

IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS

AIZAWL, MIZORAM

Criminal Trial No. Excise - 371/2015  
Vide Ex-A-418 of 2015 Dt.19.06.2015  
U/S 43 (1) MLPC Act, 2014

State of Mizoram : Complainant

Versus

Shri R Chhuanthanga (52)

S/o Zathanga (L)

R/o Melthum, Mizoram

:

Accused

PRESENT

H. LALDUHSANGA

Judicial Magistrate First Class

Aizawl

Counsel for the Prosecution : Smt Lalthazuali Renthlei, APP

Counsel for the Defence : Smt Lalramnghaki, Legal Aid Counsel

Judgment pronounced on : 29.08.2018

Sentence heard on : 29.08.2018

Judgment delivered on : 29.08.2018

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LIST OF PROSECUTION WITNESSES

PW 1	: Shri Laltanpuia, civilian seizure witness
PW 2	: Shri Lalbiaknia, civilian seizure witness
PW 3	: Shri Lalhmachhuana Asst Director FSL, Aizawl
PW 4	: ASI C Vanlalruati, seizing officer
PW 5	: Case I/O ASI Rohmingthanga

LIST OF DEFENCE WITNESSES

NIL

JUDGMENT

Dated: 29.08.2018

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1. The prosecution story in nutshell is that accused Shri R Chhuanthanga (52) S/o Zathanga R/o Melthum was arrested for alleged possession of about 30 liters of prohibited liquor 'Rakzu'. The seizing officer reported the matter to the Officer In-charge, Excise & Narcotics, Aizawl and a case U/S 43 (1) of MLPC Act, 2014 against the accused was registered and ASI Rohmingthanga E&N, Aizawl investigated into the case. The Case I/O examined the accused and the witnesses. 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, the Case I/O sent the case for trial to the Court.

2. A copy of complaint sheet (charge-sheet) and other relevant documents were free of cost delivered to the accused. He was also informed of his right to engage a lawyer of his own choice or avail free legal aid. 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. The accused pleaded not guilty and claimed to be tried.
3. As to whether the accused was the actual possessor of about 30 (thirty) liters of the said prohibited liquor named Rakzu seized on 18.06.2015. The prosecution alleged that the accused was the actual possessor of the seized liquor which was strongly denied by the accused. The Court entered into evidence and the Prosecution examined as many as four witnesses when the accused examined no witness in her defence despite sufficient opportunity. Heard the Ld. APP representing the prosecution and the Ld. Counsel for the accused during oral argument. The seizing officer (PW 3) ASI C Vanlalruati deposed that on receiving telephonic information from the Local Leaders, Melthum, she with subordinate officers rushed to the spot and seized about 30 liters of Rakzu from the house of the accused (inside almirah and box). The seizing officer during cross-examination admitted that the Local Leaders, Methum conducted search into the house of the accused and recovered the seized liquors. PW 5 the Case I/O deposed that the accused confessed before him that he was the actual possessor of the seized liquor. He purchased it from Rangvamual and kept inside his Almirah. The two independent seizure witnesses PW 1 and PW 2 deposed that on 18.06.2015, as they had strong suspicion, they conducted search into the house of the accused, unlocked the Almirah and recovered the said liquor. They left the said liquor untouched and informed the matter to E & N Personnel. Accordingly, E & N personnel came to the spot and seized the said liquor in their presence. They both admitted that they without informing the E & N personnel conducted search into the house of the accused.

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".

Sec 102 (1) Cr.PC says, "Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence".

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".

Sec 40 of MLPC Act, 2014: Offences cognizable and non-bailable: Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) –

- (a) Every offence under this Act shall be cognizable.

Sec 36 of MLPC Act, 2014: Arrest by private person or persons or group of persons and procedure on such arrest: Any private person or persons or group of persons may arrest or cause to be arrested any person who commits a non-bailable and cognizable offence under this Act, and, without unnecessary delay, shall make over any person so arrested to the Excise & Narcotics Officer or Police Officer, or, in the absence of the Excise or Police officer, take such person or cause him to be taken in custody to the nearest Excise & Narcotics Station or Police Station.

Sec 37 Cr. PC says, "Public when to assist Magistrate and Police-. Every person is bound to assist a Magistrate or Police officer reasonably demanding his aid –

- (a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorised to arrest or; or

(b) in the prevention of suppression of a breach of the peace; or.

Sec 43 Cr. PC says, "Arrest by private person and procedure on such arrest-. Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, taken such person or cause him to be taken in custody to the nearest police station.

4. From the above, it appears that a civilian can arrest who committed a cognizable offence. However, making arrest by civilian and conduct of search by civilian is quite different. In the present case, gross violation of mandatory provision of the Code to have caused serious prejudice to the accused is found. No doubt, the investigating agency is to comply with all the mandatory provisions of the Code. However, there can be such situations and circumstances when and where the mandatory provisions of the Code could not be complied with exactly as they are. In such cases, it is important to consider as to whether such violation was serious enough or not to have caused prejudice to the defence and whether such violation vitiated the entire trial or not. From the evidence, it appeared that there was a gross violation of mandatory provision of the Code and illegal search in the present case. The civilians entered into the house of the accused and conducted search into the house of the accused.

In state of Punjab Vs Balbir Singh 1994 (3) SCC 299 it was held that failure to comply with the provisions of Cr. PC in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 per se does not vitiate the prosecution case. If there is such a violation, what the Courts have to see is whether any prejudice was caused to the accused.

The Hon'ble Supreme Court in State of Madhya Pradesh Vs Paltan Mallah decided on 20.01.2005 has held that in India, the evidence obtained under illegal search is not completely excluded unless it has caused serious prejudice to the accused. The discretion has always been given to the Court to decide whether such evidence is to be accepted or not.

5. In the light of the above observation, the present case is decided in favour of the Defence.

#### ORDER

6. Accused Shri R Chhuanthanga (52) S/o Zathanga (L) R/o Melthum is hereby acquitted of the offence on benefit of doubt and set at liberty.

7. Bail bond shall be cancelled and surety shall also be discharged from all liabilities.
8. All the seized liquors shall be destroyed.
9. With the above order, the present case stands disposed of.

Given under my hand and seal of this Court on this day of the  
29<sup>th</sup> Aug, 2018 Anno Domini

Sd/-H. LALDUHSANGA  
Magistrate 1<sup>st</sup> Class,  
Aizawl

Memo No..... : Dated Aizawl, the 29<sup>th</sup> Aug, 2018

Copy to:-

1. Shri R Chhuanthanga (52) S/o Zathanga (L) R/o Melthum through counsel Smt Lalramnghaki Legal Aid Counsel
2. The Superintendent of Excise & Narcotics, Aizawl District: Aizawl.
3. The Superintendent, Central Jail, Aizawl.
4. Smt Lalthazuali Renthlei, APP, District Court, Aizawl.
5. Case I/O ASI Rohmingthanga, Excise & Narcotics, Aizawl Station.
6. The Officer-in-Charge, Excise and Narcotics, Aizawl Station.
7. The Prosecution Branch (E&N), District Court, Aizawl
8. i/c Judicial section
9. Case record.

PESHKAR