

CHARGE SHEET

(Under Section 173 Cr.PC.)

IN THE COURT OF SPECIAL JUDGE FOR NIA CASES NAGALAND, AT **DIMAPUR**

State V/s ABSI Khugai Zhimomi and others

1. Name of the Branch National Investigation Agency, Branch

Office Guwahati.

F.I.R. No. RC-03/2013/NIA-GUW.

Year 2013

Date 11.11.2013

2. Final Report/Charge : 03/2017

Sheet No

3. **Date** ____/04/2017

4. Section(s) of Law Sections 409,120-B, 121, 468 and 34 of

> Indian Penal Code, section 25 (1-A) Arms Act, section 29 of Police Act 1861 and sections 7 and 8 of Nagaland

Security Regulation, 1962.

Not Applicable

5. Type of Final Report Supplementary Charge Sheet.

6. If Final Report **Un**- :

occurred false/Mistake

of fact/ Mistake of law/

Non Cognizable/

Civil Nature

7. sheeted : Supplementary Charge Sheet charge

original/Supplementary

8. Name of Investigating:

Officer

Sh. Amalendu Dhar, Dy.Supdt. of Police

Sh. Subhashis Baruah, Addl. SP R.S. Jamwal, Dy. Supdt. of Police

9. XXXXXXXXX Name the : of

Complainant

Informant

Details of properties/: 10.

Articles/Documents

recovered/Seized XXXXXXXXX

Investigation during

and relied upon:

Particulars of accused persons charge sheeted: 11.

(A-2)

Name	SS Col. Akaho @ Akaho Zhimo		
Whether verified	Verified		
Father's Name	Saiche		
Age	43 years		
Sex	Male.		
Nationality	Indian		
Passport No	Not Applicable		
Place of issue	Not Applicable		
Date of issue	Not Applicable		
Religion	Christian		
Occupation	Member of NSCN (K), self-styled Colonel.		
Address	Village- Khetoyi,		
(present/Permanent)	P.O. & P.S Aghunato,		
	Dist. Zunheboto, Nagaland.		
	Present location- Suspected to be in		
	Myanmar.		
Whether verified	Yes		
Provisional Criminal No.	Not Applicable		
Regular Criminal No.	Not Applicable		
(If known)			
Date of Arrest	Not Applicable		
Date of release on bail	Not Applicable		
Under Acts & Sections (of	, , , , , , , , , , , , , , , , , , ,		
charge sheet)	Penal Code, section 20 of Unlawful Activities (Prevention) Act. 1967, section 25 (I-A) Arms Act and sections 7 and 8 of Nagaland Security Regulation, 1962.		
Name (s) of bailer/	Not Applicable		
sureties and address			
Previous convictions	Not Applicable		
with case reference			
Status of accused	Absconding		

Name	ss Col. Aheto @ Aheto Chophi		
Whether verified	Verified		
Father's Name	Hozuxu		
Age	47 years		
Sex	Male.		
Nationality	Indian		
Passport No	Not Applicable		
Place of issue	Not Applicable		
Date of issue	Not Applicable		
Religion	Christian		
Occupation	Member of NSCN (U), self-styled Colonel.		
Address	Village- Yehemi,		
(present/Permanent)	P.O. & P.S Suruhoto, District Zunheboto, Nagaland.		
Whether verified	Yes		
Provisional Criminal No.	Not Applicable		
Regular Criminal No.	Not Applicable		
(If known)			
Date of Arrest	Not Applicable		
Date of release on bail	Not Applicable		
Under Acts & Sections (of charge sheet)	Under sections 120-B, 121, 122 of Indian Penal Code, section 20 of Unlawful Activities (Prevention) Act. 1967, section 25 (1-A) Arms Act and sections 7 and 8 of Nagaland Security Regulation, 1962.		
Name (s) of bailer/	Not Applicable		
sureties and address			
Previous convictions	Not Applicable		
with case reference			
Status of accused	Absconding		

13.

i. Particulars of Witnesses examined: XXXXXXXXX
 ii. List of Documents : XXXXXXXXXX
 iii. List of Material objects : XXXXXXXXXX

- **14**. If F.I.R. is false, action taken : Not Applicable.
- **15**. Result of laboratory Analysis :

Forensic Science Laboratory Reports/Expert opinions:

- 15.1 SLR's bearing Arsenal No15132128 and BM-0284 (received from NSCN(K) through the chairman, CFSB Nagaland, Kohima). SLRs bearing Arsenal No. 15414245 and 15414099, (collected from the Zunheboto court). All four SLR's along with five numbers of magazines were sent for examination and expert opinion to SFSL, Kahilipara Guwahati, Assam vide letter NIA/GUW/RC/03/2013/2516 dated 19.05.2014. Further, after examination by the Experts of SFSL, received back the exhibits along with the report vide letter no. DFS.1212/14/809/FB-5542 dated 09.07.2014. As per report, it has been opined that, the said SLR's are 7.62 x 51 mm calibre Self Loading Rifles, which are firearms under the Arms Act all the SLRs are serviceable and all the SLR's are factory made firearms. Regarding the magazines, it has been opined that the magazines are of 7.62 x 51 mm calibre Self Loading Rifles.
- 15.2 Further SLR's bearing arsenal number 15166291 and S2713 along with magazines were sent to Forensic Science Laboratory, Meghalaya, Shillong vide Letter No. NIA/GUW/RC/03/2013/5867 dated 17.11.2014 for examination and expert opinion. After examination the exhibits along with the report has been received back vide letter no. FSL/361/Fb-1186 dated 25.11.2014. As per report, it has been opined that, the said SLR's are factory made 7.62 mm calibre Self Loading Rifles and they were found serviceable in their present condition and come under the purview of Arms Act 1959.

16. Brief facts of the case:

The case was initially registered at Zunheboto Police Station vide F.I.R. No. 28/2016 on 28.06.2012 under sections 409, 120B and 34 of Indian Penal Code read with section 25(1A) of Arms Act and section 29 of Police Act, on the basis of written complaint of XXXXXXXXXXX, the then Superintendent of Police, Zunheboto District, Nagaland. It was alleged in the complaint that, Armed Branch Sub Inspector (ABSI) Kughai Zhimomi and staff of Record Officer (Clothing) establishment of DEF Zunheboto had deliberately misappropriated the arms and ammunition at Zunheboto DEF Arms Kote. XXXXXXXXXXX,

Dy.SP, the then SDPO Zunheboto was the Investigating Officer of the case. During the course of investigation carried out by the Nagaland Police, the following facts have been established.

16.1 Physical verification of Arms and Ammunition of DEF Zunheboto Kote was carried out. On completion of physical verification, it was found that the following arms and ammunition were misappropriated by accused ABSI Kughai Zhimomi from DEF Zunheboto Kote.

STATEMENT OF MISAPPROPRIATED ARMS BETWEEN THE PERIOD 2000 TO 2012

Types of Arms	No. of Arms misappropriated
7.62 SLR	21
Carbine	01
Sten gun	11
.303 Rifle Mk IV	19
.303 Rifle Mk III	23
Total No. of arms misappropriated	75

STATEMENT OF MISAPPROPRIATED MAGAZINES BETWEEN THE PERIOD 2000-2012.

Types of magazine	No. of magazines Misappropriated
Sten gun	29
AK Rifle	3
Carbine	2
7.62 SLR	28
Total No. magazines misappropriated	62

STATEMENT OF MISAPPROPRIATED AMMUNITION BETWEEN THE PERIOD 2000-2012.

Types of Ammunition	No. of ammunitions misappropriated		
7.62mm Ammunition	8587		
7.62x 39mm Ammunition	1701		
.303 BDR	10285		
.303 CTN	2256		
9mm Ammunition	1988		
.38mm ball	981		
.22mm Ammunition	300		
Total No. Ammunitions misappropriated	26098		

STATEMENT OF MISAPPROPRIATED BAYONET BETWEEN THE PERIOD 2000-2012.

Types of	Bayonet		No. of Bayonet misappropriated
5.56 INSA	S		1
AK Rifle			1
7.62 SLR			1
Total	Nos.	bayonet	3
misapproj	priated		

- Investigation has further established that, accused ABSI Kughai Zhimomi remained posted as Record Officer (Clothing), between the period 1999 to 2012, under the administrative control of Superintendent of Police Zunheboto and was entrusted with the responsibility for the safe keeping of arms and ammunition of Zunheboto DEF Kote and he was the sole custodian of arms and ammunition.
- Investigation has also established that underground groups like NSCN (K) and NSCN (U) factions are actively involved in terrorist acts/activities in Nagaland. Instance have come fore, such as factional clash between NSCN(U) and NSCN(K) which took place on 19.06.2012 at Zhekiye village under the limits of P.S. Sataka, District Zunheboto. The factional clash resulted in the death of 03 cadres of NSCN (K). An SLR rifle bearing arsenal No. 15414099 with magazine was recovered from one of the NSCN(K) cadres. In this connection Sataka P.S. case FIR No. 04/2012 under sections 302, 325 IPC and sections 7 and 8 NSR Act 1962 was registered. Further it was established that SLR arsenal No. 15414099 was sold by accused ABSI Kughai Zhimomi to NSCN (K) in the year 2010.
- The FIR named accused ABSI Kughai Zhimomi(A-1) was arrested on 07.07.2012 by Nagaland Police. One SLR bearing Arsenal No. CZ 9082 was recovered from the possession of ABSI Kughai Zhimomi(A-1) at the time of his arrest. A confessional statement of accused ABSI Kughai Zhimomi (A-1) was also got recorded under section 164 Cr.P.C. wherein accused voluntarily confessed his guilt in the commission of crime.
- Investigation has established that ABSI Kughai Zhimomi (A-1) handed over 10 SLRs of DEF Zunheboto to the cadres of NSCN (K) as demanded by SS Col. Akaho(A-2). The NSCN (K) cadres gave Rs. 5 lakh towards the cost of SLRs to ABSI Kughai Zhimomi (A-1). In the latter part of August, 2011, ABSI Kughai Zhimomi (A-1) again handed over 5 SLRs with 6 magazines, 9(Nine) .303 rifles, 1 carbine rifle with 2 magazines and 1 sten gun with 2 magazines of DEF Zunheboto to the NSCN(K) in lieu of money.

- Investigation has established that ABSI Kughai Zhimomi (A-1) had also delivered 6 SLRs along with 6 magazines of DEF Zunheboto to the cadres of NSCN (U) which were received by accused SS Col. Aheto (A-3), at Showuba village, Dimapur, Nagaland. ABSI Kughai Zhimomi (A-1) also delivered 3 sten guns with 6 magazines, 7 .303 rifles of DEF Zunheboto to the NSCN (U) outfit at Showuba village. Investigation has further established that accused ABSI Kughai Zhimomi (A-1) sold the misappropriated arms of DEF Zunheboto to both the organization such as NSCN (K) and NSCN(U). For selling these arms and ammunition from kote of DEF Zunheboto, ABSI Kughai Zhimomi (A-1) communicated with (A-2) of NSCN(K) and (A-3) of NSCN (U) as confessed in the confessional statement by accused ABSI Kughai Zhimomi (A-1).
- On completion of investigation on 04.10.2012 Nagaland Police filed the charge sheet against the accused ABSI Kughai Zhimomi under sections 409,120(B),121,468 and 34 of Indian Penal Code read with section 25 (1-A) of Arms Act, sections 7 and 8 of NSR 1962 and section 29 Police Act and other two absconding accused persons, namely SS Col. Akaho(A-2) of NSCN(K) and SS Col. Aheto (A-3), NSCN/GPRN under sections 120(B) and 121 of Indian Penal Code read with section 25 (1-A) of Arms Act and sections 7 and 8 of NSR 1962.
- 16.8 Further in compliance of Ministry of Home Affairs, Government of India Order No. F. No.11011/24/2012-IS.IV dated 04.11.2013, NIA re-registered the Zunheboto P.S. case no. 28/12 dated 28.06.2012 as RC-03/2013/NIA-GUW dated 11.11.2013 under sections 409,120(B),121,468,34 of Indian Penal Code read with section 25(1-A) of Arms Act, section 29 of Police Act & sections 7 and 8 of Nagaland Security Regulation, 1962 and carried out further investigation of the case. During the course of further investigation by the NIA under section 173 (8) Cr.P.C. the following facts have been established.
- The complainant XXXXXXXXXX, the then Superintendent of Police, Zunheboto DEF has been examined and his examination has established that, in the month of June, 2012 the senior officers of Nagaland Police, inspected the main Kote of Zunheboto DEF, and found missing a large number of arms and ammunition. During the inspection of records of the main Kote, it was found that, the stock ledger for the period 2000-2006, was found missing. Accused ABSI Kughai Zhimomi (A-1) had opened a new arms and ammunition stock ledger, in the year 2006 and maintained the records of the available stock only. Whenever any senior officer, visited the Kote for inspection, the physical holdings of arms and ammunition were found correct, in accordance with that of the stock ledger. That is how ABSI

Kughai Zhimomi (A-1) kept the authorities in the dark. ABSI Kughai Zhimomi (A-1) was holding the charge of R.O. (Clothing & Equipment) of Zunheboto DEF, for last twelve years. It has further established that accused ABSI Kughai Zhimomi (A-1) used to handle the *Kote* alone and no one has counter checked his activities. It has further established the role of SS Col. Akaho (A-2) of NSCN (K) and SS Col. Aheto (A-3) of NSCN (U) regarding the illegal acquiring of arms and ammunition of Zunheboto DEF Kote from accused ABSI Kughai Zhimomi (A-1).

- Investigation has further established that on 25.02.2013 at about 16.10 0030 hrs, an encounter took place between 10 Nagaland Armed Police (Indian Reserve Battalion) personal of Nagaland Armed Police and the cadres of NSCN (K) at Kitsakita, Zunheboto. In the incident one armed cadre of NSCN (K) namely SS 2nd Lt. Kasheto son of XXXXXXXXX of XXXXXXXXX village, P.O. and P.S. Akuluto, District Zunheboto was killed. One 7.62 SLR bearing arsenal No. 15414245, two magazines and sixty one live rounds of 7.62 SLR, were recovered from the slain cadre of NSCN(K). The recovered SLR bearing arsenal no. 15414245 Butt No. 1005001578(M-1) was found to be sourced from Zunheboto DEF Kote and was one of the rifle misappropriated by accused ABSI Kughai Zhimomi(A-1). In this regard Zunheboto PS case No. 11/2013 under section 120(B) Indian Penal Code read with section 25(1-A) Arms Act and under sections 7/8 NSR Act was registered. Further it has been established that said SLR was sold by the accused ABSI Kughai Zhimomi (A-1) to SS Col. Akaho (A-2) of NSCN (K). During the course of the investigation, the said SLR was collected from the Ld. CJM Court, Zunheboto and taken on record.
- 16.11 Investigation has established that accused ABSI Kughai Zhimomi before his arrest had paid a sum of rupees 10 lakhs in cash to SS Col. Akaho of NSCN (K) for return of arms of Zunheboto DEF. But no arms were returned by SS Col. Akaho in lieu of money received by him.
- During the course of investigation, both the accused persons, SS Col. Akaho (A-2) and SS Col. Aheto (A-3), were issued notice under section 41A Cr.P.C. but the said accused persons did not join the investigation proceedings. However a written reply has been received from accused SS Col. Aheto (A-3), through the Chairman Cease Fire Service Board Nagaland, Kohima. The contents of the reply corroborates the commission of the offence on the part of accused SS Col. Aheto(A-3) of NSCN (U) i.e. GPRN/NSCN or NSCN (KK).
- 16.13 It has further established that as the accused (A-2) and (A-3) did not

join the investigation, application was filed in the NIA Special Court at Dimapur, for initiation of legal proceedings against both accused absconders. The Special Judge, NIA issued Non-Bailable Warrant on 14.05.2014, with the direction to arrest the accused persons and to produce them before the said court on or before 16.06.2014. Again the court issued NBWs on 08.07.2014 with an open date for their execution. The arrest warrants were marked to the Superintendents of Dimapur and Zunheboto for execution. However, the accused persons are still absconding and evading arrest.

- Investigation has established that, the matter to return/recover of police arms of DEF Zunheboto, from the factions of NSCN was taken up by the NIA with the Chairman, Cease Fire Service Board, Nagaland, at Kohima. Further established that letters dated 26.03.2014 29.04.2014 and 07.07.2014 were written to the Chairman, CFSB, for return of Police arms, belonging to Zunheboto DEF by the NSCN (K) and NSCN(U) or GPRN/NSCN factions. The Chairman, CFSB further referred the matter of return of Police arms to NSCN factions. Efforts resulted in partial return of arms, to the NIA, on two instances through XXXXXXXXXXX, the then Chairman, Cease Fire Service Board Nagaland at Kohima.
- Investigation has established that on 13.05.2014 two SLR's bearing Arsenal No. 15132128 and BM-0284 were seized by the NIA from NSCN (K) faction, through the Chairman, Cease Fire Service Board, Nagaland at Kohima. On comparison with the Arsenal numbers of missing SLR's of DEF Zunheboto kote, found that both the SLR's seized did not match with the missing SLRs in question. However Khekaho Rochill Secretary CFSB NSCN(K) in his letter dated 05.05.2014 addressed to Chairman XXXXXXXXXXX of CFSB Nagaland has admitted that NSCN(K) neither contact nor threat any police official to sale out any arms to NSCN(K) rather the police official has bought the arms directly by himself to be sold to any well-wishers on which the NSCN (K) government bought it on that sale out condition. Thus it has established the acquiring of arms of DEF Zunheboto by the NSCN(K) faction.
- 16.16 It has further established that on 11.09.2014, further two SLR's bearing Arsenal numbers 15166291 and S2713 were seized by the NIA from GPRN/NSCN faction i.e NSCN(U) through the Chairman, Cease Fire Service Board, Nagaland, at Kohima. On comparison with arsenal numbers of DEF Zunheboto, it was found that the Arsenal number 15166291 matched with that of the missing SLR's of DEF Zunheboto Kote. Self-Loading Rifle (SLR) bearing Arsenal number 15166291 was a part of 60 SLR's which were issued to DEF Zunheboto from Police Central Store Chumukedima (Dimapur) on

11.09.2010 vide issue voucher no 965/Arms Cmd. Arsenal number 15166291 found also mentioned against the serial number 37 on the said issue voucher of PCS, Chumukedima and the entry regarding issuance was also found made at page no 34 of Arms Stock Ledger Volume-6, pertaining to Police Central Store Chumukedima to Zunheboto DEF. Whereas it was also found that out of 60 SLR's issued to DEF Zunheboto, only 45 SLR's had been taken into account, relating to which an entry was made at page no. 233 of the Arms /Ammunition stock ledger of DEF Zunheboto. The accused ABSI Kughai Zhimomi (A-1) intentionally did not enter the entire quantity of 60 SLR's in the Arms & Ammunition stock ledger of DEF, Zunheboto. Hence, accused ABSI Kughai Zhimomi misappropriated 15 nos. of SLR's. Further ABSI Kughai Zhimomi (A-1) sold the self-loading rifle (SLR) bearing number 15166291 to SS Col. Aheto (A-3) of NSCN(U).

17. Facts Disclosed During Investigation:

- 17.1 That main accused ABSI Kughai Zhimomi(A-1) during the course of investigation has died on 12.11.2013 due to illness. NIA has reregistered the instant case on 11.11.2013 as such accused could not be interrogated during the further investigation by the NIA.
- 17.2 Accused persons SS Col. Akaho (A-2) of NSCN(K) and SS Col. Aheto(A-3) of NSCN(U) are the active members of a terrorist gangs operating in the state of Nagaland and were found involved in acquiring the prohibited Government arms and ammunition with the intention to wage war against the Govt of India.
- 17.3 Investigation has further established that, accused ABSI Kughai Zhimomi (A-1) supplied a huge quantity of arms and ammunition of Zunheboto DEF Kote to accused SS Col Akaho (A-2) of NSCN (K). The said outfit returned 02 SLR's to NIA on 13.05.2014, but the registration number of 02 SLR's in question did not match with the actual missing SLR's of Zunheboto DEF Kote. However, the Self Loading Rifle (SLR) bearing Arsenal number 15414245 recovered from the cadre of NSCN (K) on 25.02.2013 in P.S. Zunheboto case FIR No. 11/2013 pertaining to firing by cadres of NSCN(K) on personnel belonging to one platoon of 'F' Coy of 10 Nagaland Armed Police (Indian Reserve Battalion), which on comparison matched with the missing SLR's of Zunheboto DEF Kote. Thus the SLR's of

- Zunheboto DEF Kote acquired by the accused person SS Col. Akaho (A-2) of NSCN(K) was found and recovered on 25.02.2013 from the place of incident of firing on the personnel of 10th NAP (IRB).
- 17.4 Investigation has further established that, accused ABSI Kughai Zhimomi (A-1) supplied a huge quantity of arms and ammunition of Zunheboto DEF Kote to accused SS Col Aheto (A-3) of NSCN (U). The said outfit NSCN(U) had returned 02 SLR's to NIA on 11.09.2014, bearing arsenal number 15166291 and S 2713. On comparison it was found that only arsenal number 15166291 matched with the arsenal number of missing SLR's of Zunheboto DEF Kote. Thus the SLR's of Zunheboto DEF Kote acquired by the accused person SS Col. Aheto (A-3) of NSCN(U).
- 17.5 During the course of investigation, both the FIR named accused person namely ss Col. Akaho (A-2) and ss Col. Aheto (A-3), were issued notice under section 41A Cr.P.C. but both the accused person, did not join the investigation proceedings. However written reply has been received from accused SS Col. Aheto (A-3), through the Chairman CFSB Nagaland, Kohima. Contents of the reply corroborates with the commission of the offence, on the part of accused SS Col. Aheto(A-3) of NSCN (U) i.e. GPRN/NSCN.
- 17.6 As the accused persons, did not join the investigation proceedings. Therefore an application was filed in the NIA Spl. Court at Dimapur, for initiation of legal proceedings, against both the FIR named, accused absconders. The Hon'ble Special Judge, NIA Dimapur, Nagaland issued Non Bailable Warrant on 14.05.2014, with the direction to arrest the accused persons and to produce them before the said court on 16.06.2014. Again issued NBW on 08.07.2014 with open date for the arrest of the absconding accused persons. Arrest warrants were marked, to the Superintendents of Police of Dimapur and Zunheboto for execution of the same, accused persons are still absconding and evading their arrest. Thus the co-accused persons SS Col. Akaho (A-2) and SS Col. Aheto (A-3), are yet to be arrested.

18 Charge:

- 18.1 Investigation has brought on record that the co-accused persons SS Col. Akaho (A-2) of NSCN (K) and SS Col. Aheto (A-3) of NSCN(U) during the period 2010 to 2012 entered into a criminal conspiracy with accused Late ABSI Kughai Zhimomi (A-1), the then Record Officer of Zunheboto DEF Kote and in pursuance of said conspiracy accused persons SS Col. Akaho (A-2) of NSCN (K) and SS Col. Aheto (A-3) of NSCN(U) illegally acquired the arms and ammunition with the intention to wage war against the Government of India. Therefore further Charge-Sheet should be filed under the following sections against the following accused persons.
 - 1. SS Col. Akaho of NSCN(K) under sections 120(B), 121, 122 of Indian Penal Code read with section 25 (I-A) Arms Act and section 20 of Unlawful Activities Prevention Act, 1967, as amended
 - 2. SS Col. Aheto, NSCN/GPRN under sections 120(B), 121, 122 of Indian Penal Code read with section 25 (I-A) Arms Act and section 20 of Unlawful Activities Prevention Act, 1967, as amended

The sanction for prosecution under section 45 (1) of the Unlawful Activities (Prevention) Act, 1967 as amended and sanction for prosecution under section 196 of Cr.P.C. has been obtained from the competent authority and the same is enclosed herewith.

- 18.2 The sanction for prosecution against the aforesaid accused persons under section 39 of Arms Act has been obtained from the competent authority and the same is enclosed herewith.
- 18.3 All the aforesaid offences have been committed within the jurisdiction of this Hon'ble Court. Hence, this Hon'ble Court has got jurisdiction to try the above offences.
- 18.4 It is therefore, prayed that this Hon'ble court may be pleased to take cognizance of the offences as mentioned above against the aforesaid accused persons and issue due process against the accused persons.

19. Despatched on : . . 2017

20. No. of enclosures : 05

21 List of enclosures :

- (I) Annexure A (XXXXXXXXXX)
- (II) Annexure B (XXXXXXXXXX)
- (IV) Annexure D (XXXXXXXXXX)
- (V) Annexure E (XXXXXXXXXX)

(R.S. Jamwal),
Dy. Supdt. of Police,
Chief Investigation Officer,
NIA B.O. Jammu
Camp at Dimapur.

Forwarded by

(DEBAJIT HAZARIKA, IPS) Superintendent of Police NIA Branch Office, Guwahati

Vetted and signed by