

IN THE COURT OF ADDITIONAL SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional Sessions Judge,
Aizawl Judicial District, Aizawl.

Sessions Case No. 422 of 2012

Crl Tr. No.4 of 2012

State of MizoramComplainant

-Versus-

Shri R.C.Lalmuana (53)
S/o Ainawna (L),
R/o Ramhlun North, Aizawl. Accused person.

APPEARANCE

For the State : Shri Joseph Lalfakawma, Addl. P.P.
Smt. Lalremthangi, Asst. P.P.

For the accused : Shri A.R..Malhotra. Advocate.

Hearing : 4.8.2015

Judgment delivered on : 17.8.2015

J U D G M E N T & O R D E R

The accused person has been tried in connection with the offences punishable under Section 25 (1)(1A) of the Arms Act, 1959 read with 5 of the Explosive Substances Act, 1908.

2. The prosecution story is that on 31.12.2011 S.I. John David Rengsi CID (Special Branch) submitted a report to the Officer-in-Charge, Bawngkawn Police Station to the effect that he had seized 47 Nos. of .303 live Ammunitions, 21 Nos. of .38 live Ammunitions, 10 Nos. of empty Cartridge, 4 Nos. of Arms Licences and 9

Nos. of Detonators from the house of the accused without having valid licence. Hence, Bawngkawn PS Case No. 378 of 2011 u/S 25(1) (1A) of the Arms Act r/w 5 of the Explosive Substances Act was registered by the Officer-in-Charge, Bawngkawn Police Station and investigated into.

In the course of investigation, the accused was arrested and interrogated. The statement of the accused was recorded in which he admitted that all the seized articles had no valid licenses. The Case I.O. sent 47 Nos. of .303 Live Ammunitions, 21 Nos. of .38 Live Ammunitions and 9 Nos. of Detonators to the FSL. The FSL Report reveals that .303 Live Ammunitions and .38 Live Ammunitions are working conditions, and the Donators can be used to detonate commercial dynamite. Prosecution Sanction was also obtained from the District Magistrate, Aizawl. A prima facie case being found against the accused u/S 25(1) (1A) of the Arms Act r/w 5 of the Explosive Substances Act, charge sheet was submitted by SI P.C. Lalchuangliana to the court of CJM, Aizawl.

3. Upon committal, my learned predecessor framed charges u/S 25(1) (1A) of the Arms Act r/w 5 of the Explosive Substances Act against the accused and the charges were read over and explained in the language known to the accused, to which he pleaded not guilty and claimed to be tried.

4. In the course of trial, the prosecution produced and examined as many as 3 out of 6 witnesses to prove that the accused had committed offences punishable under Sections 25(1) (1A) of the Arms Act r/w 5 of the Explosive Substances Act. After closure of the prosecution evidence, the accused was examined under Section 313 of Cr PC. The accused produced himself as defence witness.

5. I heard the learned Shri Joseph Lalfakawma appearing for the State assisted by the learned A.P.P. Smt. Lalremthangi. I also heard the learned Senior Counsel Shri C. Lalramzauva assisted by Shri A.R. Malhotra appearing for accused Dr. R.C.Lalmuana.

6. **Points For Determination :**

- a) Whether the prosecution proves beyond reasonable doubt that accused Dr. RC. Lalmuana possessed the ammunitions and the explosive substances in his residence on 31.12.2011 at about 9:10 Am?
- b) Whether the accused is liable to be convicted under Section 25 (1) (1A) of the Arms Act, 1959?
- c) Whether the accused is liable to be convicted under Section 5 of the Explosive Substances Act, 1908?

7. **Discussion, Reasons and Decision :**

8. P.W. 1 S.I. John Daniel Rengsi identified accused Dr. R.C.Muana. He is Sub Inspector of Police posted in CID Special Branch. He received information from their source that the accused was possessing contraband items. Search Warrant for house search of the accused was obtained by them from the Chief Judicial Magistrate, Aizawl. They conducted search in the presence of civilian witnesses who were close neighbours of the accused. The accused was not present in his house, but his wife was present while conducting search for the contraband items. They read out the content of the Search Warrant in the presence of wife of the accused and civilian witnesses and it was shown to the wife of the accused. Thereafter, they started search. They found 47 numbers of .303 live Ammunitions, 21 numbers of .38 live Ammunitions, 10 numbers of empty Cartridge, 4 numbers of Arms Licences and 9 numbers of Detonators and he prepared seizure memo in which the civilians stood as seizure witnesses. He recorded the statements of the seizure witnesses. He gave intimation to the CJM about the search and the recovery. He then lodged the FIR at Bawngkawn PS. Ext. P-1 is the FIR and Ext. P-1 (a) is his signature. Ext. P-2 is the seizure memo and Ext.P-2(a) is his signature. Ext. P-3 is the application for search warrant and Ext. P4 is the search warrant issued by the CJM, Aizawl. Ext.M-1 contains 47 numbers of .303 live Ammunitions, 21 numbers of .38 live Ammunitions, 10 numbers of empty Cartridge, 4 numbers of Arms Licences and 9 numbers of Detonators which he seized from the house of the accused. On checking the seized materials marked at Ext.M-1, out of 47 numbers of .303 live cartridges, 5 numbers of cartridges are empty and out of 21 numbers of .38 live cartridges 2 numbers of

cartridges are empty. He knew that test firing was done when seized materials were sent to FSL. On cross-examination, he stated that he had given verbal information to his superior about the application for search warrant. Before search, he did ask the accused's wife to call the accused. He further stated that he had informed the accused's wife to call the accused. In the application made to the Magistrate for search warrant, he did not specifically mention that the search was required for arms and ammunitions reportedly kept by the accused in his house. He also stated that when the envelope was opened, he found that the seized materials were packed separately without any seal of the I.O. or his seal as seizing officer. He admitted that they had not made identification mark on the seized materials. He also admitted that while producing Ext. M-1 in the court in an envelope, he did not notice any rubber seal stamp except the Case Number, Police Station Number and the Court Malkhana Record Number. However, he denied that he had conducted search in the house of the accused out of personal interest and not on receiving information from their source. He further denied that no recovery was made during the search and the case was fabricated. He also denied that the seizure witnesses were not present during the search and they were made to put their signatures at belated stage. He finally denied that there were no civilian witnesses during the search and seizure in the house of the accused.

9. P.W.2 S.I. Lalbuatsaiha identified accused Dr. R.C.Lalmuana. On 31.12.2011 at 12:25 noon, S.I. John Banyan Daniel Rengsi, CID (SB) lodged a report to the effect that on that morning at 9:10 Am he had received information that Dr. R.C.Lalmuana possessed the prohibited arms with live ammunitions, empty cartridges, arm licenses and detonators without valid licence. Hence, Bawngkawn P.S. Case No. 378 of 2011 dated 31.12.2011 under Section 25(1)(1A of the Arms Act r/w 5 of the Explosive Substances Act was registered against the accused and the case was endorsed to him for investigation. He did not take any step since he was transferred to Darlawn P.S. He handed over the Case Diary to the O.C. Bawngkawn P.S. Ext. P-5 is the form of FIR in which it is reflected that the case was endorsed to him. Cross-examination was declined by the Defence Lawyer.

10. P.W.3 S.I. P.C. Lalchuangliana identified accused Dr. R.C. Lalmuana. After arresting the accused, he released him since the accused was granted anticipatory bail. He interrogated the accused and recorded his statement. He sent

material exhibits excluding the empty cartridges to the FSL. After receiving report from the FSL, he applied to the District Magistrate, Aizawl for prosecution sanction. The complainant recorded the statements of the seizure witnesses. On finding a prima facie case against accused Dr. R.C. Lalmuana, he submitted charge sheet to the Chief Judicial Magistrate, Aizawl. Ext. P-6 is the charge sheet and Ext. P-6(a) is his signature. Ext. P-7 is the FSL Report. Ext. P-8 is the forwarding note of exhibits and Ext. P-8 (a) is his signature. Ext. P-9 is the prosecution sanction. On cross-examination, he denied that the ammunitions such as .303 and .38 live ammunitions were as per the permission under Arms Licenses stated earlier. He further denied that the prosecution sanctions were obtained without proper application of mind and without any basis. He also denied that the case was fabricated against the accused and without any prima facie evidence.

11. After examination of the accused under Section 313 of Cr PC, the accused produced himself as Defence Witness.

12. D.W. Dr. R.C.Muana deposed that Shri Lalchhuanmawia S/o Liana R/o Khatla was issued Licence No. 7980/AZL/III/87 by the District Magistrate, Aizawl and he was appointed as retainer w.e.f. 26.4.2011. The licence seized by the police is shown at Ext. P-2. Ext. D-1 is the licence No. 7980/AZL/III/87 and it is a part of Ext. M-1. On cross-examination, he denied that 21 numbers of .38 life ammunitions and 10 numbers of empty cartridges with 9 numbers of detonators were seized from his possession. On cross-examination, he denied that the police had seized 21 numbers of .38 live ammunitions, 10 numbers of empty cartridges and 9 numbers of Detonators from his possession. He also denied that he was not appointed as retainer by the District Magistrate, Aizawl for Licence No. 7980/AZL/III/87 at the time of seizure.

13. I have carefully perused the entire evidence on record and the materials placed before me.

14. The learned Additional P.P. submits that the present evidence on record is sufficient enough for passing conviction against the accused. Hence, he prays for passing conviction and severe sentence.

15. However, the first contention of the learned Senior Counsel Shri A.R. Malhotra is that the prosecution did not prove the search and the seizure of the alleged ammunitions and the detonators. According to him, the procedures laid under Section 100 of Cr PC relating to search have to be complied and it shall be proved by the prosecution which is not done in the present case.

16. In the present case at hand, P.W. S.I. John Daniel Rengsi deposed in the Court that after obtaining the search warrant from the Chief Judicial Magistrate, Aizawl, he had made a search in the presence of civilian witnesses, namely, Shri Samuel L.R.Ralte and Shri Ruata Zote, both residents of Ramhlun North. But, the seizure witnesses did not come to the Court to give evidence. Hence, the search and the seizure of the seized materials were not proved by the prosecution.

17. Section 100 (4) of Cr PC requires that before making a search, 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 of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to search, to attend and witness the search and may issue an order in writing to them or any of them so to do. The object of the section is to obtain as reliable evidence as possible of the search and to exclude the possibility of concoction or malpractice of any kind.

18. The learned Defence Counsel appearing for the accused further contended that S.I. John Daniel Rengsi did not lead evidence to the effect that he had given copy of the list of seized articles signed by the seizure witnesses to accused Dr. R.C.Lalmuana or to his wife.

19. While perusing the records of evidence, I do not find that S.I. John Daniel Rengsi gave the copy of the seizure memo or the copy the list of the seized articles signed by the seizure witnesses to accused Dr. R.C.Lalmuana or to his wife. Hence, the non compliance of the mandatory procedure of law provided u/s 100 (6) (7) of Cr PC. appears to me that the entire case of the prosecution is vitiated.

20. The learned Counsel Shri A.R.Malhotra also contended that the seized articles were not packed with sealed.

21. Having gone through the evidence, I find that the contention raised on behalf of the accused is correct and, therefore deserves to be accepted. In the cross examination of P.W. S.I. John Daniel Rengsi, neither he nor the Case I.O. sealed seized materials. Therefore, the case appears to be doubtful.

22. On perusing the entire evidence on record, I find that the accused had retainer permission for .303 live ammunitions. However, the procedures of the search and the seizure having not been complied with, the allegation that the accused possessed other ammunitions and detonators appears to be doubtful.

23. From the evidence discussed above, there is no evidence whatsoever to implicate the accused in the present case. The points, are therefore, answered accordingly.

24. In the light of the above discussion and reasons thereof, I hold that the prosecution has failed to prove its case beyond reasonable doubt. Hence, I do not find guilty against the accused. Accordingly, accused Dr. R.C.Lalmuana is acquitted of the offences under Sections 25(1) (1A) of the Arms Act r/w 5 of the Explosive Substances Act and he be set at liberty forthwith.

25. Seized articles i.e. 47 numbers (including 5 empty) of .303 live ammunitions and 4 Arms Licences shall be released to Dr R.C.Lalmuana. But, 21 numbers of .38 live ammunitions (including 2 empty cartridges), 10 numbers of .38 empty cartridges and 9 numbers of detonators shall be returned to the Govt. of Mizoram for confiscation in due process of law.

Judgment and Order prepared and delivered in the open court on this 17th day of August, 2015 under my hand and seal.

Sd/-(VANLALENMAWIA)
Addl. Sessions Judge
Aizawl Judicial District,
Aizawl, Mizoram.

Memo No. _____/AD&SJ(A)/2015 : Dated Aizawl, the 17th August, 2015

Copy to: -

1. Accused Dr. R.C. Lalmuana through Counsel Shri A.R. Malhotra, Advocate.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. District Magistrate, Aizawl District, Aizawl.
4. PP / Addl. PP.
5. DSP (Prosecution), District Court, Aizawl.
6. Officer-in-Charge, Aizawl PS, Aizawl.
7. i/c G.R. Branch, District Court, Aizawl.
8. Registration Section, District Court, Aizawl.
9. Guard File.
10. Case Record.
11. Calendar Judgment.

P E S H K A R