

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

Crl.Revision No.17/2015

In connection with Crl.Tr.No (Ex) 190/2014 U/S 8(1) MLTP Act.

Lalramthlana : Petitioner

Versus

State of Mizoram : Respondent

BEFORE

**Shri. Vanlalmawia,
AD & SJ-I**

PRESENT

For the Opposite party : R.Lalremruata, Addl. P.P.
Lily Parmawii Hmar, APP.

For the Accused : Lalbiakkima, Advocate & Ors.
Date of hearing : 29.4.2015
Date of Order : 7.5.2015

ORDER

Case record was received and today is fixed for hearing.

The ld. D/L and AGA was present. The ld. counsel for the convict petitioner submitted that :-

1. That the convicted/petitioner was arrested on 18.10.2014 at 2:00pm by C.Lalbiaktluanga, Sub Inspector of Excise & Narcotic Mamit District for alleged possession of 23 litres in 83 pockets of Rakzu. The matter station vide MENS-

203/2014 dt.22.10.2014 U/S 8(1) MLTP Act, 1995. Hence, criminal trial (EX) 190/14 dated 22.10.2014 was registered and investigated into and the case was proceeded before the court of Smt. Julie Lalrinzami Id. Judicial Magistrate First class, Mamit District, Mamit.

2. That on 8.4.2014 the charge leveled against the convict/petitioner was considered and the Id trial Judicial Magistrate First class, Mamit, Mizoram convicted the petitioner and sentenced him to undergo simple imprisonment for a period of 3 months and to pay a fine of Rs.100/- and in default of payment of fine another simple imprisonment for a period of 2 days on the charge leveled against him. The convict petitioner was convicted at the time of consideration of charged on his plea of guilty without taking any further evidence.

3. The Id. counsel for the convict petitioner also submitted that.

a) For that the Id. Chief Judicial Magistrate proceeded the trial without complying of the provision of 303/304 of Cr PC 1973 which vitiated the whole process and that the conviction is bad in law as well as in fact and cannot be stand in the eye of law and also a clear violation of this fundamental rights guaranteed by the constitution of India.

b) For that at the time of framing of charge the Id. Chief Judicial Magistrate should explain the charge against the accused and that he had a freedom not to plead guilty and also must inform the accused the consequence of pleading guilty and it is also imperative on the part of the trial court to assign reason whatsoever as to why it opted to base conviction of the accused on his plea of guilt(State of Mizoram Vs Ramengmawia 2006(1) GLT 770). Moreover, at the time of consideration of charge even if the petitioner pleaded guilty, the Id Chief Judicial Magistrate should proved further and take evidence especially in warrant case.

c) For that the convicted/petitioner was not defended by a pleader. The importance of an accused being defended by a counsel has clearly been emphasis

and given important by the Hon'ble Gauhati High Court, Aizawl Bench in Criminal Petition No 3 of 2013 (J.Lalchharmawia Versus State of Mizoram) in the said judgment has been held that 'it is a settled principle of law that no man be tried until and unless he is defended by a counsel appointed by him or a legal aid counsel is appointed'. Duty is cast upon the court to make the accused aware of his right to free legal aid counsel. The Hon'ble open court in the cases of Moti Lal Padampat Sugar Mill Co-Ltd Versus State of U.P reported in 1979 2. SCC 409 it has been held that, "it must be remember that there is no presumption that very person know the law. It is often said that everyone is presumed to know the law, that is not the correct statement there is no such Mazim known to the law".

4. The ld. counsel for the convicted petitioner also submitted that Excise Officer is not among the Expert list under section 293 Cr.PC and that scientific test be done by Excise Officer in a case where investigation is conducted by Excise Officer is bias an improper of the accused was presuming plead guilty, in the absence of any scientific proved that the seized article was liquor within the meaning of the Act, the petitioner could not have been convicted.

5. That also submitted that section 244 Cr PC case instituted otherwise than on police report, the Magistrate shall proceed to hear prosecution and take all such evidence, and at the instant case the ld. Magistrate fail to follow this provision.

6. Also submitted that on 8.4.2015 the accused was received charge sheet copy and that on the same day the charge was also considered and convicted to the accused. It is clearly violated mandatory provisions and there is no change to defend against the convicted/ Petitioner.

The ld. counsel for the convict/petitioner prays the court to set aside and quash the impute conviction order and to released a convict/petitioner.

On the other hand the ld. Addl. P.P strongly objected and submitted.

- a) That on perusal of case record there is no procedural lapse on the part of the Id. Magistrate First class.
- b) That P.W No.5 was examined before charge consideration by the Id. trial court. There is no need of examining all the witnesses mentioned on the complaint sheet.
- c) That after examining P.W No.5, a charge was framed, and the accused pleaded guilty and the Id. trial court is right convicting the petitioner Lalramthlana.
- d) That on 22.10.2014, the petitioner was informed of law right to engage a lawyer of his own choice by the Id. trial court.
- e) That the petitioner is a habitual offender, infact he was convicted earlier under MLTP Act by the same court.
- f) That hearing on sentence was also conducted by the Id. Trial court.
- g) That the petitioner failed to show that Pu Darhmingthanga, I/C Laboratory was not an expert to examine alcohol's strength of liquor. Infact, since he is in charged of the same it is obvious and cannot be said he is not an expert.
- h) Hence prayed the court to dismiss the petition.

After hearing of both parties and on perusal of the High court ruling enclosed by the Id counsel for the appellant, case record of the trial court is perusal, on perusal of the case record of Lower court, it is learnt that accused was informed his right to engage counsel and released on bail. This means that the accused has a good chance to engage defence Lawyer after informing his right during his release of bail period.

Besides that Pw No.5 has been examined before conviction of accused. So, I find no violation of mandatory provision on the conviction of accused.

So, the conviction imposed by the trial court is found just and proper, and find no ground to involve in the judgement of Lower court the judgment is therefore uphold.

Give copy of this order to all concern, and case record of lower court be returned.

The appeal is disposed.

(VANLALMAWIA) ,
Addl. District & Sessions Judge-I
Aizawl Judicial District, Aizawl

Memo No. AD&SJ-I/2015 : Dated Aizawl, 7th May 2015.

Copy to:

1. District & Sessions Judge, Aizawl.
2. Lalramthlana C/o Lalbiakkima Advocate.
3. Chief Judicial Magistrate Mamit with case record of CrI.Tr(Ex 190/2014.
4. Judicial section.
5. Case Record
6. Guard file

P E S H K A R