

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. 2 of 2014 (SC & ST)

Zofa Welfare Organisation
& Joint Action CommitteeComplainant.

-Versus-

Principal Chief Conservator of Forest, Assam. 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 on 5.2.2013 the Assam Forest Department personnel under the cover of large contingent of Police illegally seized and carried away about 80 teak logs by boat from Bairabi ghat of Tlawng river. It is also alleged that the said personnel intimidated and insulted the poor villagers. In the circumstances, the complainant made a prayer to take necessary steps against the atrocities committed by the Assam Forest Department personnel which is in violation of Section 3.3 (i) and (x) of the Scheduled castes and the Scheduled Tribes (Prevention of

Atrocities) Act, 1989 (33 of 1989) and other relevant laws. According to the complainant, the illegal action of the O.P. amounted to daylight robbery.

3. My predecessor directed the SP of Kolasib District to carry out or appoint Investigating Officer in terms of Rule 7 of the Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989) and submit investigation report to this Court. Thereafter, the SP of Kolasib District forwarded the Final Report submitted by the Case I.O. Shri C. Lalrohlua M.P.S. due to lack of evidence.

4. I heard the learned P.P. Shri R.C.Thanga, the learned S.P.P. Smt. Rose Mary and the learned Amicus Curiae 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 from the F.R. and its connected documents submitted by the Case I.O. 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 28th May, 2015

Copy to: -

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

P E S H K A R