

**IN THE COURT OF ADDL. DISTRICT & SESSIONS JUDGE-I,  
AIZAWL JUDICIAL DISTRICT , AIZAWL.**

**S.C No.72/2015 A/O CrI.Tr.No.312/2014  
U/S 120B/121A IPC R/W 5(a) of ES Act 1908,  
Sakawrdai P.S Case No.3/2014.**

Hrangthanpara	:	Appellant
Versus		
State of Mizoram	:	Respondent

**BEFORE**

Vanlalmawia  
Addl District & Sessions Judge,  
Aizawl Judicial District, Aizawl.

**PRESENT**

For the Opposite party	:	R. Lalremruata, Addl. P.P.
	:	Lily Parmawii Hmar, APP.
For the Accused	:	J.Lalremruata Hmar , Advocate.
Date of hearing	:	7.5.2015
Date of order	:	15.5.2015

**ORDER**

Accused Hrangthanpara on bail is present, with his ld. counsel J.Lalremruata Hmar, Advocate. Today is fixed for opening of the case u/s 120(b)/121(A) IPC R/W 5(A) of ES Act against the accused.

The ld. counsel submitted that the accused person is a permanent resident of Sakawrdai, Aizawl District, Mizoram and holding the post of President, Sakawrdai Branch YMA, when he was arrested by the Police on 1<sup>st</sup> March 2013. Moreover, he had been undertaken a contract work for the construction of Zohmun to Palsang

Village Road on the strength of Power of Attorney executed by Mr.Rualthankhuma of Luangmual, Aizawl who was the allottee of the said contract work vide order no.B.15011/1/2011/EOT/NHC-I/116 dated 06.09.2013. the ld. counsel for the accused person submitted the following legal point praying to discharge the accused person which are as follows :

1) In respect of the charge sections 120(B)/121(A) IPC, no cognizance could be taken against the accused by virtue of the provision of section 196 Cr. PC since there is no prosecution sanction obtained by the state of Mizoram in this case. The provision of section 196 Cr.PC read as ,

“I no court shall take cognizance of

a) Any offence punishable under chapter VI or under section 153 A, (section 295 A or sub section (1) of section 505) of the Indian Penal code, 1860, or

b) A criminal conspiracy to commit such offence or

c) Any such abetment, as is described in Section 108 A of the Indian Penal Code, 1860 (45 of 1860) except with the previous sanction of the Central Government or of the State Government.

(1A) No court shall take cognizance of

a) Any offence punishable under section 153 B or sub section(2) or sub section (3) of section 505 of the Indian Penal Code, 1860.

b) A criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

2) No court shall take cognizance of the offence of any criminal conspiracy punishable under section 120 B of the Indian Penal Code, 1860 other than a criminal conspiracy to commit (an offence) punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding.

Provided that where the criminal conspiracy is one to which the provisions of Section 195 apply, no such consent shall be necessary”.

Moreover, in analogous case i.e State of Mizoram Vs Malsawma & others and State of Mizoram Vs Lalhlawhtlinga & others, the Hon'ble Addl. District & Sessions Judges already discharged the accused persons for which the present accused is also entitled to be discharged from the liability of criminal charge leveled against him under section 120(B)/121(A) IPC. A copies of the orders of the said Addl. District and Sessions Judges are also placed in the case record.

3) In respect of the charge section under section 5(a) of Explosive Substances Act, the present accused has no liability in it since the seized articles are legally possessed by him on the basis of a letter issued by Executive Engineer, PWD National Highway Division-II, under memo no Tech-17016/24/10/NHD-II/178 dated Aizawl the 25<sup>th</sup> February 2014 as well as the cash memo issued by M/S Zothanmawia, dated 26.2.2014 who is the licensee under license no E/HQ/MZ/21/2(E51556) 22.2.010. hence, being a contractor, the present accused possessed the seized articles legally as he was authorized to possess the same by the Public Work Department, Government of Mizoram. He is therefore entitled to be discharged from the liability of criminal charge leveled against him u/s 5 (a) of Explosives substance Act. An original copies of the said letter issued by the PWD and M/S Zothanmawia is also placed in the case record for reference.

Furthermore, the ld. counsel for the accused also prays that the seized articles be returned to the accused person as he possessed the same legally.

With the above submissions, the ld. counsel for the accused person earnestly prays the Hon'ble court to discharge the accused in this case from the liability of criminal charge leveled against him u/s 120(B).121(A) IPC R/w 5(a) of Explosive Substance Act and to return the seized articles to the accused person as he possessed the same legally as he possessed the same legally for the interest of justice.

On the other hand the ld. Addl. PP submitted :

a) That the accused was arrested at Tuiruang Road, outskirts of Vaitin where he was not working any contract work. In fact he was to hand over the explosives to the HPC(D).

b) That as per the alleged permission of purchase of explosive Materials submitted, by the accused was allowed to purchase safety fuse 3 coils, however 6 coils were seized from his possession. Hence prima facie u/s 5(a) Explosive substances Act is found well established against the accused.

c) That since the accused was carrying the S.A towards the Mizoram border where he did not have any contract work to do it was just that the accused was in possession of explosive substances under suspicious. In fact though he had a permission to obtain the S.A, but the said alleged permission was meant only for his contract work. Hence prima facie u/s 5(a) Explosive Substance Act is found well established against the accused.

Hence prayed the court to frame charge under the aforesaid section of law.

Upon hearing of both parties, it is learnt that the District Magistrate, Aizawl has awarded prosecution sanction to prove entail accused u/s 5(a) of the Explosive Act 1908, but no prosecution sanction was accorded u/s 120(b) 121(A) of IPC. If there is not prosecution, the court cannot take cognizance as per provision of section 196 Cr.PC and hence accused Hrangthanpara is discharge from the liability of the charge leveled against him u/s 120(b)/121(A) IPC.

In respect of Explosive Act, I do not find his involvement in accompany with the HPC 'D' after going through the charge sheet submitted by the investigating officer. But the accused exceeded in purchasing explosive Item in comparison of his permit issued by Zodingliana, E.E P.W.D National Highway Division-II Vide his No Tech-17016/24/10/NHD-II/178 dt.25.2.2014.

But I do not find it fit to prosecution the accused under Explosive Act as the offence committed by the accused seems to be minor offence.

I therefore discharged accused Hrangthanpara, from the charge u/s 5(a) of Explosive Act 1908, and set him at liberty.

Seized articles of

1. Noogel – 4 boxes

2. Detonator – 8 boxes.
3. Safety fuse 3- 3 coils

Shall be returned to the accused, and the sent seized articles beyond the quantity of permit shall be destroyed.

Accused Hrangthanpara is further warned not to repeat to keep any explosive, I then without permit or beyond the quantity of permit.

Give copy of this order to all concern.

Sd/- VANLALMAWIA,  
Addl.District & Sessions Judge-I,  
Aizawl Judicial District, Aizawl.

Memo No \_\_\_\_\_AD & SJ-I/2015 : Dated Aizawl the,15<sup>th</sup> May 2015.

Copy to :

1. District & Sessions Judge.
2. Accused Hrangthanpara C/o J.Lalremruata Hmar Advocate.
3. O/C Sakawrdai P.S.
4. Addl.PP/APP.
5. Judicial Section.
6. Case Record.
7. Guard file.

P E S H K A R