

IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS

AIZAWL, MIZORAM

Case No

**Crl. Tr No Ex-764/2015
Vide Ex-A-247 Dt.04.04.2015
U/S 43 (1) of MLPC Act, 2014**

State of Mizoram : Complainant

Versus

**Shri R Lalhmunzauva (35) : Accused
S/o R Pachhunga
R/o Model Veng, Lengpui**

PRESENT

**H. LALDUHSANGA, Judicial Magistrate First Class
Aizawl**

Counsel for the Prosecution	: Smt Lalrinsiami & Laldinpuii APP
Counsel for the Defence	: Shri J Lalremruatha Hmar, Advocate
WA submitted on	: NIL
Argument heard on	: 15.03.2016
Judgment pronounced on	: 04.05.2016
Judgment & Order delivered on	: 04.05.2016

Total No of Pages of Judgment & Order: 7 (Seven)

INDEX

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**H. LALDUHSANGA
Judicial Magistrate First Class, Aizawl**

Counsel for the Prosecution	: Smt Lalrinsiami & Laldinpuii APP
Counsel for the Defence	: Shri J Lalremruatha Hmar, Advocate
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LIST OF PROSECUTION WITNESSES

PW 1	: C Hmingthansanga, civilian seizure witness (absentee)
PW 2	: Lalrinnggheta Sailo, civilian seizure witness
PW 3	: Lalhmachhuana, Asst. Director FSL
PW 4	: SI Jason lalrinchhana E&N, Aizawl seizing & arresting officer.
PW 5	: ASI Rohmingthanga Case I/O

LIST OF DEFENCE WITNESSES

NIL

LIST OF ENCLOSURES

- 01. Complaint sheet**
- 02. Seizure and arrest memo**
- 03. Report of seizure & arrest memo**
- 04. Statement of the accused**
- 05. Statement of witnesses**
- 06. Laboratory certificate**
- 07. Destruction certificate**

JUDGMENT & ORDER

Dated: 04.05.2016

INTRODUCTION OF THE CASE

1. Accused Shri R Lalhmunzauva (35) S/o R Pachhunga R/o Model Veng, Lengpui was arrested on 03.04.2015 by Excise & Narcotics personnel, Aizawl as he was alleged to have possessed about 40 (forty) liters of Rakzu. A case U/S 43 (1), MLPC Act, 2014 was registered against him. After being received complaint-sheet (charge-sheet), the present case was endorsed to me by the Hon'ble Court of Chief Judicial Magistrate for trial. The Court released the accused on Bail during trial of the case. The accused was provided Shri J Lalremruata Hmar, Legal Aid Counsel. As the accused pleaded not guilty of the offence, the Court entered into evidence. The accused denied all allegations U/S 313 Cr.PC and declined to enter into defence evidence as well.

Received written argument neither from the Ld. Counsel for the accused nor the Ld. APP. Heard both side of the case on oral argument and Judgment & Order is pronounced in an open Court today and the accused is acquitted. We shall now go for more details.

PROSECUTION STORY OF THE CASE

2. The Prosecution story of the case in brief is that Shri R Lalhmunzauva (35) S/o R Pachhunga R/o Model Veng, Lengpui was arrested on 03.04.2015 by SI Jason Lalrinchhana, Excise & Narcotics personnel, Aizawl as he was alleged to have possessed about 40 (forty) liters of Rakzu. The seizing officer reported about the matter to the Officer In-charge, Excise & Narcotics, Aizawl. Hence, a case U/S 43 (1) of MLPC Act, 2014 against the accused was registered and endorsed to ASI Rohmingthanga E&N, Aizawl for investigation. The Case I/O duly investigated into the case, examined the accused and the witnesses under cool and calm atmosphere. The accused admitted his guilt by making confession that he was the actual possessor of the seized articles. Hence, as he found Prima-facie case well established against the accused U/S 43 (1) of MLPC Act, 2014 and sent the case for trial to the Court.

DELIVERY OF DOCUMENTS

3. As per requirement of Sec 207 Cr.PC, a copy of complaint sheet (charge-sheet) and other relevant documents were at free of cost delivered to the accused. As per Sec 303 Cr.PC, he was informed his right to engage a lawyer of his own choice or avail free legal aid. Accordingly, the accused was provided Shri J Lalremruata Hmar, Legal Aid Counsel.

FRAMING OF CHARGE

4. On 14.09.2015, having heard both side of the case and perused all documents on record, the charge U/S 43 (1) of MLPC Act, 2014 was framed against the accused as I found Prima-facie case well established against him. It was read over and explained to the accused in the language known to him to which he pleaded not guilty and claimed to be tried.

POINT FOR DETERMINATION

Whether the accused was the actual possessor of about 40 (forty) liters of the said Rakzu seized on 03.04.2015.

PROSECUTION EVIDENCE

5. **PW 5 ASI Rohmingthanga Case I/O** deposed that he was the Investigating officer in the present case. SI Jason Lalrinchhana arrested the accused on 03.04.2015 for possessing about 40 (forty) liters of Rakzu. He examined the accused, the seizure witnesses and sent sample of the seized Rakzu to FSL and found that the seized Rakzu contained 28.9% V/V ethyl alcohol. He identified that Exhibit P - I was charge-sheet submitted by him and P I (a) was his true signature.

6. On cross-examination, he deposed that it was the fact that he did not examine the seizing officer as the seizing officer had already examined and recorded statements of the seizure witnesses. He further deposed that he submitted complaint sheet against the accused solely on the basis of statement of the accused recorded during investigation.
7. **PW 4 SI Jason Lalrinchhana, seizing and arresting officer** deposed that on 03.04.2015 at around 11:40 AM, he seized about 40 (forty) liters of Rakzu at Model Veng, Lengpui and arrested the possessor namely R Lalhmunzauva. A sample was drawn and sent to FSL in presence of reliable witnesses. He identified Exhibit P-II as seizure and arrest memo and P-II (a) as his signature. Cross-examination was declined.
8. **PW 2 Lalrinnggheta Sailo** deposed that while on duty on 03.04.2015, they received information that the accused was keeping Rakzu illegally in his house. Accordingly, they informed the matter to Excise & Narcotics personnel. He was present when the said Rakzu was seized by Excise & Narcotics personnel and stood as a seizure witness.
9. On cross-examination, he deposed that it was the fact that the said Rakzu was seized from YMA Office, Lengpui. It was also the fact that the Case I/O did not examine him.

EXAMINATION OF ACCUSED U/S 313 Cr.PC

10. On 25.02.2016, the accused was examined U/S 313 of Cr.PC as follows:

- 1) Is it true that you are accused R Lalhmunzauva?
= Yes, it was true.
- 2) From the Prosecution evidence, it appeared that about 40 (forty) liters of Rakzu was seized from your residential building on 03.04.2015 by Excise & Narcotics personnel, Aizawl Station. What did you have to say?
= That was false.
- 3) Did you have anything to say in respect of the charge made against you by the Prosecution in the present case?
= I was called by some leaders of Model Veng, Branch YMA when I was in Airport. They told me that some quantity of liquors was seized from my residential house. But, I kept no liquor in my house. I did not understand the matter.

DEFENCE EVIDENCE

11. Despite fair chance was given to the accused, he did not enter into defence evidence.

ARGUMENTS

12. No written argument was submitted. Heard both side of the Case at length on oral argument. The Ld. APP for the Prosecution submitted **inter alia** the prosecution evidences were strong enough for conviction of the accused. One civilian witness duly adduced evidenced in favour of the accused. There was no violation of mandatory provision of the Code to have vitiated trial of the whole case. Hence, strongly prayed the Court to convict the accused.
13. The Ld. Counsel for the accused on the other hand submitted **inter alia** no prohibited liquors were seized from the physical possession of the accused. It was rather seized from the possession of Model Veng Branch YMA, Lengpui. The Case I/O did not examine the seizing officer. Further, Sec 157 Cr.PC was not complied in the present case. Hence, vehemently argued and prayed the Court to acquit the accused immediately.

DECISION AND REASONS FOR DECISION

14. In the present case, we have to determine as to whether the accused was the actual possessor of about 40 (forty) liters of Rakzu seized on 03.04.2015. As per allegation made by the Prosecution, the said articles were seized from Model Veng, Lengpui. However, the accused denied that he was the actual possessor of the seized articles. *In fact, the term 'possession' is a very wide complex concept in Jurisprudential law.*
15. From the Prosecution evidence, it is found the seizing officer seized about 40 Liters of Rakzu from Model Veng, Lengpui. However, the seizing officer did not say the actual/particular place of making seizure of the said Rakzu. It also appeared that the alleged accused was not at the place of making seizure of the said articles. Hence, it is considered that from which place the said Rakzu was actually seized and, either by Model Veng Branch YMA, Lengpui or the Excise & Narcotics personnel were uncertain. It also appeared from the Prosecution evidence that the seizing officer makes two civilian seizure witnesses namely C Hmingthansanga and Lalrinnggheta Sailo who were cited as PW-1 and PW-2 respectively at the time of making formal seizure of the said articles. However, despite fair chance was given and summons was duly issued to both the civilian seizure witnesses on 14th September, 16th October and 20th November, 2015, but PW 1, C Hmingthansanga still remained absent without step and he was dropped from the Prosecution witnesses accordingly on 20th January, 2016. As a result, only one civilian seizure witness adduced evidence in the Court.

Sec 100 (4) of Cr.PC says, *"Before making a search under this chapter, the officer or other person about to make it shall call upon **two or more** independent and respectable inhabitant of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order writing to them or any of them to do so".*

Sec 100 (5) of Cr.PC says, *"The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this*

section shall be required to attend the Court as a witness of the search unless specifically summoned by it".

16. Further, there was neither search warrant nor recorded grounds of belief in the present case.

Sec 94 (1) Cr.pc says, *"If a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks fit necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is deposited in any place, he may by warrant authorize any police officer above the rank of constable-*

- (a) to enter, with such assistance as may be required, such place,*
- (b) to search the same in the manner specified in the warrant,*
- (c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this section applies.*

Sec 165 (1) Cr.pc says, *"Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and such that thing can not in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station".*

17. Furthermore, the Case I/O during his cross-examination deposed that he did not examine the civilian witnesses as the seizing officer had already examined them. However, I perused all the documents submitted by the Case I/O alongwith the Complaint sheet and found that all the statements of the witnesses and the accused also were recorded by the Case I/O not the seizing officer. In the meanwhile, the civilian seizure witness (PW-2) during his cross-examination deposed that he was not examined by the Case I/O. However, all the statements of the witnesses including the accused were recorded by the Case I/O as per documents on record. There was a lot of contradictions. Therefore, it might not be wrong to state that the Case I/O was heart of the whole case but not familiar with facts of the case when he was highly expected to find out truth of the case.

Investigating Officer has to perform his duties with the sole object of investigating the allegations and in the course of the investigation has to take into consideration the relevant material whether against or in favour of the accused. Mohd. Jainal Abedin V State of Assam, (1997) 2 Crimes 660 (Gau).

18. For all these reasons, it is considered that the Prosecution evidences were not quite strong enough when the accused vehemently argued and denied the allegations throughout trial of the case. Accordingly, benefit of doubt was given to the accused. I would therefore conclude that the Prosecution failed to bring home present case beyond the shadow of all reasonable doubts.

ORDER

19. Accused R Lalhmunzauva (35) S/o R Pachhunga R/o Model Veng, Lengpui is hereby acquitted of the offence and set at liberty on benefit of doubt.

20. The seized articles had already been destroyed at the pre-trial stage of the case.

21. Bail-bond shall be cancelled and surety shall also be discharged from all liabilities.

22. With the above order, the instant case stands disposed of.

**Given under my hand and Seal of this Court on this day of the 4th
May, 2016 Anno Domini.**

Sd/-H. LALDUHSANGA

Magistrate 1st Class,
Aizawl

Memo No..... :Dated Aizawl, the 4th May, 2016
Copy to:-

1. Mr. R Lalhmunzauva (35) S/o R Pachhunga R/o Model Veng, Lengpui.
2. The District & Sessions Judge, Aizawl.
3. i/c Judicial Section.
4. The Superintendent of Excise & Narcotics, Aizawl District: Aizawl.
5. The Superintendent, District Jail, Aizawl.
6. Ld. APP, District Court, Aizawl.
7. Mr. J Lalremruata Hmar, Advocate, District Court, Aizawl
8. Case I/O ASI Rohmingthanga, Excise & Narcotics, Aizawl Station.
9. The Officer-in-Charge, Excise and Narcotics, Aizawl Station.
10. The Prosecution Branch (E&N), District Court, Aizawl
11. Guard File.
12. Case record.

PESHKAR