

**IN THE COURT OF THE ADDL.DISTRICT AND SESSIONS JUDGE  
AIZAWL JUDICIAL DISTRICT : AIZAWL**

Crl. Rev. No. 15/2014

In Crl. Tr. Ex. (M) No. 202/13 & 191/13

U/s 8(1) MLTP Act

**P R E S E N T**

Mrs. Helen Dawngliani  
Addl.District & Sessions Judge

Lalramthlana

S/o Vanlallawma(L)

R/o Mamit, Mizoram

.....

Convict/Petitioner

Versus

State of Mizoram

.....

Respondent

Date of hearing

.....

13.05.2014

Date of judgment

.....

13.05.2014

**A P P E A R A N C E**

For the revision petitioner

.....

Mr.Lalbiaknunga Hnamte

Mr.C.Lalhruaitluanga

Mr.Lalbiakkima Advocates

For the Respondent

.....

Mrs.Rosemary, Addl.PP

Ms.Rosy Lalnuntluangi APP

**J U D G M E N T   A N D   O R D E R**

1. This revision petition u/s 397/399 Cr.P.C is directed against the Order dt.1.4.2014 passed by the Ld.Chief Judicial Magistrate, Mamit in Crl. Tr. Ex (M) No. 202/2013 u/s 8(1) MLTP Act convicting the petitioner for the offence punishable u/s 8(1) MLTP Act and sentencing him to undergo simple imprisonment for a period of 3 months and to pay a fine of Rs. 1000/- and in default to further undergo simple imprisonment for a period of 10 days and Order dt.1.4.14 passed by the Ld. Chief Judicial Magistrate, Mamit in Crl. Tr. Ex. (M) No. 191/2013 u/s 8(1) MLTP Act convicting the petitioner for the offence punishable u/s 8(1) MLTP Act and sentencing him to undergo simple imprisonment for a period of 3 months and to pay a fine of Rs. 1000/- and in default to further undergo simple imprisonment for a period of 10 days.

2. I have heard Mr. Lalbiaknunga Hnamte, Ld. Counsel for the petitioner and Mrs. Rose Mary, the Ld. Addl. Public Prosecutor assisted by Ms. Rosy, APP.

3. Mr. Lalbiaknunga Hnamte, Ld. Counsel for the revision petitioner by making a common submission for both the convictions submitted that the Ld.Trial

court failed to deliver copy of the charge sheet to the petitioner which is a clear violation of section 203 Cr.P.C. The Ld. Counsel argued that the accused was not made known of his right to engage a Counsel of his choice as well as his right of being defended under the Legal Aid Scheme and the petitioner was not defended before the ld. Trial Court. The Ld Counsel also submitted that the accused was not explained of the consequences of pleading guilty and that the offence punishable u/s 8(1) MLTP Act being a warrant procedure case, it was not proper to convict on the alleged plea of guilt. The next argument of the Ld. Counsel is that hydrometer test which was allegedly conducted was only to test the density of the substance but not the chemical contents. In order to come to a finding whether the seized article was alcohol or not there has to be a test of its chemical content. According to the Ld. Counsel, Excise officer is not amongst the Experts listed u/s 293 Cr.P.C and that scientific test being done by Excise officer in a case where investigation is conducted by the Excise officer is bias and improper. Mr.Lalbiaknunga argued that presuming the accused pleaded guilty, in the absence of any scientific proof that the seized article was liquor within the meaning of the Act, the petitioner could not have been convicted. The Ld. Counsel submitted that there are a lot of procedural irregularities which warrant setting aside the conviction Order. According to the Ld. Counsel remaining the case for de-novo trial would not serve any purpose since the seized materials have already been destroyed, a certificate to the said effect is available in the record.

On the other hand, Mrs. Rose Mary, Ld. Addl. PP submitted that the manner of recording the plea of the accused is only a procedural formality and that it is not the case of the petitioner that they did not plead guilty. Mrs. Rose Mary argued that MLTP Act is a Special Act which have been enacted to suit the need of the society. Under the said Act, the Excise personnel have been entrusted to conduct test of liquor. The Ld. Counsel argued that the petitioner was released on bail and usually when such accused persons are released on bail, they know their right to engage a Counsel. The Ld. Addl.PP submitted that charge was read out and explained to the accused in Mizo language and his reply clearly shows that he understood the question put to him. According to the Ld. Counsel, no illegality was committed by the Ld.Trial court and that the Ld. Trial Court already showed leniency to the petitioner by awarding minimum sentence prescribed by law. The Ld. Counsel therefore argued that no interference is called for.

In Crl. Tr. Ex. (M) No. 202/2013, the petitioner was arrested for illegal possession of local made liquor (Rakzu) which were packed in 32 polythene

packets and kept in a wooden truck in his house. The said wooden truck was also seized.

In CrI. Tr. Ex. (M) No. 191/2013, the petitioner was arrested for illegal possession of 12 litres of local made liquor (Rakzu) which were packed in 41 polythene packets in the residence of the petitioner.

The Ld. Counsel for the petitioner submitted that the complaint sheet was not delivered to the convict/petitioner. In this regard, I have carefully perused the record of CrI. Tr. Ex. (M) No. 202/2013. In the daily Order sheet, for the Order dt.16.11.2013 it has been written by the Ld. Trial Court that documents were delivered to the accused. The signature of the petitioner also appeared on the left handside of the said order sheet. In respect of CrI. Tr. Ex. (M) No. 191/2013, the Order Sheet dt.14.10.13 shows that documents were delivered to the petitioner on the said date. As such, the said submission appears to be baseless and misplaced.

Coming to the next submission of the Ld. Counsel for the petitioner regarding the petitioner not being defended by a Counsel, upon perusal of the records, it is seen that the accused was produced for the first time before the Court on 16.11.2013 in CrI. Tr. Ex. (M) No. 202/2013 and 14.10.2013 in CrI. Tr. Ex. (M) No. 191/2013. Upon careful perusal of the daily ordersheets of both the CrI. Trials, I fail to find any order, mentioning that the accused was informed of his right to engage a Counsel as well as his right of being defended by a Counsel under the Legal Aid Scheme. The Impugned Orders dt.1.4.2014 also does not reflect the presence of any Counsel for the petitioner.

The honb'le Gauhati High Court (Aizawl bench) in CrI.Rev.P No.107/2012 Lalmuanzuala versus State of Mizoram vide its Judgment & Order dt.16.1.13, while setting aside the conviction Order observed that *"Framing of charge is not an empty formality. The object behind framing of charge is to make the accused aware of the nature and extent of accusation against him. The accused must be made aware of the consequences of pleading guilty. It is for this reason that providing legal assistance to the accused is of crucial importance, more particularly, in a warrant procedure case. Section 303 mandates that any person accused of an offence before a criminal court or against whom proceedings are instituted under the Cr.P.C may of right be defended by a pleader of his choice....."*

*14. In the present case, when the petitioners admitted to the charge, they did not have the benefit of legal assistance. It does not appear from the record that they were also made aware of the consequences of their admission.*

*15. These defects are not minor defect. They go to the root of the matter and are fatal to the prosecution case....”*

In the instant case also, the petitioner was not defended by a Counsel and he was not made aware of his rights.

7. Further, upon examining the records in the light of the decision of the Honb’le High Court, I do not find any material to suggest that the accused/petitioner was explained of the consequences of pleading guilty. This lapse and the prejudice it caused to the petitioner is an offshoot of the petitioner not being defended by a Counsel.

8. Without going into the other grounds of challenge, I find that there is irregularity in the procedure adopted by the Ld. Trial Court while convicting the accused/petitioner in both the Crl. Trials.

Accordingly, the Impugned Judgment & Order dt.1.4.2014 In Crl. Tr. Ex. (M) 191/2013 and Order dt.1.4.14 in Crl. Tr. Ex. (M) 202/2013 are set aside and quashed.

The petitioner have served sentence from 1.4.2014, by now he has suffered detention for about 1 month and 12 days. Moreover, it is seen from the record of the Ld. Trial Court that the seized material have already been destroyed. As such, no fruitful purpose would be served by remanding the matter back to the ld. Trial Court.

Petitioner who is in confinement shall be set at liberty forthwith, if not required in any other case.

12. Release Order be prepared accordingly.

13. Send back the case record of the Ld.Trial Court.

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

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

**Memo No.: 272 /AD&SJ(A)/2014 : Dated Aizawl, the 13<sup>th</sup> May, 2014**  
**Copy to: -**

1. Lalramthlana through Counsel Mr. Lalbiaknunga Hnamte, Advocate.
2. PP/Addl. PP, Aizawl.
3. Special Superintendent, Central Jail, Aizawl.
4. Chief Judicial Magistrate, Mamit.
5. Registration Section.
6. Guard File.
7. Case Record.
8. Calendar Judgment.

**P E S H K A R**