

**P R E S E N T**  
Mrs. Helen Dawngliani  
Addl.District & Sessions Judge-III

3. Mention may be made at this stage that delay in filing the revision petition was condoned vide Order dt.26.3.2013. Thereafter, case record was called for. Since the case record could not be located from the record room, attempt was made to have the relevant record through the Superintendent of Excise who is expected to maintain records of the cases. As no documents could be furnished by either of the parties, and considerable time was already spent in trying to get the record or atleast some documents pertaining to the case, in the interest of justice, the case is proceeded for hearing and judgment passed.

4. Heard the Ld. Counsels.

Mr. F. Lalzuiliana, Ld. Counsel for the revision petitioner submitted that on 1.10.2007 the revision petitioner was arrested by Excise personnel and Excise Case No. A-918/07 dt.2.10.2007 was registered. The petitioner was produced before the court of the Magistrate First Class at Aizawl on 2.10.2007 and CrI. Tr. Ex. No. 1009/07 u/s 8(3) MLTP Act was registered. The offence being summarily triable, the Ld. Magistrate First Class also tried the case summarily, and framed charge against the accused/petitioner for the offence punishable u/s 8(3) MLTP Act and convicted the accused on his plea of guilt. At this stage, the Ld. Counsel submitted that the said Court i.e Magistrate First Class did not have the power to try case summarily and no specific authorization was given to the court or the incumbent to try cases summarily. The Ld. Counsel argued that since the impugned Order was passed by a Court which does not have the power to try such case, the impugned Order has to be set aside and quashed. Further, the Ld. Counsel argued that the plea of the accused have not been properly recorded and this has greatly prejudiced the accused. The Ld. Counsel contended that the petitioner used to work as a driver in the Excise Department. Due to his conviction he has been removed from service. Due to wrong legal advice, he thought that he could not do anything about the Judgment. But as he lost his job and his family started facing a lot of hardship he thought it would be wise to sought another legal advice and that is how the revision petition have been filed. The Ld. Counsel argued that the impugned judgment & order suffers from a lot of infirmity and the Order passed by a Court which does not have the power is liable to be set aside and quashed.

On the other hand, Mrs. Rose Mary the Ld. Addl. PP submitted that it is not the case of the petitioner that he did not plead guilty to the charge. The Ld. Counsel argued that there was nothing illegal in the procedure adopted by the Ld. Trial Court and that there is no reason to interfere with the impugned Order at this belated stage.

5. It is not in dispute that the offence punishable u/s 8(3) MLTP Act is summarily triable. Section 260 Cr.P.C reads as follows:

***“260.Power to try summarily- (1) Notwithstanding anything contained in this Code –***

***(a) Any Chief Judicial Magistrate;***

***(b) Any Metropolitan magistrate***

***(c) Any magistrate of the first Class specifically empowered in this behalf by the High Court,***

may, if he thinks fit, try in a summary way all or any of the following offences:-

(i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years.....”

A plain reading of the impugned Order dt.2.10.2007 shows that the same was not passed by the Chief Judicial Magistrate. At the same time, the Order itself shows that it was tried summarily. In spite of sufficient opportunities given to the Ld. Counsels to produce any letter/Order authorizing the said Magistrate to try the case summarily the same have not been produced.

6. Section 461 Cr.P.C reads as follows:-

**“461. Irregularities which vitiate proceedings** – *If any Magistrate, not being empowered by law in this behalf, does any act of the following things, namely;-*

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j)

(k)

(l)

(m) tries an offender summarily

..... his proceedings shall be void”

7. In the given facts and circumstances of the case and the law involved, it cannot but be held that the impugned Order dt.2.10.2007 was passed by a Magistrate who is not specially empowered to try the case summarily. Such irregularity vitiates the whole proceeding and renders the entire proceeding void.

8. For the reasons indicated in the preceding paragraph, the impugned Order dt.2.10.2007 passed by the Magistrate First Class, Aizawl in CrI.Tr.Ex.1009/07 u/s 8(3) MLTP Act is hereby set aside and quashed. As the petitioner has already served out his sentence there is no question of sending the case back to the Ld. Chief Judicial Magistrate.

9. Accordingly, the impugned Judgment & Order dt.14.10.13 is set aside and quashed.
10. With the above Order, the Revision Petition stands disposed off.

**Sd/- HELEN DAWNGLIANI**  
Addl. District & Sessions Judge-III  
Aizawl Judicial District : Aizawl

Memo No:\_\_\_\_\_AD&SJ/(A)/2013 : Dated Aizawl, the 31<sup>st</sup> January, 2014  
Copy to: -

1. C. Zodinliana through Counsel Mr. F. Lalzuiliana, Advocate.
2. PP/Addl. PP, Aizawl District, Aizawl.
3. Superintendent of Excise & Narcotics (Prosecution Branch), District Court, Aizawl.
4. Registration Section.
5. Guard File.
6. Case Record.

**P E S H K A R**