

IN THE SPECIAL COURT (ND&PS ACT): AIZAWL

Crl.Tr.Ex.No.1555/2015

Ref: Excise Case N-74/2015, u/s 25 'A' of ND&PS Act '85

State of Mizoram	.....	Complainant.
Vs.		
Lalthuama (47), S/o Rochhuma (L), R/o Tuikual 'C'.	.....	Accused

PRESENT

For the Prosecution	.....	C.Lalremruati, Addl.PP Penlui Vanlalchawii, A.P.P.
For the defence	.....	R. Lalhmingmawia, Advocate
Date of hearing	....	30.09.2016
Date of Judgment & Order	....	27.10.2016

BEFORE***SHRI. LIANSANGZUALA, JUDGE*****JUDGMENT AND ORDER**

INTRODUCTION

This is a case involving the seizure of 2,30,000 (Two Lakhs Thirty Thousand) tablets of Pseudoephedrine. The indictment of one person who was driving the vehicle Sumo from where it was seized. What would be the appropriate charge in such circumstances. The procedure to be adopted in such situation. The need to consider the welfare of the society and corresponding need to safeguard the rights of an individual

THE FACTS

Brief history of the case is that on 17th May 2015 at 10:45 Pm, S.I Lalrinnunga seized 2,30,000 (Two Lakhs Thirty Thousand) white tablets suspected to be containing Pseudoephedrine at Khatla, Aizawl, and in connection with the seizure, he arrested (1) Lalthuama (47) S/o Rochhuma (L) of Tuikual C mual, Aizawl, (2) Lalhriatpuia (23) S/o Lalhlimpaia of Serchhip Bazar veng, P/a Chanmari, Chepa road, Aizawl C/o Zarzokimi and (3) David Remlalngbaka (27) of Hmuntha, Serchhip District, P/A Kulikawn, Tlangnuam Road C/o Tluanga R.O Forest Dept. Samples was drawn and sent for chemical test at FSL, Aizawl. A case U/s 25-A and 29 r/w 25-A of ND & PS Act'85 was registered investigated upon. The accused Lalthuama was found to possess and transport the seized articles in his vehicle from Guwahati. The FSL report confirmed that the seized articles contains Pseudoephedrine. The co accused persons Lalhriatpuia and David Remlalngbaka were, on the other hand, found to have no involvement in this case and they were released by the Court on prayer of the Investigating Officer. A prima facie case under sections 25-A and 29 r/w 25-A of ND &PS Act 85 were therefore found established against the accused Lalthuama and he was charged accordingly for violation of Sec. 4(1) and 10(2) of RCS order 2013.

OPENING OF THE CASE

The learned Addl. PP open the case stating that the accused Lalthuama was arrested on 17th May 2015 for transporting in a Maxi Cab Sumo, the seized articles i.e. 2,30,000 (Two Lakhs Thirty Thousand) tablets of Pseudoephedrine at Khatla, Aizawl, He was charged under sections 25-A and 29 r/w 25-A of ND &PS Act 85.

The Ld. Addl.PP proposed to prove the case against the accused with the help of the evidence of list of witnesses submitted in the charge sheet and documents submitted in favour of the prosecution which will be taken in evidence in the course of trial.

CONSIDERATION OF CHARGE

Upon considering the case record and after hearing the accused and the Learned Defence Counsel and the Learned Addl. PP, The Court was of the

opinion that there was ground for presuming the accused had committed the offence.

The ramification and implications of pleading guilty was explained to the accused.

Since the co accused were released, the Court did not find it necessary to include Section 29 r/w 25-A of ND & PS Act '85.

As such after the above explanation, charge u/s 25-A of ND & PS Act was framed, read over and explained to the accused person Lalthuama in the language known to him to which he pleaded 'Not Guilty'

EVIDENCE FOR PROSECUTION

The prosecution then commenced their evidence.

P.W. NO. 1 Lalhmangaiha of Tuikual identified the accused person and deposed that on 17th May 2015, he received a telephone call from Excise & Narcotic duty inviting them to witness the seizure of contraband drugs from one Lalthuama. Accordingly, he rushed to the PO immediately. On reaching the spot, the Excise personnel seized and recovered the Pseudoephedrine from the possession of accused Lalthuama. The said drugs were kept in three bags. Counting of the said drugs (tablets) was done and it was 2,30,000 (Two Lakhs Thirty Thousand). Weighment was taken, it was 46 kgs. Sample was drawn from each bag. Sealing and packing were also done in his presence. He put his signature in seizure and arrest memo and seized property. He exhibited the seizure and arrest memo and the seized articles and his signatures on them.

On cross examination, he denied knowing the owner of the Sumo. He also denied the suggestion that no seized articles were recovered from the accused. He also denied that no sample was drawn and no weighment was done in their presence. He also denied that they were called after the search was already conducted by the Excise personnel. He admitted that there were two other persons in the said sumo. That he did not see the accused actually carrying or concealing the seized articles. That nothing was recovered from the physical possession and the residence of the accused. That he did not see the accused driving the sumo. That the name of the accused was not written in the bags. That he had not seen the accused purchasing the aforesaid bags. That he did not know what was written

in the tablets. That he could not see what was written on the tablets as he had poor eyesight and he was wearing spectacles. That there was no ID or other documents inside the said bag to show that the seized articles belonged to the accused. That there was no sample in the court on the date of examination. That there was no seal (material for sealing) for comparison and examination before the court at the time of his examination. That he did not know whether the other passengers were arrested. That there were no three bags to exhibit. On re-examination by Addl. PP, he deposed that the said sumo was driven by the accused. That the two other passengers denied ownership of the seized articles. That he did not know what was the reply given by the accused but he believed that the seized articles belongs to accused as he was the driver of the said vehicle and the other passengers did not claim ownership. On re cross examination, he stated that he did not know whether any driving license was seized from the accused. That he did not have any material document to show that the accused was the driver. He denied the suggestion that the accused was not the driver.

P.W. NO. 2 H. Lalpiangmawia of Tuikual identified the accused person and deposed that on 17th May 2015, he received a telephone call from Excise & Narcotic duty inviting them to witness the seizure of contraband drugs from one Lalthuama. Accordingly, he rushed to the PO immediately. On reaching the spot, the Excise personnel seized and recovered the Pseudoephedrine from the possession of accused Lalthuama. The said drugs were kept in three bags. Counting of the said drugs (tablets) was done and it was 2,30,000 (Two Lakhs Thirty Thousand). Weighment was taken, it was 46 kgs. Sample was drawn from each bag. Sealing and packing were also done in his presence. He put his signature in seizure and arrest memo and seized property. He exhibited the seizure and arrest memo and the seized articles and his signatures on them.

On cross examination, he denied knowing the owner of the Sumo. He also denied the suggestion that no seized articles were recovered from the accused. He also denied that no sample was drawn and no weightment was done in their presence. He also denied that they were called after the search was already conducted by the Excise personnel. He admitted that there were two other persons in the said sumo. That he did not see the accused actually carrying or concealing the seized articles. That nothing was recovered from the physical

possession and the residence of the accused. That he did not see the accused driving the sumo. That the name of the accused was not written in the bags. That he had not seen the accused purchasing the aforesaid bags. That he did not know what was written in the tablets. That there was no ID or other documents inside the said bag to show that the seized articles belonged to the accused. That there was no sample in the court on the date of examination. That there was no seal (material for sealing) for comparison and examination before the court at the time of his examination. That he did not know whether the other passengers were arrested. That there were no three bags to exhibit. On re-examination by Addl. PP, he deposed that the said sumo was driven by the accused. That the two other passengers denied ownership of the seized articles. That he did not know what was the reply given by the accused but he believed that the seized articles belongs to accused as he was the driver of the said vehicle and the other passengers did not claim ownership. On re cross examination, he stated that he did not know whether any driving license was seized from the accused. That he did not have any material document to show that the accused was the driver. He denied the suggestion that the accused was not the driver.

P.W. NO. 5 Lalnghahmawii identified the accused person and deposed that on 17th May 2015 at 10:45 Pm, SI. Lalrinnunga seized 2,30,000 (Two Lakhs Thirty Thousand) tablets of pseudoephedrine and he arrested Lalthuama S/o Rochhuma (L) of Tuikual C Mual Aizawl. The said drugs were kept in 3 bags and it was 46 kgs. Drawing sample, packing and sealing were done at the spot. That during investigation, she examined all the said accused persons seizing officer and witnesses. On examining the accused persons, she learned that the accused Lalhriatpuia and David Remlalnghaka had no involvement in the instant case and the seized articles were carried by accused Lalthuama in his vehicle without the knowledge of both the aforementioned said accused. The said two accused Lalhriatpuia and David Remlalnghaka were released by the Court on her prayer. The FSL report reveals that the exhibit sample were found to be pseudoephedrine. Hence, She found a prima facie case against accused Lalthuama under section 25-A for violation of Sec. 4 (1) and 10 (2) of RCS order 2013. She exhibited the seizure and arrest memo, the complaint sheet/charge sheet, grounds of belief, FSL examination report, seized articles and her signature on the complaint sheet.

On cross examination, she admitted that there were no witness who had seen the accused persons concealing the seized articles. She admitted that she did not know the owner of the sumo. That no vehicular documents and driving license were seized. She also admitted that the type of medicine and its contents were not mentioned anywhere in the seized article. That she did not count the number of seized articles. That she did not take the weightment of the seized articles. She further admitted that she did not know the number of tablets taken out and sent to the FSL as sample. She denied not recovering anything from the accused persons. She denied that no sample was sent to the FSL. She denied that the investigation was conducted without following the procedure. She also denied that there was no prima-facie case against accused person. She denied deposing falsely before the court. She denied that the sample content was not pseudoephedrine.

P.W. NO. 3, Lalrinnunga SI of Excise identified the accused person and deposed that on 17th May 2015, while they were having duty with party at Rangvamual area. They suspected one vehicle (Sumo) driven by Lalthuama for carrying contraband drugs. There were two occupants in the said vehicle. They asked the driver/accused Lalthuama whether he owns the drugs. He claims that the owner of the said drugs were at Zarkawt and they were waiting for them. They then detained the three suspected persons and they brought them along with the vehicle and the suspected drugs to zarkawt. However, the alleged owner of the said drugs were nowhere to be seen. Thereafter, the three suspected persons were brought to Office of the Commissioner, Excise & Narcotics, Tuikual along with the said contraband drugs carried by the said vehicle (Sumo). They requested two independent witnesses to witness the seized of the contraband drugs. After recording grounds of belief and after the arrival of two reliable witnesses, he conducted checking of the vehicle driven by Lalthuama. He recovered and seized the pseudoephedrine kept in 3 bags. Weightment was taken at the spot (Commissioner's office), it was 46 kgs and counting of the said drugs was also done. Sample was drawn. Sealing and packing were also done in presence of reliable witnesses at the spot. He exhibited the seizure and arrest memo, report of seizure and arrest, grounds of belief, seized articles and his signatures on them.

On cross examination, he admitted that nothing was recovered from the physical possession of the accused persons. That the exact place (vehicle, residence, luggages or personal possession of the accused persons) were not mentioned in the seizure memo. He stated that he did not know the owner of the said sumo. That they did not see the accused persons concealing the seized articles. He denied the suggestion that nothing was recovered from the accused persons. She denied deposing falsely before the court.

EXAMINATION OF ACCUSED U/S 313 CrPC.

The question and answer given in the examination of accused may be reproduced below:-

Q. It appears from the evidence that on 17th May 2015, drugs were recovered from a Sumo driven by you, what do you want to say for yourself?

=> The seized articles were sent from the Counter and I merely transport it, I had no idea it was drugs.

DEFENCE EVIDENCE

The Learned Defence Counsel submitted that they have no defence evidence.

ARGUMENT

Argument was conducted on 30.09.2016.

The Ld. Addl. PP submitted that 2,30,000 (Two Lakhs Thirty Thousand) tablets of Pseudoephedrine kept in 3 bags were seized from a sumo driven by the accused Lalthuama. On strong suspicion, the sumo driven by the accused was halted at Rangvamual. On seeing the 3 bags, they enquired with the driver. On being stated by the driver that the bags were owned by a person at Zarkawt. They proceeded towards Zarkawt but there was no such person. Hence, they went to the Excise Commissioner's office where 2,30,000 (Two Lakhs Thirty Thousand) tablets of Pseudoephedrine were seized, samples were also drawn. All seizures and sampling were done in the presence of independent witness after recording grounds of belief. The 3 bags were not disturbed. Hence, possession of the seized articles are proved beyond doubt and the accused must be convicted and sentenced and appropriate sentence was also prayed for.

On the other hand, the Ld. Defence Counsel submits that the seizure was done at 10:45 P.M and there were no search warrant. The reason behind their grounds of belief was not written. There were several packs inside the 3 bags and sample was not taken from all the packs. There were no civilian witness at the initial place of occurrence. The witness existed only at the Excise station. There were no Magistrate during sampling and weighing. The investigating agency must have opened the bag to know that the seized article are indeed Pseudoephedrine. There was nothing in the seized article to connect it to the accused. There was nothing to show that it belonged to the accused. Hence, the prosecution fails to proof the case against the accused and he prayed for acquittal of the accused.

ANALYSIS OF EVIDENCES

I have carefully perused the case record in its entirety. I have examined and considered all the evidences and the arguments advanced from both sides.

The P.W No. 3 stated that they halted one sumo driven by the accused Lalthuama at Rangvamual on 17th May 2015 on suspicion of carrying contraband drugs. On query the accused Lalthuama told them that the owner of the seized article was at Zarkawt. As such, they proceeded towards Zarkawt but such persons were nowhere to be found. The said sumo was having 2 passengers. They then proceeded to Excise & Narcotic Commissioner's office at Tuikual. The drugs were seized in the presence of 2 witness after recording grounds of belief. The seized article were weight and it was 46 kgs. Counting of the drugs, sample drawing, sealing and packing were done in the presence of reliable witness. The cross-examination re-iterate that seizure was not done from physical possession of the accused and the accused concealing the seized article was not seen or witnessed.

The evidence of P.W No. 3 was corroborated by the evidence of P.W NO. 1 & 2, who stated that they were requested to witness seizure of contraband drugs on 17th May 2015. They witness the seizure and recovery of the drugs. It was also counted and it was 2,30,000 (Two Lakhs Thirty Thousand). On weighing it was 46 kgs. Sampling, sealing and packing was done in their presence. They exhibited their respective signature. Cross-examination did not, in my opinion, rebutted the above evidence and the corroboration and the chain of

events disclosed in the evidences. The above 3 evidences were again corroborated by evidence of P.W No.5 who stated that the seized articles were carried by the accused Lalthuama without the knowledge of the other 2 occupants. He also sent the FSL report for examination and the seized article were found to be Pseudoephedrine. He exhibited papers prepared by him and his signatures without objection. The cross-examination also did not discredit his evidence since concealment and recovery on the person of the accused was never asserted.

The evidence of PW No. 4, Lalmuanawma, Asst. Director, FSL was not taken and he was not called to give evidence as the genuineness of the FSL report was not denied. He was the Scientific Expert at Forensic Science Laboratory who certified that the seized substances were indeed Pseudoephedrine. Reliance is placed on the *Judgement and Order of the Hon'ble Gauhati High Court, Aizawl Bench dated 03.03.2016 in Criminal Appeal No. 21 of 2015.*

Thus, the above evidences are in conformity and conclusive in nature. They unerringly pointed towards the fact that the accused possessed and transported the seized article in his Sumo without permission.

Thus, the evidences supported one another that 2,30,000 (Two Lakhs Thirty Thousand) tablets of Pseudoephedrine were seized from a Sumo driven by the accused Lalthuama at Khatla, Aizawl. It was initially recovered at Rangvumal area while performing a normal duty. Since the accused Lalthuama claimed that the owner of the 3 bags were at Zarkawt, the Party went on a wild goose chase, but no such owner was found at Zarkawt. The accused Lalthuama was not only found possessing and transporting the seized articles 2,30,000 (Two lakhs Thirty Thousand) tablets of Pseudoephedrine. He also attempted to hide his deeds by leading the Excise Personnel in a futile search. Although, the accused stated in his examination under section 313 CrPC that he was merely transporting the bags from the Counter, the manner in which he conducted himself makes his statement extremely doubtful especially since the seizure involved a huge quantity.

Since the search was made in a public place in a public conveyance and there was no body-search, the procedure prescribed under section 43 ND & PS Act '85 is applicable.

Given the circumstances highlighted above and the need to take urgent action for ascertaining and apprehending the true culprit or culprits, the seizure done at Excise Commissioner's Office in the presence of witnesses appears to be logical. Since the evidences on record only pointed to search, seizure, sample taking, counting and weighing at the Excise Commissioner's Office only. There appears to be no irregularity and the argument of the Learned Defence Counsel of a search of the bags elsewhere is not tenable.

As to the argument that sampling and weighing was not done before Magistrate. Sampling were done as per the standing order 1989 and there should not be any difficulty in accepting it. Reliance is again placed on the Judgement and Order of the Hon'ble Gauhati High Court, Aizawl Bench dated 03.03.2016 in Criminal Appeal No. 21 of 2015.

As such, I am convinced that the procedure followed by the Investigating Agency did not suffer any infirmity.

The situation being thus, the accused did not offer any plausible explanation why he was consciously in possession and why he was consciously transporting the seized articles 2,30,000 (Two Lakhs Thirty Thousand) tablets of Pseudoephedrine without permit. There is no mitigating factor which can be attributed in favour of the accused person. The accused person failed to prove anything to the contrary which would convinced me of the non commission of an offence on his part.

FINDINGS

From the above discussion, it is clear that 2,30,000 (Two Lakhs Thirty Thousand) tablets of Pseudoephedrine were seized from the illegal possession of the accused person Lalthuama (47) S/o Rochhuma (L) of Tuikual C mual, Aizawl while he was illegally transporting it in a Sumo Driven by him.

As such, I have no difficulty in holding that the accused Lalthuama (47) S/o Rochhuma (L) of Tuikual C mual, Aizawl is guilty of the charge beyond doubt. The prosecution has brought home the charge against him under section 25-A ND & PS ACT for violation of 4 (1) and 7 (1) ND & PS (Regulation of Controlled Substances) Order, 2013 made under section 9-A ND & PS Act, 1985.

The accused person Lalthuama was found to possess and transporting 2,30,000 (Two lakhs Thirty Thousand) tablets of Pseudoephedrine which is included under both Schedule A and Schedule B substances under the Order, 2013 (Supra). Thus, he can be charged under sections 25-A for violation of 4 (1), 7 (1) and 10(2) of the aforesaid Order. However, no evidence was led or asserted in respect of the charge for violation of Order under Order 10 (2), hence, Order 10 (2) is altered to Order 7 (1), since it is in no way prejudicial to the prosecution or the accused person. It does not affect the charge section in any way. Reliance is placed upon *the judgment and order of the Hon'ble Supreme Court in Durgo Bai and Anr Vrs State of Punjab AIR 2004 SC 4170 wherein the Hon'ble Supreme Court observes "Mere citation of wrong section in the charge would not cause any prejudice to an accused as punishment prescribed under sections 21 and 22 are the same"*

ORDER AND SENTENCE

Hence, for all the above reasons, I hereby convict the accused Lalthuama (47) S/o Rochhuma (L) of Tuikual C mual, Aizawl under section 25-A ND & PS ACT for violation of 4 (1) and 7 (1) ND & PS (Regulation of Controlled Substances) Order, 2013 passed under section 9-A ND & PS Act, 1985.

I conduct hearing on question of sentences. The accused Lalthuama prays for leniency stating that he is the bread earner of his family and he is looking after his three children. The learned Addl. PP on the other hand stated that this is in connection with seizure of huge amount of controlled substances, the accused must be given highest punishment.

I have considered all the matters discussed above. I have perused all the available materials. Before passing sentence, I shall venture to understand some of the precedents set forth in this regard by the Hon'ble Supreme Court.

In *Dhananjoy Chatterjee v. State of W.B. (1994 (2) SCC 220)*, the Hon'ble Supreme Court has observed that shockingly large number of criminals go unpunished thereby increasingly encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should

impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

Similar view has also been expressed in *Ravji v. State of Rajasthan, (1996 (2) SCC 175)*, the Hon'ble Supreme Court observes that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

In *Union Of India vs Kuldeep Singh, (Appeal (crl.) 1468 of 2003; Special Leave Petition (crl.) 2827 of 2003)*, the Hon'ble Supreme Court observes on 8 December, 2003 as under

"Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences relating to narcotic drugs or psychotropic substances which have great impact not only on the health fabric but also on the social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time or personal inconveniences in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system."

"It is true as contended by learned counsel for the respondent- accused that no minimum sentence is prescribed, but the sentence imposed should fit in with the gravity of offence committed but in the teeth of the other indications in the enactment, mere absence of a provision for minimum sentence is no reason or justification to treat the offences under the Act as any less serious as assumed by the High Court."

In *Sevaka Perumal etc. v. State of Tamil Naidu (AIR 1991 SC 1463)* the Hon'ble Supreme Court held that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

The Present case pertains to seizure of 2,30,000 (Two Lakhs Thirty Thousand) tablets of pseudoephedrine. When the volume of the contraband articles is taken note of, it is sufficient for a conclusion that the quantity of finished product Methamphetamine out of it would have been enormous. The disastrous effect of such huge quantity would be mind-boggling. The resultant effect on the society would be crippling.

After considering all the above, I pass the following sentence.

For his conviction under section 25-A ND & PS ACT, I hereby sentence the accused Lalthuama (47) S/o Rochhuma (L) of Tuikual C mual, Aizawl to undergo rigorous imprisonment for 5 (Five) years and to pay a fine of Rs 50,000/-. In default of payment he shall undergo another rigorous imprisonment for 1 (One) year.

Detention period already undergone is directed to be set off.

Bail bond cancelled.

The seized articles are allowed to be destroyed. The concerned Officer-in-Charge is directed to take an early action with the Drug Disposal Committee for disposal of the seized articles (Including the samples drawn on finalisation of the case and expiry of the appeal period) according to the provisions of law.

Case is disposed.

Give copy to all concerned.

Sd/- LIANSANGZUALA
Judge,
Special Court, ND&PS Act.

Memo No. _____ND&PS/ : Dated Aizawl, the 31st October, 2016.

Copy to: -

1. Accused Lalthuama C/o R. Lalhmingmawia, Advocate.
2. Addl.PP.
3. Superintendent, Excise & Narcotics, Aizawl.
4. O/C, Anti Narcotic Squad, Excise & Narcotics, Aizawl.
5. i/c Judicial Section.
6. i/c Malkhana Excise.
7. Guard File.
8. C.R

PESHKAR