

(2013) 01 GAU CK 0026
In the Gauhati High Court
Case No : Criminal Rev. Petition No. 3 of 2012

Lalmuanzuala and Others

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 303, 304, 482

Citation : (2013) CriLJ 2666 : (2013) 1 Crimes 451 : (2013) 2 GLD 150 :
(2013) 2 GLT 300

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : Lalramhluna and Mr. K. Lalchhanliana, for the Appellant; A.K. Rokhum, PP, for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—Heard Mr. Lalramhluna, learned counsel for the petitioners and Mr. A.K. Rokhum, learned Public Prosecutor, State of Mizoram. This is an application under Article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure (Cr.P.C.) against the judgment and order dated 9.11.2012 passed by the learned Addl. District & Sessions Judge-IV, Aizawl in CrL. Rev. No. 107/2012 upholding the conviction and sentence imposed on the petitioners by the learned Judicial Magistrate 1st Class, Mamit in CrL. Tr. Ex. (M) No. 102/2012 whereby and whereunder the petitioners were convicted u/s 8(1) /45 of the Mizoram Liquor Total Prohibition Act, 1995 (MLTP Act) and sentenced to undergo Simple Imprisonment (S.I.) for a period of 3 (three) months and to pay fine of Rs. 1000/- each, in default, to undergo further S.I. for a period of 5 (five) days.

2. Facts of the case may be briefly noted.

3. The petitioners were arrested by the Excise and Narcotic Personnel, Mamit on 16.6.2012 under the MLTP Act. Complaint No. 62/2012 dated 17.6.2012 was filed

before the Trial Court alleging that 60 bottles of Mc Dowell's Rum were seized from the petitioners on 16.6.2012 at 3:05 P.M.

4. Learned Magistrate framed charge against petitioner No. 1 u/s 8(1) of the MLTP Act stating that 60 bottles of Mc Dowell's Rum were seized from his illegal possession. Similar charge was also brought against petitioner No. 2. Additionally, he was also charged with helping petitioner No. 1 in the transportation of the liquor. In so far petitioner No. 3 is concerned, the charge against him was that out of the 60 bottles, 30 bottles were seized from his illegal possession.

5. The charges as indicated above were read over and explained to the petitioners on 28.8.2012, to which they pleaded guilty. Learned Magistrate by the order dated 28.8.2012 convicted the petitioners under the aforesaid sections and sentenced them as indicated above.

6. Thereafter, petitioners preferred revision petition against such conviction and sentence before the Court of learned Addl. District & Sessions Judge-IV, Aizawl, which was registered as CrI. Rev. No. 107/2012. By the impugned judgment and order dated 9.11.2012, the learned revisional court below rejected the revision petition and upheld the conviction and sentence imposed by the learned trial court.

7. Learned counsel for the petitioners submits that though the petitioners had pleaded guilty, learned trial court had failed to properly explain to the petitioners the consequence of their admission. No defence counsel was also made available to the petitioners. He submits that it was the duty of the learned trial court to have ensured that the petitioners were defended by a legal counsel and failure to do so has vitiated the impugned conviction and sentence. Learned revisional court below also failed to consider this aspect of the matter in the correct perspective. He further submits that no finding has been recorded about the contents of the seized material as to whether it was liquor within the meaning of section 2(j) of the MLTP Act. In the absence of such a finding, petitioners could not have been convicted u/s 8(1) of the MLTP Act. In support of his submission, learned counsel has placed reliance on a judgment of this Court in the case of Zohmingthanga Vs. State of Mizoram, . He has also submitted that till the petitioners were released on bail by this Court by order dated 23.11.2012, they had spent 29 (twenty-nine) days in custody. He, therefore, prays for quashing of the impugned conviction and sentence.

8. Mr. Rokhum, learned Public Prosecutor, on the other hand submits that there is no infirmity either in the order of the learned trial court or that of the learned revisional court below. Since the petitioners had themselves pleaded guilty to the charge brought against them, learned courts below were justified in convicting the petitioners and sentencing them as indicated above. He, therefore, prays for dismissal of the present petition.

9. Submissions made have been considered.

10. Section 2 (j) of the MLTP Act defines "liquor". For ready reference, said definition is quoted hereunder:-

"Liquor" means any intoxicating liquor and includes Zu, Rakzu, Tinzu, Zupui and all liquid consisting of or containing alcohol and any substance which the Government may, by notification, declare to be liquor for the purpose of this Act.

11. Section 7 of the MLTP Act prohibits manufacture, transportation, consumption, etc. of liquor, except consumption of liquor on medical prescription or on a permit granted under the MLTP Act or the rules framed thereunder. Punishment for contravention of section 7 is provided in section 8 which says that whoever contravenes the above provision, on conviction, shall be punished with imprisonment for a term which may extend to five years but not less than three months and also with fine which may extend to ten thousand rupees but not less than one thousand rupees. u/s 45, whoever abets an offence punishable under the MLTP Act, shall, whether such offence has or has not been committed in consequence of such abetment, shall be punished with the punishment provided for the offence.

12. Framing of charge is not an empty formality. The object behind framing of charge is to make the accused aware of the nature and extent of the accusation against him. The accused must be made aware of the consequence of his pleading guilty. It is for this reason that providing legal assistance to the accused is of crucial importance, more particularly, in a warrant procedure case. Section 303 Cr.P.C. mandates that any person accused of an offence before a criminal court or against whom proceedings are instituted under the Cr.P.C., may of right be defended by a pleader of his choice. If the accused is not represented by a pleader and when it appears to the court that the accused does not have sufficient means to engage a pleader, u/s 304 Cr.P.C., the court is required to assign a pleader for the defence of the accused at the expense of the State.

13. In the present case, when the petitioners admitted to the charge, they did not have the benefit of any legal assistance. It does not appear from the record that they were also made aware of the consequence of their admission.

14. These defects are not minor defects. They go to the root of the matter and are fatal to the prosecution case, which the learned revisional court below appears to have overlooked.

15. In *Zohmingthanga* (supra), this Court had held that liquid containing alcohol is an essential ingredient of liquor within the meaning of section 2(j) of the MLTP Act. The burden of proving that the seized commodity comes within the definition of liquor as defined u/s 2(j) of the MLTP Act was on the prosecution. The prosecution has to prove beyond doubt that the liquid which was seized was liquor or prohibited liquor. The label pasted on the exterior of the bottles cannot be an indicator of the substance contained inside the bottles. This Court had also pointed out that in a warrant case, it is not proper to convict the accused on a plea of guilty without taking further evidence.

16. For the aforesaid reasons, the prosecution case suffers from serious infirmities. As submitted by the learned counsel for the petitioners, since petitioners have already suffered imprisonment for 29 days, question of remanding the case for fresh trial does not arise.

17. For the foregoing reasons, the conviction as recorded by the learned trial court and upheld by the learned lower revisional court cannot be sustained and is, accordingly, set aside and quashed. Petition stands allowed. No cost.