

**IN THE SPECIAL COURT OF ND&PS ACT
CRL.TR. Ex. 1328/2011**

Ref: SR No. 136/2011

Narcotic PS C/no. 14/13, u/s 20(b)(ii) B of ND&PS Act 1985

State of Mizoram	.....	Complainant.
	Vs.	
Lalremruata (38) S/o Lalmana Seling, Mizoram	.....	Accused
Date of judgment and order	.....	23-7-2014
For the State	.....	Lalchhandama, Addl.PP Lalrinpuui APP.
For the accused	.....	SL Thansanga, Advocate.

**BEFORE
Lucy Lalrinthari
Special Judge**

JUDGMENT AND ORDER

1. The prosecution story of the case in brief is that on 16.6.2011 at 6:00pm, SI David Lalmawia and party performed duty at Thingsulthliah and seized 17kgs of Ganja kept in a nylon sack and 10 polythene bags and one steel trunk used for keeping 10 polythene bags containing Ganja and arrested the possessor Lalremruata (39) S/o Lalmana of Seling (Aizawl road) in the presence of civilian witnesses. The weightment was taken in presence of the same witnesses and the said accused person; and the samples were also drawn for chemical examination. The seizing officer on 17.6.2011 submitted report of seizure and arrest to the O/C and a Case Ex.N.120/2011 dt.17.6.2011 u/s 20(b)(ii) B of ND&PS Act was registered against the said accused person.

During the course of investigation, the accused person and the witnesses were carefully examined and it revealed that the said accused Lalremruata bought the said Ganja at the rate of Rs.1000/- per kg from his friend Sanghleia of Parbung, Manipur State on 14.6.2011 and the accused intended to sell at the rate of Rs. 2000 (approx) to his customer(s). The FSL report from FSL Aizawl was received which stated that the seized articles were positive of Ganja. Hence a prima facie case u/s 20(b)(ii) B of ND&PS Act was found well established against the said accused person and was charged accordingly for violation of section 8(c) of ND&PS Act and therefore filed complaint against the accused person.

2. As per procedure u/s 207/208 of Cr.P.C, all the police reports and its connected documents were furnished to the accused person. And advocate S.L.Thansanga was appointed to defend the accused u/s 304 of Cr.P.C at the state's expense.

3. After hearing the ld. Addl.P.P. and the ld. Counsel for the defence charge u/s 20 (b)(ii)B was framed, read over and explained to the accused to which the accused pleaded nit guilty to the charged framed against him and claimed for trial.

EVIDENCES ADDUCED

4. The prosecution examined the following witnesses to bring home charge against the accused.

PW 1 is David Lalmawia, SI of Excise and Narcotics, he was the seizing officer and he identified the accused and stated that as they received a reliable information that some unknown person was keeping and intending to sell Ganja at Thingsulthliah Camp area. He and the party rushed to Thingsulthliah Camp area from Aizawl. When they reached the spot they came to know that some amount of Ganja was kept inside the house of Pu Buatsaiha. He then prepared grounds of belief for search of the said house and to arrest the actual possessor. Thereafter, they began to search the house and recovered 17kgs of cannabis kept in one nylon sack and ten polythene bags inside the steel trunk suspected to be ganja and he seized the said ganja in presence of reliable witnesses. In this connection, he also arrested on person namely Lalremruata who was also known as Ruatthanga (39) S/o Lalmana of Seling Aizawl road. He prepared seizure and arrest memo on the spot and thereafter the accused person and the S/A were brought to the Anti Narcotic Squad Office, Aizawl. After they reached the office, he reported seizure and arrest to the O/C, Excise Anti Narcotic Squad Mizoram Aizawl. Exbt.P-1 was the grounds of belief prepared by him, exbt.P-1(a) was his signature, Exbt.P-2 was seizure and arrest memo, exbt.P-2(a) was his signature. Exbt.P-3 was report on seizure and arrest prepared by him, exbt.P-3(a) was his signature. Exbt.M-1 and M-2 were the seized articles seized by him.

In his cross examination he stated that when he said Thingsulthliah Camp area he meant to say that the area adjoining the Military Camp area of Thingsulthliah village. He received information about the offence of possession of the S/A in the forenoon of 16.6.2011 and they reached Thingsulthliah at around a little later after 12.00 noon. It is a fact that the SA was recovered from the house of one Pu Buatsaiha who was the maternal uncle of the accused. It is a fact that he does not know the quantity contained in each and every polythene packets and one nylon packet because he did not take the weighment of each of them. It is a fact that he took weighment of the nylon and it contained 17kgs of cannabis. It is a fact that the contents of the said bags were mixed up and no flowers, leaves or stems could be separated from one another. It is a fact that the civilian witnesses cited by him were active members of the local YMA branch. It is also a fact that after taking weighment of the entire SA samples were drawn for sending to FSL. As far as he knows around 2-5 grams of the SA was drawn from each and every packet mentioned above. It is a fact that after drawal of the samples the quantity of the SA would be less than 17kgs. It is not a fact that he did not take the weighment nor did he take the samples in the presence of the witnesses. It is not a fact that the grounds of belief was written in their office at Aizawl and not at Thingsulthliah because he did not take search warrant from the competent authority. It is not fact that exbt.M-1 and M-2 which were nylon sacks contained ground leaves apparently from the original SA without any different containers neither of polythene or nylon bags. It is a fact that he cannot say for sure that EXbt.M-1 and M-2 were the ones he seized on 16.6.2011.

5. Pw no. 4 T.Lalropuia, Dy. Director, FSL stated that on 24.6.2011 FSL Mizoram received exhibits for examination in connection with excise and narcotic c/no. 120/11 which were packed in 11 exhibits. Accordingly, he examined the said article by using instruments available on FSL Mizoram on 27.7.2011 and the said exhibits were found to be Ganja. Exbt.P-4 was his examination report and exbt.P-4(a) was his signature. In his cross examination he said that it is not a fact that he did not examine the materials.

6. Pw no.5 is Shri Ngurthanzama Sailo, Inspector of Excise and Narcotics, he identified the accused and stated that on 16.6.2011 at around 6 pm SI David Lalmawia and party performed duty at around Thingsulthliah area and they had seized 17kgs of

suspected Ganja kept in a nylon sack in 10 polythene bags and one steel trunk used for keeping 10 polythene bags containing suspected ganja. As such he also arrested the accused Lalremruata. The case was registered as Ex c/No 120/11 dated 17.6.2011 u/s 20(b)(ii) B of ND&PS Act. The case was endorsed to him for further investigation. During his investigation, he examined the seizing officer, accused and other reliable witnesses and he recorded their respective statements. The accused stated to him that all the seized articles were bought from his friend Sanghleia of Parbung, Manipur at the rate of Rs. 1000 per kg on 14.6.2011 and he tried to sell at the rate of Rs. 2000 per kg to his customer. He also prepared test memo for examination of sample of he seized article. Thereafter, he received FSL report from FSL Mizoram and the report stated that it was found to be Ganja. Hence, he found prima facie u/s 20(b)(ii) B of ND&PS Act against the accused person and he submitted complaint accordingly. Exbt.P-5 was complaint submitted by him. exbt.P-5(a) was his signature.

In his cross examination he stated that it is a fact that the story about having bought the SA from Sanghleia of Parbung Manipur at the rate of Rs. 1000 per kg to be resold at Rs. 2000 per kg purported to have been stated by the accused was at the time when the accused was already in the Excise custody. It is a fact that he did not mention the weight of each of the polythene bag, but he only mentioned that the total quantity of the SA was 17kgs. It is also a fact that he did not mention the exact quantity of the samples drawn out from each bag of polythene

7. After the prosecution evidence is closed, the accused was examined u/s 313 Cr.P.C and was asked the following questions:

Q1. It is in the evidence that 17kgs of Ganja kept in a nylon sack of 10 polythene bags kept in a steel trunk was seized from your possession-- what do you say?

Ans. It was not in my possession. It does not belong to me. It belongs to Sanghleia.

Q2. It is in evidence that you have requested your friend Sanghleia of Manipur to send you Ganja and he had sent the seized article to you. What do you say?

Ans No, I did not send for the seized article.

Q3. It is in evidence that you have kept the said Ganja in the house of Pu Buatsaiha of Thingsulthliah (who is your relative)-- what do you say?

Ans: I know the seized article was seized in the house of Pu Buatsaiha. I was present below the house as it was two storey building.

Q4. It is in evidence that you have admitted before the case i/o that you have requested/send the seized article from Sanghleia and you purchased at the rate of Rs. 1000/- per kg---what do you say?

Ans: I did not say.

Q5. Do you want to adduce defence evidence?

Ans: Yes, I want to adduce evidence.

Q6. Do you have any other thing to say?

Ans: As I am a humble farmer, I pray the court to have mercy upon me.

8. At the time of examination of the accused u/s 313 of Cr.P.C, the accused was given sufficient time to explain himself. All the incriminating evidences were put to him for his explanation. After the examination of the accused is over one defence witness is examined by the defence.

9. Dw.1Lalhmunliana of Seling identified the accused and stated that he has been his neighbor for more than the last 10 years at Seling. As far as his knowledge is concerned, he and his wife were good neighbors and he knew that they earned their livelihood from growing vegetables of different types and he never knew the accused to be involved in selling or transacting with contraband goods especially Ganja. On 16.6.2011 the accused and he together went to Seling and having drinks together in a house the owner of which he does not remember. However, he knew that the occupant of the upper room of the house they were having liquor together was a friend of the accused Lalremruata but he does not remember his name. At the midst of taking liquor he had to go home to Seling because he had to collect some pig feed on the way and after having reached his home he came to learn that his friend the accused Lalremruata was arrested by the Excise for allegedly possessing some quantity of Ganja. On learning his story, he was shocked and surprised because the accused Lalremruata never ever indulged in such an offence like possessing ganja in his knowledge. The said accused and his wife were still his neighbors till today and are still engaging themselves in the same occupation i.e. growing vegetables and selling them for their livelihood.

In his cross examination by the Id. Addl. PP he stated that it is a fact that he was not present in the residence of the accused Lalremruata on the night of 14.6.2011. On 16.6.2011 they went together to consume liquor about half an hour. It is a fact that he does not know as to whether the accused possessed 17kgs of ganja on 16.6.2011. It is also a fact that he does not know as to whether the accused involved in selling or transacting with the contraband articles like ganja or not.

DECISIONS AND REASONS THEREOF

10. The Id. Defence counsel and the Id. Addl.P.P were heard.

In a case under ND & PS act the burden of proving his innocence is upon the accused. In other criminal cases, the burden of proving the guilt of the accused is placed upon the prosecution to the extent of beyond reasonable doubt. But in a case under ND & PS act, the burden of proving his innocence is placed upon the accused. Section 54 of the ND & PS Act stated that, “54- **Presumption from possession of illicit articles-** In trial under this Act, it may be presumed, unless and until the contrary is proved is proved, that the accused has committed an offence under this act..... for the possession of which he fails to account satisfactorily”.

In the instant case, though the accused denied the allegation, he admitted in his examination u/s 313 that the seized article belongs to one Sanghleia of Manipur. His statement clearly shows the accused knew where from the seized article was coming. The prosecution evidence shows that the seized article was sent to the accused by one Sanghleia as requested by the accused. The prosecution evidence shows that the accused concealed the seized article in the residence of Pu Buatsaiha, maternal uncle of the accused for safe keeping. The seized article was seized from the house of Pu Buatsaiha. The accused failed to account satisfactorily he was not the person who kept the Ganja in the house of Pu Buatsaiha. Had the accused not been the owner of the seized article, the owner of the house where the seized article was kept should be arrested by the investigating agency. But, the accused who was present in the house of Pu Buatsaiha was arrested. Had the accused not been the owner, there is no reason why the accused who is merely present in the house of Pu Buatsaiha was arrested. As the accused was the real owner, he was arrested at the time of seizure of the Ganja.

As per the evidence of PW 1. They know from source that some unknown person was keeping and intending to sell Ganja at Thingsulthliah Camp area. He and the party rushed to Thingsulthliah Camp area from Aizawl. When they reached the spot they came to know that some amount of Ganja was kept inside the house of Pu Buatsaiha. He then prepared grounds of belief for search of the said house and to arrest the actual possessor. Thereafter, they began to search the house and recovered 17kgs of cannabis. In this connection, they arrested one person namely Lalremruata who was also known as

Ruatthanga (39) S/o Lalmana of Seling Aizawl road. He prepared seizure and arrest memo on the spot and thereafter the accused person and the S/A were brought to the Anti Narcotic Squad Office, Aizawl. Cross-examination did not alter his evidence, and it was not shaken by the cross-examination.

Likewise, the evidence of PW no.5 corroborated the evidence of PW no 1 above. PW No 5 stated that on 16.6.2011 at around 6 pm SI David Lalmawia and party performed duty at around Thingsulthliah area and they had seized 17 kgs of suspected Ganja kept in a nylon sack in 10 polythene bags and one steel trunk used for keeping 10 polythene bags containing suspected ganja. As such he also arrested the accused Lalremruata. The case was registered as Ex c/No 120/11 dated 17.6.2011 u/s 20(b)(ii) B of ND&PS Act. The case was endorsed to him for further investigation. During his investigation, he examined the seizing officer, accused and other reliable witnesses and he recorded their respective statements. The accused stated to him that all the seized articles were bought from his friend Sanghleia of Parbung, Manipur at the rate of Rs. 1000 per kg on 14.6.2011 and he tried to sell at the rate of Rs. 2000 per kg to his customer. He also prepared test memo for examination of sample of he seized article. Thereafter, he received FSL report from FSL Mizoram and the report stated that it was found to be Ganja. Hence, he found prima facie u/s 20(b)(ii) B of ND&PS Act against the accused person and he submitted complaint accordingly.

Cross-examination did not alter the evidence of PW No 5.

PW No is the expert from FSL and he confirmed that the seized article was Ganja. The examination of DW 1 did not support the innocence of the accused. DW NO 1 simply stated that he never knew the accused involving in similar offence.

Actually in the instant case, there is no procedural lapse on the part of the investigating agency. However, the two civilian seizure witnesses failed to appear before the court. PW 2 & 3 are the independent civilian seizure witnesses. They are given summon more than 3 times and they did not appear before the court. In spite of the fact that these two civilian witnesses failed to appear before the court, the prosecution did not prayed for issue of warrants against them. They have not taken steps for their attendance to the court beyond normal summons. As such, there is no independent witnesses to corroborate the seizure, I am giving my anxious thoughts whether the accused can be convicted on the evidence of investigating agency only without the corroboration of independent civilian witnesses. The P.O is a residential building and many civilian witnesses are available. And the seizing officer cited two civilian witnesses PW 2 & 3. When PW 2 & 3 failed to appear, the prosecution did not submitted prayer to the court for their force attendance in the form of W.A with bail or without bail against the defaulting PWs. Hence, the prosecution is not keen enough to prove their case. I am therefore unable to convict the accused on the basis of the lone statement of seizing officer Pw 1 and the case I/O PW 5 without the corroboration of any independent witnesses is not sufficient to prove the guilt of the accused.

Hence I am constrained to acquit the accused Lalremruata from the charge section due to insufficient evidence. Accused Lalremruat is acquitted from the charge section of 20(b)(ii) B of ND&PS Act. Bailbond stand liquidated and bailers are free from the bail bond.

Seized article of 17 kgs of Ganja be destroyed immediately.

Given under my hand and sealed of this court today the 23rd of July 2014.

Give copy of this order to all concerned.

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

Memo No. _____ND&PS/

: Dated Aizawl, the 23rd July, 2014.

Copy to: -

1. Lalremruata C/o SL Thansanga , 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