

NAVIGATION OF SHIP HELD UNDER SEIZURE

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Once a ship is said to be arrested under charge is generally not allowed to sail over the seas fearing its accrual of additional liabilities. It is believed that allowing an arrested ship to work will tantamount to diluting the orders of arrest and also defeat the purpose of its arrest. To avoid further concerns the decision of allowing its trade is relied upon the discretion of the court. The court that under whose jurisdiction the ship was arrested has exclusivity upon deciding whether the ship be released or continue trading. The discretion of a court with regard to the allowance of a ship to trade on its arrest is not a common practice permissible by the court under normal circumstances. A ship under arrest is not permitted to sail on the seas unless there is a sufficient cause of bail provided or a specific deemed security is furnished by the owner of the Vessel. The rationale behind such a principle is that the ship that is in actuality under arrest is said to be within the custody of the Court Marshal. It is the duty of the Court Marshal to keep the ship in safe custody and to preserve it, however this duty does not extend to managerial control and operation of the ship for the purpose of generating an operational profit for the ship owners and those interested in it.

In the case of *Government of the Republic of Spain v. SS "Arantzazu Mendi"*,²⁹⁹ it was explained by Lord Atkin that,

"The ship arrested does not by the mere fact of arrest pass from the possession of its then possessors to a new possession of the Marshal. His right is not possession but custody. Any interference with his custody will be properly punished as contempt of the Court which ordered arrest, but, subject to his complete control of the custody, all the possessory rights which previously existed continue to exist, including all remedies which are based on possession. Once arrested, a ship cannot be moved from the place of arrest without the authority of the Marshal. To move the ship without such authority, whether to another place within the jurisdiction or to flee the jurisdiction constitutes contempt of court."

²⁹⁹ [1939] AC 256.

With respect to the same, the Bombay High Court in its recent decision of Jaldhi Overseas Pvt. Ltd v. M.V. Daebo Lumut and Anr. opened the Pandora's Box by holding that an application for release and trading of a ship under arrest may be allowed only under *special circumstances*, i.e., after providing for an adequate amount of security towards the claims of both the parties. The in the aforesaid judgement has however not enumerated what constitutes to the said special circumstances, and neither has it relied upon any precedents reckoning on the same. There is yet to be decisions upon the indian courts interpretations upon the same situations. In Alexandros Dryron S.A. v. Owners and Parties interested in the vessel M.V. "PRAPTI",³⁰⁰ the Calcutta High Court, the court allowed a ship to sail outside the territorial waters under arrest where in if she was detained under charges, there would be no movement of the cargo, that would lead to the wastage of the public money. In the aforementioned case, the vessel was carrying the some cargo of *Rashtriya Ispat Nigam Limited*, a Government company³⁰¹. If there were any auxiliary delay of the shipment of the same, it would have resulted in the loss of revenue. A analogous approach is followed by some foreign courts, in Martha II where in the courts had expected that the arrested ship would be refinanced leading to the releasing of the ship where in it would be allowed to discharge cargo to a nearby port in accord to its scheduled cargo operations.³⁰² However, in the case, the view of the judges were highly criticized. A ship in actuality that has been held under arrest is no permitted to move to any port within the jurisdiction, because if permitted to sail, the act would dilute the jurisdiction of the arresting Court.³⁰³

In the case of Tai Shing Maritime Co SA v. The Ship 'Samsun Veritas',³⁰⁴ there was a factual likelihood of the vessel grounding. The Court allowed the ship to be moved to another port on application forwarded the Court Marshal. This law was followed by the court while deciding Malaysia Shipyard and Engineering Sdn Bhd v Iron Shortland,³⁰⁵ where in the orders permitted the vessel that was charged and held under arrest to glide between Port Headland in the Western Australia and Port Kembla in the New South Wales. The same was said to have been approved under sufficient grounds of public interest. It was observed by the court that, amongst other

³⁰⁰ AIR 1998 Cal 142.

³⁰¹ Supra n. 2

³⁰² The Martha II (Unreported: Federal Court of Australia, Sheppard J, VG70/1996, 6/3/96).

³⁰³ Derrington and James M. Turner: The Law and Practice of Admiralty Matters, Oxford University Press 2007 at [7.32] to [7.34] in Tony Tesoriero, Practical issues in Admiralty Arrests, 2012.

³⁰⁴ [2008] FCA 1546.

³⁰⁵ (1995) 59 FCR 535.

considerable factors, a significant public interest consideration, such as potential shortage of iron at the Port Kembla needed immediate consideration.

Concluding the exploration of the above named judgments, it may be clearly mentioned that the Courts that have minor inclination towards the allowance of a ship under arrest to sail. Conversely in circumstances which mandate an urgent consideration towards the sail of the ship for an obligatory public interest, the Courts have sidestepped the general rule and affirmed the contrary.

