

**IN THE COURT OF
DISTRICT & SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT: AIZAWL**

BEFORE

**Mr.R.Thanga
District & Sessions Judge
Aizawl Judicial District, Aizawl**

SR No.43 of 2013
Criminal Trial No.165/2013
u/s 26(2) Arms Act
Ref: Aizawl PS C/No.29/2013 dt.25-1-2013

State of Mizoram
Vrs
Zakir Hussain S/o Cherag Ali, of Patharkandi, ~ Accused
Karimganj, Assam.

PRESENT

For the Prosecution : Mr.H.Lalmuankima & Mrs.K.Lalremruati, Ld. Addl. P.Ps.

For the Accused : Mr.Lalremtlunga, Ld.Advocate

Date of Hearing : 23-04-2014

Date of Judgment : 15-05-2014

JUDGMENT & ORDER

1. The story of prosecution in brief is that on 25-01-2013 at around 8:10 PM, the accused Zakir Hussain S/o Cherag Ali of Patharkandi, Karimganj, Assam was caught in possession of one 9mm pistol without having any license and this pistol was seized from the house of R.Sangkima, which was rented by the accused. Accordingly, Aizawl PS Case No. 29/2013 dt.25-01-2013 u/s 26 (2) Arms Act was registered and investigation carried out by Mr. J.Lalchungnunga, S.I. Charges under section 26(2) Arms Act was registered against the accused Zakir Hussain, s/o Cherag Ali of Patharkandi, Karimganj, Assam and committed for Trial.
2. Relevant copies of the documents were handed over to the accused and Mr. Lalremtlunga, Ld. Advocate appointed as defense counsel since the accused did not have means to engage counsel. Accordingly, charge under section 26(2) Arms Act was framed against the accused and explained to him in the language known to him, to which he pleaded not guilty and hence, trial commenced.

3. The prosecution produced and examined 4 Nos. of witnesses in order to prove their case. The accused was also examined by the trial judge under section 313 Cr.P.C.
4. P.W. No.1, J.Lalchungnunga, S.I. of Police, stated in his examination-in-chief that on 25.1.2013 they had received information regarding unauthorized possession of gun at Bethlehem Vengthlang where they proceeded with personals of 26 AR as joint operation. They searched the floor rented by one Zakir Hussain which was in the house of one R.Sangkima. While they were conducted the search the accused person was not present, only his wife was present who allegedly produced a gun from under the pillow of their bed. He had seized the gun in the presence of witnesses and prepared seizure memo. The accused had returned home while they were still present and they arrested him and took him to the Thana. He then submitted FIR. Exbt-P-1 is the FIR and Exbt-P-1A is his signature. Exbt-P-2 is grounds of belief and Exbt-P-2 A is his signature. Exbt-P-3 is the seizure memo and Exbt-P-3A is his signature. Exbt-M is the seized article. Further he also stated during cross examination that he did not conduct any firing test for the seized gun nor did he make any special marking on the seized article for identification.
5. The PW No.2, K.Rosangzela states in his examination that on 25.1.2013 the police had come to their house and inquired whether any YMA members were present. Since they were no YMA members the police requested to accompany them to the house rented by Zakir Hussain. The police requested him to be seizure witness for a gun which was produced from beneath a rizai on the bed. Further in the cross examination he stated that they did not make any special marking on the seized gun in order to identify the gun produced in Court and that also the gun was not packed in any container at the place of occurrence.
6. P.W.No.3, T.Lalnuntluangi, S.I. of Police, Aizawl P/S stated that on 25.1.2013 she was on duty at Aizawl PS when SI J.Lalchungnunga submitted FIR stating that they had seized one 9 MM pistol from the house of R.Sangkima which was rented by Zakir Hussain. After case was registered she had conducted the investigation and arrested Zakir Hussain after duly informing him of the grounds of arrest, recorded the statement and sent the gun for examination to

FSL. FSL reports was received that the gun was country-made and therefore found prima facie case u/s 26(2) of the Arms Act and accordingly submitted charge-sheet. Exbt.P-4 is the charge-sheet submitted by her and Exbt.P-4A is her signature. She also stated in cross examination that she did not visit the place of occurrence during her investigation and that the seized gun was taken to FSL by one rider PC-a, who is not cited as witness. Further she had stated that as per FSL report the seized article is not serviceable

7. P.W.No.4, Vanlalnghaka stated that on 25.1.2013 the police officer came to his house and requested him to be seizure witness as he was a leader of local YMA. Exbt-P-3 is the seizure memo and Exbt.P-3C is his signature. He also stated that he is not certain whether the seized article shown to him in Court was the seized article as at Exbt-M-1. He also stated in his cross examination that when he reached the place of occurrence, the pistol/seized gun was already in the possession of the police.
8. After completion of the examination of the prosecution witnesses, the accused was duly examined u/s 313 Cr.PC on 19-02-2014 and vide Court's order sheet of the said date the defense did not have witnesses to produce in their defense.
9. During examination of the accused u/s 313/281 of Cr.PC the accused person had stated that on the date of incident his wife had given him a call asking him to come home. When he reached home there were police personnel who stated that a pistol was allegedly taken from beneath his pillow and asked whether it belonged to him. He denied ownership but however was arrested. When he inquired from his wife regarding the incident she had told him that one person had entered their house and kept some article under the pillow and immediately ran out. After 5:7 Minutes the police entered their house.
- 10.Arguments were heard from both the parties.
- 11.Section 26(2) of the Arms Act states "Whoever does any act in contravention of any of the provisions of section 5,6,7 or 11 in such manner as to indicate an intention that such act may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and also with fine".

12. Section 5, 6, 7 & 11 provide for “license for manufacture, sale etc., of arms and ammunition”; “License for the shortening of guns or conversion of imitation firearms into firearms”; “Prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition” and “Power to prohibit import or export of arms, etc.” respectively.
13. The prosecution states that from the evidences adduced the case against the accused has been proved beyond reasonable doubt. It is also pointed out that the FSL report has been accepted by the Defense Counsel during its exhibit.
14. The Defense Counsel on the other hand has stated that the provision of section 26(2) of the Arms Act has not been violated while examining the evidences placed before the Court. The provisions of section 5, 6, 7 & 11 of Arms Act are also not attracted to the present case. Further the seized article was not sealed at the place of occurrence nor any marking made so as to identify it. He has also stated that there is contradiction in the statement of the witnesses regarding the seizure of the gun.
15. It may be seen from the evidences adduced before this Court that the only witness to the seizure was the PW SI J. Lalchungnunga. As evidence adduced it appears that the other eye witness would be the wife of the accused who was present at the relevant time, however she has not been cited as a witness.
16. The statement of PW 1 states that the article was seized from under the pillow of the bed of the accused. The statement of PW 2 states that the gun was produced from under the rizai on the bed of the accused therefore it appears that this PW is only meant to serve as seizure witness.
17. The statement of PW1, PW 2, PW 4 mentions that the seize article was not marked so as to identify it later nor are they certain that the gun produced in the Court was the same that was seized.
18. In the above circumstances it is not established whether the gun was actually seized from under the pillow/rizai on the bed of the accused, that the gun which was produced in Court was actually the gun that was seized since no special markings were made on the gun seized, nor was the seize article kept in a sealed container.

19. In light of the above evidences and discussion this Court is of the considered opinion that case u/s 26(2) of the Arms Act is not established and therefore not proved. Accordingly the accused Zakir Hussain S/o Cherag Ali of Patharkandi, Karimganj District, Assam is acquitted of the charge u/s 26(2) of the Arms Act. Bail bonds if any stands cancelled. Seized articles (CMR No.135/13) may be return to rightful owner or destroyed.

Sd- R.THANGA

District & Sessions Judge
Aizawl

Memo No. _____DSJ/A/ 2014 : Dated Aizawl, the 15th May, 2014.

Copy to:-

1. Accused Zakir Hussain S/o Cherag Ali of Patharganj, Karimganj, Assam C/o Mr.Lalremfluanga Ld. Counsel.
2. Mr. H.Lalmuankima and Ms. K.Lalremruati, Ld.Addl.Public Prosecutors, Aizawl.
3. DSP, Prosecution.
4. Officer-in-charge, Aizawl P.S.
5. i/c Judicial Section.
6. Case record.
7. Guard file.

PESHKAR