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WRIT PETITION NO. 4542 OF 2012, 22 FEBRUARY 2012

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

(Special Original Jurisdiction)

Writ Petition (c) No. 4542 of 2012

Mr. Massimilano Latorre & 2 others. ... Petitioners

Vs.

Union of India & 2 others ... Respondents

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Dated this the 22nd day of February, 2012.

B.RAMAN PILLAI
COUNSEL FOR THE PETITIONER

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

(Special Original Jurisdiction)

Writ Petition (c) No. of 2012

Mr. Massimilano Latorre & 2 others. ... Petitioners

Vs.

Union of India & 2 others ... Respondents

SYNOPSIS

1. That the Petitioners No. 1 and 2 are the officers of Italian Military Navy and are citizens of Italy. That the Petitioner No. 3 is the Republic of Italy represented through its Consul General Mr. Giampaolo Cutillo.

2. That on February 12, 2012, the Petitioner No 1 and 2 were directed by the Italian Military Navy to be part of the Military Protection Department on the vessel "Enrica Lexie" (hereinafter also referred to as the **"Vessel"**) along with 4 other Italian Military Navy Personnel.

3. That on February 15, 2012 while the Vessel was heading for Djibouti at about 1630 Indian National Time, there was an attempted piracy attack on the Vessel.

4. After about 1900 IST when the Vessel had covered almost 38 Nautical Miles, the Vessel received information by phone and email from the MRCC, Mumbai requesting the Vessel to come to Cochin Port to assist and identify suspected pirates who had been apprehended.

5. Accordingly, the Vessel turned course and came to the port of Cochin at 0030 IST on February 16, 2012.

6. Thereafter the Master of the Vessel was informed that an F.I.R. No. 2 of 2012 on the file of the Circle Inspector, Neendakara, Kollam has been registered under Section 302 IPC read with Section 34 of the Indian Penal Code with the allegation that around 33 Nautical Miles from the coast of Kerala (India), in the international waters there was a firing on a ship by the name of "St. Antony" and that in the firing two fishermen namely Mr. Ajish Pinku (aged 20 years) and Mr. Jelestin (aged 44 years) were killed.

7. That the Petitioners contested and challenged the jurisdiction of the Respondents 2 and 3 to register the FIR and conducting the present investigation and their arrest or production before the Magistrate. The Petitioner No 1 and 2 were arrested on February 19, 2012 by the Respondent No. 3 and were subsequently produced before the Chief Judicial Magistrate Kollam who has remanded them into police and judicial custody.

8. That it is the prosecution's case in the FIR as well as in the subsequent applications filed for seeking custody of the Petitioner No. 1 and 2 that the alleged incident happened outside the territorial waters of India in the Contiguous Zone/Exclusive Economic Zone of India that does not fall within the territorial waters of India. The Petitioner No. 1 and 2 are admittedly Italian Military Navy Personnel and not Indian citizens. Therefore, under the provisions of the Indian Penal Code, 1860 read with the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 the Respondents have no jurisdiction to register the complaint and investigate the incident. The alleged offence was not completed in Indian territory (in this case on Indian territorial water), or on board an Indian vessel or Indian aircraft. The Petitioners N0 1 and 2 are admittedly foreign citizens. Therefore, the registration of FIR, the investigation into the alleged incident, the arrest of the Petitioner No. 1 and 2 and all procedures there under are wholly without jurisdiction, null and void and the FIR and all proceedings thereunder are liable to be quashed on this ground.

9. The provisions of Article 97 read with Article 58 of the UNCLOS when read in harmony and in conjunction with the Indian Penal Code, 1860 and other relevant statutes establish that the Courts in Italy will have the sole and exclusive jurisdiction in the matter.

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10. Under the principles of international law and conventions including the United Nations Convention on the Law of the Sea (UNCLOS) to which India is already a signatory, Indian courts shall not have jurisdiction over the said alleged incident and only courts in Italy shall have the jurisdiction to investigation or prosecute in respect of the alleged incident irrespective of the fact that the incident involved in another Indian vessel outside Indian territorial waters. In fact, investigation has already been launched in Rome, Italy by the Ordinary and Military Prosecution Office. Therefore, on principles of international laws and comity of nations, the Petitioner No. 1 and 2 are liable to be tried and prosecuted only in Italian courts.

11. Petitioners 2 and 3 were on active functional duty having been deployed by the Defense Ministry of the Petitioner No. 3 for the purpose of protection of Italian vessel from piracy in order to fight international menace of piracy. Therefore, they were acting in their official capacity and were in transit from Galle to Djibouti as Italian Military in transit and therefore under the provisions of UNCLOS as well as the principles recognized by international laws were subject to the jurisdiction of the flag state of the vessel or the jurisdiction of the State of which the relevant person is subject of i.e. Italian jurisdiction. Since the Petitioner No. 1 and 2 are Italian Navy military personnel and were on official duty as Naval Officers as part of the Italian Military Navy detachment which had been directed by the

Ministry of Defense to board the Vessel which was flying an Italian Flag for the protection of the Vessel, the Petitioner No. 1 and 2 have functional immunity on recognized and accepted principles of international law from being tried for any offence related to their official duties and alleged to be committed during the performance of official duties by the state of any other jurisdiction except the courts or military tribunal of Italy. Hence, the courts in India have no jurisdiction in this matter even on the well settled, accepted and admitted principles of international law as applicable and applied by Indian courts.

12. The provisions of Article 97 read with Article 58 of the UNCLOS when read in harmony and in conjunction with the Indian Penal Code, 1860 and other relevant statutes establish that the Courts in Italy will have the sole and exclusive jurisdiction in the matter. Article 97 of the UNCLOS states as under:

13. That the arrest, detention and judicial remand of the Petitioner No. 1 and 2 as well as the registration of FIR and all proceedings thereunder are without jurisdiction, illegal, null and void for the reasons stated herein. The FIR is also liable to be quashed as it is contrary to law.

Hence this Writ petition.

Dated this the 22nd day of February, 2012.

B.RAMAN PILLAI
COUNSEL FOR THE PETITIONERS

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

(Special Original Jurisdiction)

Writ Petition (c) No. of 2012

PETITIONERS:

1. Mr. Massimilano Latorre,
   Holder of Italian Passport Number AA 1465972
   (Chief Master Sergeant San Marco Regiment, Italy)
2. Salvatore Girone
   Holder of Italian Passport Number S 111982
   (Sergeant San Marco Regiment, Italy)
3. Republic of Italy
   Through its Counsul General
   Mr. Giampaolo Cutillio

Vs

RESPONDENTS

1. Union of India
   through Secretary, Ministry of Home Affairs
   New Delhi
2. State of Kerela
   through Chief Secretary, Government of Kerela
   Trivandrum
3. Circle Inspector of Police
   Needakara Coastal Police Station
   Kollam District, Kerela

All notices and processes on the Petitioners may be served on their Counsel. B.Raman Pillai , Advocate, Old Railway station road, Kochi-18 and Abhixit Singh, Titus & Co., Advocates S- 217, Panchsheel Park, New Delhi.

All notices and processes on the Respondents may be served on their aforesaid addresses or on their Counsel if any engaged.

WRIT PETITION FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CRIMINAL PROCEDURE CODE 1973 FOR AN APPROPRIATE WRIT, ORDER OR DIRECTION DECLARING REGISTRATION OF F.I.R. NO. 2 OF 2012 ON THE FILE OF CIRCLE INSPECTOR OF POLICE NEENDAKARA, KOLLAM UNDER SECTION 302 READ WITH SECTION 34 OF THE INDIAN PENAL CODE, AS BEING WITHOUT JURISDICTION AND ALL ACTIONS THEREUNDER CONTRARY TO LAW, NULL AND VOID AND FURTHER FOR APPROPRIATE WRIT, ORDER OR DIRECTION, DECLARING THAT THE ARREST AND DETENTION OF THE PETITIONERS NO 1 AND 2 HEREIN ARE WITHOUT JURISDICTION AND NULL AND VOID.

PETITIONERS ABOVE-NAMED MOST RESPECTFULLY SHOWETH:-

1. That the Petitioners No. 1 and 2 are the officers of Italian Military Navy and are citizens of Italy. Copy of military identity cards of the Petitioners herein are produced herewith and marked as **Exhibit P-1** collectively. The Petitioner No. 1 is the Chief Master Sergeant in the Italian Military Navy in active duty. Petitioner No. 1 was enlisted in Italian Military Navy in the year 1984 and has trained at the Amphibian Force Centre. Petitioner No. 1 is also trained for vessel boarding teams since 2001 and has practical

and continuous maritime experience. Petitioner No. 1 is the team leader of the Military Protection Detachment deployed by the republic of Italy to protect its maritime interests in accordance with the Italian laws.

2. Petitioner No. 2 is the Sergeant in the Italian Military Navy and has been enlisted in the Italian Military Navy in 1996. Petitioner No. 2 has trained at the Amphibian Force Centre in 1996 and has practical and continuous maritime experience. Petitioner No. 2 is a member of the Military Protection Detachment deployed by the republic of Italy to protect its maritime interests in accordance with the Italian laws.

3. That the Petitioner No. 3 is the Republic of Italy represented through its Consul General Mr. Giampaolo Cutillo.

4. That on February 12, 2012, the Petitioner No 1 and 2 were directed by the Italian Military Navy to be part of the Military Protection Detachment (Nucleo Military di Protezione), on the vessel "Enrica Lexie" (hereinafter also referred to as the "**Vessel**"), along with 4 other Italian Military Navy personnel and embarked on the Vessel on Galle, Sri Lanka. The Vessel had started from Singapore and was heading to Djibouti as its next Port of Call whereat the Italian Military Navy personnel were to disembark to embark on a different Vessel. In the recent past Petitioner No.

3 encountered a scurge of piracy on several occasions in relation to its vessels. As a consequence of this and also to counter the menace of piracy on its vessals worldwide, the Petitioner No. 3 has been deploying its trained military navy personnel on Italian vessels to protect and safeguard its maritime interests. Petitioners 1 and 2 were on active functional duty having been deployed by the Defense Ministry of the Petitioner No. 3 for the purpose of protection of Italian vessel from piracy in order to fight international menace of piracy.

5. That on February 15, 2012 while the Vessel was heading for Djibouti, there was an attempted piracy attack on the Vessel when the Master of the Vessel immediately set into motion the established international procedures to be undertaken by vessels during attempted piracy attacks including setting into motion the alarm, flash lights and horns. The Master also activated Ship Alert Security System (SASS) which sent out signals to the Italian Maritime Rescue and Coordination Centre (MRCC). The Master also reported the incident on the Mercury Chart which links together and transfers information to the community including several Navies across the world fighting piracy including to the Indian Navy Head Quarters. The "military report" was also done. A report was also sent to MSCHOA at UK. Since the attempted attack was averted, the Vessel continued on its scheduled course of journey.

6. That the average speed of the Vessel is about 13 Knots per hour. Before the incident of the attempted piracy attack the Vessel was moving at a speed of 13 Knots per hour and in accordance with the established anti piracy procedures, the Master increased the speed of the vessel to 14 Knots per hour at the time of the attempted piracy attack. Once the piracy attack was averted, the Vessel reduced its speed to 13 Knots and was traveling on its scheduled route to Djibouti which was its the next Port of Call. The communication from the Vessel was sent out and received in different time zones but for the purpose of this Petition Indian Time Zone is mentioned.

7. Thereafter when the Vessel had covered almost 38 Nautical Miles, the Vessel received information by phone and email from the MRCC, Mumbai requesting the Vessel to come to Cochin Port to assist and identify suspected pirates who had been apprehended. Accordingly, the Vessel turned course and came to the port of Cochin at about midnight on February 16, 2012.

8. Subsequently, the Master of the Vessel was informed that an F.I.R. No. 2 of 2012 on the file of the Circle Inspector, Neendakara, Kollam has been registered under Section 302 IPC read with Section 34 of the Indian Penal Code. A copy of the FIR is produced herewith and marked for identification as **Exhibit P-2**. In the said FIR it is alleged that around 33 Nautical Miles from the coast of Kerala (India), in the

international waters there was a firing from a ship. It is alleged that a fishing boat by the name of "St. Antony" which left Kollan Fishing Harbour for deep-sea fishing on February 7 with 11 crew members was fired at by an Italian Cargo ship at 33 nautical miles at international borders and that in the firing two fishermennamely Mr. Ajish Pinku (aged 20 years) and Mr. Jelestin (aged 44 years) were killed.

9. That apart from the fact that the Petitioner No. 1 and 2 deny their involvement in any such alleged incident as laid out in the FIR, the Petitioners contested and challenged the jurisdiction of the Respondents 2 and 3 to register the FIR and conducting the present investigation and their arrest or production before the Magistrate. The Petitioner No 1 and 2 were arrested on February 19, 2012 by the Respondent No. 3 and were subsequently produced before the Chief Judicial Magistrate Kollam. The Respondent NO. 3 sought and obtained police custody of the Petitioner No. 1 and 2 until February 23, 2012 under the FIR. The Respondent No. 3 also sought and obtained custody of the Police of the Petitioner No.2 and 3 until February 23, 2012 under the file. The respondent No.3 also sought and obtained judicial remand of the Petitioner No.1 and 2 for 14 days. In the application filed seeking judicial remand, the Respondent No.3 has specifically claimed that the alleged incident happened at 22.5 Nautical Miles away from the Kerala off Thirukunnam, outside the territorial waters of India and in the contiguous zone/water though in the FIR it is stated that the

incident took place 33 nautical miles from the Kerala coast. The remand report and the affidavit for Police custody filed by the respondent is marked as **Ext. P-3 and P3 (a)**. The learned Magistrate has allowed the judicial remand and police custody application and has directed 14 days judicial remand of the petitioner No.1 and 2 in Central Jail, Trivandrum from February 20, 2012. The learned Magistrate has also allowed the Police remand for a period of 3 days from February 20, 2012. the Learned Magistrate has allowed the Police remand for a period of 3 days from January 20, 2012.

10. That the Petitioners state that the registration of the FIR, investigations and all proceedings there under are without jurisdiction for the reasons stated herein. In these circumstances the Petitioners have no alternative efficacious and speed remedy than to approach this Hon'ble Court on the following amongst other grounds which are being taken without prejudice to each other.

GROUNDS

A. That under Article 297(3) inter-alia the limits of territorial waters shall be such as may be specified from time to time or under any law made by the Parliament. The Parliament has enacted the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, hereinafter also referred to as the Territorial Waters Act.

B. Under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, the territorial waters of India extend up to 12 Nautical Miles from the nearest coastline. In this regard Section 3 of the above Act reads as under:

Sovereignty over, and limits of territorial waters.

(a) The sovereignty of India extends and has always extended to the territorial waters of India (hereinafter referred to as the territorial waters) and to the seabed and subsoil underlying, and the air space over such waters.

(b) The limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.

(c) Notwithstanding anything contained in sub-section (2), the Central Government may, whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the territorial waters.

(d) No notification shall be issued under sub-section (3) unless resolutions approving the issue of such

notification are passed by both Houses of Parliament

C. That in terms of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, between 12 to 24 Nautical Miles from the baseline is referred to as the Contiguous Zone which is an area beyond the territorial waters of India and the limit of the contiguous zone is distance of 24 Nautical Miles from the nearest point of the baseline referred to in sub section (2) of Section 3.

5. – Contiguous Zone of India. – (1) The contiguous zone of India (hereinafter referred to as the contiguous zone) is an area beyond and adjacent to the territorial waters and the limit of the contiguous zone is the line every point of which is at a distance of twenty-four nautical miles from the nearest point of the baseline referred to in sub-section (2) of section 3.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, whenever it considers necessary so to do having regard to International Law and State Practice, alter, by notification in the Official Gazette, the limit of the contiguous zone.

(3) No notification shall be issued under sub-section (2) unless resolutions approving the issue of such notification are passed by both Houses of Parliament.

(4) The Central Government may exercise such powers and take measures in or in relation to the contiguous zone as it may consider necessary with respect to:

(a) the security of India; and

(b) immigration, sanitation, customs and other fiscal matters.

(5) The Central Government may, by notification in the Official Gazette:

(b) any enactment, relating to any matter referred to in clause (a) or clause (b) of sub-section (4), for the time being in force in India or any part thereof, to the contiguous zone; and

(c) make such provisions as it may consider necessary in such notification for facilitating the enforcement of such enactment, and any enactment so extended shall have effect as if the contiguous zone is a part of the territory of India.

D. That the territorial waters and territorial jurisdiction of India extends to territorial water to the extent of 12 nautical miles from its coast. Beyond the territorial waters is the Contiguous Zone extending up to 24 nautical miles from the coastline and beyond that up to 200 nautical miles is the Exclusive Economic Zone of India. The jurisdiction of criminal courts in India will be governed by the provisions of the Indian Penal Code.

E. That it is the case of the prosecution that the alleged incident took place outside the territorial waters of India in the Contiguous Zone/Exclusive Economic Zone of India i.e. 22.5 nautical miles away from the Kerala coast of Thirukunnam as stated in the application of the Respondent No. 3 while seeking judicial custody of Petitioners No. 1 and 2 and 33 nautical miles from the Kerela Coast as stated in the First Information Report. That as per the case of the prosecution, the alleged incident happened beyond the territorial water of India which extends to 12 nautical miles from the coast line and in not related to the territory and territorial waters of India.

F. It is well settled law as laid down by the Hon'ble Supreme Court in various decisions interpreting Section 4 of the IPC that the jurisdiction of the courts in India in relation to the criminal offences is limited to the territory of India. Any extra territorial jurisdiction relates only to Indian citizen. In the present case, in view of the settled law, the provision of the Indian Penal Code read with the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 the impugned FIR, investigation and procedures there-under are without jurisdiction, illegal and null and void. A copy of the relevant portion of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 is annexed herewith and marked as **Exhibit P-4**.

G. That it is the prosecution's case in the FIR as well as in the subsequent applications filed for seeking custody of the Petitioner No. 1 and 2 that the alleged incident happened outside the territorial waters of India in the Contiguous Zone/Exclusive Economic Zone of India that does not fall within the territorial waters of India. The Petitioner No. 1 and 2 are admittedly Italian Military Navy Personnel and not Indian citizens. Therefore, under the provisions of the Indian Penal Code, 1860 read with the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 the Respondents have no jurisdiction to register the complaint and investigate the incident. The alleged offence was not committed in Indian territory (on Indian territorial waters), or on board a registered Indian vessel or registered Indian aircraft. The Petitioners No. 1 and 2 are admittedly foreign citizens. Therefore, the registration of FIR, the investigation into the alleged incident, the arrest of the Petitioner No. 1 and 2 and all procedures there under are wholly without jurisdiction, null and void and the FIR and all proceedings thereunder are liable to be quashed on this ground alone.

H. The provisions of Article 97 read with Article 58 of the UNCLOS when read in harmony and in conjunction with the Indian Penal Code, 1860 and other relevant statutes establish that the Courts in Italy will have the sole and exclusive jurisdiction in the matter. Article 97 of the UNCLOS states as under:

Article 97

Penal jurisdiction in matters of collision or any other incident of Navigation

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

I. Under the principles of international law and conventions including the United Nations Convention on the Law of the Sea (UNCLOS) to which India is already a signatory, Indian courts shall not have jurisdiction over the said alleged incident and only courts in Italy shall have the jurisdiction to investigate or prosecute in respect of the alleged incident irrespective of the fact that the

incident involved in another Indian vessel outside Indian territorial waters. In fact, investigation has already been launched in Rome, Italy by the Ordinary and Military Prosecution Office. Therefore, on principles of international laws and comity of nations, the Petitioner No. 1 and 2 are liable to be tried and prosecuted only in Italian courts.

J. Without prejudice to the above even otherwise the Petitioners 2 and 3 were on active functional duty having been deployed by the Defense Ministry of the Petitioner No. 3 for the purpose of protection of Italian vessel from piracy in order to fight international menace of piracy. Therefore, they were acting in their official capacity and were in transit from Galle to Djibouti as Italian Military in transit and therefore under the provisions of UNCLOS as well as the principles recognized by international laws were subject to the jurisdiction of the flag state of the vessel or the jurisdiction of the State of which the relevant person is subject of i.e. Italian jurisdiction. Since the Petitioner No. 1 and 2 are Italian Navy military personnel and were on official duty as Naval Officers as part of the Italian Military Navy detachment which had been directed by the Ministry of Defense to board the Vessel which was flying an Italian Flag for the protection of the Vessel, the Petitioner No. 1 and 2 have functional immunity on recognized and accepted principles of international law from being tried for any offence related to their official duties and alleged to be committed during the performance of official duties by the state of any other jurisdiction except the courts or military tribunal of Italy. Hence, the courts in India have no jurisdiction in this matter even on the well settled, accepted and admitted

principles of international law as applicable and applied by Indian courts.

K. That the Petitioners 1 and 2 were discharging official functions as expression of sovereign powers of the Petitioner NO. 3 for the protections of Vessels flying Italian flags and therefore they have to be regarded as state officials. The sovereign functions of the Italian Government include the deployment of trained military navy personnel for protecting its vessels on international sea irrespective of the fact that by way of an agreement relating to the reimbursement of costs by the vessel owners in Italy to the Petitioner No. 3. The functions being discharged were, in any event notwithstanding the recovery of costs, sovereign functions or acts of state. Accordingly agents and/or of officers performing the duties for and on behalf of the sovereign Government, are entitled to full immunity from prosecution in any State except the sending State i.e. the State deploying the said Military personnel. Bringing a foreign state official at trial for official acts tantamounts to bringing a foreign sovereign state to trial in violation of sovereign equality of states

L. That without prejudice to the above, the Petitioners No. 1 and 2 who were invited to the Indian territory and/or came to Indian territory in the manner as stated herein before and with the approval of the Petitioner No. 3 cannot be subject to the jurisdiction of the court in India. In this regard, the well settled principles of international law provide that where a sovereign allows or requests entry of foreign military personnel to its territory it necessarily implies a waiver of all jurisdiction over the said military

personnel during the course of stay or passage that was allowed, requested or determined by the sovereign state of India. In the present case, the Petitioners No. 1 and 2 being part of the military detachment on board the vessel and consequently upon active military duty had been requested the MRCC, Mumbai to come to the Port of Cochin for the purpose of co-operating and identifying the suspected pirates purportedly arrested by the Cost Guard. Hence, on principles of international law, the Respondents have by the said act, waved all their rights to exercise jurisdiction in India against the military personnel who were supposed to briefly stop in transit in Indian territory. Further rationale for this international law principle is that military personal which come to Indian Territory and thereafter by exercising jurisdiction over it, Respondents are preventing the Petitioner No. 3 from exercising its sovereign rights of deployment of its military personnel and thereby causing a negative operational impact on the Petitioner No. 3.

M. That the registration of the FIR, prosecution of the Petitioner No. 1 and 2, their arrest, detention and remand is without jurisdiction and Indian courts have no jurisdiction to proceed with the present prosecution and investigation. The detention and the arrest of the Petitioner No. 1 and 2 are also without jurisdiction, null and void and the Petitioner No. 1 and 2 are liable to be released forthwith. That while the Petitioners have raised the objection of jurisdiction before the Respondents, the Respondents are proceeding with the prosecution and investigation in relation to the case. As a consequence thereof, the Petitioners are left without any efficacious alternate remedy except to approach this Hon'ble Court

seeking appropriate, writ, order or direction for declaring the impugned FIR and the proceedings there under are without jurisdiction, null and void and liable to be quashed.

N. That the arrest, detention and judicial remand of the Petitioner No. 1 and 2 as well as the registration of FIR and all proceedings thereunder are without jurisdiction, illegal, null and void for the reasons stated herein. The FIR is also liable to be quashed as it is contrary to law.

O. Petitioners have not filed any other writ petition in respect of the aforesaid /FIR in this court or any other courts in India.

P. In view of the foregoing, it is most humbly prayed that this Honourable Court may be pleased to:-

(i) Issue appropriate writ, order or direction, declaring that the registration of FIR No. 2 of 2012 of Costal Police Station , Needakara investigated by the Circle Inspector of Police, Neendakara, Kollam District is without jurisdiction, contrary to law, null and void and accordingly quash the said FIR and all proceedings and investigation thereunder;

(ii) Pass appropriate writ, order or direction, declaring the arrest and detention of the Petitioner No. 1 and 2 and all proceedings subsequent thereunder of the Petitioner No. 1 and 2, as without jurisdiction, contrary to law, null and void and direct immediate release of the Petitioner No. 1 and 2;

(iii) Pass any such and further orders and directions as this Hon'ble Court deems fit in the facts and circumstances of this case.

Dated this the 22nd day of February 2012.

1. Massimilano Latorre,

2. Salvatore Girone

3. Giampaolo Cutillio

Counsel for the Petitioners

INTERIM RELIEF

For the reasons stated in the Writ Petition and the accompanying affidavit, this Hon'ble Court may be pleased to issue interim orders and directions during the pendency of this Petition staying all or any other further proceedings under the FIR No. 2 of 2012 on the file of Circle Inspector of Police, Neendakara, Kollam District and release the Petitioner No. 1 and 2 upon such terms and conditions as may be deem fit and proper by this Hon'ble Court.

Dated this the 22nd day of February 2012.

B.RAMAN PILLAI
COUNSEL FOR THE PETITIONERS

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

(Special Original Jurisdiction)

Writ Petition (c) No. of 2012

Mr. Massimilano Latorre & 2 others. ... Petitioners

Vs.

Union of India & 2 others ... Respondents

AFFIDAVIT

I, Mr. Massimilano Latorre, Holder of Italian Passport Number AA 1465972 (Chief Master Sergeant San Marco Regiment, Italy) Aged. 45 years, S/o. Tommaso Latorre, residing at Reggimento San Marco, Strada per San Vito dei Normanni 72100 Brindisi – Italy. Now undergoing detention in Crime No: 02 of 2012 of Costal Police station Neendakara , Kollam district do hereby solemnly affirm and state as follows :-

1. I am the petitioner in the above Writ Petition © and I am conversant with the facts of the case. I am swearing this affidavit on behalf of petitioner Nos. 2 & 3 as I am duly authorized to do so.

2. All the averments in the Writ Petition are true to the best of my knowledge and belief and I am entitled to the relief's as prayed for in this Writ Petition

3. Exhibits-P1 to P4 are the true copies of the documents mentioned in the Writ Petition.

4. I have not filed any other Writ Petition before this Hon'ble court or any other court seeking the same relief's sought for ion this Writ Petition.

All the facts stated above are true to the best of my knowledge, information and belief.

Dated this the 22nd day of February, 2012.

Deponent,

Solemnly affirmed and signed before me by the deponent, who is personally known to me on this the 22nd day of February 2012, in my office at Ernakulam.

Abhixit Singh,
Advocate.