IN THE COURT OF SHRI VANLALMAWIA ADDL. DISTRICT & SESSIONS JUDGE –I
AIZAWL JUDICIAL DISTRICT, AIZAWL.

Criminal Revision No.61/2015
A/o Crl.Tr.No 1227/2015
U/S 380 IPC.

Lalfamkima	:	Petitioner
	Vrs	
State of Mizoram	:	Respondent

BEFORE
Vanlalmawia
Addl.District & Sessions Judge-I

PRESENT

For the petitioner	:	K.Laldinliana, Advocate
For the opposite party	:	Lalremruata Addl.PP Lily Parmawii Hmar, APP
Date of Hearing	:	7.10.2015
Date of order	:	7.10.2015

ORDER

Case record put up for hearing. Both the ld. Counsels are present. This is an application u/s 399/400/397 Cr.PC for revision of the conviction Order passed by Chief Judicial Magistrate, Aizawl in Crl. Trl. No. 1227/15 u/s 380 IPC.

The ld. Counsel appearing for the petitioner submits that the petitioner Lalfamkima was arrested by Police personnel on 09.06.2015 on the allegation of having committed an offence of theft by stealing lap-top Acer (Black) which belongs to R.Lalnunkimi of Govt Complex.The complaint was submitted by father of the said R. Lalnunkimi namely R. Lalrammawia who is also the father of the petitioner. The ld. Counsel submitted that the ld. CJM has, by holding that the petitioner has pleaded guilty, convicted the petitioner on 14.09.2015 thereby sentencing him to undergo S.I for a period of 6 months and to pay a fine of Rs. 1000/- I.D S.I for another 10 days. In this connection, the ld. Counsel submitted

that the ld. Trial Court had simply came to the conclusion that the petitioner has pleaded guilty without any proof of such allegation made against him. Moreover, the ld. Trial Court had convicted the petitioner without taking evidence though the offence alleged to have been committed by him is of a warrant case. In this connection the ld. Counsel produced the Judgement passed by the Hon'ble High Court in Zohmingthanga – Vs- State of Mizoram reported in 1998 (i) GLT 124 whereby it is held that," In a warrant case it is not proper to convict on a plea of guilty without taking further evidence". He further submits that no chance was given to the petitioner to defend himself as per see. 303 Cr.PC for which the mandatory provisions of law were not complied with and further the ld. Trial Court failed to invoke See. 360 Cr.PC though the petitioner was entitle to grant the same. He further submitted that the complainant as well as the victims had already forgiven the petitioner by executing " IN NGAIHDAMNA LEHKHA " dt 29.09.2015. In this connection the ld. Counsel produced the decision made by the apex Court in Gulab Das & Ors –Vrs- State of M.P (i.e Criminal Appeal No. 2126 of 2011) by which the Apex Court has held that

> "9. In the totality of the circumstances we are of the view that the settlement arrived at between the parties is a sensible step that will benefit the parties, give quietus to the controversy and rehabilitate and normalize the relationship between them.
>
> 10. "In the result, while upholding the order of conviction recorded by the Courts below, we reduce the sentence awarded to the appellants to the sentence already undergone by them. The appeal is to that extent allowed and the impugned orders modified. The appellants shall be set free forthwith if not otherwise required in any other case".

He further submits that the petitioner is suffering from many physical infirmities. In view of the above and on the basis of the "INNGAIHDAMNA LEHKHA" executed by the complainant as well as the victim of the case, the learned counsel pray the court to set aside and quash the conviction order dt. 14.09.2015 passed by the learned Chief Judicial Magistrate, Aizawl in Crl. Trl. No. 1227/15 thereby reversing the said order or by reducing the conviction Order to the sentence already undergone by the petitioner.

On the other hand, the learned APP objected the petition on the ground that there is no illegality in passing the Order dt. 14.09.2015 and in fact the learned trial Court has already imposed minimum penalty to the petitioner at the time of convicting the petitioner and as such he pray the Court to reject the petition submitted by the petitioner.

The complainant R.Lalrammawia has submitted letter of forgive, to the court forgiving his son/accused Lalfamkima as his character more improved after sentence, and the victim who loss laptop computer, who is also her sister, had also forgive him and prayed the court to dismiss the case against Lalfamkima.

On the other hand charge section 380 IPC is not compoundable under section 320 Cr.PC. but the ld. counsel submitted Apex court ruling in criminal appeal No.2126 of 2011 to which section 307 IPC is also compounded observing the settlement arrived at between the parties is sensible stop that will benefit the parties give quietus to the controversy and rehabilitate and normalize the relationship between them.

In this instance case also section 380 IPC is not compoundable, but the offence committed by the convicted is within their family concern, the complainant victim and accused belong to same family, and does not amounted to social evil at present, the accused was arrested on 9.6.2015 and convicted on 14.9.2015 and this means that accused was in the custody for almost 4 months, whereas he was convicted for 6 months.

With these observation the conviction and sentence awarded by the Chief Judicial Magistrate is hereby uphold, but with some modification by reducing the sentence period from 6(six) months into 4(four) months S.I but no modification in the fine imposed by the Chief Judicial Magistrate court.

Detention period shall be set off.

The revision petition is disposed.

Case record of lower court be return.

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

Memo No_____/AD&SJ-I(A)/2015 : Dated Aizawl the, 7th October 2015.

Copy to :

1. District & Sessions Judge, Aizawl.
2. Lalfamkima C/o Mr.K.Laldinliana Advocate.
3. Spl.Superintendent Central Jail,Aizawl.
4. Chief Judicial Magistrate Aizawl with case record of Crl.Tr.No.1227/2015.
5. Judicial Section.
6. Case record.
7. Guard file.

PESHKAR