

MLSH020007452026



Session t/34/2026

ORDER

CR put up today.

Accused Damanstar Syiemlieh @ Bahlieh is present along with his counsel Shri L Syiem, Advocate.

Accused Shadiroy Kharnaier, Banaibor Kharnaier and Syrpaishisha Kharnaier are present along with their counsel Smt M. Wahlang, Advocate.

Accused Anthonious Kharnaier is present with his counsel Smti. P. Riahtam, advocate.

Learned Addl PP Smt K Chisa is present.

This case is posted for orders on arguments before charge.

The criminal machinery was set into motion upon registration of an FIR dated 28.04.2004 lodged by ASI F Kharkongor, who is a police personnel on mobile duty at Madanrting N.H.44 to the effect that on 28.04.2004 the accused persons namely Damanstar Syiemlieh, Santiray Kharnaier, An Kharnaier, Serpai Kharnaier, Banaibor Kharnaier and Horian Lyngdoh were apprehended at Upper Mawblei NH 44 while attempting to commit dacoity. It is further alleged in the FIR that during search, one

country-made revolver along with six rounds of .22 ammunition were recovered from the said group. The FIR also states that the accused persons were travelling together in a vehicle bearing Registration No ML 05 D 2963 at the relevant time. The FIR came to be registered vide Madanrting P S Case No. 29(04) 04 u/s 399 IPC read with section 25(1A)(1b) Arms Act and the case was endorsed to Inspector U C Das for investigation.

The country made revolver with ammunition was seized vide seizure list dated 28.04.2004 from the possession of Banaibor Kharnaioir and one Indica car tourist taxi having registration no ML 05 D 2963 was seized from. Damanstar Syiemlieh.

During the course of investigation the country made revolver along with ammunitions were sent to the FSL, Meghalaya, Shillong for examination. As per the FSL report it was opined that Ex 841(A) is a Country made .22 revolver and it is in working condition and Ex 841 (B) are .22 live ammunition and chamber in Ex 841 (A).

After completion of investigation, the I.O filed charge sheet u/s 399 IPC read with section 25(1-a)(1-b) Arms Act against accused Demonstar Syiemlieh, Hodriak Lyngdoh, Shandiroy Kharnaioir, Anthious Kharnaioir, Serpa Kharnaioir and Banaibor Kharnaioir before the Additional District Magistrate, East Khasi Hills, Shillong.

Pursuant to the separation of judiciary from the executive,vide Notification no. LJ(A)77/2000/206 dated 28th September 2011 the case was transferred to the Additional Deputy Commissioner (Judicial), Shillong.

The case was endorsed to the Judicial Magistrate First Class, Shillong for disposal.

The case was committed to this court vide order dated 19.05.2026. Pursuant to the committal. Summons were issued to the accused persons. The accused persons appeared before this court on 23.06.2026

Smt K Chisa, learned Addl. PP submitted that the accused were apprehended while attempting to commit dacoity and from their possession one country made revolver along with ammunitions have been recovered. Hence submitted that there is prima facie material to frame charge against the accused person u/s 399 IPC read with section 25(1-a)(1-b) Arms Act.

Smt M Wahlang, advocate appearing for accused Shadiroy Kharnaier, Banaibor Kharnaier and Syrpaishisha Kharnaier submitted that the FIR and the charge-sheet do not disclose any material showing that the Petitioner or the co-accused had devised or arranged the means necessary for the commission of dacoity. There is no allegation regarding any intended target, victim, place of occurrence, or any overt act amounting to preparation for committing dacoity. The Learned counsel submitted that the presence of the accused persons in a vehicle, by itself, does not constitute "preparation" within the meaning of Section 399 IPC. Learned counsel submitted that the FIR states that the arms and ammunitions were recovered from all the accused persons whereas the seizure list mentions only the name of accused Banaibor Kharnaier which renders the recovery doubtful. Learned counsel submitted that the I.O has filed charges sheet u/s 25(1-a)(1-b) of the Arms Act. However, the FIR and charge does not mention even by a whisper that the accused persons had manufactured, obtained, procured, sold, transferred, converted,

repaired, tested or proved, or exposed or offered for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, the arms or ammunition in contravention of section 5. It is also not the prosecution case that the accused had shortened the barrel of a firearm or converted an imitation firearm into a firearm. Therefore, the provision of section 25(1-a)(1-b) Arms Act is not attracted. The learned counsel therefore prayed that the accused be discharged.

Smt P Riahtam learned counsel for Anthonious Kharnaioir submitted similarly.

Learned Counsel for Damanstar Syiemlieh submitted that the vehicle in question belongs to him and was seized by the investigating agency vide seizure list bearing MR No. 15/2004 dated 28.04.2004. The learned counsel submitted that the alleged revolver was recovered from the possession of Banaibor Kharnaioir and seized vide seizure list bearing MR No. 16/2004 who was a passenger travelling in the vehicle belonging to the accused. The learned counsel submitted that the accused is a taxi driver by profession, ferrying passengers from Shillong to Khliehriat. Learned counsel submitted that on 27.04.2004, he was ferrying passengers from Shillong to Khliehriat. In the evening of the same day, one Shri Banaibor Kharainor (co-accused) along with three other persons boarded his taxi for travelling to Shillong. Due to traffic congestion at Puriang Village, West Jaintia Hills District, the journey was delayed and the accused person named herein, along with his passengers reached Mawblei, East Khasi Hills District at about 1:25 AM. The Accused Person, Shri. Damanstar Syiemlieh stopped the vehicle briefly to relieve himself and being fatigued due to the long journey, he rested inside the vehicle for

sometime. Thereafter, the he along with the passengers were apprehended by the police and taken to the police station. It is further submitted that although he was acquainted with the said passengers, he had no knowledge whatsoever that Shri Banaibor Kharnaiaor was in possession of any country-made revolver or ammunition, nor did he have any knowledge of any alleged unlawful activity/activities being carried out by them. The Learned counsel submitted that the accused has no nexus whatsoever with the alleged recovery of the firearm or ammunition from the co-accused. The FIR and the subsequent charge-sheet is vague, ambiguous and do not disclose any specific role, overt act, knowledge, or participation attributable to the Petitioner in the alleged commission of the offence. Learned counsel submitted that the continuing trial is a futile exercise as the offence under Section 399 of IPC has not been established and that the continuation of the criminal proceedings against the Petitioner is wholly unsustainable. The FIR and the charge-sheet do not disclose any material showing that the Petitioner or the co-accused had devised or arranged the means necessary for the commission of dacoity. There is no allegation regarding any intended target, victim, place of occurrence, or any overt act amounting to preparation for committing dacoity. At best, the prosecution alleges the presence of the accused persons in a vehicle, which by itself does not constitute "preparation" within the meaning of Section 399 IPC. The Learned counsel relied on the following decisions:

- i) (1979) 3 SCC 430 Chaturi Yadav and others vs State of Bihar.
- ii) Jaganath Mundari vs State of Odisha (High Court of Orissa).

It is humbly submitted that the accused person above named was merely a driver in the incident and have no knowledge of the presence of the revolver. Moreover, the revolver was recovered from the possession of the co-accused Shri. Banaibor Kharnaioir and not from the accused person named herein nor the vehicle. His presence in the vehicle cannot by itself give rise to an inference that he was aware of the articles carried by each passenger or that he had knowledge of the firearm allegedly possessed by a co-passenger. There is no material in the charge sheet to suggest that Shri Damanstar Syiemlieh had seen, handled, concealed, transported or otherwise dealt with the firearm in any manner. Learned counsel relied upon a decision report in (1972) 2 SCC 194 Gunwatlal vs State of Madhya Pradesh. Learned counsel submitted that on the basis of the above authority, the charge sheet is completely silent on any facts from which conscious or constructive possession may legitimately be inferred to the accused person to be charged under Section 25(1a) and (1b) of the Arms Act. In the absence of any specific factual foundation demonstrating the accused person's knowledge of the firearm or his de facto control or dominion over it, the indispensable ingredients of the offence under Section 25 of the Arms Act are conspicuously absent. Consequently, the prosecution of the accused person for the alleged Arms Act offence is legally unsustainable and constitutes a clear abuse of the process of the Court. Learned counsel submitted that there is no evidence against the accused person and trial in the instant case against the Accused Person will be a futile exercise and also wastage of the precious time of this Court. Hence prayed that the accused be discharged.

The accused persons have been charged for the offence u/s 399 IPC read with section 25(1-a)(1-b) Arms Act. The relevant provisions are reproduced below-

Section 399 of the Indian Penal Code reads as :-

Making preparation to commit dacoity .- Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

* * * *

Section 25 (1-a) and (1-b) of the Arms Act 1959 reads :-

25. Punishment for certain offences .- [(1)Whoever- (a)[manufactures, obtains, procures], sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section5; or

(b) shortens the barrel of a firearm or converts an imitation firearm into a firearm [or convert from any category of firearms mentioned in the Arms Rules, 2016 into any other category of firearms] in contravention of section 6; or

..... Shall be punishable with imprisonment for a term which shall not be less than [seven years but which may extend to imprisonment for life]and shall also be liable to fine.

The FIR mentions that the accused persons were attempting to commit dacoity at the time when they were apprehended. On the other hand, the charge sheet mentions that the accused persons were apprehended when they were preparing to commit dacoity.

The offence of dacoity is explained by Section 391 of the IPC, 1860. Section 391 defines dacoity as follows: *“When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery and persons present and aiding such commission or attempt amounts to five or more, every person so committing, attempting, or aiding is said to commit dacoity.”*

The accused persons were found together at 1 a.m. Taking the prosecution case at its face value, there is no prima facie material to show that the accused persons had assembled for the purpose of committing a dacoity or they had made any preparation for committing the same. As per the FIR and charge sheet one country made revolver and ammunitions were recovered from the accused persons. The mere fact that these persons were found at 1 a.m. does not, by itself, prove that the accused persons had assembled for the purpose of committing dacoity or for making preparations to accomplish that object. Therefore, there is no prima facie material to frame charge against them u/s 399 IPC.

In 2021 SCC Online Ori 900 the Hon’ble High Court at Orissa held-

22. Section 399 of the Penal Code, 1860 deals with making preparation to commit dacoity and section 402 of the Penal Code, 1860 deals with assembling for purpose of committing dacoity. There is

manifestly a distinction between the offences under section 399 and section 402 of the Penal Code, 1860. The offence under section 402 of the Penal Code, 1860 is complete as soon as five or more persons assemble together for the purpose of committing a dacoity. Preparation for committing a dacoity may take place before or after the dacoits assemble together. Preparation consists in devising or arranging the means necessary for the commission of an offence. Though the offence falling under section 402 of the Penal Code, 1860 and the offence falling under section 399 of the Penal Code, 1860 would probably involve almost similar ingredients, the only difference is that under section 402 of the Penal Code, 1860, mere assembly without any preparation is enough to attract the offence, whereas section 399 of the Penal Code, 1860 is attracted only if some additional steps are taken in the course of preparation.

In the instant case, the fire arm recovered is a country made .22 revolver. It is nobody's case that the accused persons had manufactured, obtained, procured, sold, transferred, converted, repaired, tested or proved, or exposed or offered for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, the arms or ammunition in contravention of section 5. It is also not the prosecution case that the accused had shorten the barrel of a firearm or converted an imitation firearm into a firearm. Therefore, the provision of section 25(1-a)(1-b) Arms Act is not attracted.

The Code of Criminal procedure empowers the court to alter the charge at any stage. From the materials on record, at best the offence alleged to have been committed by the accused persons would attract section 25(1B) (a) Arms Act. Section 25(1B) (a)

Arms Act deals with acquisition, possession or carrying any firearm or ammunition in contravention of section 3.

Section 39 of the Arms Act provides that

39. Previous sanction of the district magistrate necessary in certain cases – No prosecution shall be instituted against any person in respect of any offence under section 3 without the previous sanction of the district magistrate.

In the instant case, no prosecution sanction has been obtained as contemplated u/s 39 Arms Act. Therefore, prosecution of the accused persons u/s 25(1B) Arms Act cannot be maintained in the absence of a prosecution sanction.

In view of what has been discussed above, there is no prima facie case to frame charge against the accused persons u/s 399 IPC read with section 25(1-a)(1-b) Arms Act.

Accused Accused Damanstar Syiemlieh @ Bahlieh, Shadiroy Kharnaier, Banaibor Kharnaier, Syrpaishisha Kharnaier and Anthonious Kharnaier are discharge from the liabilities of the case.

The seized revolver and ammunition be destroyed after expiry of the appeal period.

S. 437A has been inserted in the Cr. P.C. by amendment act, 2008 (Act No 5 of 2009). Section 437 Cr.P.C provides

"437A. (1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to

appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.
(2) If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply."

The bail bonds executed by the accused person shall remain in force for a further period of 6 (six) months. The accused shall ensure that they shall appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the order of this Court.

Date : 29-07-2026

Smti.Dashalene R Kharbteng MG00011
Addl. D.C. Judicial, Shillong

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