

IN THE COURT OF JUDICIAL MAGISTRATE OF THE FIRST CLASS

AIZAWL, MIZORAM

Crl.Tr. No 1122/2015

Vide. Bawngkawn PS C.No 59/2015 Dt.27.03.2015

U/S 25(1B) (a) of Arms Act, 1959

The State of Mizoram : Prosecution

Versus

Shri. Vanlalhraia (26) : Accused

S/o Laldingliana

R/o Zuangtui, Aizawl

Aizawl District

PRESENT

H. LALDUHSANGA

Judicial Magistrate First Class

For the Prosecution : Smt Lalthazuali Renthlei, APP

For the Accused : Shri H Lalrinthanga, Advocate & others

Judgment pronounced on : 18.08.2017

Judgment & Order delivered on : 18.08.2017

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PROSECUTION WITNESSES

PW 1	:	Shri SI Laldusanga, Special Narcotic PS, complainant
PW 2	:	Shri PC Vanlalruata, seizure witness
PW 3	:	Shri Zoremsiama, seizure witness
PW 4	:	Shri MC Richard Vanlalnhezova, expert witness
PW 5	:	Shri Dy.SP Saidingliana Sailo, Case I/O
PW 6	:	Smt SI R Lalvohbiki, Case I/O

LIST OF ENCLOSURES

1. *Statements of complainant, witnesses and accused*
2. *Arrest memo*
3. *Seizure memo*
4. *FSL Report*
5. *Prosecution sanction*

No of Total Pages of Judgment & Order: 10 (ten)

#### PROSECUTION EXHIBITS

*Exhibit P – I is a property search and seizure form*  
*Exhibit P – I - (a) is a signature of SI Laldusanga*  
*Exhibit P – II Final Form/Report containing 16 pages*  
*Exhibit P – II (a) is a signature of Case I/O SI R Lalvohbiki*  
*Exhibit P – III is reasons for opinion by the Expert witness*  
*Exhibit P – III (a) is a signature of Expert witness*  
*Exhibit P – IV is a brief fact of the case (charge-sheet)*  
*Exhibit P – IV (a) is a signature of the Case I/O Dy.SP Saidingliana Sailo*  
*Exhibit P – V is Arrest memo*  
*Exhibit P – V (a) is the signature of Case I/O Dy.SP Saidingliana Sailo,*

#### DEFENCE WITNESSES

NIL

#### DEFENCE EXHIBITS

NIL

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#### **JUDGMENT & ORDER**

**Dt.18.08.2017**

#### INTRODUCTION OF THE CASE

1. Accused Vanlalhruaia was arrested on 27.03.2015 as he was alleged to have illegally possessed .22 calibre Local made pistol (black) and one live .22 ammunition. Shri Dy.SP Saidingliana Sailo investigated into the case. Due to transfer of his place of posting, SI R Lalvohbiki carried on the case and submitted a charge-sheet. The charge U/S 25 (1-B) (a) of Arms Act, 1959 was framed against the accused but pleaded not guilty and claimed for trial. The Prosecution out of six cited witnesses examined three witnesses. The accused produced no witness. Received no written argument. Oral argument was conducted and judgment is pronounced today. We shall now go for more detail.

## PROSECUTION STORY OF THE CASE

2. The Prosecution story of the case in brief is that on 27.03.2015 at 3:30 PM, SI Laldusanga of Special Narcotic PS, Aizawl lodged a written FIR at Bawngkawn PS, Aizawl stating that on 27.03.2015 at 11:30 AM, he and his party from Field 'G' Team SHQ, BSF, Aizawl launched a joint search operation at Zuangtui, PWD Complex Area, Aizawl, recovered and seized one .22 calibre Local made pistol (black) and one live .22 ammunition from the possession of Shri Vanlalhruaia (26) S/o Laldingliana R/o Zuangtui, Aizawl at the residence of Shri Laldingliana. The total value of the seized weapons was estimated to be Rs 30,000/- at local market. The alleged illegal possessor held no valid license. Hence, Bawngkawn PS C/No. 59/2015 Dt.27.03.2015 U/S 25 (1-B) (a) of Arms Act, 1959 was registered. During the course of investigation, accused Vanlalhruaia was formally arrested. During interrogation, the accused admitted his guilt by saying that he had actually possessed the said arm and ammunition illegally from one whose name was not known to him at the cost of Rs.7,000/- and Rs.500 for extra ammunition which had not been delivered to him. The seized weapons which were kept at PS Malkhana vide MR No. 51/15 were sent to FSL, Aizawl for Laboratory analysis. The report of expert revealed that .22 calibre Pistol was improvised .22 firearm modified from Air Pistol and in working order and .22 live ammunition also could be fired from the weapon. The complainant and all available witnesses were examined. Hence, the Case I/O found Prima-facie case well established against the accused U/S 25 (1-B) (a) of Arms Act, 1959 and so sent the Case for trial to the Court.

## DELIVERY OF DOCUMENTS

3. On 14.08.2015, a copy of chargesheet and other relevant documents were delivered to the accused. He was also informed his right to engage a lawyer of his own choice or to avail free legal aid.

## CHARGE CONSIDERATION

4. On 14.09.2015 the charge U/S 25(1-B)(a) of Arms Act, 1959 was framed against the accused, read over and explained to him in the language known to him to which he pleaded not guilty and claimed to be tried.

#### POINTS FOR DETERMINATION

1. *Whether .22 calibre Local made pistol (black) and one live .22 ammunition were seized from the possession of the accused 27.03.2015.*
2. *Whether the accused acquired, possessed or carried .22 calibre Local made pistol (black) and one live .22 ammunition without holding any valid licenses*

#### PROSECUTION EVIDENCE

- 5 The prosecution among cited 6 (six) witnesses examined 3 (three) witnesses to establish its case whereas the defence examined no witness.
6. **PW 1: SI Laldusanga, complainant** deposed that he was a complainant in the present case. On 27.03.2015 at around 11:30 AM, he and his party upon receiving information launched a joint search operation at Zuangtui, PWD Complex Area, Aizawl, recovered and seized one .22 calibre Local made pistol (black) and one live .22 ammunition. As the place was secluded, he could not find civilian to stand as seizure witness and so Shri Zoremsiama and Shri PC Vanlalruata (duty parties) were made seizure witnesses. The alleged illegal possessor Shri Vanlalhruaia held no valid license at the time of making seizure. Hence, he lodged a written FIR. He identified that Ext P – I was Property search and seizure memo and P – I (a) was his true signature. On cross-examination, he admitted that he did not remember who held the seized weapons at the time of making seizure. He was the one who actually seized the said articles. He admitted that they did not call any neighbours for civilian seizure witness at the time of making seizure. He admitted that he was at the Narcotic PS at the time of making seizure of the said weapons.
7. **PW 4 MC Richard Lalhnehzova**, expert witness deposed that in connection with the present case, one pistol and one .22 Cartridge were received from Bawngkawn PS, Aizawl at FSL. He examined the said two Exhibits and found that the weapon was .22 calibre pistol modified from Air Pistol and in working condition. It was a factory made but converted into local firearm. It could chamber and fire .22 rim fire ammunition. The ammunition was a live .22 ammunition and could be fired from the said weapon. He identified Ex P-III as his examination Report and P-III (a) as his signature. On cross-examination, he admitted that fingerprint was not taken in

connection with the present case. He admitted that the pistol which he examined was originally Air Pistol but locally modified into .22 Pistol.

8. **PW 5 Dy.SP Saidingliana Sailo** deposed that as per FIR received from SI Lalduhsanga, he investigated into the case and arrested the accused for illegal possessing one .22 calibre Local made pistol (black) and one live .22 ammunition on 27.03.2015. During interrogation, the accused admitted his guilt. SI Lalduhsanga seized the said articles. The seized articles were sent to FSL for analysis. The Expert reported that .22 Calibre was in working condition and .22 live ammunition could be fired from the weapon. On his cross-examination, he deposed that he was not present at the time of making search and seizure of the said weapons. He recorded statements of the accused and the seizing officer. He also sent the seized weapons to FSL for examination.
9. **PW 6 SI Lalvohbiki** deposed that on 27.03.2015 at 3:30 PM, SI Lalduhsanga of Special Narcotic PS, Aizawl lodged a written FIR at Bawngkawn PS, Aizawl stating that on 27.03.2015 at 11:30 AM, he and his party from Field 'G' Team SHQ, BSF, Aizawl launched a joint search operation at Zuangtui, PWD Complex Area, Aizawl, recovered and seized one .22 calibre Local made pistol (black) and one live .22 ammunition from the possession of Shri Vanlalhruaia (26) S/o Laldingliana R/o Zuangtui, Aizawl. The alleged illegal possessor held no valid license. During the course of investigation, accused Vanlalhruaia was arrested and he admitted his guilt by saying that he had actually possessed the said arm and ammunition illegally from one whose name was not known to him at the cost of Rs.7,000/- and Rs.500 for extra ammunition which had not been delivered to him. The seized weapons were sent to FSL, Aizawl for Laboratory analysis. The report of expert revealed that .22 Calibre was in working condition and .22 live ammunition could be fired from the weapon. The Case I/O Dy.SP Saidingliana Sailo had investigated into the case, examined all the witnesses and the accused. As the Case I/O was transferred out, she continued investigation, drafted and submitted charge-sheet on the basis of investigation done by the previous Case I/O. She identified that Ext P – II was chargesheet and Ext P – II (a) was her signature. On cross-examination, she deposed that she examined no witnesses. She knew nothing about the present case as the previous Case I/O had done all the investigating parts.

## EXAMINATION OF ACCUSED U/S 313 Cr.PC

10. The Court examined the accused U/S 313 Cr.PC as follows.

(1) Is it true that you are accused Vanlalhruaia?

= Yes

(2) From the prosecution evidence, it appeared that one .22 calibre Local made pistol (black) and one live .22 ammunition were seized from your possession on 27.03.2015. What did you have to say?

= That was wrong

(3) From the prosecution evidence, it appeared that you were the actual possessor of one .22 calibre Local made pistol (black) and one live .22 ammunition seized on 27.03.2015. What did you have to say?

= It was wrong.

(4) Then, did you have anything to say in respect of the present case?

= I had no involvement.

## ARGUMENT

11. No written argument was submitted. Oral argument was conducted. The Ld. APP for the Prosecution submitted *inter alia* the said weapons were illegally possessed by the accused and duly seized from his possession. All the Prosecution witnesses were thorough with facts of the case. There was no contradiction in the evidences of the Prosecution witnesses *inter se*. The seizing party had complied with all the mandatory provisions of the Code. The accused was liable to be convicted and so prayed the Court to convict the accused and award him the maximum punishment.

12. On the other hand, the Ld. Counsel for the accused submitted *inter alia* there was no sufficient ground for conviction. A lot of contradictions in the evidences of the Prosecution witnesses makes the case doubtful and suspicious. Neither search warrant was obtained nor Grounds of belief was recorded in the instant case. There was no civilian witness at the time of seizing the said articles. From the facts and circumstances, it appeared that the accused did not involve in any act in contradicting with law. Hence, the accused was liable to be acquitted of the offence and set at liberty.

13. I have heard the rival submissions of the Ld. APP for the prosecution and the Ld. Counsel for the accused. I have also perused the entire materials on record including all depositions recorded in the Court.

14. **Point No 1:-** In this point, we have to determine as to whether one .22 calibre Local made pistol (black) and one live .22 ammunition were seized from the possession of the accused on 27.03.2017.

Sec 38 of the Arms Act, 1959 says, "Every offence under this Act shall be cognizable within the meaning of the Code of Criminal Procedure, 1973".

Sec 37 of the Arms Act, 1959 Arrest and searches:- Save as otherwise provided in the Act,- (a) all arrests and searches made under this Act or under any rules made thereunder shall be carried out in accordance with the provision of the Code of Criminal Procedure, relating respectively to arrests and searches made under that Code.

15. Hence, as required by Sec 37 of the Arms Act, 1959 we have to look into the mandatory provisions of the Code of Criminal Procedure relating to search and arrest.

Sec 41 B (b) (i) of Cr.PC reads, "Every police officer while making an arrest shall prepare a memorandum of arrest which shall be attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made".

Sec 60A of Cr.PC reads, "No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest".

16. From the above, it is a crystal clear that the seizing party is to comply with the mandatory provisions of the code especially in the matter relating to making seizure of the said illegal weapons and arrest. However, I have repeatedly gone through all the documents on record but found neither search warrant nor grounds of belief.

**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-

to enter, with such assistance as may be required, such place,

to search the same in the manner specified in the warrant,

**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. In the matter relating to making seizure, SI Shri Laldusanga, complainant (PW 1) deposed that he was the seizing officer who actually seized the said weapons. But, he did not remember who held the seized weapons at the time of making seizure. He also admitted that they did not call any neighbours for civilian seizure witness at the time of making seizure of the said weapons. In fact, the seizing officer is to call two civilian seizure witnesses to stand as reliable witnesses before making search. The seizing officer simply deposed that as the place of making seizure of the said weapons was secluded, the two duty police personnel were made seizure witnesses. However, it appeared that the time of making seizure was a daytime about 3:30 PM and the place was also a residential area in the town.

**Sec 100 (4) 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 inhabitants of the locality in which the place to be searched is situate or 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 in 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".

18. When the Prosecution is highly expected to comply with all the mandatory provisions of the Code, the seizing party had failed to comply with the mandatory provisions of the Code of Criminal Procedure relating to search and arrest, which is required under Sec 38 of the Arms Act, 1959. There was a gross violation of the mandatory provisions of Sec 100(4), (5), 94 (1), 165 (1) of the Code of Criminal Procedure Code in the present case and the same is considered to have prejudiced the defence.

"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 (Gauhati).**

19. **Point No 2:** We shall determine as to whether accused Vanlalhraia illegally acquired, possessed or carried .22 calibre Local made pistol (black) and one live .22 ammunition without holding any valid licenses. With regard to Point No. 2, in the light of observation and decision made in Point No 1, it is felt unnecessary to proceed further. Hence, Point No 2 is also hereby decided in favour of the accused and benefit of doubt is given to him.

"13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court..... 14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. (**Supreme Court of India in CRIMINAL APPEAL NO. 984 OF 2007 Govindaraju @ Govinda (Appellant) Versus State by Srirampuram P.S. & Anr. (Respondents), Swatanter Kumar, J. March 15, 2012).**

**ORDER**

20. Accused Shri Vanlalhraia (26) S/o Laldinglana R/o Zuangtui, Aizawl is hereby acquitted of the offence on benefit of doubt and set at liberty.

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

22. At the time of making seizure of the seized articles, the accused persons held no valid license or permit to possess or keep the same. A rightful owner may claim ownership on the seized articles which have been kept at Court Malkhana within a period of 6 (six) months from the date of this Order. In case of no rightful claimant within the above-specified time, the same shall be sent at the disposal of the State Government in accordance with law.

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

**Given under my hand and Seal of this Court on this day of the 18<sup>th</sup> August,  
2017 Anno Domini.**

**(H. LALDUHSANGA)  
Magistrate 1<sup>st</sup> Class,  
Aizawl: Aizawl, Mizoram.**

Memo No.....:Dated Aizawl, the 18<sup>th</sup> August, 2017

Copy to:-

1. Shri Vanlalhraia (26) S/o Laldinglana R/o Zuangtui, Aizawl
2. The District & Sessions Judge, Aizawl
3. The Special Superintendent, Central Jail, Aizawl.
4. The Superintendent of Police, Aizawl.
5. The DSP, Prosecution, Aizawl.
6. Smt Lalthazuali Renthlei, APP
7. The Officer-in-charge, Bawngkawn Police Station.
8. Case I/O SI Lalvohbiki through the Officer-in-charge, Bawngkawn Police Station.
9. The Officer-in-charge, Court Malkhana.
10. i/c Judicial Section.
11. Case record.
12. Guard file

**PESHKAR**