

Crl.Rev. No.5/2014
In Crl.Tr.No.82/2014
U/s 8(3) MLTP Act

Mrs. Helen Dawngliani
Addl.District & Sessions Judge

1. Malsawmtluanga Fanai
S/o Lianthanga
R/o Chhing Veng, Aizawl

2. Zoremsiama
S/o Lalchhuanawma
R/o Edenthlar, Aizawl Petitioners

State of Mizoram Respondent

Date of hearing 06.03.2014 & 14.03.2014

Date of judgment 18.03.2014

For the revision petitioner Ms.Dorothy Lalrinchhani,
Ms.Lalremruati Pachuau, Advocates

For the Respondent Mrs. Rose Mary, Addl.PP
Ms.Rosy Lalnuntluangi APP

1. The present revision petition has been filed u/s 397 Cr.P.C against the Order dt.5.2.2014 passed by the Ld. Chief Judicial Magistrate, Aizawl in CrI. Tr. No.82/2014 wherein the revision petitioners have been convicted for the offence punishable u/s 8(3) MLTP Act and sentenced to undergo simple imprisonment for 7 days each and to pay a fine of Rs.500/- each and in default to further undergo simple imprisonment for 2 days.

2. Since the case was tried summarily, no case record except the daily order sheet is maintained.

3. Heard the Ld. Counsels.

Ms. Dorothy, the Ld. Counsel for the revision petitioners submitted that the petitioners were not given any opportunity to engage a Counsel which is in clear violation of the provision of section 303 Cr.P.C. According to the Ld. Counsel as the petitioners were not defended by any Counsel they did not understand the proceeding and they did not know and were not explained the consequence of pleading guilty. This according to the Ld. Counsel is a serious violation of the right of an accused. The Ld. Counsel further submitted that the revision petitioners does not have any criminal antecedents and that since both of them are engaged in a private automobile workshop they stand to lose their job if they are further detained in custody. The Ld. Counsel submitted that though the Ld. Trial Court has awarded minimum sentence and fine to both the petitioners, the petitioners not being defended by any Counsel is a clear violation of the right of petitioners and thus pray to set aside the conviction and sentence. In support of her submission, the Ld. Counsel has placed reliance in the case of **Ranchod Mathur Wasawa Vs. State of Gujarat** reported in (1974) 3 SCC 581, **Hussainara Khatoun Vs. State of Bihar** (1980) 1 SCC 98.

On the other hand, Mrs. Rose Mary, the Ld. Addl. PP submitted that it is not the case of the petitioners that they did not plead guilty or that their plea was wrongly recorded. As the petitioners actually pleaded guilty to the charge, the Ld. Trial Court has rightly exercised its direction to convict them and that enough leniency has already been shown by the Ld. Trial Court by awarding minimum sentence to both the petitioners. The Ld. Counsel therefore submitted that no sufficient ground has been made out to interfere with the Order passed by the Ld. Trial Court.

4. Section 303 Cr.P.C provides that any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under the said Code, may of right be defended by a pleader of his choice.

Section 303 & 304 Cr.P.C flows out from Article 22(1) of the Constitution of India which is an offshoot of the principle of natural justice that no one should be condemned unheard. Thus, the

importance of an accused being defended by a Counsel or legal practitioner cannot be over emphasised.

5. In the case at hand, we are dealing with a case which was tried summarily. The materials on record shows that the two revision petitioners were convicted on the same day they were produced before the Court. It is not the case of the revision petitioners that they did not plead guilty to the charge u/s 8(3) MLTP Act. The main grievance of the petitioners is that they were not defended by a Counsel, they did not understand the proceeding and that they did not know/they were not made known the consequence of pleading guilty.

6. The hon'ble Karnataka High Court in the case of *State of Karnataka versus Mallappa* reported in 1979 Cri.LJ 1482 has held that in a case where the accused was not afforded sufficient opportunity to acquaint himself with the prosecution case and to prepare himself to claim that he wants to defend or decide to plead guilty, it would not be proper to convict the accused on the basis of his plea of guilty.

7. A close reading of the record does not provide any material to suggest that the two revision petitioners were carefully explained the prosecution case i.e the meaning, implication and consequences of the offence. There is also no material to suggest that their freedom to engage a counsel was ever made known to them. The two revision petitioners are working in an automobile workshop and they are not expected to know the intricacies of law. The two revision petitioners were convicted on the same day they were produced for the first time before the Court. Accordingly, in this particular case, the materials on record support the submission of the revision petitioners that they did not understand the proceedings before the court, that they were not offered an opportunity of engaging a Counsel and that they did not know/were not made known the consequences of pleading guilty.

8. For the reasons indicated above, I am of the considered view that there are irregularities which require interference. Accordingly, the impugned Order dt.5.2.2014 is set aside and quashed. As the revision petitioners have already served 4 days of their respective sentences, there

is no reasonable ground to remand the matter back to the Ld. Trial Court.

9. With the above Order, the revision petition stands disposed off.

10. Send back the Case Record to the Id. Trial Court.

Sd/- HELEN DAWNGLIANI
Addl. District & Sessions Judge
Aizawl Judicial District, Aizawl

Memo No. ____/AD&SJ/2014 : Dated Aizawl, the 18th March, 2014
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| 1. | Malsawmtluanga Fanai S/o Lianthanga, | } | through
Counsel
Ms. Dorothy,
Advocate. |
| | Chhing Veng, Aizawl | | |
| 2. | Zoremsiama S/o Lalchhuanawma, | } | |
| | Edentharr, Aizawl | | |
| 3. | Special Superintendent, Central Jail, Aizawl. | | |
| 4. | Chief Judicial Magistrate, Aizawl. | | |
| 5. | i/c G.R. Branch. | | |
| 6. | Registration Section. | | |
| 7. | Guard File. | | |
| 8. | Case Record. | | |

PESHKAR