

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

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

Criminal Complaint No. 1 of 2014 (SC & ST)

Zofa Welfare Organisation  
& Joint Action Committee .....Complainant.

-Versus-

The Officer-in-Charge, Kalahar P.S. & Others.....Opposite Parties.

APPEARANCE

For the Complainant	:	Shri R.C.Thanga, P.P. Smt. Rose Mary Special P.P. Shri W.Sam Joseph, Advocate.
For the respondent	:	None appears.
Hearing	:	14.5.2015
Order delivered on	:	28.5.2015

**ORDER**

1. This criminal complaint has been filed by Shri Lalbiaktluanga representing the Zofa Welfare Organisation & Joint Action Welfare.

2. In the complaint, it has been alleged that the Assam police personnel committed atrocities upon Shri Lalrawngbawla, who was the then President of Saipum Village Council (hereinafter stated as "the VCP") and Shri Zohmangaiha (hereinafter stated as "the VC Secretary"). It is alleged in the complaint that on 12.12.2013 at about 4:30 Pm the VCP and VC Secretary and other Saiphai villagers on their returning from Bagha Bazar towards Saiphai by Auto Rickshaw was signaled to stop by one police and one non Mizo at Kalahor Assam Police Outpost, about 6 Kms from Saiphai. The Auto

Rickshaw driver did not stop his Auto Rickshaw due to non availability of seat, the Assam Police then followed and rebuked them in harsh language. On learning the incident, the Officer-in-Charge, Kalahor Assam Police Outpost and his party arrived at the spot. Shri Lalungawia and Shri Huala of Saiphai while begging pardon for the driver accidentally touched the shoulder of the Officer-in-Charge. The Officer-in-Charge despised the two persons by calling them "**Hill Tribesmen**" and hit them with his hand. The VCP tried to describe the situation, but the Officer-in-Charge did not listen him, rather he stroke him with his hand and destroyed the VCP's seal brought by him. It is also alleged that the policemen of the Outpost used to show highhandedness and also imposed fine upon those scheduled tribesmen. In the circumstances, the complainant made a prayer to take necessary steps against the atrocities committed by the Assam police personnel which is in violation of Section 3(1) (ii) and 3 (1) (x) of the Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989) and other relevant laws.

3. My predecessor directed the SP of Cachar District, Assam to carry out or appoint Investigating Officer in terms of the Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989). After receiving the copy of the complaint through this Court, the SP of Cachar District sent the same to Officer-in-Charge of Dholai Police Station vide Office Memo No. CR/Dholai/4672 dated 31.7.2014 for taking action as per law. Accordingly, Dholai P.S. Case No. 331/2014 under Section 341/323/294 IPC T/W Section 3 (i) (x) of the SC & ST (Prevention of Atrocities) Act, 1989 was registered and the investigation was performed by DSP of Cachar District. Thereafter, the DSP of Cachar informed this Court that the Dholai PS case against the Assam Police personnel at Kalahar Police Outpost had ended in F.R. vide F.R. No. 197 dated 29.11.2014.

4. I heard the learned P.P. Shri R.C.Thanga, the learned S.P.P. Smt. Rose Mary and the learned Counsel Shri W.Sam Joseph. I also heard the complainant.

5. The Judges of Special Court to try the cases arising under the SC/ST (prevention of Atrocities) Act 1989 are specified under Section 14 of that Act. Section 14

provides that for the purpose of providing speedy trial the State Govt. shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a special Court to try the offence under this Act.

6. In [M.A. Kuttappan v. E. Krishnan Nayanar and another](#), 2004 Cri.L.J. 1770, the Supreme Court while considering the scope of Section 3(1) (x) and Section 14 of SC/ST Act and Section 193 of the Code of Criminal Procedure Code held:

"The Special Judge has no jurisdiction to entertain the complaint directly and to issue process after taking cognizance without the case being committed to it by a competent Magistrate. The question is no longer res intergra and, therefore, it must be held that the Special Judge in the instant case erred in entertaining a complaint filed before it alleging offence under the Act and in issuing process after taking cognizance without the case being committed to it for trial by a competent Magistrate."

7. In *Moly and another V. State of Kerala*, 2004 Cri.L.J. 1812 SC (Kerala), the Supreme Court, while considering the scope of Section 14 of the SC/ST Act and following *Vidyharan* (7 supra) and *Gangula Ashok v. State of A.P.*, , 2000 SCC (Cri) 488, held:

"The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as a Special Court is to ensure speed for such trial. 'Special Court' is defined in the Act as 'a Court of Session specified as a Special Court in Section 14'. Thus the Court of Session is specified to conduct a trial and no other Court can conduct the trial of offences under the Act. In view of S.193 of the Code of Criminal Procedure, unless it is positively and specifically provided differently, no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate. Neither in the Code nor in the Act is there any provision whatsoever, nor given by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straightway be filed before such Special Court for offences under the Act."

8. In view of the decision held by the Apex Court, I hold that this court cannot entertain the complaint filed by the ZOFA Welfare Organisation and Joint Action Committee directly and to issue process after taking cognizance without the case being committed to it by a competent Magistrate.

9. It also appears that the place of occurrence of the alleged crime happened within the State of Assam, which this court has no jurisdiction. By the Notification of the Hon'ble Gauhati High Court vide Memo No. HC.VII-330/2012/26/A sated 3.1.2013 and the letter vide Memo No. H.C.VII-242/2013/3895-98/A. dated 19.06.2014, this Court was constituted as Special Court under the Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989) for the whole of Aizawl Judicial District, comprising of Aizawl, Kolasib, Mamit, Champhai and Serchhip Administrative Districts. Hence, I hold that this court cannot try the complaint filed by the ZOFA Welfare Organisation and Joint Action Committee.

10. In the light of the above discussion and reasons thereof, I do not find any ground to proceed with the complaint case filed by the ZOFA Welfare Organisation and Joint Action Committee. Hence, the case of complainant is closed.

11. The complainant is advised to file his complaint in the proper forum having jurisdiction, if he finds necessary.

Order delivered in the open court on this 28th day of May, 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 28<sup>th</sup> May, 2015**

**Copy to: -**

1. Sh. Lalbiaktluanga, GS, Zofa Welfare Organization & JAC, Mizoram, Aizawl.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. Sessions Judge, Cachar District, Silchar.
4. District Magistrate, Aizawl.
5. District Magistrate, Cachar, Silchar.
6. Superintendent of Police, Aizawl District, Aizawl.
7. Superintendent of Police, Cachar District, Silchar.
8. Public Prosecutor/Spl. Public Prosecutor, Aizawl.
9. Sh. W. Sam Joseph, Advocate.
10. Registration Section.
11. Guard File.
12. Case Record.
13. Calendar Judgment.

**P E S H K A R**