

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

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

Criminal Appeal No. 12 of 2016

State of MizoramAppellant

-Versus-

1. Sri Lalthanzama
S/o Rotluanga,
R/o Tlangnuam Vengthar, Aizawl,
Aizawl District, Mizoram.
2. Sri Lalhlimawma
S/o Lalhmingliana,
R/o Lungrang South, Lunglei District. Respondents

APPEARANCE

For the Appellant	:	Shri R.C.Thanga, Public Prosecutor.
For the Respondent	:	Shri Zoramchhana, Advocate.
Hearing	:	31.1.2017
Order delivered on	:	1.2.2017

ORDER

The appeal petition filed under Section 382 of Cr PC for setting aside the impugned order dated 28.9.2016 passed by the learned Chief Judicial Magistrate in Kulikawn P.S. Case No. 114 of 2016 is disposed of after hearing the rival parties.

2. I heard the learned PP. Shri R.C.Thanga for the State as well as the learned counsel Shri Zoramchhana appearing for the respondents.

3. What was submitted by the learned P.P. is that the learned Chief Judicial Magistrate, Aizawl had passed Zimanama order without jurisdiction. According to him, Section 6A of EC Act has conferred power of confiscation upon the District Collector. The seized materials are covered by EC Act. At the time of hearing, he furnished copy of the Apex Court's decision in Shambu Dayal Agarwala v. State of West Bengal & Anr. (1990) 3 SCC 549, the Chhattisgarh High Court's decision in Vishnu Prasad Vaishnav v. State of Chhattisgarh on 17.12.2014 in Cr. MP. No. 1068 of 2014, the Gauhati High Court's decision in WP (C) No. 1044 of 2012 on 1.6.2012 and also the decision of the Gauhati High Court's decision in Crl. Revn. Petition No. 196 of 2013 on 16.7.2013 to buttress his stand. His prayer is to set aside the impugned order dated 25.8.2016 passed by the learned Chief Judicial Magistrate, Aizawl District.

4. The learned counsel for the respondents also sought to defend his case. According to him, the instant case starting from the FIR to the charge sheet as well as the charges framed by the Trial Court show that the prosecution had launched its story, in which there is no implication against the respondents committed under the offence of EC Act. He further submitted that the learned Chief Judicial Magistrate, therefore rightly passed the order of Zimanama. He also submitted that the Zimanama petition was filed before the learned Chief Judicial Magistrate by Smt Vanlalzawmi W/o Lalthanzama R/o Tlangnuam, Aizawl representing some customers who claimed LPG Gas Cylinders and not by the respondents. The learned counsel also relied on the decision of the Gauhati High Court in Crl. Revn. Petition No. 196 of 2013 on 16.7.2013 to substantiate his case.

5. During the course of hearing, requisition of the case record of the learned Trial Court was made in the presence of the rival parties. The case record was also made available and its photo copy of the charge sheet and the order sheet was put in the instant case record.

6. I have considered the submission of the rival parties and also perused the Case Record.

7. The prosecution story appears that the respondents were caught red handed by the members of Young Mizo Association (NGO) of Tlangnuam West Branch, Aizawl while tempering seals of filled LPG Cylinders to refill empty Gas LPG Cylinders with intent to sell to consumers. The respondents were handed over to Kulikawn Police with the LPG Cylinders.

8. It is shown in the case record that Smt Vanlalzawmi on behalf of some consumers applied for release of 92 numbers of LPG Cylinders before the learned Chief Judicial Magistrate, Aizawl. Hence, the appeal petition filed by the learned Public Prosecutor is liable to be rejected.

9. The offence relates to the laws of EC Act. It cannot be denied that the District Collector is conferred with the power of confiscation of the seized materials provided under Section 6A of EC Act. When such law is enacted, other criminal law is overridden by the law, it being special law.

10. I am surprised to learn that why the prosecution launched its case under IPC and not under EC Act. The learned Chief Judicial Magistrate in its decision of the case of Zimanama was passed in favour of Smt. Vanlalzawmi and not the respondents.

11. Interference of this court does not call in connection with the order dated 25.8.2016 passed by the learned Chief Judicial Magistrate in Criminal Misc. No. 165/16 arising out of Kulikawn P.S Case No. 114 of 2016.

12. The Officer-in-Charge, Kulikawn police station is informed to register any case of similar nature under the EC Act, 1955 and the District Collector, Aizawl shall exercise powers conferred upon him provided under Sections 6A, 6B, 6C, 6D and 6E of the essential commodities Act, 1955 in any similar case in future.

13. The appeal petition is rejected.

14. Send back the learned Lower Court records

Order is pronounced in open Court on this 1st day of February, 2017
under my hand and seal of this Court.

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

Memo No. ____/ASJ(A)/2017 : Dated Aizawl, the 1st February, 2017

Copy to: -

1. Lalthanzama } through Counsel
2. Lalhlimawma } Shri Zoramchhana, Advocate.
3. The Sessions Judge, Aizawl Judicial District, Aizawl.
4. The District Magistrate, Aizawl District.
5. The Chief Judicial Magistrate, Aizawl District.
6. The Superintendent of Police, Aizawl District.
7. The Public Prosecutor, Aizawl.
8. i/c G.R. Branch.
9. Registration Section.
10. Guard File.
11. Case Record.
12. Calendar Judgment.

P E S H K A R