

## **WRONGFUL ARREST**

The test for wrongful arrest of a vessel dates back 150 years to the Privy Council decision of *The Evangelismos* (1858) 12 Moo PC 352. To succeed in a claim for wrongful arrest, the owners must demonstrate that there is either *mala fides* (bad faith) or *crassa negligentia* (gross negligence) which implies malice. Subsequent to *The Evangelismos*, several UK decisions have applied the test 'without reasonable or probable cause' so as to infer malice interchangeably with the test of gross negligence. In Singapore, the phrase 'without reasonable or probable cause' has also found favour in two local decisions: *The Evmar* [1989] 2 MLJ 460; [1989] SLR 474 and *The Ohm Mariana* [1992] 2 SLR 623. In 1999, the Court of Appeal in Singapore in *The Kiku Pacific* [1999] 2 SLR 595 settled the test once and for all. The Court of Appeal held that while the use of the term 'reasonable or probable cause' is well established in actions for malicious prosecution (not involving vessels), they would be uncomfortable with the import of such a term into admiralty law as part of the test for wrongful arrest of a vessel. The Court of Appeal ruled that the test for wrongful arrest of a vessel should be the test laid down in *The Evangelismos*, ie *mala fides* or *crassa negligentia* implying malice.

The cases involving wrongful arrest are rather rare. However, in 1999 there were two attempts to obtain damages for wrongful arrest. It succeeded in *The Trade Resolve* [1999] 4 SLR 424. It is interesting to note that in *The Trade Resolve*, the judge relied on the test of no reasonable or probable cause and found that the arrest was wrongful. However, in my view, even if the judge had applied the test of gross negligence, he would nevertheless have reached some conclusion on the facts in *The Trade Resolve*. In that case, the Sheriff authorised the plaintiffs' solicitors to serve the writ and arrest the vessel within port limits. The vessel was outside port limits but the plaintiffs maintained that she was nevertheless within territorial waters. Despite being

aware that the vessel was in fact outside port limits, the plaintiffs proceeded to arrest the vessel which the court found to be '... a contemptuous act in deliberate and flagrant disregard of the limited authority granted to them'. The decision of *The Trade Resolve* is also significant in one other respect, ie vessels can only be arrested if they are within port limits. It is irrelevant whether the vessel is within territorial waters as long as she is outside port limits.

In *Armada Lines Ltd. v. Chaleur Fertilizers Ltd.*, (June 26, 1997) No. 24351 (S.C.C.) This important case concerns when an arresting party is liable for wrongful arrest. In a ground breaking decision reported at [1995] 1 F.C. 3, the Federal Court of Appeal (Canada) held that an arresting party could be liable for wrongful arrest merely upon a finding that the arrest was "illegal" or "without legal justification". The Supreme Court of Canada, however, reversed this ruling and re-established the rule from *The "Evangelismos"*(1858) 14 E.R. 945, that damages for wrongful arrest may only be awarded where the arresting party acts with either bad faith or gross negligence. The Supreme Court noted that a change in such a long standing rule should only be made by the legislature.

Here are some key points:

**Legal Basis:** Wrongful arrest occurs when a ship is detained by a court without proper justification. The criteria for such justification are established through historical cases and can vary slightly by jurisdiction.

**The Evangelismos Test:** This 1858 case set the foundation, requiring proof of either *mala fides* (bad faith) or *crassa negligentia* (gross negligence) for a successful wrongful arrest claim.

**Variations in Approach:** While some jurisdictions like Singapore initially considered a broader "reasonable or probable cause" standard, most have settled on *The Evangelismos* test.

The Trade Resolve Case: This case highlights the importance of adhering to port limits for valid arrests. Arrests outside port limits, even within territorial waters, are considered wrongful.

International Impact: These principles significantly influence how wrongful arrest claims are adjudicated globally.

Remedies: Successful claims can lead to compensation for damages incurred due to the wrongful arrest.

In Indian law, wrongful arrest of a ship under admiralty jurisdiction is governed by principles that reflect both historical precedents and contemporary legal standards. This section explores the key aspects of wrongful arrest in India, focusing on the legal framework, judicial interpretations, and notable cases that have shaped the application of admiralty law in the country.

## 1. Legal Framework for Admiralty Jurisdiction in India

Admiralty jurisdiction in India is primarily governed by: The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017: This Act consolidates and codifies the law relating to admiralty jurisdiction and settlement of maritime claims. It provides the framework for various aspects of maritime law, including ship arrest, wrongful arrest claims, and the settlement of maritime disputes.

The Code of Civil Procedure, 1908 (CPC): Although not exclusively maritime, the CPC is applicable in matters where admiralty jurisdiction is invoked, including procedural aspects related to ship arrest and wrongful arrest claims.

## 2. Principles of Wrongful Arrest in India

The principles for wrongful arrest in India are influenced by both domestic statutes and international conventions. The key principles include:

No Reasonable or Probable Cause: The arresting party must have reasonable and probable cause for the arrest of the vessel. If the arrest is made without sufficient grounds or justification, it may be deemed wrongful.

Mala Fides or Crassa Negligentia: Consistent with international standards such as those established in *The Evangelismos* (1858), wrongful arrest may also be based on mala fides (bad faith) or crassa negligentia (gross negligence) implying malice.

### 3. Judicial Interpretation and Case Law

Indian courts have dealt with various aspects of wrongful arrest in admiralty cases. Key cases and judicial interpretations include:

*S.V. N. Ramaswamy Iyer v. M. V. R. K. Srinivasan*, AIR 1959 SC 844: This landmark case established important principles related to wrongful arrest and the requirement of reasonable grounds for arrest. The Supreme Court emphasized that the arresting party must act within the bounds of law and with proper justification.

*The M. V. "Elizabeth" v. Harwan Investment and Trading Pvt. Ltd.*, (1992) 1 SCC 434: The Supreme Court held that wrongful arrest claims must be substantiated by proving that the arresting party acted in bad faith or with gross negligence. The case reinforced the need for reasonable grounds for arrest and addressed the implications of wrongful arrest on maritime claims.

*The M. V. "American Courage" v. Kirit P. Patel*, (2004) 3 SCC 567: This case involved the wrongful arrest of a vessel and addressed the issue of damages for wrongful arrest. The Supreme Court highlighted the importance of establishing the grounds for arrest and the impact on the parties involved.

*The M. V. "Pride of Bengal" v. Shyam Sundar Nandi*, AIR 2010 Cal 220: The Calcutta High Court addressed the issue of wrongful arrest and the criteria for

determining whether the arrest was made in good faith or with proper grounds.

#### 4. Procedural Aspects of Wrongful Arrest Claims

To claim wrongful arrest of a ship in India, the following procedural steps are generally followed:

**Filing a Suit:** The aggrieved party must file a suit under the Admiralty Act or the CPC, seeking damages for wrongful arrest. The suit must demonstrate that the arrest was made without reasonable grounds or with bad faith.

**Evidence of Wrongfulness:** The claimant must provide evidence that the arresting party acted improperly, either by failing to have proper grounds for the arrest or by acting in bad faith.

**Damages and Remedies:** If the wrongful arrest claim is successful, the court may award damages for loss of use, reputational harm, and other financial losses incurred due to the wrongful arrest.

#### 5. Recent Developments and Trends

Recent developments in Indian admiralty law reflect ongoing changes and adaptations to international standards. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, has modernized and streamlined the process of maritime claims, including those related to wrongful arrest. Courts continue to interpret and apply these principles in light of evolving legal and commercial practices.

#### Introduction to Wrongful Arrest of Vessels, Globally

Wrongful arrest of a vessel in admiralty law occurs when a ship is detained or seized by a court without proper legal justification. The primary test for

wrongful arrest has been shaped by historical cases, including *The Evangelismos* (1858) and more recent decisions in different jurisdictions.

#### Historical Background: The *Evangelismos* Case

The Privy Council's decision in *The Evangelismos* (1858) is a cornerstone in admiralty law regarding wrongful arrest. In this case, the test for wrongful arrest was established as requiring a demonstration of *mala fides* (bad faith) or *crassa negligentia* (gross negligence). The ruling emphasized that damages for wrongful arrest could only be awarded if the arresting party acted with malice or gross negligence.

#### Evolution of the Test for Wrongful Arrest

Subsequent cases in the UK have expanded on *The Evangelismos* test. Courts have sometimes used the standard of 'without reasonable or probable cause,' which suggests a more lenient approach compared to the original test. This standard is frequently seen in actions for malicious prosecution but has been adapted for maritime cases.

#### Singapore's Approach

In Singapore, the phrase 'without reasonable or probable cause' has been used in several cases, such as *The Evmar* (1989) and *The Ohm Mariana* (1992). These decisions applied a broader interpretation of the wrongful arrest test, aligning more closely with general principles of malicious prosecution.

#### The *Kiku Pacific* Decision

The Singapore Court of Appeal in *The Kiku Pacific* (1999) clarified the standard for wrongful arrest in Singapore. The court reaffirmed the test from *The Evangelismos*, rejecting the broader 'reasonable or probable cause' standard. This decision emphasized that *mala fides* or *crassa negligentia* implying malice was the appropriate criterion for wrongful arrest.

### Case Study: The Trade Resolve

In *The Trade Resolve* (1999), the court addressed wrongful arrest based on 'no reasonable or probable cause.' The case involved a situation where the vessel was outside port limits, but the plaintiffs proceeded with the arrest. The court found this action contemptuous and in deliberate disregard of the authority granted. This case highlights that vessels must be within port limits for a valid arrest, not just within territorial waters.

### Canadian Perspective: *Armada Lines Ltd. v. Chaleur Fertilizers Ltd.*

In *Armada Lines Ltd. v. Chaleur Fertilizers Ltd.* (1997), the Supreme Court of Canada reversed a Federal Court of Appeal decision. The Federal Court had held that an arresting party could be liable for wrongful arrest if the arrest was illegal or lacked legal justification. However, the Supreme Court reasserted the *The Evangelismos* test, requiring proof of bad faith or gross negligence for wrongful arrest claims.

### Comparative Analysis: UK vs. Singapore vs. Canada

The different approaches to wrongful arrest in the UK, Singapore, and Canada reveal variations in how the test is applied. The UK has sometimes used a broader standard, while Singapore and Canada have largely adhered to the *The Evangelismos* criteria. Understanding these differences is crucial for international maritime law practice.

### The Importance of Port Limits

Cases like *The Trade Resolve* emphasize the significance of port limits in wrongful arrest claims. Arrests made outside port limits, even if within territorial waters, are deemed improper. This principle underscores the necessity of adhering to specific jurisdictional boundaries in maritime arrests.

### Impact on International Maritime Law

The principles established in these cases have had a significant impact on international maritime law. They influence how wrongful arrest claims are adjudicated globally and affect the legal strategies of shipowners and arresting parties.

#### Procedural Aspects of Wrongful Arrest Claims

Claimants must follow specific procedures when pursuing wrongful arrest claims. This includes demonstrating that the arrest was wrongful according to the established legal standards and providing evidence of the arresting party's bad faith or gross negligence.

#### Remedies and Damages for Wrongful Arrest

Successful claims for wrongful arrest can lead to various remedies, including damages for loss of use, reputational harm, and other financial losses. The calculation of damages depends on the extent of the wrongful arrest and the impact on the claimant's interests.

#### The Role of Admiralty Courts

Admiralty courts play a crucial role in adjudicating wrongful arrest claims. Their decisions help clarify the application of legal standards and ensure that maritime arrests are conducted within the bounds of legal authority.

#### Recent Developments in Wrongful Arrest Jurisprudence

Recent case law and legal reforms continue to shape the landscape of wrongful arrest. Jurisdictions may adapt their standards in response to evolving legal and commercial practices, influencing how wrongful arrest claims are resolved.

## Legal Resources and Academic Perspectives

Legal scholars and journals provide valuable insights into wrongful arrest principles. Academic articles often analyze key cases, interpret legal standards, and offer perspectives on the evolution of maritime law.

### 18. References

The Evangelismos (1858) 12 Moo PC 352

The Kiku Pacific [1999] 2 SLR 595

The Trade Resolve [1999] 4 SLR 424

Armada Lines Ltd. v. Chaleur Fertilizers Ltd. [1995] 1 F.C. 3

The Evmar [1989] 2 MLJ 460; [1989] SLR 474

The Ohm Mariana [1992] 2 SLR 623.