

IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS

AIZAWL, MIZORAM

CrI. Tr No Ex-58/2016 Vide Ex-A-799 of 2015

U/S 43 (1) of MLPC Act, 2014

State of Mizoram : Complainant
Versus
Shri Lalramsanga (24) : Accused
S/o Lalremruata
R/o Phunchawng Mel - 10, Aizawl

PRESENT

H. LALDUHSANGA

Judicial Magistrate First Class, Aizawl

Counsel for the Prosecution : Smt Lalthazuali Renthlei APP
Counsel for the Defence : Shri C Lalrinchhunga, Advocate
Judgment pronounced on : 20.07.2018
Judgment & Order delivered on : 20.07.2018

JUDGMENT & ORDER

Dated: 20.07.2018

1. Accused Lalramsanga (24) S/o Lalremruata R/o Phunchawng Mel - 10, Aizawl was arrested on 15.11.2015 by SI Jason Lalrinchhana Excise & Narcotics, Aizawl as he was alleged to have possessed 13 Bottles (750ml each) of Mc. Dowell's Rum No 1, 11 bottles of Officer Choice (750ml each), 3 bottles of Casino whisky and 1 liter of Rakzu. He reported 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 ASI Lawmsanga Khiantge investigated into the case, 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. 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 her right to engage a lawyer of her own choice or avail free legal aid.

3. 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 Prima-facie case was found 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 the seized liquors.

DECISION AND REASONS FOR DECISION

4. In the present case, the Prosecution alleged that the accused was the actual possessor of the said liquor which was strongly denied by the accused. Out of five cited, the Case I/O, the seizing officer and PW 1 Constable Shri Huliana (seizure witness) adduced evidence. In fact, the accused denied the allegation throughout trial of the case. All the witnesses adducing evidence are Excise & Narcotics personnel and the evidences adduced by the three Excise & Narcotics officers alone are considered not quite strong enough. When two respectable independent seizure witnesses are expected U/S 100 (4) Cr.PC, the two Excise & Narcotics personnel were made seizure witnesses and one seizure witness Constable Smt Lalchuanawmi (PW 1) was dropped from the prosecution witness on 16.08.2017 for failure in making appearance for evidence before the Court after being summoned for five times. Further, the seizing officer is one who makes seizure of the alleged liquor and the Case I/O is to investigate into the case thoroughly including sample drawal and sending it for Laboratory examination. In the present case, the seizing officer deposed that sample drawal was done by him on the spot. It could be doubtful when the prosecution is to prove its case beyond reasonable. I would therefore conclude that the Prosecution for all the reasons stated above fails to bring home present case beyond the shadow of all reasonable doubts.

"Prosecution is to prove its case beyond all reasonable doubt, if the data leaves the mind of the Judge in equilibrium, the decision must against the prosecution and the accused must be acquitted". **Harish J. Mal Vs State 1982 Cr. LJ 2123.**

In **Narain Singh v. State, (1997) 2 Crimes 464 (Del)**, it was held that *the prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defence. Nor can the Court, on its own make out a new case for the prosecution and convict the accused on that basis.*

ORDER

5. Accused Lalramsanga (24) S/o Lalremruata R/o Phunchawng Mel - 10, Aizawl is hereby acquitted of the offence and set at liberty on benefit of doubt.
6. The seized liquor except one liter of Rakzu shall be confiscated.
7. Bail-bond shall be cancelled and surety shall also be discharged from all liabilities.
8. With the above order, the instant case stands disposed of.

Given under my hand and Seal of this Court on this day of the 20th July, 2018 Anno Domini.

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

Memo No.....

:Dated Aizawl, the 20th July, 2018

Copy to:-

1. Accused Lalramsanga (24) S/o Lalremruata R/o Phunchawng Mel - 10, Aizawl.
2. The District & Sessions Judge, Aizawl
3. The Superintendent of Excise & Narcotics, Aizawl District: Aizawl.
4. The Superintendent, Central Jail, Aizawl.
5. Smt Lalthazuali Renthlei, APP, District Court, Aizawl.
6. Case I/O ASI Lawmsanga Khiangte, Excise & Narcotics, Aizawl Station.
7. The Officer-in-Charge, Excise and Narcotics, Aizawl Station.
8. The Prosecution Branch (E&N), District Court, Aizawl
9. i/c Judicial section
10. Case record.

PESHKAR