Narendran of Indian Coast Guard, Thoothukudi presented a report addressed to the Inspector of Police, Tharuvaikulam Marine Police Station narrating the acts and other details. On receipt of the report on 13.10.2013 at about 18.00 hours, the Inspector of Police, Marine Police Station, Tharuvaikulam registered a FIR in Crime No.18/2013, u/s. 25(1B), (a)(f) of the Arms Act, 1959 and Section 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, 1998 and took up investigation. Later, on 15.10.2013 as per the orders of DGP, Tamil Nadu in R.C.No.176936/Crime/IV(2)/2013 Dated 15.10.2013, for transferring the case to 'Q' Branch CID, he handed over C.D. file for further investigation.

2):- The Inspector of Police, 'Q' Branch Thoothukudi took up investigation on 16.10.2013 and visited M.V.Seaman Guard Ohio vessel, which was secured at 2nd berth, V.O.C. Port, Thoothukudi and prepared a rough sketch and observation mahazar on the same day. The vessel was kept at the Port itself under the custody of Port authorities for the purpose of

investigation. On 17.10.2013, investigating officer visited the vessel to collect some more documents for the purpose of investigation. During the visit, it was found that 35 fire arms, 5,682 ammunition and 102 magazines were kept in the vessel without any documents for its possession. Hence those arms and ammunition were seized after physical verification from 11.30 p.m on the same day to 4.00 a.m on 18.10.2013. The fact of seizure was intimated to the Court of Judicial Magistrate No.II, Thoothukudi. Seizure was effected under the cover of mahazar attested by independent witnesses, as there were no valid documents in the vessel for such possession. On 18.10.2013, in continuation of earlier investigation A4 (Paul David Dennish Towers), A6 to A37 were arrested at about 07.45 hours at 2nd berth, V.O.C Port, Thoothukudi. A3 and A5 were allowed to be in the vessel for its maintenance as per their request. All the arrest had been made after observing all legal formalities. On 19.10.2013 A3 and A5 were also arrested in the vessel at 2nd berth V.O.C Port, Thoothukudi after observing all legal formalities as well as the accused A3 to A37 who were sailing in M.V.Seaman Guard Ohio vessel were unable to produce licence or any authorisation order from the competent authority in accordance with the provisions of the Arms Act, 1959 for the possession of fire arms and ammunition in the vessel. They have also not kept such documents which they were expected to keep in the vessel itself during its voyage.

3):- The seized fire arms and ammunition have been remanded to judicial custody on 18.10.2013 and kept at the Armoury of CISF, Thoothukudi. On 19.10.13, accused A38 Maria Anton Vijay was arrested and A39 Vijay, A40 Ranjithkumar, A41 Murugesh and A42 Selvam were arrested on 20.10.2013, for being responsible for the illegal supply of diesel to the vessel M.V.Seaman Guard Ohio with the able assistance and facilitation of absconding accused A43 to A45, when the vessel was anchored in the territorial waters of India in contravention of Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices), Order 1998, which is punishable under Essential Commodities Act.

4):- On 24.10.2013, A4 Paul David Dennish Towers, A6 Lalith Kumar Gurung and A7 Radheshdhar Dwivedi were taken on police custody and they have been interrogated and their voluntary confessions have been recorded in the presence of independent witnesses. In pursuance of the confession of A4 Paul David Dennish Towers and A7 Radheshdhar Dwivedi, investigating agency visited the M.V.Seaman Guard Ohio vessel on 27.10.2013 and recovered certain documents relating to the weapon movements and mail transactions between the vessel and Advan Fort Company. In addition to these seizures, the Central Processing Unit (CPU) and the Digital recorder from the vessel bridge, besides 1 litre of diesel from 10 barrels kept on the deck

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which was illegally purchased from the accused A38 to A45 were also collected. On 31.10.2013, the seized 35 fire arms and samples of 50 ammunition of five categories :--

- i) 7.62 x 39 mm -10
- ii) 7.62 x 63 mm-10
- iii) 7.62 x 51 mm -10
- iv) 5.56 x 45 mm -10
- v) 9 mm -10

and 17 magazines of 9 categories (I) Browning Ltrac Weapon -2, (ii) CZ858 Weapon -2 (iii) SAIGA M3 Weapon-2 (iv) HKG3 Weapon-2 (v) SLR Weapon-2 (vi) Benelli MRI Weapon-2 (vii) Benelli Argo E Weapon-1 (viii) Oberland Weapon-2 (ix) Glock 17 Weapon-2 were sent to the Tamil Nadu Forensic Sciences Department, Chennai for analysis under the orders of the Court. Similarly, the diesel samples collected from 10 barrels were also sent to Hindustan Petroleum Corporation Limited, Washermanpet, Chennai for analysis under the orders of the Court. The Ballistics report of Tamil Nadu Forensic Sciences Department, Chennai, dated 08.11.2013 discloses that 49 items were analysed and among them, items 16 to 21 are prohibited arms and all the rest are ordinary fire arms and for which, sanction for the institution of prosecution under section 39 of The Arms Act, 1959 from District Magistrate is mandatory.

5):-

Investigation also disclosed that the vessel belongs to A1 Advan Fort Company, 1875 Eye Street, MW, 5th

Floor, Washington DC-2006, USA and its Operations Director is A2 Mohamed Frajallah. Both the Advan Fort Company and its Operations Director Mohamed Frajallah are mainly responsible for all the clandestine acts committed by the other accused A3 Dudnik Valentyn, Captain of the vessel, A4 Paul David Dennish Towers, Tactical Deployment Officer of the vessel, who were found in physical possession of 35 fire arms and other ammunition without any valid documents in the vessel M.V.Seaman Guard Ohio. A1 Advan Fort Company represented by Mohamed Frajallah and A2 Mohamed Frajallah, Operations Director of the Company are mainly responsible for the control over the administration of the company's vessel M.V.Seaman Guard Ohio in which 35 fire arms and other ammunition were kept by A3 Dudnik Valentyn and A4 Paul David Dennish Towers jointly with other crew and guards, who were the occupants of the vessel without having any licence and authorisation from the competent authority, only with the connivance and knowledge of the said company. Further A1 and A2 are also liable to be prosecuted for the contravention of the relevant provisions of The Arms Act, 1959 for such possession of the fire arms by A3 and A4 in the vessel, who were keeping the arms and ammunition at the joint control of other occupants of the vessel, such as A5 to A37, the crew and Guards on their behalf.

6):-

Further A1, Advan Fort Company represented by A2 and A2, the Operations Director of the said

company are directly responsible for illegal bunkering of diesel from A38 to A45 and such purchase was effected by A3, A5, A6 and A7, employees of the vessel, on the instruction of A1 and A2.

7):- A1 Advan Fort Company represented by its Operations Director Mahamed Frajallah, owner of the vessel M.V.Seaman Guard Ohio and it is a utility vessel registered in Sierra Leone in West Africa.

8):- A2 Mohamed Frajallah, Operations Director, Advan Fort Company, USA is mainly responsible for the business administration of the vessel and also for the employees of M.V.Seaman Guard Ohio.

9):- A3 Dudnik Valentyn, Ukraine, Captain of the vessel, who is responsible for the general control of the vessel for making arrangements of bunkering and provisions received illegally and dishonestly. He also aided and facilitated the possession of fire arms and ammunition in the ship without any licence or authorisation from the competent authority and he himself directly having the control and possession of the fire arms kept in the vessel, jointly with A4 and other crew and guards.

10):- A4 Paul David Dennish Towers, Britain, Tactical Deployment Officer, who is in charge of the armed guards in the vessel and looking after sending and receiving of guards with arms and ammunition to merchant vessels and maintaining the record in Annex -G, incoming team weapon and

equipment declaration, Annex-F, outgoing team weapon and equipment declaration Annex-C, ammunition declaration (on board), Annex-G, F, C, Annex-A for Zodiac maintenance, Annex-B for record of weapon on board, Annex-D for kit equipment, Annex-E for on board guard list and Annex-J for risk assessment in loose leaf sheets and aided and facilitated the possession of fire arms and ammunition in the ship jointly having control over the fire arms kept in the vessel along with A3 and other crew and guards.

11):-

A5 Sidorenko Valeriy, Ukraine, Chief Engineer, the person, who operates the engine of the vessel, aided and facilitated the possession of fire arms and ammunition in the vessel and indulged himself in illegal bunkering. A6 Lalitkumar Gurung, Maharashtra, India, Chief Officer, who is the person in charge of Deck Department and navigation watch, responsible for maintaining Deck Log Book and making entries relating to the vessel movements and about the illegal bunkering and unauthorised purchase of diesel from the accused A38 to A45 and also maintaining the Chief Officers Deck Log Book in the bridge of the vessel, aided and facilitated the possession of fire arms and ammunition in the vessel and indulged himself in illegal bunkering.

12):-

A7 Radhesh Dhar Dwivedi, Uttar Pradesh, India, Second Officer, the person in charge of navigation watch was responsible for maintaining Deck Log Book and Chief Officer's Deck Log Book in the bridge of the vessel along with A6

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Lalitkumar Gurung, alternatively once in six hours, aided and facilitated the possession of fire arms and ammunition in the vessel and indulged himself in illegal bunkering.

13):- A8 Naveen Rana, Himachal Pradesh, India, Third Officer/Engineer is assisting the operation of the vessel aided and facilitated the possession of fire arms and ammunition in the vessel.

14):- A9 Dinesh Narayanan, Kerala, India, Oiler and A10 Ramesh Kumar, Himachal Pradesh, India, Oiler, who are the other crew of the vessel assisting engineering Department of the vessel, aided and facilitated the possession of fire arms.

15):- A11 Rajan Thandapani, Tamil Nadu, India and A12 Abijit Ashok Sawani, Maharashtra, India, Able Bodied Men, the person who are assisting the Deck Officer in doing certain work allotted to them in the bridge for the movement of the vessel and aided and facilitated the possession of fire arms and ammunition in the vessel.

16):- A13 Jagdish Prasad, Uttaranchal, India, Chief Cook, the person who maintains cooking Department, aided and facilitated the possession of fire arms and ammunition in the vessel in joint control.

17):- A14 Renee Tonissaar, Estonia, A16 Raigokustmann, Estonia, A17 Vladislov Korsunov, Estonia, A19 Alvar

Hunt, Estonia, A21 William Irving, United Kingdom, A22 Igortotrov Lev, Estonia, A24 Krito Koha, Estonia, A25 Levgen Semenov, Ukraine, A27 Raymond John Tindall, United Kingdom, A28 Nicholas James, United Kingdom, A29 John Wilson Armstrong, United Kingdom, A31 K.V.Prakashan, Kerala, India, A33 Sudheer, Keala, India, A34 Unnikrishnan, Kerala, India, A36 Andrej Gortsagov, Estonia, A37 Harijeet Singh, Punjab, India are Security Guards, who provide security to merchant vessels under their team leaders as directed by A1 Advan Fort Company through Tactical Deployment Officer of Seaman Guard Ohio and aided and facilitated the possession of fire arms and ammunition in the vessel.

18):- A15 Ignor Blinkov, Estonia, A18 Lauriader, Estonia, A29 Dennis Sukhenlov, Estonia, A23 Roman Obeitsak, Estonia, A26 Nicholas Simpson, United Kingdom, A30 Aleksei Tutonin, Estonia, A32 Demitri Pappel, Estonia and A35 Jogiste, Estonia, Team Leaders, who are in charge of one or more guards armed with fire arms, provides security to other merchant vessels as directed by Advan Fort Company through Tactical Deployment officer of Seaman Guard Ohio, aided and facilitated the possession of fire arms and ammunition .

19):- A38 Maria Anton Vijay received an amount of Rs.7,00,000/- through his Manager A41 Murugesh and arranged for getting diesel from M.V.S.Muthuvel & Sons Petrol Bunk, Thoothukudi and also provisions and transported the same to the

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Fishing Harbour in a vehicle TATA ACE bearing registration No.TN 69AH 8457 with the able assistance of A39 to A45 and then the diesel was transported in a fishing boat by A39 Vijay in his father's boat along with A45 Vinoth to the vessel unauthorisedly and the boat was operated by one James and indulged himself in illegal sale and supply of diesel to M.V.Seaman Guard Ohio through his associates.

20):- A39 Vijay illegally and unauthorisedly transported about 2,000 litres of diesel in 10 barrels in the fishing boat by himself along with A40 Ranjithkumar supplied the same to M.V.Seaman Guard Ohio vessel on 11.10.2013 night along with A45 Vinoth and thus sold the same illegally, when the vessel was in the territorial waters of India and anchored.

21):- A41 Murugesh received an amount of Rs.10,00,000/- from A43 Munithevan in his HDFC Bank Account No.11041050004770 at Thoothukudi on 09.10.2013 has withdrawn an amount of Rs.7,00,000/- on the same day and handed over to his Master A38 Maria Anton Vijay. On receipt of the same, A38 purchased 2,000 litre of diesel from MVS.Muthuvel and Sons Petrol Bunk at Thoothukudi for supplying the vessel as directed by A43 Munithevan.

22):- A42 Selvam, who accepted the contract with A38 for providing provisions to the vessel in the sea and received a sum of Rs.15,000/- for the transaction, transported

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the provisions to the vessel M.V.Seaman Guard Ohio, but had to return halfway through due to rough sea, had stored the same in Raghu Ice & Cold Storage, Thoothukudi with the intention of supplying the same provisions to the vessel the next day and also aided and facilitated and indulged himself in the illegal sale and supply of diesel to the vessel M.V.Seaman Guard Ohio on 11.10.2013.

23):- A43 Munithevan of Chennai received an amount of about Rs.20,00,000/- (40,476 US\$) from A1 Advan Fort Company through bank transaction, credited in his HDFC Bank Account No.50200000105782 in Chennai for purchase of diesel and provisions to be supplied to the vessel through his associates at Thoothukudi. On receipt of the same, A43 credited an amount of Rs.10,00,000/- in the HDFC Bank account of A41 Murugesh, the Manger of A38 Maria Anton Vijay at Thoothukudi. On receipt of the same, A41 withdrew an amount of Rs.7,00,000/- on 09.10.2013 and handed over the same to A38, who in turn purchased 2,000 litres of diesel from M.V.S.Muthuvel & Sons Petrol Bunk, Ettayapuram Road, Thoothukudi transported the same to the Fishing Harbour with the assistance of other accused by transporting the same in a fishing boat on 11.10.2013 evening.

24):- A44 Vimal on the instruction of A43 Munithevan informed A38 Maria Anton Vijay at Thoothukudi regarding the purchase and supply of diesel to the vessel and thus

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aided and facilitated and indulged himself in illegal supply and sale of diesel to the vessel along with other accused concerned.

25):-

A45 Vinoth, who unauthorisedly sailed along with A39 Vijay in the fishing boat owned by the father of A39 and A40 Ranjith Kumar supplied and sold diesel in 10 barrels to M.V.Seaman Guard Ohio vessel. A39 and A45 transported the same in the fishing boat from the Fishing Harbour aided and facilitated and indulged themselves in the illegal supply and sale of diesel to the vessel on the night of 11.10.2013.

26):-

All the guards A14 to A37, who were provided with fire arms without any proper licence in accordance with the provisions of The Arms Act, 1959 did not possess Flag Nation endorsement certificate for their employment in the Flag Nation vessel.

27):-

The employees of M.V.Seaman Guard Ohio vessel A3 to A37 performing the duties allotted by Advan Fort Company in Washington District of Columbia represented by A2 Mohamed Frajallah, Operations Director has registered in the country Sierra Leone in West Africa. They are expected to keep the documents in the vessel in their journey at sea such as (1) certificate of registration (2) International Tonnage Certificate (1969), (3) Cargo ship safety Certificate (4) International Load Line Certificate (5) Cargo Ship Safety Radio Certificate (6) Record of equipment for the cargo ship safety Radio Certificate

form (R), etc. But the certificates found on the vessel viz., (1) International Tonnage Certificate (1969), (2) Cargo ship safety certificate (3) International Load Line Certificate (4) Cargo Ship Safety Radio Certificate (5) Record of equipment for the cargo ship safety Radio Certificates issued by the International Register of Shipping (IRS) were not recognized by Indian Maritime Administration or IACS (International Association of Classification Society) as per Merchant shipping regulation of entry into Ports Government Gazette GSR 311 (E) dated 20.04.2012. The Seaman Guard Ohio vessel owned by Advanfort Company, USA was illegally anchoring at the territorial waters of India since 10.10.2013 and remained there till its interception by the Indian Coast Guard officials on 12.10.2013 at 03.30 hrs. The Captain, the first officer and the second officer of the vessel are legally bound to make a declaration of their arrival in territorial waters of India and possession of arms and ammunition to the port authorities as per Director General of Shipping circular NT/ISPS/Circular No.1 of 2011, but failed to carry out the same and contravened the provisions of section 36 of The Arms Act, 1959.

28):- On 10.10.2013 the Seaman Guard Ohio, a utility vessel owned by Advanfort Company, Washington District of Columbia, USA which was registered at Sierra Leone country in West Africa, was anchoring in the territorial waters of India at the position 08⁰52.0' North, 078⁰26.7' East and

remained there till its interception by the Coast Guard officials on 12.10.2013 at 03.30 hrs without any declaration of its entry and possession of arms and ammunition to the Port / Naval / Coastal authorities or to the nearest Port Marine Police Station of Thoothukudi as defined under section 36(2) of the Arms Act, 1959 and also in contravention of Direction General of Shipping circular NT/ISPS/Circular No.1 of 2011, without any proper documents for keeping them in the vessel and also for handing them and for such possession and carrying 35 firearms (Browning Ltrac Weapon-4), CZ858 Weapon-6, SAIGA M3 Weapon-2, HKG3 Weapon-6, SLR Weapon-11, Benelli MRI Weapon-2, Benelli Argo E Weapon-1, Oberland Weapon-1, Oberland OA15 Weapon-1, Glock 17 weapon-1, 102 Magazines (Browning Ltrac Weapon-7, X858 Weapon-19, SAIGA M3 weapon-5, HKG3 Weapon-19, SLR Weapon-41, Benelli MRI Wapon-6, Benelli Argo E Weapon 1, Oberland Weapon-2, Glock 17 Weapon/ 2 and 5682 ammunition (7.62 x 39 mm-1531, 7.62 x 63 mm-228, 7.62 x 51 mm -3582, 5.56 x 45 mm-297, 9 mm-44. Among them, 6 firarms are in the nature of prohibited firearms as defined under Government of the Republic of India, in contravention of Section 7 of the Arms Act, 1959, which is punishable under section 25 (1A) of The Arms Act 1959 as amended by Act 25 of 1983 and Act 42 of 1988 and under Section 25 (1B) (a) r/w section 3 of The Arms Act, 1959 and 25 (1B) (f) r/w. Section 10 in respect of other firearms.

29):- Having knowledge of the said unauthorized entry of the vessel in the territorial waters of India, A38 to A45, dishonestly and unauthorisedly supplied and sold about 2,000 litres of High Speed Diesel to the M.V.Seaman Guard Ohio vessel on 11.10.2013, contravening the provisions of Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 1998, under Order 2 (e) (vi) and in turn the employees of the vessel A3, A5, A6, A7 as per the directions of A1 and A2 dishonestly and unauthorisedly purchased the same in contravention of the said order under Order 2(e) (v), which are punishable under Section 7 (1)(a) (ii) of Essential Commodities Act, 1955.

30):- Thus, the accused A1 to A5, when the vessel M.V.Seaman Guard Ohio was in the territorial waters of India in the position 08^o52.0' North, 078^o26.7' East between 10.10.2013 and 12.10.2013 adjacent to Vilangusulli Island, Thoothukudi District at 3.8 Nautical Miles from the base line and earlier specifically in between first week of October 2013 and 12.10.2013 at Thoothukudi, Chennai, Dubai and other places agreed to do an illegal act or an act by illegal means and thus conspired to commit the offences such as conceal the possession of Arms and ammunition kept in the vessel without any document and without any declaration when anchored the vessel M.V. Seaman Guard Ohio in the territorial waters of India as narrated about either to the Port

authorities or to the Indian Coast Guard authorities and others, illegally and unauthorisedly purchased High Speed Diesel from unauthorised persons A38 to A45 for the vessel Seaman Guard Ohio and thus the crew and guards of the vessel contravened the provisions of sections 3, 7, 10, 33, 35, 36 (2) of the Arms Act, 1959 punishable under sections 25 (1-A), 25 (1B), (a) and 25 (1B) (f) of The Arms Act, 1959 and under Section 30 and also contravened the order 2 (e) (v) and (vi) of Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices), Order 1998, punishable under Section 7(1) (a) (ii) of Essential Commodities Act, 1955 and thus A1 to A45 did their best in carrying out, the said clandestine acts by abetting themselves with a view to achieving the common design of conspiracy and decided to do any other act as per the needs of the situation if warranted in future in achieving the common design of such conspiracy as narrated about and below and thereby A1 to A45 have committed an offence of conspiracy punishable under section 120(B) IPC and 120(B) IPC r/w Section 33, 35 and 3 r/w Section 25 (1B) (a), Section 7 r/w 25 (1-A), Section 10 r/w. Section 25 (1B) (f) of The Arms Act, 1959 and Rule 30 of The Arms Rules, 1962, Section 36(2) r/w Section 30 of The Arms Act, 1959 and Section 3 (2) (d) r/w 7 (1)(a) (ii) of 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.

31):-

In pursuance of the said conspiracy and in the course of the same transaction, the accused A1, A2, A3 and A4 were directly responsible for keeping the firearms at the vessel and A5 to A37 being the occupants in the vessel found in constructive, physical and joint possession of 35 firearms, ammunition and magazines among them 6 prohibited HKG3 firearms as defined under section 2(1)(i) of The Arms Act, 1959, bearing serial Nos.396870, E58118, 008847, 009366, 402401, 398368 kept under the joint control and in joint occupation without any valid document and authorization from the competent authority at the vessel M.V.Seaman Guard Ohio while anchoring in the territorial waters of India and when intercepted by Indian Coast Guard officials on 12.10.2013 at 03.30 hours. Further they willfully failed to make declaration of the joint possession of such firearms to the concerned authorities as per Section 35 and Section 36 of the Arms Act and in violation of the Director General of Shipping circular NT/ISPS/Circular No.1 of 2011, and there by A1 to A37 have committed offences in contravention of Section 7 and section 35 of the Arms Act, 1959 punishable under section 25 (1A) of The Arms Act, 1959 since A1 and A2 are liable to be prosecuted for the said offence as they were responsible for the control over the possession of such prohibited firearms and the administration of M.V.Seaman Guard Ohio vessel and their employees, in which these firearms were knowingly and dishonestly, allowed to be kept at the

vessel by them without any authorization from the competent authority.

32):-

In pursuance of the said conspiracy and in the course of the same transaction, the accused A1, A2, A3 and A4 were in the physical, constructive and joint possession of 29 non prohibited firearms, 5682 ammunition and 102 magazines in the vessel without any licence issued in accordance with the provisions of The Arms Act, 1959 or any other valid document for such possession along with A5 to A37, the other occupants of the said vessel, in contravention of Section 3, punishable under Section 25 (1B) (a) r/w Section 35 of the Arms Act, 1959 and thereby A1, A2 who were having direct control over such firearms and A3 to A37 who were having joint control and constructive possession of such firearms, have committed an offence punishable under section 25 (1B) (a) of The Arms Act, 1959 as they have contravened, Section 3 of the Arms Act, 1959.

33):-

In pursuance of the said conspiracy and in the course of the same transaction, the accused A1, A2, A3 and A4 were in the physical, constructive and joint possession of 29 firearms, 5682 ammunition and 102 magazines at the said vessel along with A5 to A37 when it was in territorial waters of India and anchored there till its interception by Indian Coast Guard on 12.10.2013 without any valid licence issued in accordance with the provisions of The Arms Act, 1959 or any other valid

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document as narrated in charge II and III for such possession and thereby A1 to A37 have committed an offence in contravention of the Rule 30 of The Arms Rules, 1962 and under Sections 10 and 35 of The Arms Act, 1959 punishable under section 25 (1B) (f) of The Arms Act, 1959.

34):- In pursuance of the said conspiracy and in the course of the same transaction, the commission of the said offences committed by accused A1, A2, A3 and A4 who were in the physical, constructive and joint possession of 6 prohibited firearms and 29 ordinary firearms, 5682 ammunition and 102 magazines at the said vessel when it was in the territorial waters of India and anchored there as narrated in charge IV without any license or authorization issued in accordance with the provisions of the Arms Act, 1959 or any other valid documents for such possession along with the accused A5 to A37, who were the employees and occupants of the said vessel M.V.Seaman Guard Ohio, willfully failed to inform the possession of such arms and ammunition by them to the officer of the nearest Police Station and thus A1 to A37 have committed an offence by contravening the provisions of Section 36 (2) of The Arms Act, 1959, punishable under section 30 of The Arms Act, 1959.

35):- In pursuance of the said conspiracy and in the course of the same transaction, the accused A3, A5, A6 and A7 who were employed as crew in the utility vessel

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M.V.Seaman Guard Ohio unauthorised and illegally purchased about 2,000 litres of high Speed Diesel on the advice of A1 Company and A2, its Operations Director on the night of 11.10.2013 when the vessel was in the territorial waters of India and anchored there, from the unauthorized persons/accused A37 to A45 at the instigation, facilitation and directions of A1 Advanfort Company represented by its Operations Director Mohamed Frajallah and A2 Mohamed Frajallah, the Company's Operations Director at U.S.A and thereby A1, A2, A3, A5, A6 and A7 have committed an offence by contravening the provisions of the Order 2 (e) (v) of Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices), Order 1998 punishable under section 7(1) (a)(ii) of Essential Commodities ACT, 1955.

36):- In pursuance of the said conspiracy and in the course of the same transaction, the accused A38 to A45 did their best in one way or other as noted here under, illegally and unauthorisedly supplied about 2,000 litres of high speed diesel to the vessel M.V.Seaman Guard Ohio and sold the same to the vessel as narrated in charge VI with assistance of specifically A41, the Manager of A38, who received Rs.10,00,000/- through HDFC Bank transactions from A43 of Chennai, to whom an amount of Rs.20,00,000/- (40476 US \$) was credited in the HDFC Bank Account, Chennai in Account No.50200000105782 by A1 Advanfort Company, USA for the purpose of purchase and supply of

diesel and provisions to the M.V.Seaman Guard Ohio Vessel. From the said amount, Rs.10,00,000/- was credited in the bank account of A41 Account No.11041050004770 HDFC Bank, Thoothukudi, who had withdrawn Rs.7,00,000/- on 09.10.2013 and handed over the same to his Master A38. Further A38, who in turn purchased about 2,000 litres of diesel in 10 barrels from M.V.S.Muthuvel & Sons Petrol Bunk, Ettayapuram Road, Thoothukudi and transported the same with the assistance of A42, A44, A45 to the Fishing Harbour in his TATA Ace vehicle bearing Regn. No.TN 69AH 8457 on 11.10.2013 from there it was loaded and transported by A39 and A45 in a fishing boat owned by the father of A39 and A40 and unauthorisedly and illegally supplied to the vessel M.V.Seaman Guard Ohio on the same night on 11.10.2013, which was anchored in the territorial waters of india and thereby A38 to A45, who are directly responsible in the said clandestine act of purchase, transport and delivery of diesel to the vessel as narrated above and this A38 to A45 have committed an offence punishable under section 7(1)(a) (ii) of the Essential Commodities Act, 1955 since they contravened the provision of Order 2 (e) (vi) of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order 1998 which is punishable as narrated above.

37):-

After completion of the investigation based on spot inspection of the vessel and other places

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as disclosed by the accused persons during their interrogation, examination of witnesses, seizure of documents, arms and ammunition, various articles from the vessel and other places, opinion of statutory authorities on seized items, opinion of public prosecutor and sanction order obtained from competent authorities for filing prosecution case under the Arms Act, a detailed charge sheet along with documents and other materials collected during investigation was filed by the Inspector of Police, Q branch, C.I.D against the accused on 30.12.2013 for the offences u/s 120(B) IPC , 33,35 & 3 r/w 25(1-B)(a), 7 r/w 25(1-A), 10 r/w 25(1-B)(f) of The Arms Act 1959, Rule 30 of the Arms Rule 1962, 36(2) r/w 30 of the Arms Act 1959 and Order 2(e)(v)(vi) of Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 1998 & 3(2)(d) r/w 7(1)(a)(ii) of Essential Commodities Act 1955 before the Judicial Magistrate Court No.I, Thoothukudi.

38):-

The case was taken on file against the accused as P.R.C No.1/2014 for the commission of offences punishable under sections 33, 35 and 3 read with section 25(1B)(a), Section 7 read with 25 (1-A), Section 10 read with Section 25 (1-B) (f) of the Arms Act, 1959 and Rule 30 of the Arms Rules, 1962, Section 36(2) read with Section 30 of the Arms Act and Section 3(2) (d) read with Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 and order 2 (e)(v)(vi) of the Motor Spirit

and High Speed Diesel (Regulation of Supply Distribution and Prevention of Malpractices) Order 1998 and Section 120-B of IPC and the Court took cognizance of the case and accordingly on 20.01.2014 issued non-bailable warrants against A1 Advanfort Company and A2 Mohamed Frajallah, Director Operations (who are the resident of USA, Washington) for their arrest and appearance in the Court in connection with the commission of above mentioned offences along with other accused named above.

39):-

However, two accused A1 and A2 are still not apprehended despite issuance of non-bailable warrants against them, which remain unexecuted. So far as the other accused A3 to A45 are concerned, though they were arrested on different dates, some were enlarged on bail by the trial court and remaining by the Honourable High Court on different dates on terms imposed on them. The accused persons filed before the Honourable High Court two criminal cases, the Criminal Revision (MD) No.204/2014, u/s 397 of Criminal Procedure Code, 1973 challenging the cognizance taken by the Judicial Magistrate No.I, Thoothukudi of the charge sheet seeking to prosecute A38 for commission of several offences detailed therein. So far as A3 to A37 are concerned, they filed CrI.O.P. (MD) No.6719/2014, under section 482 of the Criminal Procedure Code wherein they also sought quashing of the final report or charge sheet filed seeking to prosecute them for commission of various offences detailed therein.

40):- By common order, the Honourable High Court partly allowed both the cases and quashed the charge sheet filed against all the accused persons insofar as it related to offences punishable under the Arms Act are concerned. However, uphold the filing of the charge sheet against A3 and A38 for their prosecution in relation to the offences punishable for violating the Control Order, 2005 punishable under Section 3 (ii) (d) read with Section 7 (1) (a) (ii) of the Essential Commodities Act, 1955, holding that prima facie case against these accused for commission of offence under the Essential Commodities Act is made out and hence these accused persons have to face trial on merits insofar as the offences punishable under the said Act are concerned.

41):- Aggrieved by the said order of the Honourable High Court, the State has filed Criminal Appeal Nos. 836/15 and 837/15 by way of Special Leave petitions before the Honourable Supreme Court of India. Both the criminal appeals were allowed by the Honourable Supreme Court and remanded the matter by setting aside the orders of Honourable Madurai Bench of Madras High Court and issued direction to proceed with the case and decide the same on merits in accordance with law and also made it clear that to interpret Section 45 (a) of the Arms Act to enable the trial court to decide the rights of the parties and decide the case strictly in accordance with law uninfluenced by any of the

observations of the Honourable Supreme Court as well as the Honourable High Court.

42):- Initially the learned Judicial Magistrate No.I, Thoothukudi has taken on file as P.R.C.01/2014 against these accused and the accused Advanfort Company (A1) and Mohamed Frajallah, Operations Director, Advanfort Company, USA (A2). During the pendency of the said P.R.C case, A1 and A2 failed to appear before the court and NBW was issued against them and since NBW could not be executed, the case as against A1 and A2 was split up from this case PRC No. 01/2014 and taken on file as P.R.C. No.28/2015. Then the learned Judicial Magistrate No.I, Thoothukudi rearranged the accused in P.R.C. No.01/2014 as A1 to A43 and furnished copies of document relied on by the prosecution to all the accused at free of cost u/s 207 Cr.P.C and committed to this Court u/s 209 (a) Cr.P.C on 07.08.2015, since this case is exclusively triable by the Court of Sessions.

43):- After the receipt of this case records in this court, this court took cognizance as S.C No.262/2015 on 11.08.2015 and when the accused appeared before this Court, after hearing the arguments of both sides and after perusing the records, found a prima facie case as against the accused and accordingly charges were framed u/s 120-B IPC, 25(1-A), 25(1-B)(a) , 25(1-B)(f) &, 30 of the Arms Act 1959, and Order 2(f)(v) of the Motor Spirit and High Speed Diesel (Regulation

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of Supply and Distribution and Prevention of Malpractices) Order 2005, dated 19th December 2005 r/w 7(1)(a)(ii) of Essential Commodities Act 1955 against A1, A3 to A5, u/s 120-B IPC, 25(1-A), 25(1-B)(a) , 25(1-B)(f) and 30 of the Arms Act 1959 against A2, A6 to A35 and under Order 2(f)(vi) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005, dated 19th December 2005 r/w 7(1)(a) (ii) of Essential Commodities Act 1955 against A36 to A43, read over and explained to them. The accused denied the charges and pleaded not guilty.

44):- On the side of prosecution totally forty four witnesses were examined as P.W.1 to P.W.44, Ex.P.1 to Ex.P89 were marked and M.O1 to M.O.10 were also marked. On the side of defence Ex.D1 to Ex.D72 were marked.

45):- **The brief case of the prosecution as revealed from the evidences on the side of the prosecution is as follows :-**

On 11.10.2013 P.W.6 Tr.Rajesh Dhaulakandi, Commandant, Indian Coast Guard, Thoothukudi received an intelligence report from their Headquarters, Chennai mentioning the movement of suspected vessel near Thoothukudi. He diverted the patrolling vessel belongs to Indian Coast Guard by name Naikidevi. In which P.W.1 Tr.Narendran, P.W.2 Tr.M.M.Mark and P.W.3 Tr.Keerthi Kasbar, who are the officials of the ship proceeded towards the

suspected vessel and they reached close to the suspected vessel at 3.30 a.m on 12.10.2013. At that time the suspected vessel was anchored at 10.8 nautical mile from Vilangu shulli Island and when P.W.1 contacted that vessel, the Captain of the ship by name Dudnik Valentyn responded the reason for anchoring ship. He replied that they are waiting for bunkering and also told that they were in possession of arms and ammunition in the ship. Ex.P6 is the log book of Naikidevi. On the instruction of higher authorities P.W.1 to P.W.3 brought the ship to the VOC Port for investigation with the help of P.W.4 Tr.K.P.P.Kumar, contract pilot engaged by the Signal Station of Thoothukudi Port to bring the suspected vessel inside the Port. His personal log book extract is marked as Ex.P7. P.W.5 Tr.Kingston, Pilot, VOC Port, Thoothukudi, granted permission after consulting the Deputy Conservator Captain Amit Kaboor, who was on leave over phone to bring the vessel into the 2nd berth of VOC Port. P.W.7 Tr.Mohan Roy, VHF Operator, Signal Station, VOC Port has spoken about the procedure when the ship contacted them for permission to enter into the Port and also nominated the pilot P.W.5 for bringing the vessel Seaman Guard Ohio into the Port. Ex.P8 is the xerox copy of entries in log book maintained by him in the Signal Station. After entering the Harbour at about 1.30 p.m on 12th October 2013 joint committee consisting the officers of various departments like Customs, Immigration, Police Officers and DRI conducted a joint investigation.

46):-

P.W.8 Tr.K.Raghupathi, the then Inspector of Customs participated in the joint interrogation meeting on the instruction of their Superintendent on 12.10.13 at about 4.00 p.m at VOC Port main berth. He also participated in the joint interrogation meeting on the next day 13.10.2013 along with the officers of Customs, Coastal Security Force, Marine Police Department, Immigration Department and DRI. As per the orders of Superintendent of Police, Thoothukudi District P.W.9 Tr.Kandasamy, the then Deputy Superintendent of Police, District Crime Record Bureau, Thoothukudi visited the vessel Seaman Guard Ohio berthed in the 2nd berth of VOC port along with the Joint Interrogation Officers and also participated in the Joint Interrogation meeting. P.W.3 Tr.M.M.Mark, P.W.8 Tr.K.Raghupathi, P.W.9 Tr.Kandasamy, P.W.10 Tr.Anilkumar, P.W.44 Tr.Baskaran and some officials of Intelligence Bureau and SBCID, Thoothukudi were signed in the joint interrogation report Ex.P4. After completion of joint interrogation by the various departments, the vessel was handed over to the Tharuvaikulam Marine Police Station for further action and P.W.1 lodged a complaint with list of crew members and guards in the suspected vessel. The complaint and the list are marked as Ex.P2. The gazette notification of Ministry of External Affairs in S.O.1197 (E) is marked as Ex.P1. The list of arms and ammunition is marked as Ex.P3. The copy of minutes of report

given by the joint committee is marked as Ex.P4. The map showing the position of ship is marked as Ex.P5.

47):-

On receipt of information from Indian Coast Guard on 12.10.13 at about 2.00 p.m, P.W.10 Tr.Anil Kumar, Port Registration Officer at Thoothukudi Port visited the vessel Seaman Guard Ohio along with his team and he personally verified the passports and seaman books of 10 sailors and crew members. He also personally verified the passports and seaman books belong to the security guards and participated in the joint interrogation meeting held on 12.10.2013 and signed in the Joint Interrogation Committee report Ex.P4. Thereafter he sign off 8 crew members and 25 security guards on 18.10.2013 and also sign off 2 Ukrainians (sailor and crew) on 19.10.13 and entered the immigration seal. P.W.13 Tr.Krishnamoorthy, shipping agent received an appointment on 14.10.13 at night from Advanfort Company for supplying diesel, water, vegetables, meat and fish required for the vessel brought to the Port and assisted as an agent to Tr.Chacko Thomas, who is the direct representative of the company and submitted the documents related to the vessel and contacted with the Company. Their e-mail requests and the replies received containing 24 pages is marked as Ex.P18. P.W.14 Tr.J.V.Bharathi, Radio Inspector, Mercantile Marine Department, Chennai came to Thoothukudi Port at the request of Indian Coast Guard and Q Branch to inspect the vessel having arms and to fix

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the location of the vessel in a particular date in the month of October, he inspected the two deck log books Ex.P19 and Ex.P20 respectively and GPS log book Ex.P21 and concluded that the vessel was located only within 12 N.m, i.e. within the Indian territorial waters by comparing the log books with navigation chart in the ship. He further stated that, the vessel Seaman Guard Ohio has neither registration nor recognition from the ten concerns listed out in the Circular issued by the Ministry of Shipping, Ex.P22, for granting recognition to 25 years old vessel for entering into the Indian territorial waters. He further decided the position of the ship on a particular date is within 12 Nautical Miles. He also deposed in his evidence that, Indian Territorial Waters limit is upto 12 nautical miles from Coastal line and if any island is existing within 12 nautical miles, the territorial waters limit is to be measured from the coastal line of the island i.e it extended upto 12 nautical miles from that island. The ship entered into the Indian Territorial waters without having any valid license for possessing weapons and ammunition in the ship and to testify the fitness of the 25 years old ship it requires fitness certificate issued by any of the organizations mentioned in Ex.P23. Every ship above 25 years old should get fitness certificate from anyone of the 10 organizations approved by the Indian Government in Ex.P22. P.W.15 Tr.Nasareyan, who is the owner of the fishing boat No.219 has not supported the prosecution case and treated as hostile witness, but he admitted the ownership

of the boat and relationship between himself and A37 and A38. The original registration certificate of the above boat is marked as Ex.P24 and the mechanized boat bearing Registration No. IND TN 12 MM 219 is marked as M.O.9. P.W.12 Tr.Sekar, Assistant Director, Fisheries Department, Thoothukudi has stated that, on 11.10.13 at about 5.00 p.m two persons, Ranjith Kumar and Vijay approached him for permission to bring diesel to another boat through the mechanized boat No.219 belongs to them, for which he has not permitted and he informed the same to his Director and the xerox copy of that information is marked as Ex.P17.

48):-

P.W.18 Tr.Ganesan, Branch Manager, HDFC Bank, Chennai Paris Corner Branch stated that Vikaline Marine Service Private Limited Company maintained the current account No.50200000105782 in their bank. On 03.10.2013 US\$ 40,468 equivalent to Indian currency of Rs.25,00,000/- was credited in that account from a foreign account. On 09.10.13, out of Rs.25,00,000/-, Rs.10,00,000/- was transferred to the same bank's account number 11041050004770 maintained in the name of one Murugesh at Thoothukudi HDFC Bank Branch. The statement of account maintained in the name of Vika Line Marine Service Private Limited Company is marked as Ex.P34. P.W.19 Tr.James has not supported the case of prosecution and treated as hostile witness. P.W.20 Tr.Frank @ Franklin has also not supported the case of prosecution and treated as hostile witness. P.W.21

Tr.Rajeshkumar, Branch Manager, HDFC Bank, Thoothukudi would state that on 09.10.2013 Rs.10,00,000/- was received in the account number 11041050004770 maintained by their customer Tr.Murugesh from the account of Vika Line Marine Service Private Limited Company maintained at HDFC Bank, Paris Corner of Chennai Branch and Rs.7,00,000/- was paid to Tr.Murugesh from his account on the same day. The statement of account is marked as Ex.P35. On request of the Inspector of Police, Q Branch he froze that account and the letter of freezing is marked as Ex.P36. P.W.22 Tr.Baskar has not supported the prosecution case and treated as hostile witness. P.W.23 Tr.Ayyadurai, who is said to be working as a Manager in Muthuvel Petrol Bunk, Thoothukudi stated that, two years back one Muthusamy came to his petrol bunk and enquired for purchasing 5,000 litre diesel for the supply of generator of a ship. For that he replied the availability about 2,000 litre. On the same day at about 1.00 p.m he sold 2,000 litre diesel for Rs.1,12,680/- by filling the diesel in 10 iron barrels and issued a receipt No.72748, dated 11.10.2013 in the name of Shanathi Agencies. Carbon copy of that receipt is marked as Ex.P39. Another receipt number 72832, (date not mentioned) was issued in the name Ashok Electricals. Carbon copy of that receipt is marked as Ex.P38. The two bill books containing the above two receipts are marked as Ex.P37 series. He further stated that he sold only 1,900 litre diesel filled in 10 barrels each 190 litre, but issued a receipt for

2,000 litre. P.W.24 Tr.Appas speaks about the supply of 190 litre each in 10 barrels as per the instruction of P.W.23 and loading of the barrels in a TATA ACE vehicle.

49):-

P.W.25 Tr.Raja, Manager in Raku Ice & Cold Storage Company stated that on 10.10.2013 at about 5.20 a.m accused Maria Anton Vijay, Selvam and Keniston came to his company and bring Suguna chicken 146 kg packed in 7 yellow colour gunny bags, 16 Kg. mutton packed in 8 white colour gunny bags, 50 kg fish packed in two blue colour boxes for keeping in cold storage. On payment he issued a receipt No.1826 marked as Ex.P40 series. After one week the persons have not turned up for delivery of the goods, he enquired the accused Keniston about it. He replied that the goods belong to two persons came along with him and they were trapped in a case of American Ship and he only acted as a load man. P.W.26 Tr.Keniston stated that the TATA ACE vehicle registration No.TN 69AE 9849 is belongs to him. His cell phone number is 9843657082, but he has not supported the case of prosecution and treated as hostile witness. P.W.27 Tr.Muthusamy has also not supported the case of prosecution and treated as hostile witness. P.W.36 Tr.Ashok V.M.Kumar, Deputy Naval Provost Marshal at Tirunelveli Indian Naval Ship Kattabomman has stated that his nature of duty is to look after all Naval crimes committed by Naval person and also operations of the base. INS, Kattabomman, which is a communication base to transmit the

communication received from Naval Headquarters to submarine. He also stated that if any ship in distress, contact them through the Channel 16 at Chennai in turn the communication would send to the Kattabomman Naval base for taking further action to attend the need of the ship in distress on sea. In the month of October 2013 they have not received any such message from the vessel Seaman Guard Ohio in their navel base station.

50):-

P.W.42 Tr.Rameshkumar,

Inspector of Police, Marine Police Station, Tharuvaikulam has stated that, on receipt of the information from Q branch CID, Chennai, while P.W.1 Tr.Narendran who was on patrolling duty in Indian Coast Guard Ship, Naikidevi inspected the vessel Seaman Guard Ohio at 8° 52'04" North and 78° 26' 44" East in the Indian waters which had guns and ammunition without proper permission or licence and also received 1500 lr., diesel from a mechanized boat on 11.10.13 was found and the vessel was brought to VOC Port, 2nd berth and also participated in the Joint Interrogation Committee Meeting along with other officers and as per the decision of the Joint Interrogation Committee complaint Ex.P2 was lodged by the Assistant Commandant P.W.1 Tr.Narendran on 13.10.2013 at 18.00 hours. In turn P.W.42 registered a case in Cr.No.18/2013 of Tharuvaikulam Marine Police Station for the offences u/s. 25 (1B) (a) and (f) of Ams Act, 1959 and Section 7 (i) (a)(ii) of Essential Commodities Act 1955 r/w Section 2m (5) of Motor Spirit and High

Speed Diesel (Prevention of Malpractices Supply and Distribution), Order 1990. The original FIR is marked as Ex.P68 and he recorded the statements of witnesses. Thereafter as per the orders of the Director General of Police, Tamil Nadu Ex.P69 he entrusted the entire C.D file to the Inspector, Q Branch along with his letter Ex.P70.

51):-

P.W.44 Tr.Baskaran, Inspector of Police, Q Branch took up investigation on 16.10.13 as per the order of the Director General of Police, Tamil Nadu Ex.P69 and order of the Superintendent of Police, Q Branch C.I.D in C.C.11895/X/2013/C, dated 16.10.13 Ex.P73. He visited the vessel berthed at VOC Port in the presence of P.W.11 Tr.Muthuraj Banugopan, Village Administrative Officer, Maramangalam and another Village Administrative Officer Tr.Sivaperumal on 16.10.2013 at about 2.00 p.m visited the vessel Seaman Guard Ohio and prepared observation mahazar Ex.P14 and rough sketch Ex.P74. On the same day he asked the owner concern about the details of arms and ammunition maintained in the vessel through e-mail Ex.P87. On 17.10.2013 at 11.00 p.m the Inspector of Police seized 35 guns M.O.6 series, 102 magazines M.O.7 series and 5682 ammunition M.O.8 series from vessel by preparing seizure mahazar Ex.P16 in the presence of P.W.11 Tr.Muthuraj Banugopan and witness Tr.Sivaperumal. P.W.11 Tr.Muthuraj Banugopan also speaks about the preparation of observation mahazar, seizure of vessel, arms and

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ammunition and thereby supported the prosecution case. On the same day he also seized log books and Chief Officer's deck log book from the vessel handed over by the accused 2nd officer Radhesh Dhar Dwivedi under seizure mahazar Ex.P75 and got an acknowledgment. The carbon copy of that acknowledgment is marked as Ex.P76. He also received seaman books Ex.P78 series (belongs to A1 and A3 to A11) under mahazar Ex.P77. The above 10 seaman books are marked as Ex.P78 series. He handed over the seized guns, magazines and cartridges to the C.I.S.F Armoury at V.O.C Port and got acknowledgment Ex.P79.

52):-

On 18.10.2013 he seized 25 passports and seaman books belong to the guards from the accused Paul David Dennish Towers under atthachi Ex.P80. The accused Paul David Dennish Towers had signed in the Annexure Sheet Ex.P81. On the same day at 07.45 a.m he arrested 33 accused in the vessel except the Captain and the Chief Engineer and intimate the arrest to the agent P.W.13 Tr.Krishnamoorthy, took necessary steps to inform the Department of Foreign Relations and produced the accused before the Judicial Magistrate No.2 to send them for judicial custody and the passports had been sign off by the Immigration Officer P.W.10 Tr.Anilkumar. On 19.10.13 he went to the vessel for investigation along with P.W.11 Tr.Muthuraj Banugopan and witness Tr.Suresh Kumar, but he was unable to make search of the cabin, since it was closed and refused to give the key. He prepared a

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mahazar to that effect and the carbon copy of that mahazar is marked as Ex.P82. Further he arrested 1st and 3rd accused and taking steps to inform the arrest to the Department of Foreign Relations. On the same day at 20.30 hours he arrested A36 Maria Anton Vijay near Bell Hotel, Thoothukudi and recorded the confession statement given by A36 in the presence of P.W.16 Tr.Marisankar, Village Administrative Officer and P.W.17 Tr.Perianayagam, Village Assistant and came to know that 2,000 lr. diesel was supplied to the vessel. The admissible portion of the confession statement of A36 is marked as Ex.P28 and seized TATA ACE vehicle M.O.10, which was used for transmitting the diesel barrels in the presence of P.W.16 and P.W.17 under attachi Ex.P29.

53):-

On 20.10.13 at 5.30 a.m he arrested A37 Vijay and A38 Ranjithkumar and recorded the confession statements in the presence of P.W.16 and P.W.17 and came to know the supply of 2,000 lr diesel was done by the accused Maria Anton Vijay in 10 barrels through the mechanized boat T.N. 12MM 219 M.O.9. The admissible portion of confession statement of A37 is marked as Ex.P30 and on the basis of Ex.P30, he seized mechanized boat M.O.9 under attachi Ex.P31. On the same day at 9.15 a.m he arrested A39 Murugesh near Karmaraj College, Thoothukudi and recorded the confession statement in the presence of P.W.16 and P.W.17 and came to know that some amount

was received in the bank account of the accused Murugesh for the supply of diesel and sent A36 to A39 to the judicial custody. He arrested the accused Selvam opposite to Madura Coats Mills in the presence of P.W.16 and P.W.17 and recorded his confession statement. Further on 22.10.2013 he seized two bill books Ex.P37 series from P.W.23 Tr.Ayyadurai, Manager, M.V.S.Muthuvel & Sons in the presence of P.W.16 and P.W.17 under attachi Ex.P83. He arrested the accused Selvam in the Nehru Park and recorded his confession statement in the presence of P.W.16 and P.W.17. P.W.16 Tr.Marisankar and P.W.17 Tr.Periyanayagam speaks about the arrest of A36 to A40, recording confessions and seizures and thereby supported the prosecution case. P.W.17 Tr.Periyanayagam has also spoken about the seizure of bill books from Muthuvel Petrol bunk. The signature of P.W.16 found in the confession Statements of A37, A39 and A49 are marked as Ex.P25, Ex.P26 and Ex.P27 respectively. The signatures of P.W.17 found in the confession statements of A39 and A40 are marked as Ex.P32 and Ex.P33 respectively. On the same day he seized food items which were kept at Raghu Cold Storage under attachi Ex.P41 and Ex.P40 series receipt for keeping food items in the Cold Storage from Tr.Iyyappan, Manager of Raghu Cold Storage, Therespuram, Thoothukudi in the presence of P.W.25 Tr.Raja and witness Tr.Iyyappan. Because of decomposing nature of food items, destroyed them items by giving a requisition Ex.P84 to the Judicial Magistrate. On 24.10.13

he seized the vessel Seaman Guard Ohio which was berthed in the Thoothukudi VOC Port in the presence of P.W.11 and witness Tr.Sivaperumal under attachi Ex.P15. The vessel in the photograph enclosed along with Form-95 is marked as M.O.5.

54):- On 27.10.13 he has taken A2, A4 and A5 of you under police custody and recorded the confession statement given by A5 Radhesh Dhar Dwivedi in the presence of P.W.28 Tmt.Alwar, Tahsildar, and witness Tr. Gopal, Revenue Inspector and also recorded the confession statement given by A2 Paul David Dennish Towers in the presence of above witnesses and the admissible portion of confession statement of A2 is marked as Ex.P42. As per the admissible portion of the confession statement of A5 Ex.P43 and he seized the documents containing 12 files having 962 pages Ex.P10 series and the electronic goods C.P.U. M.O.1 and Digital recorder M.O.2 from the bridge room of the vessel under attachi Ex.P9 from A5 in the presence of PW8, PW28, PW29 Tmt. Latha, Inspector(Technical), Police Telecommunication Department and witness Special Tahsildar, Tr.Veerassamy and he also seized the documents containing 10 files having 2,315 pages Ex.P.12 series from the TDO office in the vessel on the identification of the accused Paul David Dennish Towers in the presence of witnesses under attachi Ex.P11. Since there was some violation of Rules under Essential Commodities Act during the investigation of the Inspector of Police, Q Branch P.W.43

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Tmt.Sunanda Bhagavathi, the then Deputy Superintendent of Police, Q Branch, C.I.D, Tirunelveli on 27.10.13 herself along with Q Branch Inspector, Assistant Director Tmt. Vijaya Latha, Assistant Director of Mobile Forensic Science Laboratory, P.W.28 Tmt.Alwar, P.W.8 Tr.Ragupathi, and Tr.Veerassamy, Special Tahsildar went to the 2nd berth of the VOC Port, wherein the vessel berthed and seized 10 green colour tin barrels in which letters written as "castrol" M.O.4 series from the deck portion of the vessel by preparing athachi Ex.P13 on the identification of A5 Radhesh Dhar Dwivedi who was under police custody. The admissible portion of the confession statement Ex.P43, and also she seized the diesel remained in the above 10 barrels in two glass bottles, sealed and pasted a label containing the details of the case and had given a requisition Ex.P72 to the Judicial Magistrate No.I, Thoothukudi on 31.10.13 for sending the sample diesel of one bottle to the Hindustan Petroleum Corporation, Chennai for getting report after analysis. Requisition is marked as Ex.P72. P.W.31 Tr.Narayanan, 2nd Grade Constable, Armed Reserve Police who has got experience of recording videograph, on 27.10.2013 as per the orders of District Armed Reserve Police along with another Constable P.W.32, Tr.Balasubramanian received one video camera each from their District Technical Branch and appeared before the Inspector, Q Branch at VOC Port. They recorded the proceedings of seizure of articles by the Q Branch Inspector in separate memory cards and clubbed the recorded

materials into a single DVD. That DVD is marked as Ex.P45 subject to objection raised by the side of defence as non-production of memory cards.

55):-

On 30.10.2013 handed over the 10 empty barrels to the court, sent the ½ litre sample diesel for analysis through Court and handed over another one bottle contains sample diesel to P.W.30 Tr.Mariappan for safe custody at his petrol bunk Balaji Fuel and Service at Thoothukudi and P.W.30 received it by issuing acknowledgment Ex.P44. The bottle contains sample diesel is marked as M.O.3. As per the requisition letter Ex.P59 received from the Judicial Magistrate No.I, Thoothukudi dated 31.10.13, P.W.37 Tr.Kamaraj, Senior Manager (Quality), Hindustan Petroleum Corporation Limited, Chennai analysed the diesel received in a bottle and opined that, the diesel sent for analysis is Bharath Stage 3 High Speed Diesel, which is used for diesel engine and sent his report Ex.P60 to the court. On 27.10.13 P.W.44 Inspector of Police enquired the details about Rules relating to possession of arms in ship to P.W.39 Tr.Senthilkumar, Joint Director, Central Shipping Department and P.W.39 replied that as per the circular No.NT/Circular 1 of 2011, dated 28th September 2011 every ship enter into Indian waters has to furnish prior intimation to the Indian Coast Guard, Indian Navy and Customs Department. After the receipt of any such intimation, the arms and ammunition would be sealed by the Naval Authorities. The circular to that effect is

marked as Ex.P63. P.W.39 also visited the Seaman Guard Ohio Vessel. As per the circular issued by the Central Government in GSR 311 (E) dated 20.04.2012 Ex.P64 notification consists the member of countries of International Association of Classification Society which includes India. The organization was constituted separately in United Nations and issued the guidelines, convention and recommendations. Those were noted in the guidelines issued in Sierra Leone country and the same is marked as Ex.P65. As per the circular Ex.P64 if anyone of the vessel had completed 25 years from the date of its manufacture should get prior permission for entering into Ports. No permission was obtained for possessing the arms in Seaman Guard Ohio vessel and also no prior permission was obtained for entering into Indian waters and also not informed to the Indian Naval Force, Coast Guard and Indian Customs Department.

56):-

On the basis of requisition filed by P.W.44 Inspector of Police P.W.38 Tr.Baskar, Assistant Director & Fire Arms Expert received a letter from the Judicial Magistrate No.I, Thoothukudi in his office on 30.10.2013 requesting to submit a report after analysing the weapons and ammunition. The letter of the Court is marked as Ex.P61. The materials were received by him in sealed boxes. He conducted analysis and submit a report. In his report he has stated that samples 1 to 44 are arms and magazines and 45 to 49 are unused cartridges. Samples 1 to 4 are 7.6 x 63

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mm spring field semi automatic rifles manufactured in Belgium. Sample Nos. 6 to 11, 13 and 14 are 7.62 x 39 mm size semi automatic rifles. Item No. 6 to 11 were manufactured in Czech-Republic, sample 13 and 14 were manufactured in Russia, sample 16 to 21 are 7.62 x 51 mm caliber selected automatic rifles manufactured in Germany, sample No. 23 to 27, 29 to 32, 34 to 36 and 40 are 7.62 x 51 mm caliber are semi automatic rifles. Sample 23 to 27, 29 to 31, 34 to 36 were manufactured either in England or in Australia. Sample No.32 was manufactured in Italy. Sample No.40 was manufactured in Germany. Sample No.37, 38, 42 are 5.56 x 45 mm caliber semi automatic rifles. Sample 37 and 38 were manufactured in Italy. Sample No.42 was manufactured in Germany. Sample No.43 are 9 x 19 mm caliber is a semi automatic pistol manufactured in Austria. Out of the sample Nos. 1 to 4, 6 to 11, 13 and 14, 16 to 21, 23 to 27, 29 to 32, 34 to 38, 40, 42 and 43 are firearms classified under Indian Arms Act, 1959. Sample Nos. 16 to 21 are restricted and prohibited firearms under Arms Act, 1959. He also furnished the capacity of magazines. Sample No.5 contains 10 rounds in numbers, sample No.12 contains 30 rounds, sample No.15 contains 30 rounds, sample No.22 contains 20 rounds, sample No.28 contains 20 rounds, sample No.33 contains 4 rounds, sample No.39 contains 30 rounds, sample No.41 contains 20 rounds, sample No. 44 contains 17 rounds and those are suitable for the rifles, sample Nos.1 to 4, 6 to 11, 13, 14, 16 to

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21, 23 to 27, 29 to 31, 34 to 36, 32, 37, 38, 40, 43 respectively. The cartridges in sample No.45 are of 7.62 x 39 mm caliber can be used in sample No. 6 to 11, 13 and 14. In sample No.46 measuring 7.62 x 63 mm caliber (0.30 – 0.6 spring field) can be used in sample No.1 to 4 rifles. Sample No.47 cartridges measuring 7.62 x 51 mm caliber can be used in sample No.16 to 21, sample No.23 to 27, sample No.29 to 32, sample No.34 to 36 and 40 rifles. Cartridges in sample No.48 measuring 5.56 x 45 mm caliber can be used in sample No.37, 38 and 42 rifles. Cartridges in sample No.49 measuring 9 x 19 mm caliber used in sample No.43 pistol. Sample Nos. 45 to 49 are all manufactured in Arms Industry bears the Nationality and its symbols.

57):-

P.W.38 further stated in his report that, combustion products of smokeless powder were detected in the barrels of sample Nos. 1 to 4, 6 to 11, 13, 14, 16 to 21, 23 to 27, 29 to 32, 34 to 38, 40, 42 and 43 which indicates that the guns were used for firing previously. Test firing was conducted in all the above gun items, using appropriate cartridges from item 45 to 49 and 9 cartridges from the laboratory stock and found that the guns are in the working condition and submitted a report in Ex.P62 to the Court along with above items including empty cartridges which were used for test firing. P.W.38 further deposed that, item No.16 to 21 are prohibited G3 model guns. On touching the trigger all the loaded bullets would be delivered. So

the model is prohibited, for which licence could not be obtained in India and other above fire arms can be used after getting permission under Arms Act. On 04.11.13, he handed over C.P.U and digital recorder with a requisition Ex.P85 for sending the same to the Forensic Sciences Department for analysis through the letter of the court Ex.P86 and the analysis report Ex.P89 was received by the Court.

58):-

On receipt of a letter from the Superintendent of Police, Q Branch dated 05.12.13, P.W.33 Tr.Sunil, Alternate Nodal Officer, Vodafone has furnished call details of vodafone cell phone numbers 9786925316 and 9585077909 between the period from 01.09.2013 and 12.10.2013. He also furnished the details of customer application form, subscribers details, ID proof, call details with certificate u/s 65 of Evidence Act. The file contains 125 pages is marked as Ex.P46. The incoming call details on 11.10.2013 is marked as Ex.P47. The above two cell phone numbers were issued in the name of N.Terricita residing at Thoothukudi and Maria Anton Vijay, Thoothukudi respectively. P.W.34 Tr.Vijay, Nodal Officer/Assistant Manger, TATA Tele Services has furnished call details of TATA Docomo Cell Phone number 7200070699 between the period from 1.9.13 to 12.10.13. The particulars contains 54 pages is marked as Ex.P48 with objection for non-production of necessary certificate and also stated that the cell phone number was issued in the name of R.Munithevan and

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also furnished the call details Ex.P49. On 09.10.2013 at about 11.32 a.m incoming call received in the above cell phone from another cell phone No. 9629118562. That portion is marked as Ex.P50 and on the next day another incoming call from the same number at 21.31 p.m also received and that portion is marked as Ex.P51. On the next day 11.10.2013 from the cell phone No. 7200070699 make a contact with cell phone No. 9629118562 at 4.51 a.m. That outgoing call portion is marked as Ex.P52. On the same day from the same number another outgoing call at about 15.27 p.m is marked as Ex.P53.

59):-

P.W.35 Tr.Vijayakumar Raja, Assistant Manager, Aircel has stated that a letter dated 05.12.13 from the Office of Superintendent of Police, Q Branch, CID, Chennai was received by him on 09.12.13. He furnished the particulars of call details and customer application form, ID proof for the Cell Phone number 9768684041 and also call details for the period between 01.09.2013 and 12.10.2013. He furnished the particulars as per the letter which contains 36 pages is marked as Ex.P54 with objection. The call details portion on 10.10.2013 between the cell phone numbers 9768684041 and 7200070699 at 18.53 p.m for 58 seconds is marked as Ex.P55. On the same day at 21.40 hours the contact extent 34 seconds and 74 seconds at 21.08 hours. That call details portion is marked as Ex.P55. The portion of an outgoing call to No.9585077909 at 21.40 hours and an outgoing call to

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9786925316 at 23.08 hours on 10.10.13 is marked as Ex.P56. On 11.10.2013 contact was made from 9768684041 with cell phone No.7200070699 at early hours 00.19 a.m for 276 seconds. That call detail portion is marked as Ex.P57. On the same day another contact was made between the same numbers for 223 seconds and another contact was extended for 256 seconds at 0.38 hours and also contact was made between the same numbers at 3.15 a.m for 61 seconds. That portion of call details is marked as Ex.P58.

60):-

On receipt of requisition from the Superintendent of Police, Q Branch P.W.40 Tr.Jeyakumar, Nodal Officer, Bharathi Airtel Company has furnished the call details and particulars of subscribers for the mobile numbers 9894242659, 9003894322, 9600013569, 8754907547, 9629118562 and 9791012451, call details for the period from 01.09.2013 to 12.10.2013 and furnished the particulars in 244 pages marked as Ex.P66 and also stated that the cell phone No. 9791012451 was issued in the name of Lawrence Gnanaprakash, residing at Thoothukudi, cell phone No. 9003894322 was issued to Ranjith Kumar, who is the resident of Thoothukudi, another cell phone No.9600013569 was issued to Sudandira, who is the resident of Chennai, another cell phone No. 9629118562 was issued in the name of Ramesh Kumar, resident of Madurai, cell phone No.9894242659 was issued to Maria Anton Vijay, resident of Thoothukudi and also furnished the incoming call and outgoing call

details of the cell phone numbers as requested by the Superintendent, Q Branch Police.

61):- On 17.12.13 P.W.44 Inspector of Police sent a requisition letter to the District Collector, Thoothukudi for getting permission to institute the case under The Arms Act, 1959. On receipt of requisition PW.41 Tr. Ravikumar, District Collector, Thoothukudi, who is the sanctioning authority sought additional details from PW.44 Inspector on 26.12.13 and after receipt of the same on 28.12.13, PW.41, the District Collector examined all the records and additional details furnished by the Q Branch Inspector, C.D file, ballistic report, copy of FIR, complaint, statement of witnesses, confession statements, connected records and connected Laws and after application of his mind and came to a conclusion that prima facie case is made out against the accused as a competent authority in exercising the powers conferred under Section 39 of the Arms Act, 1959 and he accorded sanction for the institution of prosecution for the commission of offence u/s 25 (1-B), (a) r/w 3 of the Arms Act, 1959 against the accused Advanfort Company and Mohamed Frazulla, who are the responsible for control and administration of the vessel Seaman Guard Ohio and for having dishonestly allowed to keep the fire arms and ammunitions in the vessel and A1 to A35 who are responsible for physical and joint possession of fire arms and ammunition in the vessel for the commission of offence u/s 25 (1-B), (a) r/w 3 of the Arms Act,

1959 and also accorded sanction for the institution of prosecution against the accused A36 to A43 for being co-conspirator with Advanfort Company, Mohamed Frazulla, and A1 to A35 for the commission of offence u/s 120-B of IPC, Section 3 r/w. 25(I B) (a) of the Arms Act, 1959. Order of sanctioning the prosecution is marked as Ex.P67. During his cross examination by the defence counsel regarding the location of the ship within the territorial waters of India P.W.41, the District Collector identified the location of the ship in a xerox copy of map Ex.P71.

62):- Investigating Officer P.W.44 examined all the witnesses of this case and recorded their statements and produced all the properties and documents seized then and there. He has filed the section alteration report Ex.P88 after including the section 120-B of IPC as an additional section of Law on 21.10.13. He has stated that, the other accused of this case Advanfort Company and Mohamed Frajallah, (i.e. then A1 and A2) and A1 to A35 including the crew members, Captain of the vessel, A38 to A45 who are supplied diesel to the vessel illegally. He further stated that, the accused A1 to A35 possessing 35 guns, 102 magazines and 5,682 cartridges in the vessel without any licence within the distance of 12 N.m from the baseline in the Indian territorial waters without any intimation to the Port and also received 2,000 litre diesel which was sold illegally by A36 to A43 filed the Charge sheet against the accused u/s. 33, 35 and 3 r/w

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Section 25 (1-B) (a), Section 7 r/w 25 (1-A), Section 10 r/w 25 (1-B), (f) of the Arms Act, 1959 and Rule 13 of the Arms Rules, 1962, Section 36 (2) r/w 30 of The Arms Act, 1959 and u/s 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 IPC. The prosecution evidence was closed with the evidence of P.W.44.

63):-

When the accused were examined u/s 313 (1)(b) of Cr.P.C, they denied the evidences appearing against them and replied that at that point of time, the vessel was in International Waters. The measurements are not correct. They never entered into the territorial waters nor intended to enter. The prosecution had suppressed the valid end users certificate (licences) for the weapons. Ex.P5 plan is outdated, not in force and usage. After the amendment it is a manipulated document. The vessel is a anti-piracy vessel. The weapons were under safe custody and under lock and key forming part of the vessel. No accused made any confession and answered for some questions as true and answered as false and denied for the remaining questions. The contents of Ex.P64 is misconstrued and the circular Ex.P63 is not applicable for the vessel on voyage and there is no violation. The sanctioning of prosecution issued without application of mind is illegal, bad in law. The registration of the case

and investigation by the prosecution are all void of initio and they are not examined any witness on their side.

64):-

A1 and A2 filed their separate written statements during the examination u/s 313(1)(b) Cr.P.C.. A1 would stated that the boundaries of sea is not calculated under the globally accepted ever-end ellipsoid. They are entitled for the benefit of doubt regarding the location of ship at the time of interception and their definite case is that they were anchored at International Waters for bunkering and topping up provisions as per the instruction of Advanfort Company and also stated that they have established that the vessel is a anti-piracy vessel and it was intercepted only at international waters and only by the authorities brought them to Thoothukudi Port through the territorial waters of India by producing documents u/s 57(13) of Indian Evidence Act for taking judicial notice.

65):-

A2 would state that in his written statement that the copies of end users certificate for 18 weapons have already been marked as Ex.D64, since the prosecution had suppressed the end users certificate relating to 17 remaining weapons. He acquired documents from the authorities concerned and submitted for taking judicial notice u/s 57(6) of Indian Evidence Act and also stated that all the 35 weapons are semi automatic in nature as per the records contained in end users certificate Ex.D66 and as per the evidence of ballistic expert, since defence is

effectively proved that the 35 weapons are forming part of the ordinary armament of the vessel and exempted from the purview of Indian Arms Act is defined u/s 45 (a) of the Act. The prosecution has suppressed the genesis and origin of the flexible situation of the case. At that score alone an adverse inference can be drawn against the prosecution u/s 114 (g) of the Indian Evidence Act.

66):- During the cross-examination of P.W.8-Tr.Ragupathi by the learned defence counsel of A2 to A11, the endorsement made in the page No.43 of 4th file of Ex.P10 series i.e. Pre arrival information of security (ISPS at Cochin Port etc) is marked as Ex.D1. During the examination of P.W.10-Tr.Anilkumar, he identified the seaman books of A2, A12 to A35 and marked as Ex.D2 to Ex.D26 respectively and passports of A1 to A35 are marked as Ex.D27 to Ex.D61 respectively. During the cross-examination of P.W.13-Tr.Krishnamoorthy by the learned counsel of A2 to A35, xerox copy of certificate of insurance relating to Advanfort Company is marked as Ex.D62, xerox copy of interim certificate of classification relating to the vessel Seaman Guard Ohio is marked as Ex.D63 and copy of conditions relating to licence of arms (11 Nos.) are marked as Ex.D64 series. During the cross-examination of P.W.39-Tr.Senthilkumar by the learned counsel of A2 to A35, original provisional certificate of registration of Seaman Guard Ohio vessel is marked as Ex.D65. During the cross-examination of P.W.28-Tmt.Alwar by the learned counsel of A2 to A35, the file No.7 relating

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1959 against A2 and A6 to A35 and under Order 2(f)(vi) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005, dated 19th December 2005 r/w 7(1)(a)(ii) of Essential Commodities Act 1955 against A36 to A43 beyond all reasonable doubts?

68):-

Point :-

On 11.10.2013 Indian Coast Guard, Thoothukudi received an information that one vessel named M.V.Seaman Guard Ohio was stationed near Vilangu Shulli Island which is located within the territorial sea waters of India. It also reveals that one unidentified boat from Thoothukudi Coast was suspected to have sailed to the vessel for doing some illegal activities on the vessel with the connivance of crew members of the vessel. On the basis of information received, the Indian Coast Guard Station Ship Naikidevi intercepted the suspected vessel. On reaching there, the sleuths of the Coast Guard questioned the crew members and enquired as to whether they possessed any arms, ammunition, guards etc., on the vessel? On being questioned, the crew members candidly admitted that they do possess and were carrying with them arms and ammunition on the vessel. On such disclosure being made admitting therein that the vessel was carrying arms and ammunition, the Coast Guard Ship directed M.V.Seaman Guard Ohio to weigh anchor and proceed to Thoothukudi Port for further investigation by the concerned agencies. The vessel was

accordingly escorted under the supervision of Captain P.W.4 Tr. K.P.P.Kumar along with 3 armed guards of the Indian Coast Guard Station. The vessel reached the Port around 13.25 hours on 12.10.2013. The joint interrogation team was accordingly constituted comprising of representatives of Indian Coast Guard, Customs Department and other agencies. The team members visited the vessel and undertook thorough inspection and interrogated the crew members, which reveals that the vessel was carrying huge quantity of arms and ammunition without any valid authorization and documentation by the crew members and also the vessel had received in bulk quantity of diesel oil from one Indian fishing boat illegally. Then the vessel was handed over to Coastal Security Group, Thoothukudi. P.W.1 Tr.Narendran, Assistant Commandant lodged a complaint. On receipt of the report, the Inspector of Police Marine Police Station, Tharuvaikulam registered the First Information Report and it requires deeper investigation, transferred the case to Q Branch, CID for further investigation. The Q Branch inspector took up the investigation and completed it by filing charge sheet against the accused.

69):- **The questions to be decided involved in the case are ;**

1) Whether the vessel in question was found in Indian sea waters, or outside Indian territorial waters?

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2) Whether the vessel was in distress and if so, for what reasons, what steps were taken by the crew members on the vessel to come out of the distress?

3) Whether steps allegedly taken in that behalf were in conformity with the relevant clauses of UNCLOS which govern the subject?

4) Whether the accused persons were having any valid licences and certificates issued by statutory authorities under the applicable laws so as to enable them to possess and carry with them the arms and ammunition including prohibited categories of arms and ammunition on the vessel?

5) What was the nature of business in which the vessel was engaged and whether owner of the vessel was having a licence to do that business which enabled them to possess and carry such arms and ammunition in huge quantity?

6) why the amount of 40476 US\$ was credited by the owner of the vessel from US to the accounts of some accused persons in their accounts in India ?

7) Whether such amount was used for purchase of diesel which was recovered from the deck of the vessel or it was used for doing some other illegal activities?

70):-

Question No.1 :-

The prosecution alleged that the location of the vessel in question was found in Indian sea waters. P.W.1 to

P.W.3 have spoken about the location of the ship on 12th October 2013 at 3.30 hours early morning within the territorial waters of India. P.W.1 to P.W.3 are the sleuth members working in Coast Guard Ship which was entrusted with the patrol duty within the area of Manapadu to Sethukarai. While on their patrolling duty, P.W.6 received an intelligence report from their head office at Chennai about the presence of suspicious vessel within the territorial waters. On receiving the message, P.W.1 to P.W.3 had intercepted the Seaman Guard Ohio vessel at 10.8 nautical mile from Vilangu shulli Island and 3.8 nautical mile away from the base line promulgated by the Ministry of External Affairs, Government of India notification Ex.P1. No question was raised by the defence during the cross examination of P.W.1 regarding the denial of the location of the ship within the territorial waters of India. But admitting the presence in Indian waters by raising questions regarding innocent passage and other things. When the defence counsel has not raised any suggestion that the ship was not found in the Indian waters amounts to admission. The learned Public Prosecutor relied on by the citation for that point **1968 Madras Law Journal Reports Criminal page 122** which was followed by referring the ruling **1965 MLJ Crminal page 935 [Faddi /vs./ State of Madhya Pradesh]**. The learned counsel for other accused also adopted the cross examination of A2 to A11. No additional question was raised to rebut the fact that the vessel was intercepted

by P.W.1 within the Indian territorial waters on a particular day. P.W.2 Tr.M.M.Mark, Commanding Officer also corroborated the evidence regarding the position of the vessel at 10.8 nautical miles from Vilangu shulli Island within the territorial waters of India. No question by denying the location within the territorial waters was raised to him also.

71):-

The main contention of the learned counsel for the defence is that, Ex.P5 is an outdated map and also the method of Everest spheroid is also outdated for fixing the baseline. To find out the location of a ship or vessel in the sea that, whether it comes into territorial waters or contiguous zone or exclusive economical zone to be decided. In Ex.P1, the copy of notification issued by the Ministry of External Affairs and Gazette of India dated 11th May 2009 coastal points are mentioned for measuring the location. In which the coastal points in Thoothukudi are mentioned bearing the location of point No.51, Tuticorin Jetty light house and point No.52 Nallathanni Island. Now the defence counsel raised a question that the baseline was not drawn as per the guidelines issued by UNCLOS. The accused were repeatedly raising some questions as the ship is not in territorial waters of India before the Honourable High Court as well as the Honourable Supreme Court of India. As it is a question of fact, the same question may be raised before this Court also, which should be

decided by this Court as a trial court on the evidences put-forth by both sides.

72):-

On careful reading of oral testimony of P.W.1 to P.W.3, who are the Officers of Indian Navy in official capacity appeared before this Court stated some facts with regard to finding out the ship, interception of the ship, fixing the location of the ship and handed over the matter to the Tharuvaikulam Marine Police Station for further action. When the witnesses are deposed regarding the routine official duty, the initial presumption is the statement of the witnesses are genuine, unless it was proved by the defence by rebutting their evidences. For that the learned counsel for the defence raised only the plea of Ex.P5-Map is outdated. Both parties relied on the citation reported in **(2013) 4 Supreme Court Cases, 721 [Republic of Italy /vs./ Union of India]**. Honourable Supreme Court decided the points regarding the incident took place at a distance of about 20.5 nautical miles from the coast line of a State of Kerela, a unit within the Indian Union. The incident occurred not within the territorial waters of the coast line of the State of Kerela, but within the contiguous zone, over which the State Police of the State of Kerela ordinarily has no jurisdiction. The extension of section 188-A of the Criminal Procedure Code to the exclusive maritime zone of which the contiguous zone is also a part did not also extend the authority of Kerela Police beyond the territorial waters, which is the limits of

its area of operations. Even the provisions of Article 100 of UNCLOS may be used for the same purpose whether the accused acted on the misunderstanding that the Indian fishing vessel was a pirate vessel which caused the accused to fire is a matter of evidence which can only be established during the trial. Under sections 6 and 7 of Maritime Zones Act, 1976 which provides that Indian Sovereignty extends over its territorial waters while the position is different in respect of the exclusive economic zone. The incident of firing from the Italian vessel on the Indian shipping vessel having occurred within the contiguous zone. The Union of India is entitled to prosecute the Italians. The sovereignty of a "Coastal State" extends to its territorial waters is also a well accepted principle of International Law. Though there is no uniformity shared legal norms establishing the limit of territorial waters. U/s 3(1) of the territorial waters, continental shelf, exclusive economic zone and other Maritime Zones Act, 1976 declares that sovereignty of India extends and has always extended to the territorial waters of India u/s 3(2). The limit of the territorial waters is specified to be 12 nautical miles from the nearest point of the appropriate baseline. Section 3 declares that the sovereignty of India extends and has always extended to the territorial waters.

73):-

There is some guidelines for drawing the baseline to fix the location of the disputed place. Maritime belt or territorial waters is that belt of the sea which is

adjacent to the Coastal State and over which the coastal State exercises sovereignty. Coastal State has sovereignty over its maritime belt. The Coastal State also exercises penal jurisdiction (Article 15 of U.N. Convention on the Law of Sea, 1982). Articles 5 to 7 of UNCLOS defines fixing of the location in the sea. Article 5 defines the normal baseline as

“except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large scale charts officially recognized by the Coastal State”.

Article 6 explained that

“In the case of island situated on atolls or of islands having bringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the Coastal State”.

74):-

Ex.P5-the Map was prepared as a large size recognized by the Government. In which two light houses in Thoothukudi Port jetty light house and Pandiyan light house are noted. The Pandiyan light house not mentioned as coastal point in Ex.P1-notification. The plea of the defence counsel is to consider the coastal point of Pandiyan light house which is not mentioned in the

gazette of Indian Government could not be accepted. Now whether the baseline drawn on the large size of the Map-Ex.P5 as defined in Article 6 and 7 of UNCLOS. Under Article 7, how to draw the State baseline was explained. Our Thoothukudi coast land is named as "Gulf of Mannar" is known for its rich Marine Biodiversity. Nearly 3600 species of Marine Organisms are inhabiting in the area. Its Coral reefs, Sea grass beds, Mangroves, Islands beaches, pearl oyster beds, Molluscans are known through out the world and also harbours nearly 220 species of birds, of which most of them are Migratory shore birds. The rich mangroves, Rocky out crops, mud flats, lagoons, wide inter-tidal zone, Sandy beaches, Back waters, Brackish waters existing in the area provides suitable habitat for their feeding and breeding and also so many islands are existing. The names of the island existing above the water level are called as Nalla Tanni Tivu, Musal Tivu and Van Tivu which are still existing. Even though they are reduced in size on recent days, but still they are existing. While drawing the baseline for fixing the location of a vessel or ship, the guidelines in Article 7 of UNCLOS to be followed. Article 7 (1) of UNCLOS is reads as follows :--

"1) In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing

the baseline from which the breadth of the territorial sea is measure.

2) Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.

3) The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

4) Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.

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5) Where the method of straight baselines is applicable under paragraph I, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage.

6) The system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone”.

The above article of UNCLOS explained the method of drawing the baseline.

(1) This method of measuring the territorial sea by straight baselines can be used where the coast line is not flat but irregular

(2) If there is any delta or other conditions on the coast line and because of the presence of such delta, the coast line is not fixed. (Example during flooding, the sea may appear to start at a point nearer than at normal times). So the baselines shall be drawn from the furthest point of land, though such point may be covered by sea in some other period like season etc.

3) The baseline should be drawn as far as possible in the general direction of the coast.

4) Baselines should not be drawn from a point on low tide elevations, except light house or similar installations, which are

permanently above the sea level have been built on them such low-tide elevations or where such a drawing of baselines has received general international recognition.

5) Economic interests shall be taken into account while determining particular baseline.

6) Baselines may not be drawn such that it cuts off the territorial waters of another State from high seas or an exclusive economic zone.

75):-

Whether Ex.P5 was drawn as per the guidelines given above?. It was drawn by selecting the jetty light house, which is a coastal point as per the gazette notification- Ex. P1. The accused cannot raised objections against such selection of coastal point by including another light house as Pandiyan light house, which was not mentioned in the gazette notification. Regarding the 2nd point, the presence of small islands in the Gulf of Mannar is admitted. By selecting the one of such island existing as Nalla Tanni Tivu cannot found fault on it. Come to the 3rd point, the baseline should be generally as far as possible in general direction of the coast. Likewise, it was drawn as slanding line in the direction of the coast from South to North-East. Come to the point No.4, the coastal point of jetty light house mentioned in the gazette notification of the Government of India and it should be accepted for drawing the baseline. Likewise, the jetty light house was selected for the purpose. Next point No.5 explained the interest

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such as economical, geographical and Wild life. As I have already pointed out that the area is declared as prohibited area. The drawing of baseline is only for safeguarding the interest of the coastal State. Even though the foreign ships are having the right of freedom in high seas and innocent passage, fixing the territorial waters, contiguous zone and economical zone are all only based to protect the rights of the coastal states.

76):- Come to the another point No.6, the line is not drawn to cut the territorial waters of another State. So the baseline was drawn in Ex.P5-large size Map by the coast guard authorities by connecting permanent structure notified in the official gazette i.e. Jetty light house at Thoothukudi Port and existing above sea level island Nalla Tanni Tivu is properly drawn by following the guidelines given in the Article 7 of UNCLOS.

77):- The first U.N. Conference on the Law of the sea (or Geneva Conference) was held in 1958 at Geneva. In which four conventions were adopted and certain developments emerged which changed the situation. One of the most important of such developments was that rapid progress in science and technology made possible commercial exploitation of mineral resources at Greater depths of the Sea bed. In order to fix the width of maritime belt the first important attempt was made in the Hague Conference of 1930, but with no success. The next important attempt was made in the Geneva Conference on the Law

of the Sea, 1958, but no agreement could be reached. Different states claimed different width of territorial waters. The general consensus was however, between a territorial waters extending from 3 miles to 12 miles. In order to solve this unresolved problem, another Geneva Conference was held in 1960 wherein the United States of America submitted a compromise formula. This formula envisaged 6 miles of territorial waters and outside this there should be another 6 miles given to the coastal state for fishing etc. Unfortunately this proposal could not be accepted as it was defeated by a majority of a single vote. But India claimed territorial waters upto 3 miles upto the year 1956. In that year, India extended its territorial waters of 3 miles to six miles through a presidential Proclamation and later on to 12 miles in 1967. The controversy finally ended with the adoption of the U.N. Convention of the Law of the Sea, 1982. According to Article 3 of the convention, breadth of territorial sea is 12 nautical miles measured from baselines.

78):-

So, I hold that the baseline was properly drawn by following the guidelines given by the UNCLOS. The objection regarding the amendment in the location after 2009 does not have much importance. Since the Map was prepared in the year 2007, within the short period of two years, we cannot expect major change in the Longitude and Latitude.

79):-

For deciding the location of the ship, P.W.1 to P.W.3, who are the eye witnesses and P.W.14 categorically stated that, the location of the ship in a particular point by fixing on the basis of Ex.P5 has come within the territorial waters limit. For supporting the oral testimony of P.W.1 to P.W.3 and P.W.14, we have to consider the other documentary evidences, which are maintained by the accused in their routine duty as a Captain and 2nd Officer working in the same vessel. For promoting safety of life at sea "International Convention for the safety of life at Sea 1974" was concluded and subsequently it was amended several times. In which certain measures to be adopted for maintaining the vessel or ship, **(SOLAS Consolidated Edition 2009, Bhandarkar Publications pages 253, 254 and 255)**. The international convention in safety of life at Sea (SOLAS) 1974 currently in force was adopted at 1st November 1974 by the International Conference on Safety of life at Sea, which was convened by the International Maritime Organisation (IMO) and entered into force on 25th May 1980. The convention of 1974 SOLAS has been mentioned by means of resolutions adopted either by "IMO Maritime Safety Committee" (MSC). In its expanded form specified in SOLAS Article viii or Conference of SOLAS contracting Government also specified under Chapter V Safety of Navigation in Regulation No.2 defines as:

“3) All ship means any ship vessel or craft irrespective of type and purpose”.

“2) Nautical chart or nautical publication is a special purpose map or book or a specially compiled data base from which such a map or book is derived that is issued officially by or on the authority of a Government, authorised hydro-graphic office or other relevant Government institution and it designed to meet the requirements of Maritime navigation.

Under Regulation No.19

“Article 1.2 Ships constructed before 1st July 2002 shall

1) subject to the provisions of paragraph 1.2.2 and 1.2.3, unless they comply fully with this regulation, continue to be fitted with equipment which fulfills the requirements prescribed in regulations V/11, V/12 and V/20 of the International Convention for the Safety of Life at Sea, 1974 in force prior to 1st July 2002.

Under this regulation, the requirements of shipborne navigational system and equipments. All ships, irrespective of size shall have 2.1.4-nautical charts and nautical publications to plan and display the ship's route for the intended voyage and to plot and monitor positions throughout the voyage; an electronic chart display and

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information system (ECDIS) may be accepted as meeting the chart carriage requirements of this sub-paragraph. 2.1.6- a receiver for a global navigation satellite system or a terrestrial radio navigation system, or other means, suitable for use at all times throughout the intended voyage to establish and update the ship's position by automatic means.

80):- These guidelines shows every ship or vessel should having some instrument to monitor for its navigation. For that purpose Ex.P21 GPS log book (global positioning system), Ex.P19 Deck Log book maintained for the period from 02.07.2013 to 08.10.2013 and Ex.P20 Deck Log Book maintained for the period from 09.10.2013 to 17.10.2013 are perused. These documents are maintained by the crew members of the vessel in their routine duty. Ex.P6 is the extract of Log Book of Indian Coast Guard ship Naikidevi. Ex.P7 is the extract of Log Book maintained by P.W.4. Ex.P8 is the endorsement made in at page No.89 of Signal VHF Log Book. These are all documents not objected by both parties and admitted by them that the documents are genuine. When the documents are genuine, the entries made in the documents are also may be treated as genuine. In which the position of the ship is fixed as 08^o52.04 N, 078^o26.44 E was not disputed. The learned Public Prosecutor submitted that there will be no change in latitude and longitude. The contention of the learned counsel for the defence is that, by drawing a baseline connecting

another light house by name Pandiyan light house for extending the location. They are trying to fix the location of the ship as in contiguous zone by concealing with the position in territorial waters. When the registers maintained by the accused themselves in their routine duty cannot be denied by them. The entries show the location and drawing the baseline by following the procedure defined in Article 7 of UNCLOS. The position of the ship is proved by the prosecution as within the territorial waters of India.

81):-

The learned counsel for the accused raised a plea that there is a separate navigation chart, which should be considered for fixing the location of the ship in a particular place and vehemently argued by the admission of the prosecution witnesses themselves disprove the location of the ship as claimed by the prosecution. As I have discussed the point elaborately above the non-production of navigation chart has no much importance, since the question of location can be decided on the basis of entries in deck log book and GPS log book, which are aided with Ex.P5 along with oral testimony of P.W.1 to P.W.3 and P.W.14 who are the eye witnesses deposed that on their official capacity which are not disproved by the defence and clearly proved that and I hold that the location of the ship is within the territorial waters and the objections raised by the defence counsel by non production of navigation chart has no much importance. I answered accordingly for the question No.1.

82):-

The question No.2:--

The charges were framed against the accused under the offences come under Indian Penal Code and Indian Arms Act and Essential Commodities Act. The learned counsel for the accused represented that, as a flag vessel having every right of freedom of innocent passage and also the vessel was in distress and want of diesel. The vessel was anchored for bunkering and for topping up of provisions and also waiting further instructions from their company. For deciding the question of innocent passage we have to consider the Articles in UNCLOS. The 1958 convention on the territorial waters and contiguous zones make it clear that the Coastal States exercise sovereignty over the territorial waters. But this is subject to certain exceptions. It is a well-recognized principles of customary international Law that foreign merchant vessels have a right of "innocent passage" through the territorial waters. Article 17 of the U.N. Convention on the Law of the Sea, 1982 also provides that subject to this Convention, ships of all states, whether coastal or landlocked enjoy the right of innocent passage through the territorial sea. Passage includes stopping and anchoring, but only in so far as the same are incidental to or are rendered necessary by force majeure or by distress. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal States such passage shall take place in conformity with these articles and with other rules of International

Law. Article 16 of the Geneva Convention empowers the coastal State to take necessary steps in the territorial sea to prevent passage which is not innocent. Further, foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the Coastal State in conformity with the convention and other rules of International Law and, in particular, with such laws and regulations relating to transport and navigation. Now we have to come to Indian Position.

83):- In the territorial waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, Article 4 provides for the use of territorial waters by foreign ships. It provides that without prejudice to the provisions of any other law for the time being in force all foreign ships (other than warships including submarines and other under water vehicles) shall enjoy the right of innocent passage through the territorial waters. Foreign warships including submarines and other underwater vehicles may enter or pass through the territorial waters after giving prior notice to the Central Government provided that submissions and other underwater vehicles shall navigate on the surface and show flag while passing through such waters. It is further provided that the Central Government may, if satisfied that it is necessary so to do in the interests of peace, good order or security of India or any part thereof, suspend, by notification in the Official Gazette, whether absolutely or subject to such exceptions

and qualifications as may be specified in the notification, the entry of all or any class of foreign ships into such area of the territorial waters as may be specified in the notification. Lastly, India is one of the signatories of the U.N. Convention on the Law of the Sea, 1982 **[Reference Book :-- International Law & Human Rights by Dr.S.K.Kapoor, 8th edition, Central Law Agency pages : 260, 261 and 262].**

84):- The International convention shows the foreign ships are having the right of innocent passage. The Honourable Supreme Court also held in Italian Solider case that the international conventions could not be ignored while enforcing the Municipal Law dealing with some subject matter and in any given case attempting were made to holuconise the provisions of International Law with the Municipal Law. For deciding the passage is innocent no element of *mens rea* is necessary. The public safety in a criminal prosecution it is well settled that the burden of the prosecution in establishing the commission of the crime by the accused never shifts and it is to be proved beyond reasonable doubts that it is the accused, who is the author of the offence. But if the accused wants the protection of any of the exception from criminal prosecution the onus is upon to him to establish the facts situated the exception since it is required section 105 of the Evidence Act. Such facts being within is special knowledge can only be established by him. The foreigner who enters

in Indian territorial waters and this acceptance the protection of Indian Laws virtually its fidelity and obedience to them and submit himself to their operations. It is no defence on behalf of the foreigner that he did not know that he was doing wrong. The act not being an offence in his own country. Section 2(12) of IPC defined territorial waters jurisdiction. The territorial waters of India extended into sea to a distance of 12 nautical miles measured from the appropriate baseline. The territories strictly speaking of a State include. Therefore not only the compass of land in the ordinary acceptation of the term belonging to such State but also that portion of the sea lying along and washing its coast which is commonly called Maritime territory. The laws of that State applied to acts committed within them.

85):-

These provisions shows the burden of claiming innocence shifted to the accused to prove that their entrance is only innocent passage and there is no intention to enter into the Indian territorial waters and it does not against safety, piece and interest of the coastal state for proving the factual aspects among the 43 accused, no one was came forward to enter into the witness box to explain the situation that the vessel was in distress in which ship's crew members, guards are boarded. All the accused are having rich experience of working in sea going vessel and ships for a long period and also belongs to different countries like Estonia, Ukraine, United Kingdom and United States including

some Indians. All are said to be working under a company which was registered in United States. The vessel was said to be flag ship registered in Republic of Sierra Leone which is a West African country. We have to scrutinize the records seized by the investigation officer during his investigation from the ship could not be denied by the accused, since all the documents seized from the ship are maintained by them. To decide the question of innocent passage the entries in log Books having much importance and the documents seized from the ship. If the vessel was in distress there is a procedure for getting out from the problem by sending information to the nearest port authorities for safeguarding the members in the ship. As I have already stated that all the accused are having rich experience of Maritime Laws and procedures to be adopted while the ship was either want of diesel or bunkering or in distress. The learned counsel for the accused submitted that the accused are having no intention to enter into the Indian Territorial waters, but there is some entry in the GPS log book and deck log book as "proceed to OPL, Thoothukudi". The learned counsel for the defence vehemently argued that it denotes outer port limits of Thoothukudi which is not within the territorial water limits which was also admitted by the prosecution witnesses.

86):-

Assuming for a moment the plea of defence counsel is reliable, the activities of the members in the ship along with entries in the log book to be considered. While

intercepting the vessel by the coast guard authorities, crew members as well as guards are present. There is no proof is available whether the vessel is equipped with boarding such number of persons. If the vessel is in distress, the Captain of the vessel is duty bound to inform it to the nearest port authorities. P.W.36 Tr.Ashok V.M.Kumar categorically stated that no such information as a ship was in distress was received in the month of October 2013. He also stated that he is working as Marshal in Indian Naval Base Kattabomman, Tirunelveli. His nature of duty is receiving the communications through 16th channel from the ship which is in distress would contact for help. In turn he instruct the coast guard on duty to attend the ship in distress. No such information was passed to the nearest port authorities who is on duty. No other proof is available that the ship was in distress at the time of interception. No entry was found in GPS log book either as want of diesel or ship in distress. At page No.241 of GPS Log Book which is marked as Ex.P21 on 09.10.2013 at 10.40 after completed operations embarking 3 guards from halidbey Zodiac Boat secured proceed to OPL Thoothukudi. At 11.00 a.m the position of the vessel is 07^o12.5 N, 077'42' E. On 10.10.2013 at 14.00 hours the vessel was dropped anchored position at 0.8^o52.0 N, 078^o26.7^o East. Engine also stopped. There is some mark of anchorage. The vessel was anchored in that location till the arrival of coast guard on 12.10.2013 and weigh up the anchor on 12.10.2013 at 06.45 hours

and proceed to Thoothukudi Port on the instruction of coast guard. Between these days on 11.10.2013 at 19.00 hours there is an entry mentioning that "fishing vessel stay 10 metres away with one mooring rope pasted astern" next entry at 20.40 hours "received 10 drums of DO (Diesel oil) and fishing vessel cost off". These entries show the vessel was received 10 drums of diesel oil from a fishing boat. There is no entry between the period on 09.10.2013 and 12.10.2013 that the ship was in distress as claimed by the accused. On perusal of deck log book maintained by the Chief Officer of the vessel Ex.P20 maintained for the period between 09.10.2013 and 17.10.2013. No entries are found between the period of 09.10.2013 and 12.10.2013 that the vessel was in distress. So we can safely conclude that the claiming of the ship is in distress is false and not true, since the documents belongs to the accused itself shows no entry regarding the ship is in distress and also substantiate it P.W.36 also stated that no such information of distress was received by him. So the ship was not in distress. But the reason for anchoring the vessel in a particular location for two days i.e 10.10.2013 to 12.10.2013 is not disclosed in the GPS log book. No entries for the reason of anchoring the vessel in a particular location. In the deck log book Ex.P20 there is an entry on 10.10.2013 while dropping anchor in the position is Lat.08⁰52.0' N, Long.078⁰26.7' E, engine of the vessel was stopped and there is a entry mentioning "vessel at OPL Tuticorin. Anchorage awaiting for

next instruction". Next day on 11.10.2013 mentioned as "Awaiting for provisions, stores & bunker". The same reason was continued till 12.10.2013. No entry was made in the deck log book as mentioned in the GPS log book. So there is some discrepancies in the reason of anchoring the vessel in a particular place is in Ex.P21 and Ex.P20. It is the duty of the accused to explain the discrepancies as it is a bonafide mistake or genuine reason, since receiving of 10 barrels diesel mentioned in Ex.P21 GPS log book was not mentioned in the Ex.P20 deck log book. But the accused did not get into the witness box for the reasons best known to them. It shows some discrepancies in the registers maintained by the accused, which are vital documents and required mandatory under Maritime Laws. No entry was found in GPS log book as a ship is in want of provisions or further instruction. At the same time in Ex.P20 deck log book on 11.10.2013 no entry was mentioned that waiting for further instruction. Even though 10 drums of diesel oil supplied on 11.10.2013 also not entered in Ex.P20. So after receiving the diesel oil the purpose of waiting was only for further instruction from their company.

87):-

The innocent passage in the territorial sea was defined in Article 17, 18 and 19 of UNCLOS and also the laws and regulations of the Coastal State relating to innocent passage is defined in Article 21. The rights of protection of the Coastal State was defined in Article 25 of UNCLOS. First we

have to see the rights of the Coastal State defined in Article 25 as follows :--

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State also has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.

3. The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published.

88):-

We have to decide whether entering into territorial waters of India is an innocent passage as claimed by the accused. Even though in all proceedings the vehicle was mentioned as vessel and ship. But it was originally certified by the Republic of Sierra Leone as utility boat. No authorisation was given by the above country that it is a ship or vessel. The certificate was also issued not at the Station or office located at Republic of Sierra Leone. Whereas it was issued for a short period of three months at Egypt. The provisional of Registry seized from the ship

issued by the Republic of Sierra Leone at Alexandria, Egypt Port of registration mentioned as free town on 27th July 2013 valid upto 26th October 2013. After arresting of the ship the provisional certificate of registry itself is lapsed. No document is produced by the accused to prove that registry still continues. The provisional certificate of registry also not issued in the name of Advanfort Company. The certificate issued only in the name of Sena guard ink 60 mar squ, PO box 363, Belize City, Belize. Even though the prosecution laid charge sheet against the company Advanfort Company registered at Washington, provisional certificate of registration was not issued in the name of the accused company. The nature of company will be decided in the question No.5. The Central Process Unit M.O.1 and Digital Voice Recorder M.O.2 were recovered from the ship by the investigation officer and taking steps for analysis. The contents of the electronic goods M.O.1 & M.O.2 i.e. analysis report of electronic goods was marked as Ex.P89. Annexure V was enclosed with the documents which discloses the list of Port calls of the vessel as follows :--

- 1) Port Sultan Qaboos, Oman 27.12.2012 to 28.12.2012
- 2) Port Sultan Qaboos, Oman 30.01.2013 to 30.01.2013
- 3) Port Sultan Qaboos, Oman 14.03.2013 to 14.03.2013
- 4) Port Sultan Qaboos, Oman 11.04.2013 to 14.04.2013
- 5) Sharjah UAE 13.06.2013 to 31.06.2013
- 6) Cochin, India 23.08.2013 to 29.08.2013

7) Tuticorin, India 12.10.2013.

There are some missing of entries that the vessel was given Port clearance on 30.08.2013 from Cochin for Maldives After clearance from Cochin, the original voyage is programmed to Maldives. But no entry was made in the GPS log book and deck log book. It creates some cloud over the movement of the vessel whether it proceed to Maldives after 30.08.2013 or else where. Electronic device recovered from the ship DVR (Digital Video Recorder) item No.2 in Annexure 6 a report was available stating that some of the switches were in jammed condition and recorded video could not be viewed uninterruptedly by operating those switches (play back, rewind, forward etc.,). Hence in spite of all the efforts mentioned above the video contents recorded in the DVR Unit could not be played back due to mechanical failure in the operational control. My personal verification of the electronic device which was marked as M.O.2 is having the provision of memory card. But it was not available with the instrument. It is not in working condition. These facts to be clarified only by the accused whether they have proceeded to Maldives if not, the reason for diversion of voyage. When they are claiming the exemption of innocent passage, the voyage must be continues and passage is incidental. When it is not in continues another cloud arises on the movement of the ship. As I have already stated no certificate was issued in the name of Advanfort Company as the owner of the ship. There is no explanation whether

the vessel was hired by the company or not?. At the time of arguments the learned counsel for the accused informed that the Advanfort Company owns three vessels. If it is true, they have to produce proper documents to prove the ownership of the ship. At present real owner is not at all added in the litigation.

89):-

Right of a visit was defined as, the general rule is that the State whose flag ship is flying (and of course is entitled to fly) has complete jurisdiction over the ship and its crew. But this exclusive jurisdiction is subject to some exception. One such exception is right of visit. The general rule is that a war ship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity, is not justified in boarding it. But the war ship may board such a ship if there is reasonable ground for suspecting that :

- (a) the ship is engaged in piracy ;
- (b) the ship is engaged in slave trade;
- (c) the ship is engaged in unauthorized broadcasting and the flag State of the war ship has jurisdiction under Article 109 of 1982 Convention on the Law of the Sea ;
- (d) the ship is without nationality; or
- (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the war ship.

If any of the above grounds exist, the war ship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

Another exemption is right of hot pursuit. It should be exercised only by war ships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect. **(Reference book : International Law & Human Rights by Dr.S.K.Kapoor 18th Edition, Central Law Agency, page Nos. 284 and 285).**

90):-

At the time of interception the vessel having the certificate of registration for a temporary period by the Republic of Sierra Leone. The persons belong to several nations are boarded in the vessel. During the time of arguments, the learned counsel for the accused informed that the very same coast guard authorities have also intercepted the vessel on earlier time and they have not found any mistakes. It may be true, at the

time of earlier interception either the ship is in International Waters or they have not in possession of any arms. As I have already stated in Ex.P89 there is a missing entry regarding the vessel proceeded to Maldives after the issuance of clearance certificate from the Indian Port of Cochin. But they have entered into Indian waters near Thoothukudi. Even though they are claiming that the vessel is engaged in anti-piracy movement which is connected only with the business of the company only on profit motive. As I have already stated when they are claiming innocent passage, they should not have any intention for entering into the Indian waters. But as per the entries in Log book shows their intention is only proceeded to Thoothukudi outer port limit. Even though they have stated it is away from territorial waters, but it was decided in the question No.1 at the time of interception the vessel was found within the limits of Indian Territorial Waters. To decide whether their claim is a bonafide, they have to prove it will be come under the purview either law governs by the flag countries or comes under the purview of Indian Law. If their purpose of voyage is for anti-piracy activities their movements are only within the four corners of any of bounded law. Without any restrictions or rule it will not differentiate their activities from the activities of original pirates. They are traced only with in the Indian territorial Waters, they have not followed the procedures and also all the crew members and guards are having rich experience knowing the procedural and

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conventional law of UNCLOS and Maritime Laws. On perusal of Ex.P21 GPS log book of the vessel, the movement of the vessel between the period 25.12.2012 to 17.10.2013 the following entries are found :--

29.12.2012 -- 08.00 hours -- 23°35'46.N/058°48'62.E drifting
-- 08.30 hours -- Engine started & proceeding to RV
with MV-Lord BYRON
-- 9.05 hours -- Commence operation Zodiac
proceeding to MV-Lord BYRON.
Zodiac coming back with luggage
& Guards & weapons in (03 trips)
-- 9.25 hours -- Operation finished (dis - Emb 03
guards) (23°36.N/0.58°48.E)
-- 9.35 hours -- Zodiac hoisted & secured in deck
-- 9.37 hours -- VSL leading to RV point
10/07/13 -- 01.00 hours -- Provision (boat) Farida alongside to
supply stores.
-- 04.00 hours -- Supply boat Farida cost off after
giving provisions
11/07/13 -- 02.45 hours -- Start bunkering
-- 07.00 hours -- completed bunkering
-- 07.25 hours -- Start engine
-- 07.30 hours -- Cost off from bunker barge
Federicia Proceed to drop anchor
at Bravo I age.
-- 08.05 hours -- Drop anchor posn:
25°22.7'.N,056°29.7'.E Kalba light
house Bearing 077° Dist. 6.5 NM

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-- 08.35 hours -- Reported to Khawr Fakkan Port
Control.

12/07/13 -- 09.00 hours -- Security message broadcast on VHF
commenced diving operation.
Flag "Alfa" keep on hoist.

Thus entries in the GPS log book shows the movement of the vessel while want of diesel oil (bunkering, provisions) and approached the Port for these purpose. So they are very well knowing and having knowledge about the procedure while the vessel was in need of either provision or diesel oil. No such entries are found at the time of interception. So the movement of the vessel is suspicious.

91):- On the basis of suspicious movement the patrolling ship belongs to Indian Coast Guard Naikidevi on the instruction from their higher authorities which is on patrol duty inspected the vessel as per the guidelines of UNCLOS and brought the vessel to Indian Port for taking further action by following the procedures. Even though the vessel was cleared off from Cochin Port to Maldives, they have not proceeded to Maldives as per the entries found in the log books. If their voyage is to Maldives which is in Arabian sea the vessel need not come into the Gulf of Mannar. In Ex.P19 on 08.09.2013 at 11.00 hours also the vessel was anchored at 08⁰51'5.N, 078⁰ 26'3.E. On 09.09.2013 at 8.55 hours coast guard contact and routine enquiry, at 9.00

hours coast guard boarding team boarded the vessel, at 9.40 hours coast guard boarding team left the vessel. Diving service was also effected. After completion of service at 12.40 hours vessel proceeding to R.V.Post. Their operations at several locations shows it is a first time they have entered into the Gulf of Mannar for their operations. When their claim is innocent passage their voyage is not continues. It is also not proved by the accused that the vessel is either want of bunkering or in distress. When these facts are not proved by the accused, we can arrive the only conclusion that, the movement of the vessel is suspicious. It cannot claim the exemption of innocent passage. Moreover it does not belongs to any Government. Even their provisional certificate of registration is genuine one, the flag state can approach for taking further action against the persons boarded in the ship. In which the flag of Sierra Leone was hoisted. But there is an entry in the log book the same ship was hoisted another country flag at a different place. It shows the ship hoisted more than one flag at a time. On the basis of temporary provisional certificate. Even though they are claiming that they are involved in a movement of anti-piracy it is only benefit for the commercial ship it will not no way benefit the coastal state. Between the period from 29.09.2013 to 09.10.2013 on various dates 25 guards with weapons disembarked from several ships at different undisclosed locations. Ex.P12 series shows the disembarkment of guards with weapons shows the vessel is only

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used for receiving the disembarked guards with weapons at several points. Prior to leaving Cochin Port Ex.P10 series document shows the undertaking given by the Captain of the ship. No guard or weapon is available with the vessel. So I hold and conclude that the plea of innocent passage and the vessel was in distress and want of diesel oil these are all not proved by the accused and the movement of the vessel is only in suspicious and I answered the question No.2 accordingly.

92):-

Question No.3 :-

Articles 17 of UNCLOS deals with right of innocent passage. Article 19 deals with meaning of innocent passage. Article 21 deals with laws and regulations of the coastal State relating to innocent passage. Article 24 deals with duties of the coastal State. Article 25 deals with rights of protection of the coastal State. Article 94 deals with duties of the flag State. Article 100 deals with duty to cooperate in the repression of piracy. When the accused claimed the right of innocent passage, they have to follow the procedure laid down the clauses of UNCLOS. As I have already explained even though the vessel was in distress, the Captain of the ship who is duty bound to inform the situation to the nearest Port for getting assistance, but not followed the procedure. There is no proper entries in the log books which are mandatory required to maintain during the vessel on its voyage. Even though the coastal States are duty bound to follow the procedures defined in Article 100 of

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UNCLOS for the repression of piracy there is some restriction. Even though the innocent passage includes anchorage, as per Ex.P63 the Circular Directorate General of Shipping in NT/ISPS/CIRCULAR NO.1/2011 issued guidelines and information by armed security guards required to be provided to Indian Navy, Indian Coast Guard and Customs. The procedure to be followed while any merchant ship or vessel arriving with weapons on board as follows :--

Guidelines No.4 :-- Deployment of armed security guards on Merchant ships thus change the Paradigm of a merchant ship which is granted a liberty to transit the territorial waters of any State under the concept of "innocent passage". Further a merchant ship arriving with weapons on board, in a commercial Port of a coastal State, would also invoke concern for customs, police and other security agencies tasked with law enforcement and coastal security. Therefore, IMO (International Maritime Organisation) has left the decision to the concerned flag States. Several flag administrations have generally left to ship owners to examine their risk assessments and take appropriate measures including deployment of armed security guards from private agencies. Subsequently, IMO has also issued interim guidance on deployment of armed security guards through MSC.1/Circ. 1405 and 1406 both dated 23.05.2011. The guidelines shows whenever any security guards with arms or engaged in any merchant ship, the administration of flag State or the owner of the ship should assess their risk for

taking appropriate measures. It shows whenever the vessel or ship entered into the territorial waters of coastal State their right of innocent passage can be claimed subject to certain conditions imposed by the coastal State. In the same circular **guidance No.7.3** defined the information furnished to the Port authorities prior to their arrival and the **guidance No.7.6** merchant vessels transmitting Indian waters with armed security guards. All merchant vessels transmitting through Indian EEZ and carrying armed guard are required to provide the information contained under para 7.3 to the coast guard and Indian Navy. In **guidance No.7.5.3** all foreign vessels visiting Indian Ports are required to secure their fire arms and ammunition in a guarded / secured "strong room" when entering into Indian territorial waters. **In guidance No.7.5.4** all foreign vessels are required to follow the reporting and declaration requirements as stipulated under paragraph 7.3. The guidelines of International Maritime Organisation (IMO) is marked as Ex.P65. Under the recommendations in Annexure Sl.No.5 flag States should have in place a policy on whether or not the use of PCASP (Privately Contracted Armed Security Personal) will be authorized and if so, under which conditions.

93):-

In developing such a policy, flag States are encouraged to take into account the following recommendations:

1) As a first step consider whether the use of PCASP:

(1) would be permitted under the National legislation of the flag State:

(2) Would be an appropriate measure under some circumstances to augment the security arrangements put in place, in accordance with related instruments and guidelines developed and promulgated by the organization including the industry-developed best management practices, on ships flying its flag when operating in the High Risk Area: and

2) As a 2nd step, if the use of PCASP is department to be an appropriate and lawful measure, established a policy which may include, inter alia:

5.2.2 as a process for authorising the use of PCASP which have been found to meet minimum requires for ships flying its flag;

5.2.3 a process by which ship owners, ship operators or shipping companies may be authorised to use PCASP;

5.2.4 the terms and conditions under which the authorisation is granted and the accountability for compliance associated with that authorisation;

5.2.5 references to any directly applicable national legislation pertaining to the carriage and use of fire arms by PCASP the category arrived to PCASP, and the relationship the PCASP with the Master while on board; and the guidelines issued by the Sierra

Leone flag administration is also enclosed in Ex.P65. The following guidelines No.3.3 the guidance state that the use of privately contracted armed security personnel (PCASP) should not be considered as an alternative to the Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea area (BMP) and other protective measures. 3.4 the ship owner or ship operator can contact the administration for the approval of carrying PCASP on board the vessel. The administration after review of the request will issue an official letter allowing the carriage of PCASP on board. Fees for this authorisation are applicable. Guidance No.3.6 the letter of authorisation for the carriage of PCASP do not make the Sierra Leone International Ship Registry, Regional Registrars or Registration Officers of the Sierra Leone International Ship Registry or the Government of Sierra Leone liable for any misuse of firearms or other weapons on board the vessel. The ship owner or ship operator assume all responsibility regarding the carriage of PCASP and firearms on board the vessel. Guidance No.3.7 vessels that are navigating within 20 nautical miles from the coast should follow and adhere to local Port authorities requirements for the carriage of PCASP.

94):-

The above guidelines issued by International Maritime Organisation as well as the Circular issued by Indian Government and Circular issued by the Republic of Sierra Leone consonance with the guidelines of the International Maritime

Organisation all shows the engagement of private armed security guards in commercial ships for protecting from the attack of piracy in high risk area with some restrictions. When a ship or vessel utilized the private security guard facility they must get an approval or permission from the administration of flag State. The disputed vessel Seaman Guard Ohio is said to be registered with Republic of Sierra Leone which is a West African Country also issued a circular with guidance instructing the ship owners to follow the procedures while the vessel is operating within 20 nautical miles subject to requirements of local port authorities. For which the Captain of the ship is duty bound to prior to their entry into the territorial waters of India furnished the intimation to the port authorities by disclosing the fact that private security guards with arms on board and possession of huge quantity of arms and ammunition. When they intimate the Port authorities, they have to take necessary steps to protect the use of arms within the vessel and permission may be granted for the vessel either to supply provisions or diesel oil. Without following these procedures the ship was anchored for two days at the position, wherein it was intercepted by coast guard authorities. As I have already explained not only on a particular date the same vessel was anchored in the same position at the earlier date also. The maintenance of log books is not properly entered. There are some discrepancies which are the reasons for creating doubt over the movement of the ship. While cross

examining the prosecution witnesses by the defence counsel no question was raised in respect of these guidelines shows the accused have not adopted the procedures and guidelines. The ship was registered in the Republic of Sierra Leone only for a short period. The provisional certificate Ex.D65 was lapsed on 28th October 2013. It was lapsed after 14 days, when the vessel was brought to Thoothukudi Port. No document was produced by the accused whether it was renewed for further period, whether it was recognized by the country flag State. Moreover, admittedly huge quantity of arms and ammunition were in possession within the vessel only for the use of private security guard arranged by a private company. No document was produced by the accused company for getting any permission or recognition for keeping such a huge lethal weapons with armed security guards. The movement of the vessel shows it is used only for supplying the security guards with arms and ammunition. Without getting any recognition / permission from the flag State and not followed the guidelines issued by the International Maritime Organisation and the administration of flag State. It was not explained by the prosecution whether the vessel was hoisted two flags or changing the flags during the voyage, or misusing any flag on voyage. In such situation, the law of the citizens may be applicable to the persons boarded on the vessel. Here, the persons belong to different nations such as British, Ukraine, Estonia including Indians. Even

though the law applicable to the citizens, the law enforcing authority of that nations did not approach the legal forum for taking action against their citizens under their law. After receiving the records from the committal court, this Court find the complexion nature of situation i.e. the accused belongs to several nations, they are working as private security guards in a company and take steps in engaging translators to explain the Court proceedings which is in English to the Embassy and also addressed to the District Collector for taking action in this regard. No reply was received from any of the embassies shows, the company engaged the security guards and crew members simply abandoned them. While the trial of the case is proceeded before this Court, no other way except to follow the procedures laid down under Indian Law by this Court against all of the accused. Moreover the matter was already dealt by the Honourable Madurai Bench of Madras High Court and the Honourable Supreme Court of India. Even though the defence counsel raised question of jurisdiction they cannot repeatedly, re-agitate the same question before this Court, since the factual aspects are to be only decided by the appropriate trial court i.e. this Court. When the accused are appeared before this Court with the aid of Advocates practicing here and also the counsel, who are appearing for the accused undertook they are responsible for explaining the day to day procedures to the accused in their known language. When the accused are dealt under Indian Law, we have to

decide whether the security guards working under the company and crew members having the knowledge of risk and consequences in possessing huge quantity of arms and ammunition in the vessel.

95):-

Admittedly the crew members and the security guards are having rich experience and having knowledge of International Maritime Laws. So they are having appropriate knowledge of risk in their duties or job. When the ship was anchored at Thoothukudi Port all the crew members as well as the security guards having the knowledge of consequences, since possessions of lethal weapons in their country is very easier than in India. Some of the weapons, which are in their possession are strictly prohibited in India. It is prohibited in our country only for the maintenance of peace within our boundaries. The above all discussions shows that the crew members as well as security guards boarded in the vessel were not followed the procedures and relevant clauses of UNCLOS and I answered accordingly for the point No.3.

96):-

Question No. 4:--

The accused are crew members and privately engaged security guards. They belong to several nationalities. The Captain of the ship who is having the general control over the vessel is A1-Dudnik Valentyn, Ukrainian, A2-Paul David Dennish Towers, Britisher working as a Tactical Deployment Officer, who is in charge of armed guards, A3-Sidorenko Valeriy, Ukrainian, Chief Engineer in the vessel, A4-Lalitkumar Gurung, Indian, Chief Officer in charge of

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maintaining deck log book, A5-Radhesh Dhar Dwivedi, Indian, in charge of maintaining deck log book, A6-Naveen Rana, Indian, 3rd Officer, Assisting in the operation of the vessel, A7-Dinesh Narayanan, Indian, crew member, A8-Ramesh Kumar, Indian working as a Oiler, A9-Rajan Thandapani, Indian, Assisting deck Officer, A10-Abijit Ashok Sawani, Indian, assisting deck officer, A11-Jagdish Prasad, Indian, Chief Cook, A12-Renee Tonissaar, Estonian, security guard, A13-Igor Blinkov, Estonian, Team Leader, security guard, A14-Raigokustmann, Estonian, security guard, A15-Vladislov Korsunov, Estonian, security guard, A16-Lauriader, Estonian, Team Leader, security guard, A17-Alvar Hunt, Estonian, Security guard, A18-Dennis Sukhenlov, Estonian, Team Leader, security guard, A19-William Irving, Britisher, security guard, A20-Igortotrov Lev, Estonian, Security Guard, A21-Roman Obeitsak, Estonian, Team Leader, security guard, A22-Krito Koha, Estonian, security guard, A23-Levgen Semenov, Ukrainian, security guard, A24-Nicholas Simpson, Britisher, Team leader, security guard, A25-Raymond John Tindall, Britisher, A26-Nicholas James, Britisher, security guard, A27-John Wilson Armstrong, Britisher, security guard, A28-Aleksei Tutonin, Estonian, Team Leader, security guard, A29-K.V. Prakashan, Indian, security guard, A30-Demitri Pappel, Estonian, Team Leader, security guard, A31-Sudheer, Indian, security guard, A32-Unnikrishnan, Indian, security guard, A33-Jogiste, Estonian, Team Leader, Security guard, A34-Andrej Gortsagov, Estonian, Security

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guard, A35-Harijeet Singh, Indian, Security guard. A1 to A35 are the crew members and security guards, who are boarded in the vessel while intercepted by Indian Coast Guard authorities. To find out the qualification and recognition whether they are having any pre-training or licence for using the arms and ammunition which were recovered from the vessel, the seaman books belong to A1 to A35 were produced. Even though the accused belongs to several nations, they obtained seaman book from the Government of Estonia, Republic of Nigeria, Republic of Panama, United Kingdom, Great Britain and Northern Ireland and the country of Belize. Except the seaman books belong to A10 (Ex.P78 series), A11 (Ex.P78 series), A18 (Ex.D9), fire fighting persons and A7 (Ex.P78 series) electrical/electronic Officer, those are not directly connected with handling of the weapons, arms and ammunition, all other seaman books do not contain any entries of qualification having the knowledge of handling weapons, arms and ammunition. But they are working as a security officer and security guards. No other document was available to verify the qualification of the accused who are working as security guards in the vessel, whether they are having any knowledge about the handling of weapons. In their passports also there is no entry for verification whether they are having the qualification in handling arms and ammunition. We cannot assuming that the company engaged the persons having no knowledge in handling the weapons. Engaging by the company

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them as security guards shows the engagement only on the basis of some knowledge in handling the weapons. No document was produced by the accused themselves to prove that they are having valid licence and certificates issued by the statutory authorities under the applicable laws enable them to possess and carry the arms, ammunition including prohibited categories on the vessel. So I hold that the accused have not proved that they are having any valid licences and certificates for possessing the weapons, arms and ammunition on the vessel and I answered accordingly for the question No.4.

97):-

Question No.5 :-

This question is regarding the company by name, A1-Advanfort company. One file having some papers recovered from the vessel is marked as Ex.P12 series only contains service conditions of its labours. No document is available to consider that the company is having the recognition or licence or approval from the administration of flag States. But Advanfort Company is said to be registered at Washington. On careful perusal of Ex.P89-analysis report of electric goods shows some documents are enclosed as mail attachment file which is the mail transaction between "BRUNO DMSS" to Advanfort Company Operations. The following communications to be noted for deciding the nature of handling of arms and ammunition on the vessel.

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“Thanks for the positive response to our operations in the Gulf of Oman (We are putting a bigger boat there next week -45 mts with 50 beds) and this will increase our capacity yet further. Also the amount of booking we are getting in the Red Sea means that we are now in a position to improve our service. There and offer yet another competitive package for your operations”.

Therefore I am glad to inform you that starting from Wednesday the 15th of February 2012 we will apply the same price and service in our Red Sea operations as we offer in the Gulf of Oman (Fujairah) Please note that this offer is valid only for those of our clients already using our services in both the Gulf of Oman and Red Sea.

What it, means

1) USD 5,000 per transit for pick up or drop off of equipments only

2) USD 8,000 per men for pick up or drop off of men + equipments (accommodation + meals + drinks + WIFI included) and the next page, the following paragraph to be noted :--

(1) weapons are allowed to disembark in countries not under UN Embargo as long as they have approval from each respective country and as long as

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they comply with local regulations. Weapons can disembarked on any given privately owned floating platform or vessel as long as it is approved licenced by a Government and that it follows IMO regulations or if the privately owned floating platform or vessel belongs to the security company that is renting the weapons with the appropriate flag State approval for such on operation.

(2) Weapons are not allowed to disembarked in countries under UN Embargo (Somalia, Eritrea & Iran...) & in privately owned floating platform or vessels not complying with IMO regulations (flag State approvals) & not backed up by a Government. You cannot drop or store weapons that belong to you or where rented to you to a third party i.e not either a Government of an approved operator; there are very serious legal implications.

So the e-mail communication shows embarking and disembarking of security guards as well as arms and ammunition on a floating platform or vessel not packed up by a Government and not complying with the IMO regulations involved very serious legal implications.

98):-

As I have already explained the regulations of IMO as well as the flag State Sierra Leone and the

Indian Government guidelines. The company who engaged the security guards has not produced any document either directly or through these accused to prove that the company is having approval or recognition under either flag State or International Maritime Organisation. Ex.D64 series, xerox copies of some documents are produced by claiming that the documents are licences for possessing the arms and ammunition. But those documents named as LICENCE D "UTILISATUR FINAL-END USER LICENSE" (1st page) by mentioning the seller Fieldsports Djibouti FZE, Republic of Djibouti, part of Fieldssports Malta Ltd, Malta, Republic of Malta consignee Djibouti Coast Guards, Republic of Djibouti Commandant Wais Omar Bogoreh & End User ADVANFORT SECURITY, Washington. The other documents do not contain the name of Advanfort company. Those documents show the weapons noted in those documents belong to the Government of Republic of Djibouti. Without any document to prove that there is an approval or recognition by that Government for supplying the weapons noted in that documents to the Advanfort company, we cannot come to a conclusion that the arms and ammunition recovered from the vessel were possessed with valid licence. Separate sheets are filed without filing the originals we cannot consider or rely on the documents as it is a licence for the possession of arms and ammunition. Moreover, no document was also produced that the company is doing the business of supplying security guards with

arms and ammunition with recognition of the Government of United States. Without any valid documents to prove the approval and recognition issued by the Government of flag States or the Government where the company was registered shows the nature of business which the vessel was engaged is without having a licence to do that business and without any authorisation or licence and I answered accordingly for the question No.5.

99):-

Question Nos.6 and 7:-

The prosecution laid the charge sheet against all the crew members, security guards and other local fishermen who are said to be supplied diesel oil to the vessel violating the provisions of Essential Commodities Act. In the charge sheet the accused entered into conspiracy to do an illegal act on the command of the accused company. But no fruitful efforts was taken by the prosecution to find out whether the accused are involved in any other illegal activities against peace and security of the nations. Their investigation is restricted only within the possession of prohibited arms without proper licence and violation of circulars and illegal purchase of diesel oil. They have not proceeded further whether they are involved in any other activities. No material is available before this Court to decide whether the accused are involved in any other illegal activities. So this Court also could be decided only with respect to the charges leveled against the accused, when the charge was framed u/s 120-B of IPC for the

offence of conspiracy. Even though there is no direct contact with the main accused is unnecessary, the prosecution has not enlightened some connection with the company with the accused who are said to be supplied diesel oil through the accused A1 who is the Captain of the ship. Some of the cell phone call details are produced and deposed by various Nodal Officers of Cell phone companies. During the cross examination of witnesses the learned counsel appearing for the accused A36, A39, A40 and A43 rightly pointed out that, there is some possibility of manipulation in all the call details, since the particulars are taken from a system which was not secured and also the documents derived from the electronic device should be certified under the Evidence Act. When the certificates are not furnished there is no evidentiary value for the documents.

100):-

The prosecution tried to do their level best to connect the main accused company with these accused who are said to be supplied diesel oil through A1. But there is no material is available and there is some missing of link. There is no connection between the company with the other accused except some amount was transferred to the account maintained in HDFC branch at Chennai. Even though the account belongs to one of the accused without pointing out the source of the money, we cannot connect the transaction with the purchasing of diesel for the supply to the vessel. The Nodal Officers of different cell phone companies

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would admit that, anybody can use the cell phone which was obtained in any other names. There is no material is available to prove that at the time of conversation in call details at a particular time the connection between the cell phones are within the hands of the accused we cannot connect the accused with the offence u/s 120-B of IPC.

101):-

Moreover the learned counsel for A1, A37 and A38 rightly pointed out that, the procedures laid down in Essential Commodities Act for taking samples were not followed. Even though sufficient quantity of diesel oil is not available in empty drums, the investigation officer did not take any steps to collect the diesel oil from the oil tanker of the vessel or to explain the non availability of diesel oil. The learned Public Prosecutor replied that the investigation officer collected the available diesel oil. As per the case of prosecution 1,500 litre diesel oil was supplied through a mechanized boat in 10 barrels.

102):-

The learned counsel for A36, A39, A40 and A43 stated in the written arguments that, no diesel oil have been seized from the hands of the accused, the presumption of culpable mental state u/s 10-C of Essential Commodities Act would not be attracted. There is nothing from the prosecution documents to show that A39 Murugesh is working under A36 Maria Anton Vijay and there is no record to show that the withdrawn amount of Rs.7,00,000/- was either handed over or

passed to the hands of A36. Confession given by A39 and A40 are inadmissible. P.W.16 attesting witness is unreliable and unworthiness. The evidence of P.W.17 also tainted with falsehood and ignorance. Transportation of diesel oil to the ship was also not proved. P.W.19 is not supporting the case of prosecution. Purchase of diesel oil by A36 was also not proved, as P.W.23 did not say anything about A36 or others. Essential Commodities Act does not deal with the supply of provisions. The evidence of P.W.25 Tr.Raja has no credence as it is tainted with falsehood. The evidence of PW.33, P.W.34, P.W.35 and P.W.40 have no credence to believe as they did not contain the certificate u/s 65-B of Evidence Act. P.W.15 Tr. Nasareyan, P.W.19 Tr.James, P.W.20 Tr.Franklin, P.W.22 Tr.Bakar, P.W.26 Tr.Keniston and P.W.27 Tr.Muthusamy are not supported the case of prosecution. The prosecution cannot take advantage from the available evidence of the witnesses. P.W.13 Tr.Krishnamoorthy did not say anything about the involvement of complicity of the accused. Statutory trustworthy compliance under Essential Commodities Act have not been followed and there was a clear procedural violations in collecting samples and subsequent procedures u/s 6-A, 6-B of Essential Commodities Act. The Motor Spirit and high Speed Diesel Order which suggests the mandatory procedural requirements with a view to securing the compliance of provisions of the order so as to satisfy the correctness of the action one by the officers. But the required procedural compliance had

not been followed promptly. The evidence of P.W.18 also inadmissible since no certificate u/s.2A of Bankers Book Evidence Act was not produced. Non examination of prosecution witness Tr.Choco Thomas to be considered as a suppression of fact and also the prosecution did not come forward to examine another witness Tmt.Vijayalatha who is acquainted with the facts of the case creates cloud over the prosecution case. Non recovery of material objects such as plastic gunny bag, plastic box in which the provisions were stored and the mobile phones with sim cards are fatal to the prosecution.

103):-

The learned counsel for A41 and A42 stated the same facts in the written arguments of A36, A39, A40 and A43. In addition to that, it was not proved that any amount was transferred from absconding accused, namely, Advanfort company to the account of A41, since there is no link between the Advanfort Company with A41 and that the amount was transferred only for the purpose of purchasing diesel oil by A41 to A39. Originally A41 doing the business of supplying men power to the ships, his friends also involved in the business of export and import. In such business connection A41 having several transactions from foreign countries and he also paid income tax properly. Mere 40476 American Dollar was transferred to the account of A41 alone does not prove the charges levelled against him, since no connection between the absconding accused company with A41.

The onus is upon the prosecution to prove the different ingredients of the offence and unless it discharged that onus it cannot succeed **(AIR 1973 SC 2273, AIR 1972 SC 716, AIR 1963 SC 1393, AIR 1966 SC 1393 and AIR 1964 SC 464).**

104):-

The learned Public Prosecutor stated in their written arguments that, P.W.8 has spoken about the recovery of barrels which were used for carrying diesel oil and also spoken about the taking sample diesel oil. Further recovery of sample diesel oil was deposed by P.W.43 and P.W.44. The owner of the boat also was examined as P.W.15. The investigation Officer P.W.44 Tr.Baskaran also spoke about the seizure of motor vehicle TN 69 AH 8457 and mechanized boat IND TN 12 MM 219. The purchasing of diesel oil and other provisions meant for supplying to the Seaman Guard Ohio ship was spoken by the witnesses. The transaction of money from Advanfort Company to Vikaline Marine Service Private Limited owned by A41 Thevan @ Munithevan and the transfer of the same to Thoothukudi HDFC in the account of A39 Murugesh. Such facts were also spoken by the Bank Managers, P.W.18 Ganesan and P.W.21 Tr.Rajeshkumar. Illegal diesel transport activities carried by A36, A37 and A38.

105):-

The arrest of these accused and the facts recorded in confession were spoken by P.W.16 and P.W.17. The collection of sample diesel oil, the quantity of collected diesel and the possession of sample etc., facts were questioned by the

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accused noting the Essential Commodities Act and Order. In this case only 1000 m.l (1 litre) diesel alone was available for taking sample. Any violation noting the Essential Commodities Act or Order will not affect the main fact that the diesel was illegally transported. **(2000 MLJ Reports Criminal page No. 295)**. It is now a well settled principle that any illegal and illegality during investigation agency not to be treated as a ground to reject the prosecution case. It is clearly noted with date and time that the ship has received 10 drums of diesel. It is noted as "11/10 ... 20.40 hours. Received 10 drums of diesel oil and fishing vessel cost off. So the accused side document itself proves the case of prosecution that diesel was illegally transported to the vessel in question. The bank accounts both in Chennai and Thoothukudi were frozen on the instruction of the investigation officer, P.W.44. Since the investigation officer P.W.44 is one of the signatory of the joint committee report, he is competent to speak about that document. As per the citation reported in **2004 CrI. L.J 1819**, the very same police officer, who recorded FIR on the information received, registered, suspected crime is competent to take up investigation and submitted final report.

106):- The prosecution witnesses who is the owner of the fishing boat and some of the recovery witnesses turned hostile and not supporting the prosecution case. For that the learned Public Prosecutor argued that, the admissible portion of the hostile

witnesses may be considered by this Court. Even though it is acceptable, other points should be proved by the prosecution cogently and clearly. But there is no material is available to connect these accused with the main accused for the purchase and supply of diesel oil. The procedure under Essential Commodities Act was not followed by the investigation officer and the sample recovery was also not proved and answered accordingly for the question Nos. 6 and 7.

107):-

The learned counsel for A2 to A35 raised objections in their written arguments that, the location of the ship at a particular time was not within the territorial waters of India and this Court has no power to decide the case, the prosecution based only on outdated map Ex.P5, the baseline was not drawn properly, there is some contradictions between the statement of prosecution witnesses and also the earliest documents of minutes of joint interrogation committee and the First Information Report and raised a plea of innocent passage, since the vessel was involved in service of protecting the commercial ships from the piracy attack and relied on the citations reported in

- 1) (2007) 3 Supreme Court Cases (Cri) 47 [Sujoy Sen alias Sujoy Kr.Sen]
- 2) (2010) 1 Supreme Court Cases (Cri.) 1356 [State of Maharashtra /vs./ Ahmed Shaikh Babajan and others]
- 3) (2014) 1 Supreme Court Cases (Cri.) 677 [Sujit Biswas /vs./

State of Assam]

4) (2013) 2 Supreme Court Cases (Cri.) 427 [Sunil Kundu /vs./

State of Jharkhand]

5) 1974 CRI.L.J. 385 (V 80 C 137), Allahabad High Court [Suraj

Nath Singh /vs./ The State of Uttar Pradesh]

108):-

The learned counsel appearing for crew members and the security guards, the question of location has already been decided after discussing elaborately along with Ex.P5 for drawing the baseline and decided the location of the ship at the particular time was within the territorial waters of India. The words of location of the ship within the territorial waters is not found in the FIR and minutes of joint interrogation committee will not be a fatal to the prosecution case, since initially the movement of the vessel was watched by coast guard authorities and on the instruction of the higher authorities, P.W.1 to P.W.3, who were doing the patrolling duty on that area in the ship Naikidevi proceeded. The minor discrepancies will not fatal to the prosecution as held by the Honourable Supreme Court in the 1st citation, since mentioning the location of the ship as 15 nautical miles is only a minor discrepancy since during the joint interrogation committee also they have not finalised the exact location of the ship. After preparing Ex.P5-Map and measuring the location then only they found the location was within the territorial waters. On the basis of discrepancy we cannot conclude that it is a major discrepancy which will affect the root of

the prosecution case. The complaint was only written on 7 lines by the coast guard is only on his official capacity. As I have already discussed elaborately whenever the movement of a vessel is suspicious the Navy Ship is duty bound to stop the vessel and doing verification. P.W.1 to P.W.3 were doing same work after receiving the instruction from their higher authorities then only they brought the ship to the Port by following the procedures, which will take some time. We cannot expect the such persons who were doing patrolling duty in a naval ship speaking all the incidents in the complaint. After registering a case by the Tharuvaikulam Marine Police station, investigation was handed over to Q Branch Inspector who took the investigation and proceeded and completed by filing the final report. Even though there is some omissions in the FIR, I hold that it will not affect the root of the prosecution case, since the questions connected with the case is only with the International Law and connected UNCLOS and also based only on the records, arms and ammunition recovered from the ship. Hence the registers and documents, which are maintained by the accused in their routine work and arms and ammunition cannot denied by them. To prove the possession of valid licence or recognition by the Advanfort Company for doing the so called business and possession of arms and ammunition in the vessel, no document was produced by the accused before this court for perusal. They relied upon the document Ex.D64 which is not in full form and the originals with

the accused or the company have not been produced. Hence this court cannot come to a conclusion that the documents produced before this Court are in full form. Some unfiled documents are xerox copies of certificates issued by the Government of District of Columbia in the name of "Advanfort Compay" by mentioning that "this office does not have any information about the entity's business practice and financial standing and their certificate shall not be construed as the entity's enforcement". This certificate was not issued as Advanfort Company is engaged in the business of protecting commercial ships from the attack by piracy. Even though it is not the question before this court to substantiate the claim of exception against the penal laws and prove their bonafideness, the particulars and nature of registration and business and liability should be proved. Failing to prove the facts naturally the cloud will arise regarding the management of the company as well as the movement of the boat with arms and ammunition. The licences are said to be issued with some conditions. These licence shall not affect prohibition and restriction in any legislative other than the legislation under which the licence was issued and also issued on a warning that failure to comply with any conditions attaching to the licence may led to forfeiture of the goods and or to prosecution under the customs exercise and management. When the company as well as operating Director still at large not come to the court to explain the facts by producing

relevant documents, the omission is only on the part of the accused not on the part of prosecution. The prosecution produced all the documents which are seized from the ship. The burden was shifted to the accused to explain all the facts that, nature of business, nature of licence and whether they are followed the procedures and guidelines issued by international authorities or flag States or at-least the procedure laid down by the Indian Government. In the 4th citation the Honourable Supreme Court held that,

“the major lacuna in prosecution case was that alleged use of firearms by the accused was not proved, since no firearm injuries were found on deceased and when there is cogent and reliable ocular witness evidence, it has primacy over medical evidence”.

But this case is concerned, the possession of huge quantity of arms and ammunition including some prohibited categories within the territorial waters of India without having licence or approval and even no information to the Government of India. So the nature of the case in the 4th citation is entirely different from the case on hand. So the 2nd, 3rd and 4th citations are not relevant to the case on hand. Likewise, in the 5th citation the Honourable High Court of Allahabad held that, when the material papers except Ex.Ka.4-report praying for sanction not placed before the District Magistrate for sanctioning prosecution, the sanction becomes bad. But as far as this case is concerned, PW.41, the District Collector, who accorded

sanction clearly deposed that before the sanctioning, he perused all the records and additional details furnished by the Q Branch Inspector, C.D file, ballistic report, copy of FIR, complaint, statement of witnesses, confession statements, connected records and connected Laws. Hence the 5th citation is not applicable to the case on hand.

109):-

The learned counsel for A1 to A35 also vehemently argued that the weapons are only non prohibited items. The first Surveyor General of India conducted the survey initially known as Everest 1830 (1830 represented the year in which the spheroid was defined) and the same was modified from time to time in the year 1930, 1956 and so on. So the boundaries in Ex.P1 to be measured under Everest ellipsoid, a globally accepted method in Annexure-2. Since the boundaries of seas are not calculated under the globally accepted Everest ellipsoid, the accused are entitled to benefit of doubt, regarding the location of the ship at the time of interception. It was stated in the written submission filed by A1 along with some annexures while proceeding u/s 313 (1)(b) Cr.P.C. The annexure 1 contains 19 pages of Global positioning system (GPS), which is related to objectives of GPS and GPS Segments. In the same document at page 11, 2.17 Geodetic Datum Transformation is explained. The annexure shows satellites are used for locating the vessel or aircraft. But it also mentioned that "Hence the result of the accuracy of any datum

transformation is not only dependent on the accuracy of the original data, but also on the accuracy of the determination of the transformation parameters used”.

110):- When the accused are claiming exception as they are doing anti-piracy activity and also claimed innocent passage with huge quantity of arms and ammunition along with security guards, the burden was shifted only on the accused. For discharging the burden, for shifting the burden to the prosecution side the accused should produce any data or instrument used by them in their vessel to prove their claim of location not within the territorial waters. No such instrument or document is produced by the accused. Mere producing some materials should not shift their burden to the prosecution.

111):- Admittedly, the vessel was built in the year 1984, which is above 25 years old there is some another rules for permitting such old vessels into the Indian Ports for avoiding collision with other vessels which will create claims against the vessel. I have elaborately discussed on the point of location of the ship on the basis of entries in the GPS log book which is maintained by the accused on the basis of Global Positioning System. Another electronic device digital recorder is not in working condition. In such a situation the claim of the accused cannot be accepted. A2 also produced additional documents for taking judicial notice along with his written submissions during the

proceedings u/s 313 (1)(b) Cr.P.C. The 1st document issued by the Department for Business Innovation & Skills (BIS), United Kingdom, confirming the legitimate ownership with seal. Even though the three documents bears the seal of Government of United Kingdom which are admissible in Indian courts u/s 57(6) of Indian Evidence Act, those documents were issued during the pendency of the case i.e issued only on 14th July 2015. It shows at the time of interception by the Naval authorities the accused company not having any valid licence for the possession of arms and ammunition on the vessel. Till date no document is produced to prove that the company is approved by any of the Government either United States of America or United Kingdom for doing the anti-piracy business. Without producing such valid documents, the Court cannot decide the possession of the huge quantity of arms and ammunition within Indian territorial waters is bonafide. So the arguments put-forth by the learned counsel for A1 to A35 are not acceptable.

112):-

The learned counsel for A1, A37 and A38 raising the same plea in the written arguments that, the vessel was in their voyage as a anti-piracy vessel engaged in embarking and disembarking the armed guards from ships of different nationalities and nothing else could be inferred from the details available in the log book. The ship was taken to the OPL as per the dictates of the company, penal laws would not apply to A1 since it was at the contiguous zone, when intercepted by P.W.1 and

he was forced to berth at Thoothukudi Port. The investigation officer has not aware the provisions of Arms Act, section 35. As it is only construed against the accused persons in joint possession of a house or a vehicle and not in a case of a vessel or a ship. Ignoring the specific provisions of law u/s 23 of the Act, which stipulates that only a police officer authorized by the Central Government can intercept, search and seize from a ship, the search and seizure in this case became illegal. Investigation is tainted by illegality. There was no prohibited weapon in the ship only semi automatic weapons are available which are not prohibited in India. The District Collector accorded sanction was not conversant with the positive provisions of Law especially section 23, 35 and 45 of Arms Act. The sanction order cannot be considered and there is some violation of provisions while taking samples of diesel oil. Remaining commodity is to be sent to the Collector for follow the confiscation proceedings. The offence u/s 7 (1) (a) mandates only physical possession cannot be pressed against A1, A37 and A38. The boat No.219 did not went to the sea as alleged by the prosecution. The Assistant Director, Fisheries Department stated that only two unknown persons sought permission which was declined by him. No adequate quantity of diesel oil was recovered from the ship. The investigation officer was not aware with the amendment law, rules, circulars and notifications by the Shipping Ministry. Other witnesses P.W.33, P.W.34 and P.W.35 are also not

competent persons their reports Ex.P46 to Ex.P58 are inadmissible which are contravened section 65A and B of Information Technology Act.

113):-

When there is a possibility of two views, the view which is favourable to the accused alone is to be considered by the Court. When the prosecution is failed to prove in connection with the transaction of USD from a foreign account to Indian account, there is every chance for the transaction of the accused Munithevan with his own foreign clients. The prosecution failed to traced out from which foreign account in whose name the money was transferred to prove the transaction between the accused with the company is only for purchasing of diesel oil and provisions. So the mere establishing the cell phone call details and other withdrawal of money from the bank account and purchasing of diesel oil will not prove the sale of diesel oil to the vessel by the accused and also not proved by the prosecution. Thus prosecution not proved that the accused conspired to commit the offence of conspiracy punishable u/s 120-B of IPC and purchasing of unusual large quantity of diesel oil contravening the provisions of section 3 of Essential Commodities Act and para 2(e) (v) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices), Order 2005, punishable under section 7 (1) (a) (ii) of Essential Commodities Act, 1955.

114):-

The possession of large quantity of arms and ammunition is admitted by the accused, since they have not denied. During the investigation itself, the investigation officer had given a chance to the Captain of the ship, crew members and security guards to produce the documents related to the possession of huge quantity of arms and ammunition and licence. But they have not produced any such document. PW.13 Tr.Krishnamoorthy, who is the shipping agent deposed that he contacted with Advanfort company through e-mail. In which the company replied that no such document is available. The file of e-communication is marked as Ex.P18 shows the company has no such document for the possession of arms and ammunition. The ballistic expert P.W.38 Tr.Baskar deposed some of the items of arms are strictly prohibited which are come under the prohibitive category as defined u/s 2(1)(i) of Arms Act, 1959 contravening under section 5 and 7 of Arms Act, punishable u/s 25 (1-A) of Arms Act.

115):-

The learned counsel for the accused argued that as per the document issued by the British Government produced along with written submission of A2 while proceeding u/s 313 (1) (b) of Cr.P.C shows that, the weapons are only semi automatic. Section 2(1) of Arms Act only deals with automatic weapons. The document produced for judicial notice was issued only during the pendency of the case. The prohibited arms classified in section 2(1)(i)

“Prohibited arms means :- (i) firearms so designed or adopted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazines containing the missiles is empty”.

The learned counsel for the accused argued that, during the examination of ballistic expert he admits that automatic operation of the gun was made dummy and as inoperative. So the weapons are come under the category of semi automatic and not under the category of prohibited category.

116):-

It is well settled law that while interpreting the statute or document, nothing can be ordered or subtracted by the Court. It is also well settled principle of interpretation that courts in construing statute will give much weight to the interpretation put upon it, at the time of its enactment and since by those whose duty it has been to construe, execute and apply and the statement of the rule was a quoted with approval of Supreme Court [Baleshwar Bagrti /vs./ Bhagirathi Dass] and also courts cannot rewrite a section. It is well established of canon construction that the court should read the section as it is and cannot rewrite it to suit its convenience; or does any canon of construction permit the court to read the section in such manner as to render it to some extent otiose. So the arguments of learned counsel for the accused as all the weapons

are only non-prohibited and semi automatic cannot be accepted. When the act itself says a weapon having the mechanism of automatic the court would consider only the meaning of the section alone. The court cannot rewrite the section.

117):-

The counsel for the accused argued that, the arms and ammunition which were seized from the vessel form part of the ordinary armament or equipment of the vessel within the meaning of Section 45(a) of The Arms Act and claiming exemption that, The Arms Act is not applicable for the vessel. The vessel is involved in a business of protecting commercial cargo ships from the attack of piracy on the high risk area. As I have already decided even though it is the business of the company, it is only on profit motive and no way benefit the coastal State. The International Maritime Organisation as well as the flag State Sierra Leone and Indian Government issued guidelines for the regulation of PCASP (Privately Contracted Armed Security Personal). The Advanfort company which engaged the crew members as well as the security guards for doing the business has not produced any document to prove their recognition for doing the business as well as the possession of huge quantity of arms and ammunition in their vessel. So without proving these facts the accused cannot claim the exemption u/s 45(a) of Arms Act that the arms and ammunition form part of the vessel.

118):-

When the accused are claiming exemption under section 45(a) of The Arms Act claiming right of possession of huge quantity of arms and ammunition in the vessel, first they have to get recognition or approval or licence from the flag State where the vessel was registered. When the company is involved in a business of handling huge quantity of arms and weapons, they have to get necessary licence for the possession of arms and ammunition as well as doing the business with some regulations. Without getting approval or licence or recognition from any of the organisation, the accused cannot claim exemption under section 45(a) of Arms Act, since when the language used in the statute is unambiguous and on a plain grammatical meaning the end result is neither arbitrary, irrational or contrary to the object of the statute then it is the duty of the Court to give effect to the words used in the statute as the words declare the intention of the law making authority. The words "ordinary armament" were not defined in The Arms Act anywhere. So the Court must give effect to the word only on grammatical meaning. "Ordinary" means normal or usual. "Armament" means military weapons. So we can safely mean normal military weapons. Section 45(a) of Arms Act defined as

"Arms and ammunition on board any sea-going vessel or any aircraft and forming part of the

ordinary armament or equipment of such vessel or aircraft”.

119):-

Admittedly the weapons seized from the vessel are prohibited and non prohibited arms and ammunition which can be used in military service. But the vessel was certified as utility boat. It shows the boat may used for any of the purpose, including commercial purpose. If it is used for commercial purpose, embarking huge quantity of weapons does not arise. When the utility boat was used as a carrier of huge quantity of arms and ammunition, the owner of the boat as well as the company and the crew members as well as the security guards are duty bound to get the necessary approval or licence from the authorities concerned. Even though they are involved in a business of protecting their clients cargo ships from the attack of pirates, all these questions arise when the vessel entered into a contiguous zone and territorial waters of other States. As I have already elaborately discussed the company as well as the vessel has not possessed any proper valid licence or recognition either of the countries. Even though the vessel is having the right of freedom in high seas with some restrictions while it enters into the territorial waters of other nations. Whenever it enters into the territorial waters it should follow the procedural laws of the coastal State only on the interest of the coastal State. The arms and ammunition are not attached with the vessel. The security guards with arms and

ammunition embarked from other ships in the mid sea. It shows the weapons are not under the category of ordinary armaments or equipments of the utility boat. Hence, I hold and conclude that the accused cannot claim exemption under section 45(a) of Arms Act.

120):- A1 to A35 are crew members and security guards engaged by the Advanfort company for doing the business for giving protection to their clients commercial cargo ships in high risk area with some motive of profit. As I have already elaborately discussed as both the crew members as well as the security guards who are having rich experience and knowledge in International Maritime Practice and Maritime Laws. So that they are having the knowledge about the consequences while the vessel in which they boarded entered into the territorial waters of other country.

121):- The learned counsel for the accused represented that the weapons are only kept in lock and key of the vessel under the control of Captain other members have no direct control over the weapon. To decide the possession, as I have already decided that it is not form part of the armament of the vessel.

“The possession of a firearm under the Arms Act must have, firstly, the element of consciousness or knowledge of that possession in the person charged with such offence, and secondly, where he has not actual physical

possession, he has nevertheless a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else. The concept of possession is not easy to comprehend as writers of jurisprudence had occasions to point out. In some cases u/s 19 (1) (f) of the Arms Act, 1878, it has been held that the word "possession" means exclusive possession and the word "control" means effective control but this does not solve the problem. The first pre-condition for an offence u/s 25(1) (a) of Arms Act is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly, that possession need not be the physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control. In any disputed question of possession, specific facts admitted or proved will alone establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question. Possession is not necessarily manual detention. Possession must have an element of intention or

knowledge or consciousness which must be proved (Reference book Mukherjee on Law of Arms and Explosives 3rd Edition, Dwivedi Law Agency, page No.217)".

122):-

On perusal of log books, the weapons and security guards were embarked on several dates at several locations. So the security guards along with weapons embarked into the vessel. There is no denial that the crew members no way connected with the weapons, or no way connected with the business of the company and no weapons connected with the duties of security guards. As the employee working in a particular company both crew members as well as the security guards should be treated equally for deciding the question of knowledge and possession. A1 to A35 are the crew members and security guards very well knowing the embarking the weapons into the vessel. They are engaged by the company with the supply of huge quantity of arms and ammunition for doing their job. In such a condition all the accused A1 to A35 are naturally having the knowledge of possession and all the accused A1 to A35 are having control over the weapons. No accused person has come to the witness box to explain their responsibilities and liabilities. The company engaged the accused does not possess any valid recognition or approval either by the Government of United States where the company was registered. No document was produced to

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prove the nature of the business and liability of the company and also no document was produced either by the company or the accused to prove that they are having recognition or approval either by the International Maritime Organisation or the flag State Sierra Leone. In such a situation they cannot claim the exemption u/s.45(a) of The Arms Act and also the possession is within the vessel in which A1 to A35 are boarded, even though they are not in actual possession. But A1 to A35 are having control over the weapon for its use at any time on the instruction of their company. Even though the Captain of the vessel is having the direct control over the weapon, he has not chosen to come into the witness box to clarify other crew members and security guards no way connected with control over the weapon proves that every member boarding the vessel are having knowledge and direct control over the weapon.

123):-

From the elaborate discussions in the foregoing paragraphs, I come to the conclusion for the charges levelled against the accused as follows:--

1) when the prosecution has failed to prove the connection between the Advanfort Company conspired with A1 to A35 to commit any clandestine Acts, the first charge framed against A1 to A35 for the offence u/s 120-B of IPC, is not proved by the prosecution.

2) The second charge framed against A1 to A35 for the offence in contravention of section 7 and 35 of the Arms Act, 1959 punishable under Section 25(1-A) of the Arms Act, 1959 is proved by the prosecution.

3) third charge framed against A1 to A35 for the offence in contravention of section 3 of the Arms Act 1959 punishable under section 25(1-B)(a) of the Arms Act 1959 is also proved.

4) The fourth charge framed against A1 to A35 for the offence in contravention of Rule 30 of the Arms Rules 1962 and section 10 & 35 of the Arms Act, 1959 punishable under section 25 (1B)(f) of the Arms Act, 1959 is also proved.

5) The fifth charge framed against A1 to A35 for the contravention to Section 36 (2) of the Arms Act, 1959 punishable under section 30 of the Arms Act, 1959 would not attract, since the accused are found guilty for the possession of prohibited arms and non-prohibited arms and contravention of the Rules of The Arms Act, failed to inform the possession of such arms to the nearest police station does not arise, since they are boarded in the ship. Even though they are having intention to anchor the vessel at outer port limits of Thoothukudi Port, inform the possession to nearest police station is not proved, since they are not having knowledge about the nearest police station.

6) The sixth charge framed against A1, A3, A4 and A5 contravened the provisions of section 3 of Essential Commodities Act and violation of Order 2 (f)(v) of the Motor Spirit and High Speed Diesel (Regulation of Supply and distribution and Prevention of Malpractices), Order 2005, punishable under section 7(1)(a) (ii) of Essential Commodities Act, 1955 is not proved by prosecution.

7) The seventh charge framed against A36 to A43 for the contravention of provisions of Section 3 of Essential Commodities Act and the violation of Order 2 (f)(vi) of the Motor Spirit and high Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) 2005, punishable under section 7(1) (a) (ii) of Essential Commodities Act, 1955 is also not proved and answered the point accordingly.

124):- Therefore I held A1 to A35 are found not guilty u/s 120-B of IPC, and section 36 (2) r/w 30 of the Arms Act, 1959, A1, A3, A4 and A5 are found not guilty under Order 2(f)(v) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005 r/w 7(1)(a)(ii) of Essential Commodities Act 1955 and A36 to A43 are found not guilty under Order 2(f)(vi) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005.

125):- Further I held A1 to A35 are found guilty u/s 25(1-A) of The Arms Act, 1959, u/s 25(1-B) (a) of The Arms Act, 1959 and u/s 25(1-B) (f) of The Arms Act, 1959.

126):- When the accused 1 to 35 were questioned about the sentence proposed to be imposed upon them u/s 235 (2) of Cr.P.C, they replied that,

“they are innocent and in Jail for 6 months and remain in India for 2 ½ years, also reply that they have not understand the language and permit their counsel to represent and never make any mistake and not guilty. The counsel represents that, all accused are foreigners, they have already undergone 6 months Jail. In this circumstances, punishment may set off”.

127):- From the evidence adduced and the arguments made the circumstances clearly did not attract any immunity for the acts of the accused by way of innocent passage. The accused also failed to produce adequate proof of their claim that the vessel was in distress. It is pertinent to note that the event of the vessel being at distress, there is no duty cast

upon the Captain to wait for the orders from his master rather should have communicated the information to the Port authorities. But the facts of the case prove otherwise. Hence, the accused are not entitled to claim freedom as in high seas in territorial waters of a particular State and also from the evidence, it becomes obvious that the provisional certificate of registration of the vessel in Sierra Leone, a West African country, lapsed and no proof of its renewal had been produced by the accused. The accused claim that their company Advanfort engaged in the business of anti-piracy, for which no proof of recognition, registration or approval by the Government of United States of America or of the flag state has been produced. It is a well established principle that when a vessel enters into the territorial waters of a particular state, it should abide by the law of that particular state as it is essential in the view of maintaining security of the coastal State. The accused claim that the vessel is used for the supply of arms and ammunition to the merchant ships by way of protecting them from piracy. Arms and ammunition, though held for the purpose of business, are capable of creating fear and being misused. The crew members, who are from several nations, including India, are well educated with rich experience and are aware of the International Maritime Rules and Statutes. They are expected to have verified the nature of the company and of its business, before being employed in the same. From the evidence, they did not raise any

plea as of their innocence, nor did the company come forward to establish its hold. Therefore, since, they have entered into the territorial waters of India and have violated the laws of the coastal State, punishing them in the interest of justice, proves to be essential.

128):-

In the result, I acquit A1 to A35 from the charges u/s 120-B of IPC, section 36 (2) r/w 30 of the Arms Act, 1959, acquit A1, A3, A4 and A5 from the charge under Order 2(f)(v) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005 r/w 7(1)(a)(ii) of Essential Commodities Act 1955 and acquit A36 to A43 from the charge under Order 2(f)(vi) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005 u/s 235 (1) Cr.P.C, since the prosecution has not proved the said charges. The bail bonds executed by A36 to A43 shall stand canceled automatically after the expiry of appeal time. The amount of Rs.25,00,000/- was deposited by A3 to A35 before the court of the Judicial Magistrate No.I, Thoothukudi as per the orders of the Honourable Madurai Bench of Madras High Court in CRL OP (MD) No.3575/2014, dated 28.03.2014 and the same was kept by the learned Judicial Magistrate No.I at Thoothukudi in CrI.C.D. a/c. Out of the above amount, Rs.7,00,000/- was ordered to be released to the power of attorney holder, namely, Dr.Thushara James,

Thoothukudi as per the orders of the Honourable Madurai Bench of Madras High Court in CRL RC (MD) No.448 and 17625/2014, dated 24.03.2015 as an interim order. Hence A3 to A35 may be approached the Honourable High Court for any further orders in this regard.

129):-

I convict A1 to A35 and sentence them to undergo rigorous imprisonment for five years each and to pay a fine of Rs.1,000/- each in default rigorous imprisonment for six months each for the offence u/s 25(1-A) of The Arms Act, 1959, to undergo rigorous imprisonment for one year each and to pay a fine of Rs.1,000/- each in default rigorous imprisonment for three months each for the offence u/s 25(1-B) (a) of The Arms Act, 1959 and undergo rigorous imprisonment for one year each and to pay a fine of Rs.1,000/- each in default rigorous imprisonment for three months each for the offence u/s 25(1-B) (f) of The Arms Act. [Total fine amount Rs.1,05,000/-(A1 to A35 each Rs.3,000/-)].

130):-

It is further ordered that the above sentences imposed for the above sections shall run concurrently and the period of remand already undergone by the accused shall be set off as provided u/s 428 Cr.P.C.

131):-

The orders regarding the disposal of the properties remanded and produced in P.R. No.116/15 will be passed during the disposal of the split up case in

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P.R.C No.28/2015, which is pending before the court of the Judicial Magistrate No.I, Thoothukudi. Further, the properties, namely, M.O.3-sample bottle with diesel was handed over to the Balaji Fuel and Service at Thoothukudi, M.O.4 series-10 empty barrels and M.O.10-TN 69AH 8457 TATA ACE vehicle were handed over to Q Branch CID Office, Thoothukudi, M.O.5-M.V. Seaman Guard Ohio Vessel was handed over to The Chairman, V.O.Chidambaranar Port Trust, Tuticorin which is berthed at VOC Port, Thoothukudi and M.O.6 series-35 firearms, M.O.7 series-102 magazines and M.O.8 series-5682 ammunition were handed over to the Armoury of CISF, VOC Port, Thoothukudi for safe custody as per the order of the learned Judicial Magistrate No.I, Thoothukudi and all the above safe custodies are ordered to be continued till the disposal of the split up case in P.R.C No.28/2015. The passports and seaman books of A1 to A35, which were marked as Ex.D2 to Ex.D61 and Ex.P78 series and unmarked passport and seaman book of A42, which were also remanded and produced in P.R.No.116/2015 are ordered to be kept along with the case records.

Dictated by me to the stenographer, transcribed and typed by her, corrected and pronounced by me in the open court, on this the **11th day of January 2016.**

Sd/-N. Rajasekar,
Principal Sessions Judge,
Thoothukudi.

Witnesses examined on the side of prosecution :-----

- 1) : Tr. Narendran, Assistant Commandant
- 2) : Tr.M.M. Mark, Commandant
- 3) : Tr. Keerthi Kasbar, Assistant Commandant
- 4) : Tr.K.P.P. Kumar
- 5) : Tr. Kingston, Pilot
- 6) : Tr. Rajesh Dhaulakhandi, Commandant
- 7) : Tr. Mohan Roy, Signal Bosan
- 8) : Tr. K. Ragupathi, then Inspector of Customs
- 9) : Tr. Kandasamy, Deputy Superintendent of Police, DCRB
- 10) : Tr. Anilkumar, Port Registration Officer
- 11) : Tr. Muthuraj Banugoban, Village Administrative Officer
- 12) : Tr.Sekar, Assistant Director, Fisheries Department
- 13) : Tr. Krishnamoorthy
- 14) : Tr. J.V.S. Bharathi, Radio Inspector
- 15) : Tr. Nasreyan
- 16) : Tr. Marisankar, then Village Administrative Officer
- 17) : Tr. Periyamayagam, Village Assistant
- 18) : Tr. Ganesh, Branch Manager, HDFC Bank
- 19) : Tr. James
- 20) : Tr. Frank @ Franklin
- 21) : Tr. Rajesh Kumar, then Branch Manager, HDFC Bank
- 22) : Tr. Baskar
- 23) : Tr. Ayyadurai
- 24) : Tr. Appas
- 25) : Tr. Raja
- 26) : Tr.Keniston
- 27) : Tr.Muthusamy
- 28) : Tmt. Alwar,Tahsildar
- 29) : Tmt.Latha, Inspector (Technical, Police Telecommunication Department)
- 30) : Tr.Mariappan
- 31) : Tr.Narayanan, Grade II P.C
- 32) : Tr.Balasubramanian, Grade II P.C

- 33) : Tr. Sunil, Alternate Nodal Officer (Vodafone)
- 34) : Tr.Vijay, Nodal Officer (TATA Tele Services)
- 35) : Tr.Vijayakumar Raja, Assistant Manager (Aircel)
- 36) : Tr.Ashok V.M.Kumar, Deputy Naval Provost Marshal
- 37) : Tr.Kamaraj, Senior Manager (Quality Control), HPCL
- 38) : Tr.Baskar, Assistant Director, Forensic Science Department (Ballistics Division)
- 39) : Tr.Senthilkumar, Joint Director
- 40) : Tr.R.Jeyakumar, Nodal Officer (Airtel)
- 41) : Tr.Ravikumar, District Collector, Thoothukudi
- 42) : Tr.Ramesh Kumar, Inspector of Police, Tharuvaikulam P.S.
- 43) : Tmt.Sunanda Bhagavathy, Deputy Superintendent of Police, Q Branch, C.I.D
- 44) : Tr.Baskaran, then Inspector of Police, Q Branch C.I.D.

Witnesses examined on the side of defence :----

Nil

Exhibits marked on the side of prosecution:---

- 1) 11.05.2009 ---- Copy of the notification of Ministry of External Affairs in S.O.1197 (E)
- 2) 13.10.2013 ---- Complaint along with the list of crew members and guards
- 3) 12.10.2013 ---- List of arms, magazines and ammunition handed over to the Inspector of Police by P.W.1
- 4) 12.10.2013 ---- Copy of minutes of Joint Interrogation Meeting
- 5) ----- ---- Copy of the map explaining baseline and the position of the vessel
- 6) 18.10.2013 ---- Extract of Log Book of ICGS, Naikidevi
- 7) 27.10.2013 ---- Extract Log Book maintained by P.W.4
- 8) 12.10.2013 ---- Endorsement made in the page No.89 of Signal VHF Log Book

- 9) 27.10.2013 ---- Seizure mahazar prepared at 10.00 a.m to 11.30 a.m on 27.10.13
- 10 Series) ---- ---- Documents relating to ship containing 962 pages (12 files)
- 11) 27.10.2013 ---- Seizure mahazar prepared at about 11.45 a.m to 1.00 p.m on 27.10.13
- 12 Series) --- ---- Documents relating to arms containing 2,316 pages (10 files)
- 13) 27.10.2013 ---- Seizure mahazar prepare to 1.05 p.m to 1.35 p.m on 27.10.13
- 14) 16.10.2013 ---- Observation mahazar
- 15) 24.10.2013 ---- Seizure mahazar prepared on 24.10.13 at 10.00 a.m
- 16) 17.10.2013 ---- Seizure mahazar prepared on 17.10.13 at 11.00 p.m
- 17) 16.10.2013 ---- Letter of Assistant Director of Fisheries
- 18) 14.10.13 to 26.10.13 ---- e-mail communications between Krishnamoorthy and Advan Fort Company
- 19) ---- --- Deck Log Book of the vessel from 2.7.13 to 8.10.13
- 20) ---- --- Deck Log Book of the vessel from 9.10.13 to 17.10.13
- 21) ---- --- GPS Log Book of the vessel from 25.12.12 to 17.10.13
- 22) 24.07.2012 --- Circular issued by the Mercantile Marine Department, Chennai along with the list of International Group of Protection and Indemnity Clubs, Members of Classification Societies and R.O. approved by the Government of India.
- 23) 20.04.2012 --- Copy of notification of Ministry of Shipping
- 24) 08.06.2013 --- Original R.C Book of Mechanized Boat bearing registration No. IND TN 12 MM 219
- 25) 20.10.2013 --- Signature of P.W.16 in the confession statement of Vijay (A37)

- 26) 20.10.2013 --- Signature of P.W.16 in the confession statement of Murugesh (A39)
- 27) 20.10.2013 --- Signature of P.W.16 in the confession statement of Selvam (A40)
- 28) 19.10.2013 --- Admissible portion of the confession statement of Maria Anton Vijay (A36)
- 29) 19.10.2013 --- Atthachi prepared at 21.40 hours
- 30) 20.10.2013 --- Admissible portion of the confession statement of Vijay (A37)
- 31) 20.10.2013 --- Atthachi prepared at 07.15 hours
- 32) 20.10.2013 --- Signature of P.W.17 in the confession statement of Murugesh (A39)
- 33) 20.10.2013 --- Signature of P.W.17 in the confession statement of Selvam (A40)
- 34) --- --- Chennai HDFC Bank, Account statement of Vika Line Marine Services Limited Chennai for the period from 17.10.12 to 21.10.13
- 35) ---- --- Thoothukudi HDFC Bank, Account statement of A39 Murugesh for the period from 26.6.11 to 19.10.13
- 36) 18.10.2013 --- Letter of the Branch Manager, HDFC Bank, Thoothukudi for Debit Freeze Status relating to the Account Nos.11041050004770 and 50200000105782
- 37 series) ---- --- 2 bill books of Muthuvel Petrol Bunk, Thoothukudi
- 38) ---- --- Bill number 72832 in the bill book Ex.P37 series
- 39) 11.10.2013 --- Bill number 72748 in the bill book Ex.P37 series
- 40 series) 11.10.2013 --- Two bills of Raku Ice and Cold Store, Thoothukudi
- 41) 22.10.2013 --- Atthachi 12.30 p.m
- 42) 26.10.2013 --- The admissible portion of confession statement of A2 Paul David Dennish Towers

- 43) 26.10.2013 --- The admissible portion of confession statement of A5 Radhesh Dhar Dwivedi
- 44) 31.10.2013 --- Acknowledgment for the receipt of sample diesel in a bottle (M.O.3)
- 45) 27.10.2013 --- One DVD containing scenario taken during the search of the vessel
- 46) 01.09.13 to 12.10.13 --- Applications, call details and enclosures related to the mobile numbers 9786925316 and 9585077909.
- 47) 11.10.2013 --- 4 call details in the Ex.P46
- 48) 01.09.13 to 12.10.13 --- Applications, call details and enclosures related to the mobile number 7200070699
- 49) 01.10.13 & 02.10.13 --- 6 call details in the Ex.P48
- 50) 09.10.2013 --- One call details in the Ex.P48
- 51) 10.10.2013 --- 2 call details in the Ex.P48
- 52) 11.10.2013 --- One call details in the Ex.P48
- 53) 11.10.2013 --- One call details in the Ex.P48
- 54) 01.09.12 to 12.10.13 --- Applications, call details and enclosures related to the mobile number 9768684041
- 55) 10.10.2013 --- One call details in the Ex.P54
- 56) 10.10.2013 --- Two call details in the Ex.P54
- 57) 11.10.2013 --- One call details in the Ex.P54
- 58) 11.10.2013 --- Three call details in the Ex.P54
- 59) 31.10.2013 --- Office copy of the letter of the Judicial Magistrate No.I, Thoothukudi for analysis of sample diesel
- 60) 07.11.2013 --- Test report of the sample diesel

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- 61) 30.10.2013 --- Office copy of letter of the Judicial Magistrate No.I, Thoothukudi to the Ballistics Division, Forensic Sciences Department, Chennai
- 62) 21.11.2013 --- Ballistics Report
- 63) 28.11.2011 --- Xerox copy of circular of Directorate General of Shipping in NT/ISPS/CIRCULAR NO.1/2011.
- 64) 25.05.2012 --- Xerox copy of circular of Directorate General of Shipping in No.MSL-2(1)/2005-IV
- 65) 25.05.2012 --- Xerox copy of guidelines of International Maritime Organization
- 66) 01.09.13 to 12.10.13 --- Applications, call details and enclosures related to the mobile numbers 9894242659, 9003894322, 9600013569, 8754907547, 9629118562 and 9791012451.
- 67) 29.12.2013 --- Sanction Order for the prosecution under Arms Act.
- 68) 13.10.2013 --- Printed First Information Report
- 69) 15.10.2013 --- Xerox copy of proceedings of the DGP, Tamilnadu in RC. No.176936/Crime.4(2)/2013.
- 70) 16.10.2013 --- Letter of the Inspector of Police for handing over the C.D file to the Q Branch C.I.D, Thoothukudi.
- 71) ---- --- Xerox copy of the Map showing the position of the vessel
- 72) 30.10.2013 --- Requisition of the Deputy Superintendent of Police, Q Branch C.I.D for analysis of diesel.
- 73) 16.10.2013 --- Proceedings of the Superintendent of Police, Q Branch C.I.D in C.3.No.11895/X/2013/C, dated 16.10.13.
- 74) 16.10.2013 --- Rough sketch
- 75) 17.10.2013 --- Seizure mahazar of deck log books
- 76) 17.10.2013 --- Carbon copy of acknowledgment enclosed with the seizure mahazar Ex.P75

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- 77) 17.10.2013 --- Seizure mahazar of 10 passports and seaman books
- 78) --- --- Seaman books of A1 and A3 to A11
- 79) 18.10.2013 --- Acknowledgment given by the C.I.S.F of unit VOC port, Thoothukudi.
- 80) 18.10.2013 --- Seizure mahazar of 25 passports and seaman books
- 81) 18.10.2013 --- Annexure enclosed with the seizure mahazar Ex.P80
- 82) 19.10.2013 --- Carbon copy of mahazar for the search made in the vessel
- 83) 22.10.2013 --- Atthachi for the seizure of bill books
- 84) 09.11.2013 --- Requisition for destruction of food items
- 85) 06.11.2013 --- Requisition for analysis of electronic goods
- 86) 06.11.2013 --- Office copy of the letter of Judicial Magistrate No.I, Thoothukudi to the Forensic Sciences Department, Chennai
- 87) 16.11.2013 --- e-mail transaction copies between Q Branch C.I.D and Advan Fort Company
- 88) 21.10.2013 --- Section Alteration Report
- 89) 12.03.2014 --- Analysis Report file of Electronic goods

Exhibits marked on the side of Defence :---

- 1) 22.08.13 ----- Endorsement made in the page No.43 of 4th file of Ex.P10 series i.e. Pre arrival information of security (ISPS at Cochin Port etc)
- 2) ----- Seaman Book of A2 Paul David Dennish Towers
- 3) ----- Seaman Book of A12 Renne Tonissaar
- 4) ----- Seaman Book of A13 Igor Blinkov

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- 29) ---- ----Passport of A3 Sidorenko Valeriy
- 30) ---- ----Passport of A4 Lalitkumar Gurung
- 31) ---- ----Passport of A5 Radhesh Dhar Dwivedi
- 32) ---- ----Passport of A6 Naveen Rana
- 33) ---- ----Passport of A7 Dinesh Narayanan
- 34) ---- ----Passport of A8 Ramesh Kumar
- 35) ---- ----Passport of A9 Rajan Thandapani
- 36) ---- ----Passport of A10 Abijit Ashok Sawani
- 37) ---- ----Passport of A11 Jagdish Prasad
- 38) ---- ---- Passport of A12 Renne Tonissaar
- 39) ---- ---- Passport of A13 Igor Blinkov
- 40) ---- ---- Passport of A14 Raigokustmann
- 41) ---- ---- Passport of A15 Vladislov Korsunov
- 42) ---- ---- Passport of A16 Lauriader
- 43) ---- ---- Passport of A17 Alvarhunt
- 44) ---- ---- Passport ofA18 Dennis Sukhenlov
- 45) ---- ---- Passport of A19 William Irving
- 46) ---- ---- Passport of A20 Igortotrov Lev
- 47) ---- ---- Passport of A21 Roman Obeitsak
- 48) ---- ---- Passport of A22 Krito Koha
- 49) ---- ---- Passport of A23 Levgen Semenov
- 50) ---- ---- Passport of A24 Nicholas Simpson
- 51) ---- ---- Passport of A 25 Raymond John Tindall
- 52) ---- ---- Passport of A26 Nicholas James

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- 53) ---- ---- Passport of A27 John Wilson Armstrong
- 54) ---- ---- Passport of A28 Aleksei Tutonin
- 55) ---- ---- Passport of A29 K.V. Prakashan
- 56) ---- ---- Passport of A30 Demitri Pappel
- 57) ---- ---- Passport of A31 Sudheer
- 58) ---- ---- Passport of A32 Unni Krishnan
- 59) ---- ---- Passport of A33 Jogiste
- 60) ---- ---- Passport of A34 Andrej Gortsagov
- 61) ---- ---- Passport of A35 Harijeet Singh
- 62) 19.03.2013 Copy of certificate of insurance relating to Advan Fort Company
- 63) 19.06.2013 ---- Copy of interim certificate of classification relating to the vessel Seaman Guard Ohio.
- 64 Series) ---- ---- Copy of the conditions relating to licence of arms (11 numbers)
- 65) 27.07.2013 ---- Provisional Certificate of Registration (Original) of Seaman Guard Ohio vessel
- 66) --- ---- File No.7 of the Ex.P12 series
- 67) 08.10.2012 ---- Page No.1633 in the file No.9 of Ex.P12 series (Xerox copy of commercial end user certificate)
- 68) 21.02.2011 ---- Page No.1635 in the file No.9 of Ex.P12 series (Xerox copy of one licence)
- 69) ---- ---- File No.12 of Ex.P10 series
- 70) 28.09.2015 ---- One bill Ragu Cold Store, Thoothukudi in the name of Antony
- 71 series) 14.10.2015 ---- Two bills of MVS. Muthuvel and Sons, No.I, Thoothukudi
- 72 series) ---- ---- Provisional Minimum Safe Manning Certificate, Provisional Ship Station Licence and Interim Certificate of Classification.

Material objects marked on the side of prosecution :-----

- 1) : Central Processing Unit
2) : Digital Voice recorder
3) : One bottle of diesel containing 500 m.l
4) : Empty Barrels – 10
5) : Seaman Guard Ohio ship
6 : CZ 858 06
Series) Browning 04
LTRAC
Saiga M3 02
Glock 17 01
HKG 3 06
SLR 11
Benelli MRI 02
Benelli Argo E 01
Oberland 01
Oberland 01
Total---35
: (Thirty five only)
7 : Magazines -102 numbers
Series)
8 : ammunition - 5,682 numbers
Series)
7.62 X 39 mm type 1531
7.62 X 63 mm type 0228
7.62 X 51 mm type 3582
5.56 X 45 mm type 0297
9mm 0044
Total ---- 5682
(Five Thousand six hundred and eighty two only)
9) : Mechanized boat bearing Registration No. IND TN 12 MM
219
10) : TATA ACE vehicle bearing registration No. TN 69 AH 8457

Sd/-N. Rajasekar,
Principal Sessions Judge,
Thoothukudi.

Copy to :--

1) The District Collector, Thoothukudi.	for taking further action if necessary, since most of the accused are foreigners.
2) The Inspector of Police, Q Branch, CID, Thoothukudi	

Principal Sessions Court,
Thoothukudi

S.C. No.262/2015,

Draft/Fair/Copy Judgment,

Dated :11.01.2016.
