

IN THE COURT OF THE SPECIAL JUDICIAL MAGISTRATE OF FIRST CLASS,
EXCISE COURT :: ONGOLE.

Present: **Sri R.Venkateswara Sharma**
Special Judicial Magistrate of I Class,
Excise court, Ongole.

Tuesday, this the 25th day of July, 2023

C.C. No. 2027 of 2022

Between:

The Enforcement Sub-Inspector of Police,
Special Enforcement Bureau Station,
Prohibition & Excise Station,
Chimakurthy.

... Complainant

And

Balagani Subrahmanyam
S/o Narasimha Rao, 30 years,
R/o Uppalapadu village, Podili mandal,
Prakasam District.

... Accused

This case presented before me on 19-07-2023 for hearing, in the presence of Assistant Public Prosecutor for the State and of Sri A.V.Rama Krishna, Advocate for accused, and having stood over consideration till this day, this court delivered the following:

J U D G M E N T

1. This case arises out of Cr. No.57/2020 for the offence under section 34(a) of A.P. Excise Act, 1968 (for short "Excise Act") registered by Prohibition & Excise Inspector of Chimakurthy, with the following allegations:-

2. A brief resume of the case of prosecution reads thus:-

That on 15-08-2020 at 9-00AM, PW1(M.Sukanya) Inspector of Police, SEB, Chimakurthy, in order to detect excise offences, she along with LW1(D.Dastagiri) and LW2(G.Ranga Rao), proceeded for raids, and after reaching near Musi River, Marrichetlapalem village, Chimakurthy mandal, they noticed a person carrying white colour plastic bag in front of his legs. Thereafter, on suspicion, she tried to stop him, and on seeing them, he escaped from the scene of offence by leaving

the bag near shrubs. They tried to caught hold, but in vain. She sent LW1 to Marrichetlapalem village, for securing mediators, but as nobody came forward to act as mediators, and revenue officials are not available in the village, she searched the bag and found 15 bottles of Andhra Gold Whiskey each 180ml, without HEALS, which are meant for sale in Andhra Pradesh, and identified as duty paid liquor. Thereupon, PW1 drawn sample bottle from the property found at the place of offence, sealed it, for sending it to analysis, and also sealed the remaining property, and kept it for safe custody, and later, prepared special report to that effect.

Further basing on the special report, PW1 registered a case in Cr.No.57/2020 U/sec.34-A of AP Excise Act, and issued FIR. Later, accused obtained Anticipatory Bail from the Hon'ble I-Addl. District Court, Ongole, and surrendered before SEB station, Chimakurthy, and released on bail. Later, she sent sample to FSL, and received report. Thereafter, PW2(M.Sree Nagesh) Sub-Inspector of Police, on receipt of proceedings of Deputy Commissioner, the remaining property was destroyed. Having completed the entire investigation, he charge sheeted the accused, for the offence indicated above.

3. The Court took cognizance of the offence under Section 34(a) of A.P. Excise Act, 1968.

4. Accused put in appearance before the Court, copies of documents as contemplated under section 207 Cr.P.C., are furnished to him.

5. Accused is examined under section 239 of Cr.P.C., and charge under Section 34(a) of A.P. Excise Act, has been framed, read over and explained to him, in Telugu, for which, he pleaded not guilty and claimed to be tried.

6. The prosecution in order to prove the complicity of the accused, examined PW1 and PW2 and got marked Exs.P1 to Ex.P5 and MO1 marked.

7. Accused is examined under section 313(1)(a) Cr.P.C. by explaining the incriminating material appearing from the evidence of prosecution witnesses, for which, he denied the same and reported no defence evidence.

8. I have heard the learned Assistant Public Prosecutor and learned counsel for accused.

9. Now, the point for determination is:-

“Whether the prosecution proved its case beyond all reasonable doubt that the accused committed the offences punishable under Section 34(a) of A.P. Excise Act 1968, as alleged by the prosecution”?

10. **POINT:-**

Accused has been charged on the allegation that, he was carrying property in question, namely, 15 bottles of Andhra Gold Whiskey each 180ml, without any valid license or permit, in violation of the provisions of Section 34(a) of the Act, and having noticed the same, PW1 Inspector of Police, seized the property, conducted enquiries, along with her team, registered crime, sent sample to FSL examination, and later PW2 confiscated the remaining property, filed final report, and basing on the material gathered by prosecution, accused was put to a questionnaire, explaining the contents of charge, however, his plea is one of total denial.

11. A perusal of the evidence of PW1, coupled with recitals under Ex.P1 would indicate that, PW1 along with her team LW1 and LW2 rushed to the scene of offence on 15-08-2020 at 9-00AM, found the accused was carrying the property in question, and when he left the

place of offence by leaving the property at the scene, she seized the said property covered by MO1 from the scene of offence, under Ex.P1, registered FIR, sent samples for analysis, and received analyst report, and later, PW2 after confiscation of remaining property, laid charge sheet. The evidence of LW1 and LW2 is given up by the learned Assistant Public Prosecutor.

12. It is the contention of the accused that, despite availability of number of persons at the place of offence, the police team for the obvious reasons known to it, could not secure any independent mediators, and failed to follow the mandatory provisions of section 100(4) Cr.P.C, and that, the investigating agency failed to examine any independent witness in support of its case and that, PW1 being the complainant and investigating officer only to satisfy their superiors, implicated the accused in this case.

13. It is evident from the material on record that, certain contraband/liquor was seized by PW1 from the scene of offence, on the ground that, accused was carrying the liquor bottles without any valid license. PW1 has stated that, she did not mention about the presence of independent persons in the special report, and she had not issued any notice or summons in writing to the public present at the scene, for acting as mediators, and she did not enquire their particulars. She further stated that, no notice was given to LW1 for securing mediators. PW2 has admitted that, he had no personal knowledge about the seizure of property in this case, and there is no separate destruction proceedings obtained in this case. However, for the obvious reasons known to PW1, she did not secure any independent witnesses, for acting as mediators. Therefore, in the absence of any such relevant material, either in Ex.P1 special report or in her evidence, it cannot be said that,

PW1 has made her best efforts to secure either the local inhabitants or the revenue officials for acting as mediators, and thereby she has violated the mandatory provisions of section 100(4) Cr.P.C.

14. The above circumstances throws any amount of doubt, with regard to the seizure of property in question. If really, the evidence of PW1 that, accused was carrying property in question, without license is true, she should have examined independent witnesses. Had PW1 secured independent local inhabitants for acting as mediators, the case as was projected by the prosecuting party could have been appreciated, for the reason that, if any police officer wants to seize any articles from the possession of suspected person, he/she must follow the procedure, as contemplated u/s.100(4) Cr.P.C, but in fact, such exercise has not been made by the investigating team, and no material in the form of documentary evidence is let in to support her explanation to the effect that, she tried to secure independent mediators, but none were available.

15. The offence u/s.34(a) of the Act, is made cognizable and once the excise officials are entrusted with the investigation of the cognizable offence, they become police officials, and if they failed to follow the procedure contemplated, as is referred above, the proceedings undertaken by the said agency, do not stand for judicial scrutiny. Therefore, the entire exercise of enquiries claimed to have been carried out by the investigating agency is not in accordance with the law laid down in the case of **POTHABATHULA ABBULU VS. STATE OF ANDHRA PRADESH, REPRESENTED BY ITS PUBLIC PROSECUTOR, DECIDED BY THE Hon'ble High Court OF A.P., in Criminal Revision Case No.1758 of 2005, on 06-07-2021**, wherein, his lordship has observed that, *"if the panch witness has turned hostile, seizure of property as was claimed by the Members of raiding party,*

mainly in the absence of corroboration from the panch witnesses would not be acceptable”.

16. In the instant case, admittedly, no independent witnesses are figured as mediators, for appreciating the raids conducted by PW1 and her team, and therefore, the interested testimony of PW1 and her team being police officials cannot be acted upon.

17. The Analyst report covered by Ex.P3 indicates that, the sample was received on 02-11-2020, though, it was sent on 15-08-2020 itself, according to P.W.1. There appears delay of nearly four months in receiving the report of chemical examiner. No plausible explanation, whatsoever has been offered by the prosecution, about the delay in receiving the report of Analyst, and it is one of the important circumstances, for doubting the case of prosecution.-

18. In the case at hand, except the interested testimony of Police Officials, no independent witnesses are examined and the alleged confession of the accused, is not based on sound principle of law. These circumstances make this court to record a finding of not guilty against the accused, for want of legal and acceptable evidence, which I do accordingly.

19. In the result, I find that, accused is not guilty for the offence under section 34(a) of A.P Excise Act. Accordingly, he is acquitted under section 248(1) of Cr.P.C. The bail bonds of the accused shall be in force, for a period of six months under section 437-A Cr.P.C. The MO1 sample bottle, vide CPR No.291/2022, shall be destroyed after expiry of appeal time.

Typed to my dictation directly on computer by the Stenographer, corrected and pronounced by me in open court this the 25th day of July, 2023.

Spl. Judl. Magistrate of First Class,
Excise Court, Ongole.

Appendix of evidence
Witnesses examined

For Prosecution

PW.1 : M.Sukanya(Inspector of Police)
PW.2 : M.Sree Nagesh(Sub-Inspector of police)

For Defence

-Nil-

Exhibits Marked

For Prosecution

Ex.P1 : Special Report
Ex.P2 : First Information Report
Ex.P3 : Analysis Report, dt.02-11-2020
Ex.P4 : Attested copy of proceedings of Deputy Commissioner,
dt.06-06-2022
Ex.P5 : Attested copy of destruction of proceedings, dt.15-06-2022

For Defence

- Nil -

Material Objects Marked

MO.1 : One sample bottle of Andhra Gold whiskey 180ml

Spl. Judl. Magistrate of First Class,
Excise Court, Ongole.

Typed by Sri.A.B.Srinivas, Stenographer.

// True copy //

Spl. JMFC, Excise Court, Ongole.

CALENDER AND JUDGMENT

IN THE COURT OF THE SPECIAL JUDICIAL MAGISTRATE OF FIRST CLASS,
EXCISE COURT :: ONGOLE.

Present: **Sri R.Venkateswara Sharma,**
Special Judicial Magistrate of I Class,
Excise court, Ongole.

Tuesday, this the 25th day of July, 2023

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Between:

The Enforcement Sub-Inspector of Police,
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And

Balagani Subrahmanyam
S/o Narasimha Rao, 30 years,
R/o Uppalapadu village, Podili mandal,
Prakasam District.

... Accused

Charges under section(s)	:	Sec. 34(a) of AP Excise Act
Date of occurrence	:	15-08-2020
Date of report	:	15-08-2020
Date of appearance	:	15-12-2020
Date of commencement of trial	:	23-06-2023
Date of closure of trial	:	19-07-2023
Date of hearing	:	19-07-2023
Date of Judgment	:	25-07-2023

Plea of the Accused	:	Pleaded not guilty
Finding of the Accused	:	Found not guilty

Result of the Case : In the result, I find that, accused is not guilty for the offence under section 34(a) of A.P Excise Act. Accordingly, he is acquitted under section 248(1) of Cr.P.C. The bail bonds of the accused shall be in force, for a period of six months under section 437-A Cr.P.C. The MO1 sample bottle, vide CPR No.291/2022, shall be destroyed after expiry of appeal time.

Explanation for the delay : The case was taken on file on 10-10-2022. On 28-04-2023 copies furnished to the accused. On 12-05-2023 accused was examined u/s.239 Cr.P.C., charge u/s.34(a) of AP Excise Act, framed against the accused, read over and explained to him in Telugu, for which

he denied the offence and claimed to be tried. On behalf of prosecution, PW1 and PW2 were examined, Ex.P1 to P5 were marked and marked MO1. After closure of prosecution side evidence, accused examined u/s.313 Cr.P.C., on 19-07-2023 by examining the incriminating portion of prosecution evidence in question form, in Telugu, for which he denied and reported no defence evidence, and heard arguments and pronounced the judgment on 25-07-2023. Hence, the delay.

Spl. Judl. Magistrate of First Class,
Excise Court, Ongole.

Copy Submitted to
The Hon'ble I-Addl. District & Sessions Judge, Ongole.

Copy to:
The Superintendent, Proh. & Excise, Ongole.
// True copy //

Spl. JMFC, Excise Court, Ongole.