

**IN THE COURT OF SUB- DIVISIONAL JUDICIAL MAGISTRATE,
PHULBANI, DISTRICT- KANDHAMAL.**

18.08.2023

[2(a) C.C. 88/2022]

[T.R. No. 385/2022]

**PRESENT: SRI ARIJIT DAS, LL.B
S.D.J.M., PHULBANI**

**(PR No. 05, Dated 12.05.2022 OF EXCISE, SADAR RANGE, PHULBANI-
KANDHAMAL)
(U.I.D of J.O. OD0623)**

Complainant	State of Odisha
REPRESENTED BY	Ld. A.P.P.
ACCUSED	Sanjita Pradhan , aged about 30 years, S/o- Late Panchanan Pradhan, At – Gabasaru (Kamba Sahi), PO-Adasipada, PS-Khajuripada, Dist- Kandhamal.
REPRESENTED BY	Ld. Adv. Shri Rajib Kumar Pradhan & Associates

Date of offence	12.05.2022
Date of PR/FIR	12.05.2022
Date of sanctioned PR/Charge-Sheet	12.05.2022
Date of framing of charges	23.11.2022
Date of commencement of evidence	10.01.2023
Date on which judgment is reserved	18.08.2023
Date of the judgment	18.08.2023
Date of Sentencing Order, if any	NA
Accused Details:	

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428, Cr.P.C.
1	Sanjita Pradhan	—	—	U/s.- 52(a)(i) of Odisha Excise Act	Acquitted	NA	00 days

STATUS OF THE ACCUSED PERSON: THE ACCUSED PERSON IS ON BAIL AND PRESENT BEFORE THIS COURT;

//J U D G M E N T//

The above named accused stands charged for commission of the offence punishable U/s 52(a)(i) of Orissa Excise Act for illegal possession of 10 liters of ID liquor.

2. Facts giving rise to the prosecution of the above named accused as narrated in the Prosecution Report in a nutshell are as follows:

That on 12.05.2022 at about 08.05 A.M., Inspector of Excise, Sadar Range Phulbani, Sri Sridhar Hembram along with other staffs was on patrolling duty on the village road of Kambasahi under Khajuripada PS. During patrolling they saw a person was standing on the road at Kambasahi holding one white colour plastic jerry cane. Due to suspicion they detained him and conducted search. On search they recovered 10 Liters of ID liquor from his possession. Thereafter the informant collected 500 Mls and conducted smell & tongue test, blue litmus paper test. Also he conducted hydrometer test and found to be temperature 90 degree F, the indication to be 75 and strength 40.02 degree UP. From the above test and his service experience he concluded that the liquid is nothing but ID liquor. On demand the detained person could not produce any license regarding possession of the ID liquor and further revealed his identity as Sanjita Pradhan (hereinafter referred as A1). He then seized the ID liquor in presence of witnesses and on completion of investigation submitted P.R No. 05/2022-23 U/s 52(a) (i) of Odisha Excise act against the accused to face his trial in the court of law. Hence this case.

3. The statement of the accused U/s.-313 of Cr.P.C was recorded wherein he completely denied the prosecution story & claimed to have been falsely implicated.

4. The prosecution has to prove the following points in order to bring home the guilt of the accused:

i) Whether on **12.05.2022** at about **08.05 A.M.**, on the village road of Kambasahi, the accused was standing at Kambasahi square holding one white colour plastic jerry cane containing **10** liters of ID liquor and the same were seized from his exclusive and conscious possession?

ii) Whether on the relevant date, time and place, the liquid recovered and seized were nothing but ID liquor?

5. In order to prove the case, prosecution has examined as many as two **(2)** witnesses. Out of which **P.W.2** is the informant-cum-investigating officer and **P.W.1** is the official-accompanying cum seizure witnesses. On the other hand, the defence has examined none on its behalf.

6. For better appreciation of evidence, the testimony

of the informant-cum-I.O shall be discussed first. **P.W.2** the informant-cum-I.O of this case has completely corroborated as to the fact of patrolling & seizure on the alleged day as put forth by him in his Prosecution Report. He deposed that he conducted smell & tongue test, blue litmus paper test. Also he conducted hydrometer test and found to be temperature 90 degree F, the indication to be 75 and strength 40.02 degree UP. He proved the hydrometer chart which was marked as **Ext.P-3¹/P.W.2** and **Ext.P-3²/P.W.2** is his signature thereon. It is his further evidence that as the accused failed to produce any license or authority to possess the same, he seized 10 liters of ID liquor containing in a white colour plastic jerry cane in presence of witnesses. He proved the seizure list which was marked as **Ext.P-1¹/P.W.2** and proved his signature on it marked as **Ext.1²/P.W.2**. He also proved the spot map which was marked as **Ext.P-2¹/P.W.2** & **Ext.P-2²/P.W.2** is his signature thereon. In his cross-examination, he deposed that the spot is a busy place. He further stated that he has not submitted any distillery training certificate in this case and he has not seized any ID proof from the accused. He also admitted that he has

not produced the seized articles before the court as it was kept in their Excise Malkhana. Further he has also stated that he have not cited any local persons to be a witness to the seizure.

6(a) P.W.1 is the official accompanying-cum-seizure witnesses have completely corroborated the testimony of **P.W.2** in relation to the fact of patrolling, detention & search of A1, recovery of 10 liters of ID liquor from the possession of A1 and seizure of the same. Then the complainant seized the same and prepared the seizure list. He proved his signature on the seizure list, spot map and hydrometer chart which were marked as **Ext.P-1/P.W.1, Ext.P-2/P.W.1 and Ext.P-3/P.W.1**. In his cross examination he has testified that he cannot say whether any house was situated near the spot of seizure. He has further testified that all the seized ID liquor was destroyed at the spot and it didn't find the seized article in Court today. He has also admitted that no ID proof was seized from the accused to ascertain his identity. In this case the prosecution has not cited any independent witness to strengthen its case.

7. In order to prove the offence U/s.-52(a) (i) of

Orissa Excise Act, the prosecution has to prove that:

- i) The seized article is nothing but I.D liquor &
- ii) The same were seized from the exclusive and conscious possession of the accused.

8. Perused the evidence on record and heard the argument from both the counsels. From the evidence on record it is found that the occurrence took place on the village road of Kambasahi at about 08.05 A.M. Further on perusal of **Ext.P-2¹/P.W.2**, it can be ascertained that the spot is village road. But on perusal of the record it is found that the prosecution has not produced any independent witness to support the prosecution case. Considering the time and the spot of occurrence, it is doubtful that the prosecution could not manage to produce any other independent witness who could support the story of the prosecution.

8.(a) While appreciating the evidence of witnesses it is found that both the witnesses who supported the prosecution story are the official witnesses. Though it is the settled principle of law that conviction can be based upon the evidence of only official witnesses but

it must be clear, cogent and free from all infirmities. While appreciating the evidence of **P.W.1** and **P.W.2** it is found that nothing has been done in presence of independent witness. Further the seized liquor was never sent for chemical examination. No certificate in regard to the formal distillery training of the I.O. has been submitted before this Court. In **Jhadia Nayak v. State 2010 (46) OCR 659** the Hon'ble court held that 'non examination of seized article by chemical analyst affects the prosecution case negatively.

8.(b) The I.O has deposed that he conducted the blue litmus test and concluded that the liquid is ID liquor. In **Suman Das v. State of Orissa (1993) 6 OCR 612** it was held that 'blue litmus test only shows that a particular liquid is acidic in nature and nothing more. So far as hydrometer test is concerned, it is a test just to show the density of a liquid'. The combined effect of blue litmus paper test and hydrometer test shows that the liquid is acidic in nature and the density is similar to that of liquor.

8(c) Therefore, keeping in view the overall conspectus of the case that, that the seized articles were never produced before the court for identification, that the

seized articles were never sent for chemical examination and the decision cited above, I am of the considered view that in a case of this nature where substantive sentence of imprisonment is compulsory after conviction, a heavy duty is cast upon the prosecution to establish its case beyond all reasonable doubt and in the present case prosecution has failed to discharge the burden imposed on it by law of satisfying this court beyond reasonable doubt that the accused was in Exclusive & Conscious possession of I.D. Liquor and that the seized liquid was nothing but I.D. Liquor.

9. In the result, the accused is found not guilty for the offence punishable **U/s-52(a) (i) Orissa Excise Act** and is acquitted thereof **U/s. 248(1) of Cr.P.C.** The bail bond of the accused person shall remain in force till next 6 months from today as per Section **437-A of Cr.P.C.**

10. The seized liquor be destroyed after four months of expiry of the period of limitation for appeal, if no appeal is preferred and in case of appeal, the disposal order shall be guided by the order of the Appellate Court.

11. Enter the case as mistake of fact.

Sd/-
S.D.J.M., PHULBANI
18.08.2023

This judgment is typed to my dictation and corrected by me and pronounced in the open court today on this the **18th day of August 2023** under my hand and seal of this court.

Sd/-
S.D.J.M., PHULBANI
18.08.2023

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES		
A. Prosecution witnesses		
RANK	NAME	NATURE OF EVIDENCE
P.W.1	Sri Amarjeet Sahoo	Official Witness
P.W.2	Sri Sridhar Hembram	Informant cum Investigating Officer
Defence Witnesses		
RANK	NAME	NATURE OF EVIDENCE
Nil	Nil	Nil
C. Court Witnesses		
RANK	NAME	NATURE OF EVIDENCE
Nil	Nil	Nil
LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. Prosecution Exhibits		
Sl. No.	Exhibit Number	Description

1	Ext.P-1/P.W.1	Signature of P.W.1 on the Seizure list
2	Ext.P-1 ¹ /P.W.2	Seizure List
3	Ext.P-1 ² /P.W.2	Signature of P.W.2 on the Seizure list
4	Ext.P-2/P.W.1	Signature of P.W.1 on the Spot map
5	Ext.P-2 ¹ /P.W.2	Spot Map
6	Ext.P-2 ² /P.W.2	Signature of P.W.2 on the Spot map
7	Ext.P-3/P.W.1	Signature of P.W.1 on the Hydrometer chart
8	Ext.P-3 ¹ /P.W.2	Hydrometer chart
9	Ext.P-3 ² /P.W.2	Signature of P.W.2 on the Hydrometer chart
B. Defence Exhibits		
Sl. No.	NAME	NATURE OF EVIDENCE
Nil	Nil	Nil
C. Court Exhibits		
Sl. No.	NAME	NATURE OF EVIDENCE
Nil	Nil	Nil
D. Material Objects		
Sl. NO	Material Object	Description
Nil	Nil	Nil

Sd/-
S.D.J.M., PHULBANI
18.08.2023