

IN THE SPECIAL COURT FOR NIA CASES, ERNAKULAM, KERALA

Present:-

Sri.K.M.Balachandran, B.Com., LL.B., Judge, Special Court for NIA Cases, Ernakulam

Monday, the 4th day of April, 2016/15th Chaithram, 1938

SESSIONS CASE NO. 1/2016/NIA

(R.C.No. 1/2015/NIA/KOC)

Complainant

: State of Kerala represented by National Investigation Agency, Ernakulam.

By Adv.K.N.Raveendran, Public Prosecutor, NIA

Name of the Accused

: Abdol Majid Balouch, S/o.Ibrahim, aged 30 years, Near Mosque, Chigardani Lash Village, Kaheer Town, Chabahar City, Baluchistan, Iran. Postal Code : 9985114135 (Kaheer)

By Adv. Thomas Abraham

Charges

: Offences Punishable under section 3 r/w 10 (b) and section 7 r/w 14 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981.

Plea of the accused

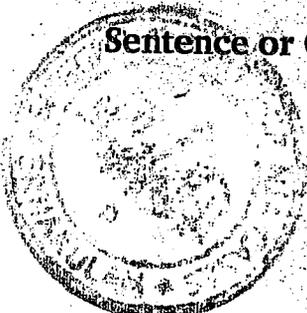
: Guilty.

Finding of the Judge

: Guilty

Sentence or Order

: (1) The accused is sentenced to pay fine of Rs.60,000/- in default to undergo simple imprisonment for one month for the conviction under section 3 r/w 10 of the Maritime Zones of



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India (Regulation of Fishing by Foreign Vessels) Act, 1981.

(2) The accused is also sentenced to pay fine of Rs.40,000/- in default to undergo simple imprisonment for one month for the conviction under section 7 r/w 14 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981.

(3) It is directed to confiscate the vessel and fishing gear of the vessel involved in this case which is now kept custody by the NIA as per the direction of this Court, under section 12 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981.

(4) It is directed to release all other items seized from the accused and from the already released/discharged accused 2 to 12 of FIR on obtaining proper receipt.

(5) On remission of fine and on reporting that fact in Court, orders will be issued with respect to custody /deportation of the accused to his home land.



DESCRIPTION OF THE ACCUSED

Sl.No	Name of Accused	Father's Name	Occupation	Age	Residence
1.	Abdol Majid Balouch	Ibrahim	Sailor	30	Near Mosque, Chigardani Lash Village, Kaheer Town, Chabahar City, Baluchistan, Iran.

Date of

Occurrence	Complaint	Apprehension	Release on bail	Commitment / Date of filing
04.07.2015	31.07.2015	05.07.2015	-----	14.03.2016

Commencement of trial	Close of trial	Date of Judgment	Sentence / order	Service of copy of judgment for finding on accused	Explanation for delay
04.04.2016	04.04.2016	04.04.2016	04.04.2016		-----

This Case coming on for final hearing before me on 04.04.2016 and upon perusing the records of evidence and proceeding and upon duly considering the same and after hearing the Public Prosecutor and Counsel for the accused, I do adjudge and deliver the following :-

JUDGMENT

The National Investigation Agency has laid a final report against the accused for committing offences under section 3 r/w 10 (b) and section 7 r/w 14 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981.

2. The averments of the prosecution in brief are as follows :- The accused, an Iranian national, while holding charge as Master of the foreign fishing vessel registered in Chabahar port in Iran vide No. 4/3517-21.10.2003 was found by the Indian Coast Guard in the Exclusive Economic Zone of India in the Arabian Sea at a distance of 58.5 nautical miles off Kerala Coast on 04.07.2015 at 04.58 hrs without any valid licence or permit issued by the competent Indian authority under the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 and without keeping the fishing gear of the vessel stowed in the manner prescribed under the Act and thereby he has committed the above offences.

3. As per the FIR, there were 12 accused and all were alleged to have committed offences under the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (SUA) along with the offences under the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 (The Maritime Zones Act).

4. However after investigation the NIA found that the offence levelled against the accused persons under SUA have not been established and the offences levelled against accused 2 to 12 in the FIR also have not been established. Hence on filing the charges I took cognizance against the present accused (A1 in the FIR) for offences under section 3 r/w 10 (b) and section 7 r/w 14 of the Maritime Zones Act. I also passed an order on 17.03.2016 releasing A2 to A12 in the final report and directing the Foreign Regional Registration Officer (FRRO) who is the civil

authority under the Foreigners Order, 1948 to take custody of the said persons till they are deported to their respective home lands.

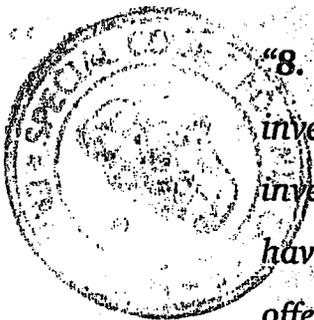
5. Since the offences now alleged are only under the Maritime Zones Act which is not a scheduled Act under the National Investigation Agency Act (NIA Act), I had a doubt as to whether the cognizance taken was correct and whether this Court can proceed with the accused on the said offences. On that aspect I heard the learned Public Prosecutor and learned Counsel for the accused Mr. Thomas Abraham who has been appointed to defend the accused by the Taluk Legal Service Committee.

6. Section 3(1) of the NIA Act reads as below :-

“3. Constitution of National Investigation Agency . -
(1) Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special agency to be called the National Investigation Agency for investigation and prosecution of offences under the Acts specified in the schedule.”

7. Thus, NIA is constituted for investigation and prosecution of the offences under the Acts specified in the schedule. Along with the above provision Section 8 of NIA Act also will have to be considered, which reads as below :-

“8. Power to investigate connected offences.- While investigating any Scheduled Offence the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled offence.”

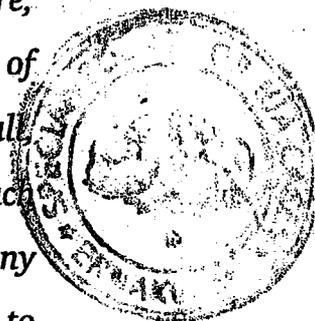


8. A combined reading of the above two provisions would show that the power of NIA to investigate is not confined to scheduled offences only. If there are any connected offences that can also be investigated and the accused can be placed for the connected offences for trial before the NIA Court.

9. Under section 11 of the NIA Act, Special Courts are constituted for the purpose of trial of offences being investigated by the NIA. Under section 14 the Special Courts have got jurisdiction to try in other offence investigated by the NIA also.

10. All these provisions if read together would show that even though the ultimate result of the investigation by the NIA did not disclose any scheduled offences, since the NIA has investigated into the connected offence also, the NIA was competent to lay a charge sheet for the said connected offence before the Special Court constituted wherein alone the NIA can file final report. The Special Court can take cognizance and try the case investigated by the NIA despite the fact that under section 20 the Special Court can transfer the case for trial by some other competent Courts. Section 20 of the NIA Act reads as below :

"20. Power to transfer cases to regular courts.- Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence"

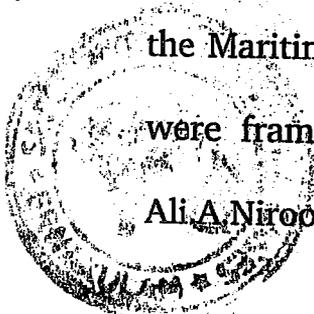


11. A reading of the above said provision would show that only if the Special Court is of the opinion that the offence is not triable by it, it has got power to transfer the case.

12. In the light of my discussion on Sections 3, 8, 11 and 14 of the NIA Act as above, I find that I need not form an opinion that the offence under the Maritime Zones Act with which the accused is charged cannot be tried by this Court. In fact since the case is investigated by the NIA, this Court is the only forum to NIA to file a final report. Hence, I do not find any illegality in the matter of taking cognizance under the Maritime Zones Act on the basis of said final report laid by the NIA.

13. Of course, under the Maritime Zones Act cognizance can be taken by the Court on the basis of a complaint by an authorised officer. The Station House Officer of all the Police station are such authorised officers. The NIA also is regarded as a wing of police and the officer in charge of the NIA who conducted the investigation can be treated as Station House officer. The final report can be treated as the complaint filed by such Station House officer. In that view, there is no illegality in taking cognizance on the basis of final report now filed by the NIA.

14. Since the accused is undergoing judicial custody, when he was produced before this Court, on hearing the learned Public Prosecutor and learned counsel for accused the charges under section 3 r/w 10 (b) and section 7 r/w 14 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 were framed, read over and explained to him through an interpreter, namely Ali A. Niroomand, Sr. Public Relations Officer, Consulate General of Islamic Republic

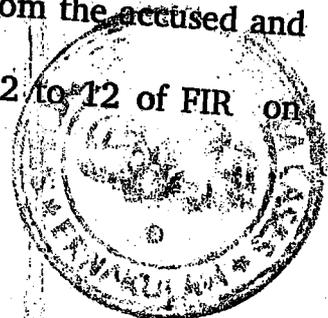


of Iran. On understanding the charges the accused pleaded guilty of the charges and requested to show leniency towards him.

15. On satisfaction that the plea of guilt made by the accused was a voluntary act from his side I accepted the same and therefore I convict him for the offences charged and I proceed to sentence the accused for the conviction entered on him and pass incidental orders as shown below :-

In the result,

- (1) The accused is sentenced to pay fine of Rs.60,000/- in default to undergo simple imprisonment for one month for the conviction under section 3 r/w 10 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981.
- (2) The accused is also sentenced to pay fine of Rs.40,000/- in default to undergo simple imprisonment for one month for the conviction under section 7 r/w 14 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981.
- (3) It is directed to confiscate the vessel and fishing gear of the vessel involved in this case which is now kept custody by the NIA as per the direction of this Court, under section 12 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981.
- (4) It is directed to release all other items seized from the accused and from the already released/discharged accused 2 to 12 of FIR on obtaining proper receipt.



- (5) On remission of fine and on reporting that fact in Court, orders will be issued with respect to custody /deportation of the accused to his home land.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court this the 4th day of April 2016.

Sd/-
K.M.Balachandran
Judge

APPENDIX - NIL

Sd/-
K.M.Balachandran
Judge

(By Oder)

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