

# IN THE HIGH COURT OF SIKKIM

## ORDER SHEET

Criminal Revision ..... No. 29/2000 of 199

In Re. .... Petitioner/Appellant

Versus

Passang Sherpa ..... Respondent

Present : Mr. S. P. Wangdi, Public Prosecutor with Mr. Karma Thinlay, Asstt. Govt. Advocate for the State.

This criminal revision was registered suo motu by this Court in order to be satisfied as to the correctness, legality and propriety of the Order dated 16.2.2000 passed by Mrs. M. M. Rai, the then Judicial Magistrate, West Sikkim at Gyalshing in C.M.V. Case No. 212/99 State Vs. Passang Sherpa which runs as under:-

“ Accused absent, summons unserved since accused untraceable in Sikkim. Case file consigned to record room.”

From the record we find a very dismal state of affairs. Summons had earlier been issued to the accused for 25.11.1999. The order dated 25.11.1999 states as follows:-

“Accused absent, surety also absent after due service of summons. Hence issue N.B.W.A. against accused and notice to surety.  
To 13-1-2000”

For 13-1-2000, non-bailable warrant was issued to the Officer Incharge, Jorethang, Traffic Branch, South Sikkim describing the

accused, Passang Sherpa son of Nima Sherpa, resident of Lava, Kalimpong, A/P Jorethang. The warrant was returned unexecuted

with the report of the Process Server that on search he came to know that the accused is at Kalimpong. It is not at all clear as to

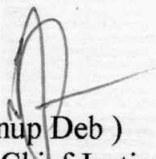
how the Process Server made a search in a place other than Kalimpong when the address of the accused was shown to be of

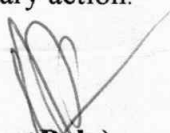
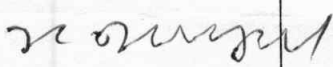
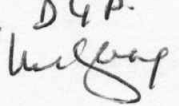
Lava, Kalimpong. This report bears the signature of Jit Man Subba. The report was countersigned by the Officer Incharge,

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
4.	11.7.2000	<p>Jorethang Traffic Branch. Prima facie, it appears that the constable concerned made false report to the effect that despite search, the accused was not found and the Officer Incharge, Jorethang Traffic Branch endorsed the report wrongly. Deliberate non-compliance of the order of the Court, prima facie, amounts to contempt of Court. Therefore, issue notice to the police constable and the Officer Incharge, Jorethang Traffic Branch as to why they should not be prosecuted for committing contempt of court. Notice be issued for 13.7.2000. A contempt case be registered separately.</p> <p>The case be put up on 13-7-2000 for hearing.</p> <p style="text-align: center;">       ( A. Deb )        Judge        25-5-2000.     </p> <p style="text-align: center;">       ( R. Dayal )        Chief Justice.        25-5-2000.     </p> <p>Present: Mr. S.P. Wangdi, Public Prosecutor with Mr. Karma Thinley, Asstt. Govt. Advocate for the State.</p> <p style="text-align: center;">...</p> <p>List it on 18.7.2000 as prayed for by the Ld. Public Prosecutor for hearing.</p> <p>Mr. Karma Thinley, Ld. Asstt. Govt. Advocate is directed to communicate the date to the opposite parties.</p> <p>A copy of the order be served upon the Ld. Asstt. Govt. Advocate for compliance.</p> <p style="text-align: right;">Sd/- ( A. DEB ) <u>Acting Chief Justice.</u></p>	

Contempt Case (Criminal) No.8 of 2000

State of Sikkim ... Petitioner  
versus  
J.M. Subba and another ... Respondents.

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	18.7.2000	<p>Present : Mr. K. T. Bhutia along with Mr. Norzang Lepcha, Advocates for the respondent.</p> <p style="text-align: center;">***</p> <p>Mr. K. T. Bhutia, learned Advocate submits that some amendments will have to be effected in the reply to the show cause filed by the respondent. One week's time is allowed for this purpose as prayed for.</p> <p>List it on 25<sup>th</sup> July, 2000 before the Division Bench.</p> <p style="text-align: center;"> ( Anup Deb ) Acting Chief Justice.</p>	
2.	25.7.2000	<p>Present : Mr. Norzang Lepcha, Advocate along with the contemnors S. K. Darnal and J. M. Subba.</p> <p style="text-align: center;">*****</p> <p>Contempt proceedings were initiated against both the contemnors namely, J.M. Subba and S.K. Darnal Since on the warrant of arrest issued to the accused Passang Sherpa in CMV Case No.212/99 giving address of the accused of Kalimpong, the Process Server C/1439 J. M. Subba made report that the accused could not be found as he was at Kalimpong despite search and S. K. Darnal, Officer Incharge, Traffic Branch endorsed the same. Since the address of the accused was given as that of Kalimpong, there was no question of making search at any place other than Kalimpong. Therefore, the report of the Process Servers and the endorsement of the Officer Incharge, Traffic Branch were wrong.</p> <p style="text-align: center;">Both the contemnors are present in Court and they have</p>	

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
		<p>tendered unconditional apology. Written apology was submitted by them on 13.7.2000. It appears to us that the Police Department need take proper steps to ensure that the Process Servers and the supervising staff know their job well. We have no reason to suspect any mala fides on the part of the contemnors. We therefore accept the unconditional apology tendered by the contemnors.</p> <p>The contempt notice is discharged. The case file be consigned to the record room.</p> <p>Let a copy of this order be sent to the Director General of Police for necessary action.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div data-bbox="470 1144 657 1381" style="text-align: center;">   <b>( Anup Deb )</b>  <b>Judge</b>  <b>25/7/2000</b> </div> <div data-bbox="917 1184 1250 1381" style="text-align: center;">   <b>( R. Dayal )</b>  <b>Chief Justice.</b>  <b>25/7/2000</b> </div> </div>	<p>Copy of order has sent to DGP.  </p>