

IN THE SPECIAL COURT OF ND&PS ACT
CRL.TR. 252/2012

Ref: SR No. 62/12

Spl. Narcotic C/no. 1/12, u/s 18(c) of ND&PS Act 1985

State of Mizoram	.....	Complainant.
	Vs.	
Ramfangzauvi (53) D/o Thangzuala Kolasib Vengthar.	.....	Accused
Date of judgment and order	.....	30-7-2014
For the State	.....	Lalchhandama, Addl.PP. Lalrinpuui, APP.
For the accused	.....	Lalremtlunga, Advocate.

BEFORE
LUCY LALRINTHARI, JUDGE
Judgment and order

1. The accused Ramfangzauvi D/o Thangzuala, Kolasib Vengthar has been facing trial in connection with CRL.TR. 252/2012 u/s 18(c) of ND&PS Act 1985, and the Court deliver the following judgment.

2. The prosecution of the story of the case in brief is that on 3.2.12 at 7pm written FIR was submitted by SI Rita Lalrinmawii of Spl. Narcotic PS stating that on the same day a joint operation with 26th AR was launch at Thingdawl Hmar Veng and recovered 2.200kgs of opium from the possession of one Ramfangzauvi (53) D/o Thangzuala of Kolasib Vengthar while she was intending to sell at the cost of Rs. 2.5. lakhs. Hence, the case was investigated into.

3. During the course of investigation, the above noted accused was arrested and seized the opium on the spot. Hence, Spl. Narcotic PS c/no. 1/12 dt. 3.2.12 u/s 18(c) NDPS Act was registered. Seizure was made in presence of reliable civilian witnesses, grounds of belief was prepared and read over to her and conducted search and recovered 2.200kgs of opium from the possession of accused. Report of seizure and arrest were also submitted to O/C, Spl. Narcotic PS. Witnesses statements and accused statement were also recorded. The accused was forwarded to CJM Aizawl court with a prayer to remand her into judicial custody for completion of investigation. Moreover, sample of exhibit was also sent to FSL for laboratory examination and the examination result was received back and it was found to be opium. Under the above circumstances, prima facie case u/s 18(c) NDPS Act was found well established against the accused Ramfangzauvi and charge sheet was submitted accordingly.

4. As per procedure under section 207/208 of Cr.P.C, all the Excise reports and its connected documents were delivered to the accused. As the accused is having no regular income advocate Lalremtlunga was appointed to defend the accused u/s 304 Cr.P.C. at the state's expense.

5. After hearing the learned Addl. P.P. Mr. Lalchhandama and APP Lalrinpuui and

the Id. defence counsel Mr.Lalremtlunga, my predecessor brother Judge framed charge u/s 18(c) of ND & PS Act 1985, after reading over and explained to the accused in her own mother tongue the charges laid before her; to which the accused pleaded not guilty and claimed for trial.

6. In order to bring home the charges against the accused, the prosecution examined the following witnesses.

EVIDENCES ADDUCED

Pw no. 1 Rita Lalrinmawii, Sub-Inspector of Police, Spl. Narcotic PS stated that on 3.2.2012 at about 4pm she and party along with 26th Assam Rifles performed joint confidential duty at Thingdawl area they received reliable information that someone was keeping contraband articles and intending to sell at Thingdawl and as per the information they saw the accused Ramfangzauvi and they have one source person whom they requested to buy such contraband articles and the said person was awaiting the suspected person at Biaktluangi's house. When they saw the suspected person she believed that she was intending to sell and hand over to other person then she prepared grounds of belief on the spot u/s 15 of NDPS Act, 1985 and after she prepared the grounds of belief, as soon as the suspected person came inside the house of Pi Biaktluangi they also went inside the house and seized the said contraband article which was suspected to be opium- 3 packs of opium wrapped in polythene laying on the floor and she also arrested the suspected person namely Ramfangzauvi, Kolasib D/o Thangzuala. Weighment was taken which was about 2.200kgs, valued at Rs. 2.5.lakhs as per the local market. Sample was drawn from the SA and duly packed and sealed to send to the FSL for the exhibit. She also prepared seizure and arrest in the house of the said Biaktluangi in presence of reliable witnesses, and further she also examined and recorded the statements of witnesses. Thereafter, the said accused person and the seized articles were brought to Special Narcotic PS. She then prepared report of seizure and arrest and she also prepared FIR and the same were submitted to the concerned O/C, Spl. Narcotic PS, Aizawl for taking further necessary action. Exbt.P-2 was the seizure memo and exbt.P-2(a) was his signature. Exbt.P-3 was the arrest memo of accused Biaktluangi prepared by her, exbt.P-3(a) was her signature. exbt.P-4 was the FIR submitted by her, exbt.P4(a) was her signature. Exbt.P-4A was the letter prepared by her for registration of a case against the accused person, exbt.P-4A(a) was her signature. Exbt.P-5 was grounds of belief prepared by her, exbt.P-5(a) was her signature. exbt.P-6 was the report of seizure and arrest prepared by her, exbt.P-6(a) was her signature. Exbt.M-1 was the seized article.

In her cross examination she stated that it is a fact that when they received an information in this regard their informant did not mention the name of the accused Ramfangzauvi. Their informant also did not inform them the physique, size, height and wearing of the accused. It is also a fact that seizure and arrest were effected on the strength of prior information. It is also a fact that she has no material evidence to prove that she had transmitted information to the superior officer regarding seizure and arrest immediately after the said seizure and arrest she effected. It is a fact that she verbally informed the accused the reason of arrest. It is a fact that she did not record the statement of Biaktluangi, resident of the PO. It is also a fact that she did not take sample, pack and seal the sample and the residue in the presence of the accused and the seizure witnesses. It is a fact that she did not know the weight of the samples she has taken from each of the packets. It is not a fact that she did not take the weight of the seized articles in the presence of the accused and seizure witnesses. It is a fact that label attached in the seized material did not bear the scene of the seizing officer. It is a fact that there is no material evidence to prove that she actually handed over the seized article to O/C although compliance report u/s 57 of NDPS Act was submitted. It is a fact that she first seized the seized material and then arrested the accused. It is a fact that she did not know the past history of the instant case. it is a fact that although Biaktluangi was the owner of the house from where the seized article were recovered, yet she did not procure her as seizure witness. It is not a fact that exbt.M-1 produced in the court was not the one she has seized on the day of the incident.

7. Pw no. 3 L/nk. R.Zonuntluanga stated that on 3.2.2012 at around 4pm CID Crime and 26th Assam Rifles conducted joint operation around Thingdawl. In the meantime they

entered one residential building at Thingdawl and they saw the accused Ramfangzauvi and 4 other persons were in the said residence and they were taking weighment of the suspected opium on the floor. The police seized the said opium and draw sample and weighment was also done and it was 3kgs. He was also stood as one of the witness and he put his signature on the body of seizure memo. Exbt.P-2 was seizure memo and Exbt.P-2(b) was his signature. Exbt.M-1 was the seized article produced before this court today.

In his cross examination he stated that as they had joint operation with the police (CID) he followed the police and the accused upto Aizawl. The police did not produce and the seized material before the magistrate. He was not sure whether exbt.M-1 was sealed in his presence.

8. Pw no. 5 Lalsanga, Sub-Inspector of Police, Spl. Narcotic PS identified the accused and stated that on 3.2.2012 around 7pm a written FIR was lodged by SI Rita Lalrinmawii, SPL. Narcotic PS stating that on the same day they conducted joint operation with 26th Bn. Assam Rifles at around Thingdawl Hmar Veng. They recovered 2.200kgs of suspected opium from the possession of the accused. The case was registered as Spl. Narcotic PS c/no. 1/12 u/s 18 (c) of ND&PS Act. The case was endorsed to him for further investigation. During his investigation he examined the seizing officer and he also examined the accused person and he recorded his statement. He also prepared test memo and requisition for examination of sample of the seized article. Thereafter, he received examination result from FSL. The said examination stated that they were found to be opium. Hence, he found prima facie u/s 18(c) of ND&PS Act against the accused person and he submitted charge sheet accordingly. Exbt.P-7 was the charge sheet containing 6 pages submitted by him, exbt.P-7(a) was his signature.

In his cross examination he stated that he saw the seized article and sample already packed and sealed by the seizing officer. It is a fact that he forwarded the accused to the court on 4.2.12 for her judicial remand. At the same time he forwarded the sample to FSL Mualpui for examination. It is a fact that he did not send the sample and the SA to the court along with the accused on 4.2.12. or subsequently until he filed charge sheet. It is a fact that the net weight of the sample drawn by the seizing officer was not mentioned in the sample package. It is a fact that FSL report stated that the said material was opium but the quantity/ percentage of opium was not mentioned in the said FSL report. Inspector Laljohan was O/C, Spl. Narcotic PS on the day of the incident and till today.

9. The accused was examined u/s 313 Cr.P.C and was asked the following question
Q1. The evidence against you is that on 3.2.2012 you were arrested by the Police due to possession of 2.200kgs of opium. What do you have to say?

Ans: The opium was given to us by Manipur people in lieu of petrol and diesel which we sold at Manipur.

Q2. It is in evidence that you possessed the said opium while you sell diesel at Manipur in lie of the price of diesel. What do you have to say?

Ans: Yes, we are two people, myself and Mawiteii. The opium was kept in my residence.

Q3. It is in evidence that you brought have the said opium at Kolasib from Manipur. What do you have to say?

Ans: Yes, we brought home the said opium. We are two people. Myself and Mawiteii.

Q4. While you intended to sell at a price of Rs. 2.5 lakhs at Thingdawl village you were arrested by Narco police. What do you have to say?

Ans: Yes, the opium was carried by Matluangi. The owner was Mawiteii.

Q5. Do you want to adduce defence evidence?

Ans:No.

Q6. Do you have any other thing to say before the court?

Ans: The fact is that we carry one truck trip tank lorry trip each of diesel and petrol for sell. They could not give us money so they gave us the seized opium in lieu of the price of diesel and petrol. So, we brought home the opium. While I try to sell the police seized the opium.

Seized articles be destroyed in the presence of Addl. P.P immediately.

Give copy of this order to all concern.
Given under my hand and sealed to day the 2nd of July 2014.

Sd/-LUCY LALRINTHARI
Judge,
Special Court, ND&PS Act.

Memo No. _____ND&PS/ : Dated Aizawl, the 2nd July, 2014.

Copy to: -

1. Thuamkhanmanga C/o Lalremtlunga, Advocate.
2. Public Prosecutor, Aizawl.
3. Superintendent, Excise Prosecution, Aizawl.
4. O/C, Excise Station, ANS, Aizawl
5. i/c Judicial Section.
6. Excise GR.
7. Guard File.
8. C.R

PESHKAR

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