

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

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

Crl. Tr. No. 1814 of 2003

State of MizoramComplainant

-Versus-

1. Smt. Zirsangi
W/o J.H. Sapthlengliana
R/o Zemabawk (Lunglei Road), Aizawl.
2. Shri J.H. Sapthlengliana
S/o Lalthanliana
R/o Zemabawk (Lunglei Road), Aizawl..... Accused persons

APPEARANCE

For the State : Shri Joseph Lalfakawma, Addl. P.P.
Smt. K. Lalremthangi, Asst. P.P.
For the accused no.1 : Shri S. Pradhan, Advocate.
For the accused no.2 : Shri W. Sam Joseph, Advocate

Hearing : 3.7.2015
Judgment & Order delivered on : 21.7.2015

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

The accused persons have been prosecuted in connection with the offence punishable under Section 25 (1-A) of the Arms Act.

2. The prosecution case is that on 4.8.2003, one Inspector Zoramthanga of Special Narcotic PS submitted FIR to the effect that on the same day after receiving information he along with his party conducted house search of accused J.H. Sapthlengliana who was occupying first floor of Sh. Rochila Building and recovered two AK automatic rifles with one magazine each. Hence, Special Narcotic Police

Station Case No. 121 of 2003 was registered by him as the Officer-in-Charge of the Station.

At the time of recovery of the seized articles, accused J.H. Sapthlengliana was not present. Accused J.H. Sapthlengliana was arrested on 12.8.2003 after his anticipatory bail petition was heard and rejected. Hence, a prima facie case under Section 25(1-A) of Arms Act was found well established against accused J.H. Sapthlengliana and his wife Zirsangi, and Charge Sheet was submitted to the Court of the ADM (J) by SI Ramtharngkhaka.

3. Initially, the case was endorsed to the learned Magistrate First Class, Aizawl. But, as the present case is triable exclusively by the Id. Sessions Court, Aizawl, the case was transferred to the learned ADM(J), Aizawl for trial and disposal.

4. After hearing the rival parties and on finding a prima facie case against the accused persons, charge was framed against them under Section 25(1-A) of the Arms Act. The charge was read over and explained in the language known to them, to which they pleaded not guilty and claimed to be tried.

5. In order to bring home the charge, the prosecution produced and examined as many as five witnesses to prove that the accused persons had committed offence punishable under Section 25(1-A) of the Arms Act. The plea of defence was of total denial. After closure of the prosecution evidence, the accused was examined under Section 313 of Cr PC. The accused produced one defence witness.

6. The case was inadvertently misplaced in the disposed rack. It was lately re-endorsed to me by the learned Sessions Judge on 29.4.2015 for trial and disposal. As the case attained the stage of hearing, I heard the learned Addl. Public Prosecutor Shri Joseph Lalfakawma appearing for the State assisted by the learned A.P.P. Ms. K.Lalremthangi. I also heard the learned Legal Aid Counsel Shri S. Pradhan for accused Zirsangi and the learned Defence Counsel Shri W. Sam Joseph appearing for accused J.H. Sapthlengliana.

7. According to the learned Addl. P.P. Shri Joseph Lalfakawma, the prosecution proved the charge framed against the accused persons under Section 25

(1-A) of the Arms Act beyond reasonable doubt. He submitted that the depositions of the prosecution witnesses were trust worthy and their statements formed concrete evidence which proved the charge.

On the other hand, the learned Counsels appearing for the accused persons contended that there was no ground to pass conviction against the accused persons from the evidence of prosecution witnesses.

8. **POINTS FOR DETERMINATION:**

9. Whether the prosecution proves the charge that the accused persons committed the offence punishable under Section 25 (1-A) of the Arms Act?

10. **Discussion, Decision & Reasons Thereof :**

P.W. 1 Inspector Zoramthanga knew the accused persons. He was posted at Special Narcotic Police Station as the Officer-in-Charge at the relevant time. He submitted FIR on 4.8.2003. Ext. P-1 is the FIR submitted by him and Ext.P-1(a) is his signature. Ext.P-1(b) is also his signature as the Officer-in-Charge of the said Police Station. Ext. P-3 is the FIR Format and Ext.P-3(a) & Ext. P-3(b) are his signatures. He received information on 4.8.2003. He submitted the FIR and arrested accused Zirsangi, but another accused J.H. Sapthlengliana could not be arrested as he had absconded. Ext.P-2 is the arrest memo of Zirsangi and Ext.P-2(a) is his signature. He seized AK Rifle bearing No. 56-1-170 14345 with its magazine (butt-fold) and another AK 47 Rifle bearing No. 1962-OP8474 with its magazine (without butt) from the house of accused J.H. Sapthlengliana. Ext.P-4 is the seizure memo and Ext.P-4(a) is his signature. The said seized articles were produced to the court. Ext. M-1 & 2 are the seized articles.

In the cross examination, he denied that as Officer-in-Charge of Narcotic PS, he was not empowered to take up cases other than Narcotic cases and not empowered to investigate cases of other nature. He submitted FIR after recovery of Ext. M-1 & 2. He submitted FIR and also registered FIR in the capacity of Officer-in-Charge, Narcotic PS and endorsed the case to Inspector Laldawngliana Sailo for investigation. He did not examine any of the witnesses in connection with the case.

When he went to the house from where Ext. M-1 & 2 was recovered he was accompanied by 5 other staff of his Police Station, namely, 1) Laldawngliana Sailo, 2) Constable. R. Lalhmingliana, 3) Driver Zomawia and he did not remember the names of other 2 persons. He did not know Lalmuantluanga. When he went to the said house it was afternoon. He did not obtain warrant to search the house of accused J.H. Sapthlengliana from where Ext. M-1 & 2 was recovered. The said Ext. M-1 & 2 was recovered from the steel trunk kept in the house. He took the key from accused Zirsangi and searched the steel trunk, and recovered the seized articles. When he entered the house of accused J.H.Sapthlengliana, he found accused Zirsangi and two of their children. When they opened the steel trunk no civilian persons were there except accused Zirsangi. Even when he recovered the Ext. M-1 & 2, no civilian was present. He prepared the seizure list at the place from where he recovered Ext. M-1 & 2. When he was preparing the seizure list, he called the neighbor to put the signature in the seizure list. Accordingly, the neighbor came and put the signature, but he did not know the name of the person who put the signature. He also did not know what the civilian witness was doing for his daily livelihood. The said steel trunk was found in their bed room. The house consisted of four rooms. He denied that the steel trunk was placed in the sitting room and not in the bed room. He further denied that the steel trunk was not locked with key and anybody could use it. He admitted that he had not enquired accused Zirsangi what their profession was and whether anybody lived with them as guests or workers under them. He did not know whether accused Sapthengliana had the knowledge about the Ext. M-1 & 2. He further did not know anything about the involvement of accused Sapthlengliana in connection with the recovery of Ext. M-1 & 2. He did not make any statement before the Case I.O. in connection with the case. He knew the two accused persons even before the institution of this case but not much as to their character, conduct and profession. Since the accused Sapthlengliana is the head of the family and accused Zirsangi is his wife, and since the seized articles were recovered from their residence he presumed them to be the culprit even though he was not the Investigating Officer. He denied that the said trunk was open forcefully because no key was available. On his asking for the key to the accused Zirsangi, after a long search for the key, the said trunk was opened. At that point of time he had not enquired Zirsangi whether they had guests. He denied that the seized articles did not belong

to the accused persons and they did not have any knowledge about the seized articles.

P.W.2 Lalmuantluanga stated that one day in the year of 2004, one Police personnel came to his house and called him to witness seizure of two guns at the building of Pu Rochila Saiawi which was rented by some other family. At the time of the seizure, the Police laid the two guns on the table. However, he could not say that they were the same guns, which were being produced in the court. He exhibited the seizure memo as Ext. P-1 and his signature as Ext.P-1(b).

In the cross examination, he stated that he was staying about two houses away from Pu Rochila's building towards Lunglei side. He did not know from where the Police personnel had recovered two guns which were placed on the table when he was called to put his signature in the seizure list as Ext.P-1. He personally did not know whether the Police had marked the description of the guns in Ext.P-1 or not. He admitted that when he put his signature he did not see both the accused persons. He also did not know the accused persons standing in the court. He did not know from whom the guns were recovered. He also did not know who the owner of the said guns was and the Police also did not tell him who was the owner of the guns and from where it was recovered.

P.W.3 Constable R. Lalhmingliana knew the accused persons. On 4.8.03 they were informed by the Officer-in-Charge Pu Zoramthanga, Special Narcotic PS that there had to check one house in Zemabawk area. He was a constable of the PS. They accompanied the Officer-in-Charge to Zemabawk and searched the house of accused J.H. Sapthlengliana. Accused J.H. Sapthlengliana was not present in the house, but his wife Ziri was present in the house. As they found one steel trunk which was locked, they asked for the key. But, he did not remember who produced the key of steel trunk. The Office-in-Charge opened the lock with key and inside the steel trunk; they found two numbers of AK 47 rifles. The Officer-in-Charge Zoramthanga seized the two rifles in their presence. He exhibited the seizure memo as Ext.P-1 and his signature as Ext.P-1(c). The Officer-in-Charge also arrested accused Zirsangi and brought her to the PS. Since the accused was not in the house at the time of the seizure, and accused Zirsangi told them that he had gone out for some reason, some of them waited for accused J.H. Sapthlengliana, but the latter did not come home the whole night.

In his cross examination he stated that he did not know what type of information was received by the OC of Narcotic PS which led him to go to the house of the accused. He, HC Lalkhuma, SI R.F. Zauva, SI Ramtharngkhaka, Women Constable Zoengi, Inspector Dawngliana and some others accompanied the OC. He did not know Lalmuantluanga. The time was 4-5 Pm, when they reached the house of the accused. There was one bedroom and one sitting room. There was no separate room. The partitions were made with cloth curtains. He did not know the owner of the said steel trunk. One civilian was called but he did not know the name of the civilian. He also did not know who the owner of the said seized articles is. The steel trunk was found on the ground in the sitting room. The key was handed over to the Officer-in-Charge by one person in his presence but he did not know who that person was. In his presence, the Officer-in-Charge did not enquire about the visitors and guests in that house. As far as he remembered, there were about three beds. He did not remember whether there was more than that. He did not look into the beds carefully and could not say whether the said beds were double beds or single beds. He did not know how many children were there in that house. He admitted that he had made statement before Police in connection with this case. According to him, the job of Narcotic Cell was to search and investigate matters relating to drugs. On the next day he gave his statement to the I/O Laldawngliana and thereafter he did not participate in connection with this case. Laldawngliana was the 2nd O/C of the Narcotic PS. At the relevant time, he did not know that the accused Sapthlengliana and accused Zirsangi were separated or not. He denied that the seized articles were not recovered from the house of Zirsangi/Sapthlengliana. He did not know how many keys were in the said bunch. According to him, the steel trunk was about 2 ½ ft. into 1 ½ ft. 7" height. He admitted that some of them waited the accused Sapthlengliana to come home but the accused did not come home for the whole night. He also admitted that the accused Sapthlengliana was waited because the co-accused Zirsangi had told them that he would come home. Also the father of the accused who was staying nearby told them that the accused Sapthlengliana would come home.

P.W.4 Inspector Laldawngliana Sailo identified the accused persons. One day while performing patrolling duty with the Officer-in-Charge, they went to Zemabawk at the accused Sapthlengliana's house as he was a habitual drugs peddler/seller, so they started searching the house, but he did not know the reason why they went to the house. As they were in the Narcotic Cell, it was their daily duty to conduct such search.

Later on, some of their men shouted that they found a trunk containing 2 nos. of AK 47 in the house of the accused Sapthlengliana. Then only, he came to know that they were going to the house of the accused searching for the AK 47. In the house, accused Zirsangi, wife of accused Sapthlengliana was present but accused Sapthlengliana was not present at home. The Officer-in-Charge Zoramthanga submitted FIR regarding the case after they seized AK 47 rifles and he was endorsed to investigate the case. He arrested the accused Zirsangi but could not arrest her husband, who is the co-accused Sapthlengliana for some time as he had absconded. From reliable source of information, he was informed that the accused Sapthlengliana was present in the DC Court complex at Aizawl and he then his men and arrested him from there. After arrest, he interrogated and during his interrogation accused Sapthlengliana stated that he had got the seized articles from a friend from Burma and that the accused was trying to sell the same to make money. (Objected by the Id. D/L). However, while recording the statement of co-accused Zirsangi she stated that she had no knowledge about the seized articles. Apart from that he also recorded the statement of seizure witness. During his investigation, he was promoted to the post of Inspector, but he had almost completed his investigation and charge sheet was to be submitted. Thereafter, the investigation was continued by SI Ramtharngbaka who submitted the charge sheet. He exhibited the arrest memo as Ext. P-5 and his signature as Ext. P-5(a).

In his cross examination, he stated that at the time of incident he was 2nd OC and he had no knowledge whether there was a report regarding the keeping of AK 47 in the house of the accused. He admitted that he himself did not conduct house search of Sapthlengliana as he was checking the other room occupied by the relative of the accused. He admitted that he could not find any evidence to prove that the accused Zirsangi had any involvement in the offence. However, she was arrested only because she was the only one who was present inside the house at the time of recovering the seized articles. As he went to the house of the accused for the first time on that day he personally did not know how many people were staying in the house, but when he reached the house he found Zirsangi only. He was not present when the box was being opened but he saw the seized article being taken out from the steel trunk. When he saw the steel trunk it was already open. As he did not check the steel trunk, he could not say what other materials were there in the said steel trunk. He knew that the steel trunk contained other articles, but since he did not check he could not say what it contained. As the case was handled by the Officer-in-Charge, the Officer-in-Charge took preliminary

investigation before submission of FIR, but investigation was conducted by him after submission of FIR and the case was endorsed to him for investigation. Before he completed the investigation he was promoted and transferred. The statements of the seizure witnesses were recorded by the Officer-in-Charge before the case was endorsed to him. Since he did not bring the original case diary, he could not say the persons who used to come to the house of the accused who he examined but he remembered that he had examined one person who was looking after the agricultural farm of the accused persons. He did not know as to how many people were employed by the accused persons for looking after the agricultural farm. In the course of his investigation, he could not ascertain how many people used to visit the house of the accused. He did not remember whether the witness whom he examined, who was a cultivator stated that whether the steel trunk was used by the visitors and guests or not. He did not know how and where his colleagues had got the key of the steel trunk because he was not present in the room when the steel trunk was open. He denied that the accused Sapthlengliana had not known how the seized AK 47 rifles were found in the steel trunk and who kept there.

P.W.5 SI Ramtharngahaka identified the accused persons. He was the IO in the instant case. The complainant in the instant case was Inspector Zoramthanga who was the Officer-in-Charge, Special Narcotic PS. The case was investigated by Inspector Laldawngliana Sailo who was later transferred to Aizawl District Executive Force. Hence, the case was endorsed to him. All the needful like arrest of the accused, prosecution sanction, interrogation of the accused and accused judicial remand etc. were done by the previous I/O Laldawngliana Sailo. After the case was handed over to him, he submitted charge sheet on finding a prima facie case I/O. He exhibited the charge sheet as Ext. P-3 and his signature as Ext. P-3(a).

In his cross examination, he stated that the contents of charge sheet at Ext.P-3 were filled up by him. The case was endorsed to him by the Officer-in-Charge Inspector Zoramthanga. He admitted that he had received a copy of prosecution sanction issued by Shri Vanlalngaihsaka, EAC (J). He further admitted that he had not received original prosecution sanction issued by the District Magistrate. He also admitted that there is overwriting at the last line at the copy of the sanction wherein it is mentioned (AA) in ink and there is no initial or signature authenticating the correction. He did not have case diary maintained by the I/O and could not produce the original

sanction to the court. He finally admitted that apart from arrest memo 2 nos., property seizure memos and prosecution sanction he did not send any other documents as enclosures along with the charge sheet. By the word 'prosecution sanction' mentioned in the charge sheet he meant the copy received by him from EAC (J). He denied that the letters 'AA' written in ink was done by him. He admitted that he had not examined any witness or the accused person in connection with this case. He personally did not know what the materials were sent to District Magistrate for obtaining prosecution sanction. He accompanied the seizing party. He did not remember who else accompanied Zoramthanga to the PO. When they reached the PO one old lady, two children and Zirsangi were present. But, the accused Sapthlengliana was not present. He did not remember who else were present in the PO. He did not know whether the prosecution sanction received by him was valid or not. He denied that he had submitted charge sheet without getting proper/valid prosecution sanction from the competent authority. He denied that he did not find prima facie case to file the charge sheet and he falsely implicated the accused in this case.

11. The accused persons were examined under Section 313 Cr. P.C. However, they denied all the incriminating evidence appeared against them.

12. D.W.1. Rokimi identified the accused persons. The accused persons were her neighbors. In the month of August 2003 she stayed in Sapthlengliana's house. Accused persons had a separate bedroom and the guest used to sleep in the sitting room. She also used to sleep in the sitting room. She came to the house of Sapthlengliana with her daughter in the month of August. She stayed in Sapthlengliana's house since she had a quarrel with her husband and left the house of her husband. The accused got a agricultural farm at Zemabawk, and the accused used to engage laborers to work in the agricultural farm. The laborers used to stay in the house of Sapthlengliana. The sitting room of the house of Sapthlengliana was quite big. In the sitting room, there was a steel trunk and the trunk was used by the guest and the laborers also. The steel trunk was lock with key and the key was kept above the trunk on the wall. The accused Sapthlengliana and his wife never used the said steel trunk. The steel trunk was placed in such a way any person coming to the house of the accused could use it freely to keep their belongings. The said trunk was placed on the ground in the sitting room. She stayed in the house of accused Sapthlengliana from first to fourth day of August and left the house on the fourth day

of August. During that time there were three other persons staying in the house of Sapthlengliana and she personally did not know them but what she knew was, they were from Myanmar. When the Police came to the house of Sapthlengliana she was in the neighbors house stitching cloth. As soon as she came to know that the Police personnel had come there, she left the house of Sapthlengliana due to fear of harassment. As far as she knew, the accused used to have a taxi and he himself used to ride the taxi. As far as she knew, the garden of the accused was quite big. She had also visited the garden and they planted thingtheihmu.

In her cross examination, in the year of 1994 she came to Bawngkawn (Aizawl) from Serchhip and thereafter she shifted to Zemabawk. She has been knowing accused Sapthlengliana since 1996. In the last part of July 2003 since she had some misunderstanding with her husband she came to stay in the house of accused JH Sapthlengliana for about a week. In the sitting room, one steel trunk was kept for guest but she did not utilize it as she was having her own bag. He admitted that she did not know when the Police came to arrest accused Sapthlengliana but she came to know that the wife of the accused was arrested at late evening. She was not available at the house of the accused persons at the time of arrest of accused Zirsangi, since she had gone out after she had her morning meal. She admitted that she never visited the house of the accused before staying in their house. She denied that she was deposing falsely inasmuch as Sapthlengliana was known to her before and he also gave her shelter when she had quarrel with her husband. He denied that there was no other guest when she stayed in the house of the accused. He also denied that there was no steel trunk and the key was also not hanged on the wall.

13. I reiterate that the point of determination is, whether the prosecution proves the charge that the accused persons committed the offence punishable under Section 25(1-A) of the Arms Act?

14. Section 25 (1-A) of the Arms Act, 1958 states as follows;

'Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than

five years, but which may extent to ten years and shall also be liable to fine.'

15. Section 7 also of the Arms Act, 1958 states as follows;

'No person shall-

- (a) acquire, have in his possession or carry; or
 - (b) use, manufacture, sell, transfer, convert, repair, test or prove; or
 - (c) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof,
- any prohibited arms or prohibited ammunition unless he has been specially authorized by the Central government in this behalf.'

16. A combined reading of the sections of the Arms Act reveals that no person is allowed to acquire or possess any prohibited arms. In short, any person acquiring or possessing prohibited arms without specific authorization from the Central Government can be convicted under Section 25 (1-A) of the Arms Act, 1959.

17. In the course of hearing, the learned Legal Aid Counsel Shri S.Pradhan submitted that conviction cannot be recorded against accused Zirsangi inasmuch as P.W.4 Inspector Laldawngliana Sailo who was the case I.O., had examined the seizure witnesses and the accused persons, and came to the conclusion that he could not find any evidence to prove that accused Zirsangi had any involvement in the case and she was arrested since she was present in the house at the time of recovery of the seized articles. I perused the evidence on record and found that the submission of the learned Legal Aid Counsel is right. Hence, I do find any ground to pass conviction against accused Zirsangi under Section 25 (1-A) of the Arms Act.

18. The learned Defence Counsel Shri W. Sam Joseph appearing for accused J.H.Sapthlengliana contended that the investigation conducted by P.W.4 Inspector Laldawngliana Sailo was not fair inasmuch as he was present at the time search and seizure of the prohibited arms. I perused the evidence on record of the prosecution witnesses. In the evidence, it is crystal clear that the complainant who also seized the prohibited arms, registered the case in Special Narcotics Police Station vide Case No. 121 of 2003 under Section 25 (1-A) of the Arms Act and not in

Bawngkawn Police Station which appears to me having jurisdiction, and endorsed the case to investigate to P.W.5 Inspector Laldawnglianiana Sailo of Special Narcotics Police Station. In my considered opinion, the investigation ought to have been done by other investigating agency. Hence, such unfair investigation is bound to suffer and as such the entire proceedings is vitiated.

In the case of Balasundaran v. State, [(1999 113 ELT) MADO], in para 16, the Madras High Court took the same view. The relevant portion reads as under:

'16. Learned counsel for the appellants also stated that PW5 being the Inspector of Police who was present at the time of search and he was the investigating officer and as such it is fatal to the case of the prosecution. PW5, according to the prosecution, was present with PWs 3 and 4 at the time of search. In fact, PW5 alone took up investigation in the case and he had examined the witnesses. No doubt the successor to PW5 alone had filed the charge-sheet. But there is no material to show that he had examined any other witness. It therefore follows that PW5 was the person who really investigated the case. PW5 was the person who had searched the appellants in question and he being the investigation officer, certainly it is not proper and correct. The investigation ought to have been done by any other investigating agency. On this score also, the investigation is bound to suffer and as such the entire proceedings will be vitiated.'

19. It is also contended by the learned Counsel Shri W.Sam Joseph that the testimonies of the prosecution witnesses are not worthy of credence due to its discrepancies in their statements. On perusing the statements of the prosecution witnesses, I find that the contention of the learned counsel is right. The complainant stated that the steel trunk wherein the prohibited arms were allegedly recovered was kept in the bedroom of the accused persons is not supported by the statement of P.W.3 Constable R.Lalhminglianiana who was the seizure witness. In the statement of P.W.3, the steel trunk was kept in the sitting room of the accused persons. It is

pertinent to mention here that the complainant stated that steel trunk was opened with the key handed over to him by accused Zirsangi but his statement is not corroborated by any other witnesses.

20. It is also contended by the learned Counsel Shri W.Sam Joseph that the whole proceeding is vitiated inasmuch as the procedure of house search was not complied in accordance with the procedures provided under Sections 100 or 165 of Cr PC.

Section 100 of Cr PC states as follows:

Persons in charge of closed place to allow search -(1)

Whenever any place liable to search of inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein,

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47,

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency,

(4) Before making a search under this Chapter, 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 the search, to attend and witness the search and may issue an order in writing to them or any of them so to do,

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such

witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it,

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person,

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person,

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

Section 165 of Cr PC states as follows:

Search by police officer – (1) Whenever an officer in charge of police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying

the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section (5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance to the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

In the present case, the complainant who was also the searching officer did not obtain search warrant from the competent authority before house search of the accused persons and also did not get two or more independent and respectable inhabitants. Moreover, the complainant also did not record in writing grounds of his belief in respect of house search. Hence, the non compliance of provisions of law also vitiates the whole proceedings.

21. In the light of the above discussion and reasons thereof, I find that the prosecution fails to prove the charge beyond reasonable doubt against accused Zirsangi and accused J.H.Sapthlengliana under Section 25 (1-A) of the Arms Act. Hence, I do find guilty against them. Accordingly, the accused persons are acquitted under the said section of law.

22. Seized articles, if any, shall be confiscated to the Government of Mizoram since the alleged recovery of the seized articles from the possession of the accused persons was not proved.

Judgment prepared and delivered in the open court on this 21st day of July, 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 21st July, 2015

Copy to: -

- 1) Accused Zirsangi C/o S. Pradhan, Advocate.
- 2) Accused J.H. Sapthlengliana, C/o W.Sam Joseph, Advocate.
- 3) District Magistrate, Aizawl.
- 4) Sessions Judge, Aizawl Judicial District, Aizawl.
- 5) PP / Addl. PP, Aizawl.
- 6) DSP (Prosecution), District Court, 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