

IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS

AIZAWL, MIZORAM

Crl. Tr No Ex-1698/2016

Vide Ex-A-378 of 2016

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

State of Mizoram : Complainant

Versus

Shri Phailianthanga (36) : Accused

S/o Lalthakima

R/o Phunchawng Sikul Mual, Aizawl

PRESENT

H. LALDUHSANGA

Judicial Magistrate First Class, Aizawl

Counsel for the Prosecution : Smt Lalthazuali Renthlei APP

Counsel for the Defence : Smt Lalnunpuii, Legal Aid Counsel

Judgment pronounced on : 11.07.2018

Judgment & Order delivered on : 11.07.2018

JUDGMENT & ORDER

Dated: 11.07.2018

1. Accused Phailianthanga (36) S/o Lalthakima R/o Phunchawng Sikul Mual, Aizawl was arrested on 18.08.2016 by Excise & Narcotics personnel, Aizawl as he was alleged to have possessed about 50 (fifty) liters of Rakzu. The seizing officer SI C Lianchungnunga seized Maruti Van MZ 01-F-6576 used for carrying the said liquor. 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 endorsed to SI Lalmalsawma for investigation. The Case I/O duly 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. He was provided Legal Aid Counsel.
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 about 50 liters of the said Rakzu*

DECISION AND REASONS FOR DECISION

4. In the present case, the Prosecution alleged that the accused was the actual possessor of the said liquor. However, the accused denied that he was the actual possessor of the seized liquor. In fact, the term 'possession' is a very wide complex concept in Jurisprudential law. Out of five cited, only the Case I/O and the seizing officer adduced evidence. The Case I/O and the seizing officer were Excise & Narcotics personnel. In fact, the accused denied the allegation throughout trial of the case. Hence, the evidences adduced by the two Excise & Narcotics officers alone are considered not quite strong enough. Accordingly, benefit of doubt is given to the accused. PW 1 Smt Laltanpuui and PW 2 Smt Lalramhluni (both are cited independent seizure witnesses) were dropped from the prosecution witness on 26.02.2018 for failure in making appearance for evidence before the Court after being summoned for four times. I would therefore conclude that the Prosecution 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 Phailianthanga (36) S/o Lalthakima R/o Phunchawng Sikul Mual, Aizawl is hereby acquitted of the offence and set at liberty on benefit of doubt.
6. The seized liquor shall be destroyed.
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 11<sup>th</sup> July, 2018 Anno Domini.**

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

Memo No.....

:Dated Aizawl, the 11<sup>th</sup> July, 2018

Copy to:-

1. Accused Phailianthanga (36) S/o Lalthakima R/o Phunchawng Sikul Mual, Aizawl through Counsel Smt Lalnunpuii, 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 SI Lalmalsawma, Excise & Narcotics, Aizawl Station.

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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