

ཚེ་མཚོ་ཁྲིམས་ཁྲིའུ་བློ་བཟང་།



HIGH COURT, BHUTAN

། དཔལ་ལྷན་འབྲུག་པའི་ཁྲིམས་ཁྲིའུ་བློ་བཟང་།

ROYAL COURT OF JUSTICE

**PRESS RELEASE**

Larger bench,  
High Court, Thimphu

Review Petition Nos. 10-160;10-161;10-162;10-163;10-164;10-165;10-166;10-167

Decided on July 22, 2011

Sangay Gyaltzen and others-----Appellants

Versus

Office of Attorney General-----Prosecutor

*(Note: This write up is for the purpose of press. Refer the text of the judgment for detail information of the case. )*

1. In an appeal under section 109 of the Civil and Criminal Procedure Code of Bhutan against the conviction order of the Samtse District Court relating to illegal mining; the aggrieved parties moved the Larger Bench for reconsideration of the decision of the lower court on various grounds. The main issue appealed for was the violation of procedural rights by the investigation authorities under various provisions of the law. The Larger Bench under section 110 of the Civil and Criminal Procedure Code reviewed those decisions upon which there were properly preserved records.
2. The Court granted full opportunity and conducted 72 uninterrupted hearings. They were also given full opportunity to defend their submissions in writing. Accordingly, 584 pages of complaints submitted at various stages of hearings were given most careful consideration. Thus,



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ROYAL COURT OF JUSTICE

upon review of the facts and evidences, the court inferred its reasoning in the judgment.

3. The issues that the appellants submitted before the court were, disregard of procedural rights under various sections of the laws by the authorities while conducting investigation. It was argued, *inter alia*, that arrest, search and seizure conducted by authorities in violation of laws were illegal and subsequent evidence obtained out of such act must be suppressed as ‘fruit of poisonous tree’. Consequently, the appellants have pleaded for vindication from the charges based on the principle of suppression of defective evidence.

The goal of criminal justice system is to dissuade authorities to minimize illegal arrest and searches of innocent persons and must not conduct unreasonable search of the properties. The law must protect the innocent and punish the guilt. King Martin Luther Jr. said, “One who condones wrong doing is just as guilty as the one who perpetrates it.” Mere fact, that the evidence recovered by unreasonable means shall not necessarily result in dismissal of a case. The evidence need not necessarily be fruit of poisonous tree simply because it would not have come to light but for the illegal act of the authorities.

4. Sections 79 and 87 of The Anti-Corruption Act of Bhutan 2006 empower the Commission to arrest, search and seize any person and his property but in accordance with the Civil and Criminal Procedure Code. Therefore, the ACC and all related authorities should be scrupulous in conducting any investigation and take all possible measures to ensure that the requirements under the Civil and Criminal Procedure Code and The Anti-Corruption Act of Bhutan 2006 is adhered to so as to avoid unnecessary counter charges in keeping with the rights of the individual persons enshrined under the Constitution.

Although the authorities shall not subject any person to arbitrary arrest, this particular matter is an instance of immediate necessity under section 165.1 of the Civil and Criminal Procedure Code. In such exigent circumstances, action in the interest of justice is deemed appropriate.



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5. The present matter before the court is a *prima facie* case. There is a chain of evidence proving their guilt beyond reasonable doubt. The appellants were charged with numerous counts of offences ranging from forgery to official misconduct. The evidence to support their conviction would have eventually and inevitably been discovered by lawful means in due course of time. Therefore, they could not have gone scot-free had they succeeded the motion of suppression of ill-gotten evidence.
6. The fundamental goal of criminal justice system is to arrive at the truth. Some cases warrant prompt action where undue delay of the authority would render the offender an opportunity to destroy or tamper evidences and are capable of inducing the potential witnesses. The evidences collected are all probative evidence directly relevant to the charges. Thus, the court overrules the motion of exclusion of evidence.
7. Although the court must take account of triangulation of interests, the larger interest of the society must prevail over the liberty of an individual. It is in this pursuit that crime should be effectively investigated and brought to justice. Further, the court notes that giving the accused benefit of every small irregularity would diminish the effectiveness of the criminal justice system.

While the magnitude of substantive rights violation is greater, the procedural remedies shall have lesser room for consideration. Thus, the authorities had probable cause to believe that the appellants were capable of obstruction of justice by concealing or destroying the evidence.
8. Justice may be violent in the eyes of the offenders, yet, the law cannot be compassionate towards the guilt. The court cannot set aside the evidences unless the illegality in the investigation could be proven to have brought about gross miscarriage of justice. It's better that hundred guilty persons escape than that one innocent suffers. Therefore, the court unanimously dismisses the plea of exoneration.

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9. The court, hereby, affirms the judgment of the Samtse District Court in its totality.

Sangay Khandu  
(Acting Chief Justice)

Tshering Namgyel  
(Drangpon)

Tashi Chhozom  
(Drangpon)