

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

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

Criminal Revision No. 90 of 2015

State of MizoramComplainant /Petitioner

-Versus-

Shri Chinsianmuana
S/o Haumunga (L)
R/o Ngur, Champhai District.Accused /Respondent

APPEARANCE

For the petitioner : Shri Joseph Lalfakawma, Addl. P.P.

For the respondent : Shri Laltanpuia, Advocate.

Hearing : 10.12.2015

Order delivered on : 14.12.2015

ORDER

The revision petition has been filed under Section 397 of Cr PC for setting aside the impugned conviction and sentencing order passed by the learned Chief Judicial Magistrate, Aizawl in CrI. Tr. No. 1042 of 2015 under Section 379 of IPC. The conviction order is upheld but the sentencing order is modified by this order due to the reasons indicated hereunder.

2. The case of the prosecution is that the petitioner was arrested in connection with the offence of theft punishable under Section 379 of IPC. The accused stole away one Karizma Bike (Black Colour) bearing Registration No. MZ-01/G-3471, its chassis No. MBL.MC38EDBGD01608; Engine No. MC38ECBGD01617 belonging to Shri

R.Lalhmingliana S/o Lalhliapa of Falkland, Aizawl from the parking place beside his residence on the night of 28.1.2015 at around between 10 Pm to 1:00 Am of 29.1.2015. The owner of the vehicle submitted F.I.R. on 10.3.2015 at around 5:00 Pm. Hence, Bawngkawn P.S. Case No. 46 of 2015 dated 10.3.2015 u/S 379 of IPC was registered and duly investigated by S.I. C. Vanlalnghakmawia.

In the course of investigation, the complainant was carefully examined and his statement was recorded. The P.O. was visited and rough sketch map of the P.O. was drawn by the Case I.O. The stolen Karizma Bike was recovered from the roadside of Bawngkawn Lunglei road (opposite to Amawii's Tyre works) and seized on 10.3.2015 at about 6:30 Pm from the possession of the accused in the presence of the reliable witnesses. During interrogation, the accused admitted his guilt. A prima facie case under Sections 465/482/379 of IPC was found against the accused. The Case I.O. submitted charge sheet.

3. The learned Chief Judicial Magistrate, Aizawl framed the charge against the accused under Section 379 of IPC. The charge was read over and explained to the accused in the language known to him, and to which he pleaded guilty stating, "**Pu R.Lalhmingliana bike ka ru a ni.**" On the plea of the accused, the learned Chief Judicial Magistrate found guilty against the accused and accordingly he was convicted.

4. I heard the learned Counsel Shri Laltanpuia appearing for the revision petitioner and the learned Addl. P.P. Shri Joseph Lalfakawma. The Lower Court Record requisitioned for the purpose of disposal of the revision petition was made available to this court.

5. The first point raised on behalf of the revision petitioner is that the learned Trial Court did not provide a lawyer of his choice or free legal aid. In the petition submitted on behalf of the accused, it is reflected that the accused was informed to engage lawyer of his choice or to avail free legal aid counsel. However, when the accused has a right to engage lawyer of his choice or to avail legal aid counsel, he also has a right to refuse to engage lawyer of his choice or to avail free legal aid counsel. Hence, the first point raised by the learned Counsel has no force of law.

6. The second point raised by the learned Counsel is that the learned Trial Court did not explain to the accused consequence of his admission of guilt. However, in the charge framed against the accused under Section 379 of IPC, it is reflected that the ramification and repercussion of being found guilty was also made known to him, to which he pleaded guilty. Hence, the point raised by the learned counsel has no force of law.

7. It was also raised by the learned Counsel that in a warrant case recording evidence is mandatory and relied upon the decision of the Hon'ble Gauhati High Court in Zohmingthanga v. State of Mizoram, 1998 (1) GLT 344 ((the learned Counsel has mistakenly quoted the page number). In the case of Zohmingthanga (Supra), 1998 (1) GLT 124 at Para 124, it is stated as follows;

'Possession is one of the most complex concept of jurisprudential law. In a warrant case, it is not proper to convict on a plea of guilty without taking further evidence. The Supreme Court in Kasambhai, AIR 1980 SC 954 has held that-

'A conviction to a light sentence on a plea of guilty as a result of plea bargaining between the prosecution, the defence and the magistrate being unreasonable, unfair, unjust and violative of Art. 21 of Constitution. High Court on its situation being drawn in suo motu revision should set aside the conviction and send the case back for trial in accordance with law.'

8. It appears to me that the petition filed in the Apex Court was allowed as the result of bargaining between the prosecution, the defence and the learned chief judicial magistrate, the ratio of the decision of the Apex Court being not applied in this case inasmuch as there is no bargaining leading to the conviction and sentence in this case. Hence, recording evidence at trial stage is not required in view of the decision of the Apex Court.

9. On the third point, the discretion of the learned Chief Judicial Magistrate in passing the sentence is questioned. Harsh sentence may be passed by the magistrate. But, on her reliance of the previous conviction of the accused, I cannot reduce the sentence, since the accused appears to me a habitual thief which I have derived from his previous criminal records requisitioned for the purpose of adjudication. I fear, accommodation of the accused in our society will be menace to the society, unless reformation theory has called for in his case.

10. With the observation above mentioned, the petition is not allowed.

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

Memo No._____/AD&SJ(A)/2015 : Dated Aizawl, the 14th December, 2015

Copy to: -

1. Accused Chinsianmuana through Counsel Sh. Laltanpuia, Advocate.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. PP / Addl. PP, Aizawl.
4. District Magistrate, Aizawl.
5. Chief Judicial Magistrate, Aizawl.
6. Special Superintendent, Central Jail, Aizawl.
7. DSP (Prosecution), District Court, Aizawl.
8. i/c GR Branch, District Court, Aizawl.
9. Registration Section.
10. Guard File.
11. Case Record.
12. Calendar Judgment.

P E S H K A R