

**In the Court of the Special Judicial Magistrate of First Class,
(Prohibition and Excise Cases), Anantapuramu
Present: Sri A. Omkar,
Special Judicial Magistrate of First Class,
(Prohibition and Excise Cases), Anantapuramu
day, the 17th Day of April, 2023**

Calendar Case No.1923 of 2022

Between:-

State Represented by Sub Inspector of Police,
Anantapuramu SEB P.S.,

...Complainant.

AND

1. Goridindla Pothanna, aged 40 years, S/o.Late G.Linganna,
2. Tanniru Ramanjineyulu, aged 66 yrs, S/o.Late T.Anjineyulu

Both are residing at Madigubba Village, Atmakur Mandal.

...Accused 1&2

This case came before me on 21.03.2023 for final hearing before me in the presence of APP for the state and of **Sri A.Sreekanth Reddy**, Advocate for accused and upon hearing both sides and having perused the material on record, this court delivered the following:

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

1) The State represented by Sub-Inspector of Police, Anantapuramu Police Station filed charge sheet against accused in Cr.No.259/2019 for the offence punishable U/Sec. 34 (a) of AP Excise Act.(for brevity of A.P.E.Act).

2) The case of the prosecution is that on 15.12.2019 at 9.30AM, LW.3 along with his staff raided at Madigubba Cross road of Anantapuramu to Sanapa road and found the accused, they were in possession of one white polythene bag, on seeing them, they tried to escape from there, they stopped and detained them. On enquiry they revealed their identity particulars and they admitted that the white polythene bag containing 1) 50 Nips of Old Label Fine Grain Whiksy, 2) 10 Nips of Old Label Fine Grain Whiksy bottle (180ml) for sale in A.P. only, duty paid liquor bottles without bills and labels. LW.3 arrested the accused and seized property under cover of special report. LW.3 registered a case in Cr.No.259/2021 U/sec.34(a) of A.P.Excise Act of Anantapuramu SEB P.S., and accused persons were sent to judicial custody. LW.3 drawn sample from bottle ID arrack and sent for chemical analysis Report to Chemical Examiner, Govt., Regional Excise Laboratory, Chittoor, vide C.E.No.66/2020, dated 27.10.2020 in S.No.568 and he opined that the sample is Indian made liquor. After completion of investigation he filed charge sheet in this case.

- 3) After filing charge sheet and required documents, the cognizance was taken for the offence U/s.34(a) of A.P Excise Act, 1968.
- 4) On appearance of accused, copies of case records were furnished to him as required u/s.207 Cr.PC.
- 5) On 12.12.2023, accused 1 & 2 were examined under Sec.239 of Cr.P.C by explaining the substance of accusation levelled against them in the charge sheet, for which, they denied. Having considered the submissions of both sides and also taking into consideration the material placed before this Court. Charge was framed against accused for the offence punishable U/s.34 (a) of AP Excise Act. Charge was read over and explained to them in Telugu language. For which, they pleaded not guilty and claimed the case to be tried. Thus, the case was posted for trial.
- 6) In order to prove the case, prosecution got examined Pws.1 and 2 and got marked Ex.P1 to P4 on behalf of the prosecution and on the other hand, no witnesses were examined and no documents are marked on behalf of accused.
- 7) After closure of the prosecution side evidence, on 27.03.2023, accused 1 & 2 were examined under Section 313 Criminal Procedure Code by explaining the incriminating evidence of prosecution in Telugu, for which they denied and reported no defence evidence. No witnesses were examined and no documents were marked by the defence.
- 8) Heard arguments of prosecution and defence. Perused the entire record.
- 9) The contention of the learned Assistant Public Prosecutor is that the prosecution has examined PW.1 & 2 to prove the guilt of the accused for the offence U/s.34 (a) of AP Excise Act and that without having any license, the accused was in possession of the liquor bottles which were seized by PW.2, that no inconsistent statement were made by PW2 and as such the accused is liable to be convicted for the offence U/s.34 (a) of AP Excise Act.
- 10) Per contra, the contention of the learned counsel for the accused 1 & 2 are that the accused were falsely implicated in this case only for statistical purpose and nothing else and the entire proceedings were drafted in the Police Station

itself and prayed this court to acquit the accused 1 & 2.

11) Now the point arose for determination is:

“Whether the prosecution proved the guilt of accused for the offence punishable U/Secs.34 (a) of AP Excise Act beyond all reasonable doubt”?

12) **POINT:-**

i). P.W.1 and 2 who are police officials at the time of arresting the accused and seizing the contraband deposed that no mediators were present as none of them came forward.

ii). **PW.1-D.Geetha, Police Constable**, deposed that on 15-12-2019 at 9-30 AM, LW3/Nagaraju, Sub-Inspector of Police along with her and other staff proceeded and reached Madigubba cross road on Anantapuram to Sanapa road and they found Two male persons by holding a white plastic bag in their hand and on seeing them, they tried to skulk away. They caught hold the accused and interrogated them and disclosed their names and identity particulars as **POTHANNA AND RAMANJINEYULU**. LW3 searched the bag and found 1)50 NIPS OF OLD LABEL FINE GRAIN WHISKY (2) 10 NIPS OF OLD LABEL FINE GRAIN WHISKY BOTTLES OF 180 ML. LW.3 arrested of accused and seized the liquor along with the lifted samples under the cover of special report. On the dictation of LW3, he drafted special report . Ex.P.1 is special report.

ii) **PW.2-K.Nagaraju, SI of Police**, deposed that on 15-12-2019 at 9-30 AM he along with PW1 and other staff proceeded and reached Madigubba cross road on Anantapuram to Sanapa road and they found Two male persons by holding a white plastic bag in their hands and on seeing them they tried to skulk away. They caught hold the accused and interrogated them and disclosed their names and identity particulars as **POTHANNA AND RAMANJINEYULU**. He searched the bag and found 1)50 NIPS OF OLD LABEL FINE GRAIN WHISKY (2) 10 NIPS OF OLD LABEL FINE GRAIN WHISKY BOTTLES OF 180 ML. LW.3 arrested of accused and seized the liquor along with the lifted samples under the cover of special report. It is marked as Ex.P.1. He registered the contents of special report /Ex.P.1 as a case in Cr.No. 259/2019, u/sec 34(A) of A.P.Excise Act and issued FIR is marked

as Ex.P.2. He submitted the copies of FIR to officers concerned. He got produced the accused before court. During the course of investigation he got forwarded the lifted samples to government laboratory for chemical analysis and report through letter of advise. Later he received analysis report. It is marked as Ex.P.3. After completion of investigation LW7/Haseena Banu filed chage sheet in this case.

13) To bring home the guilt of the accused for the offence punishable U/s. 34 (a) of A.P Excise Act, the prosecution shall prove that the accused and selling AP only.

14) Before adverting to the rival contentions made on both sides and also before delving into the evidence adduced by the prosecution witness, it is necessary to have a look at section 42 of the AP Excise Act, 1968 which deals with regard to the presumption as to the commission of the offence in certain cases.

The said Section reads as follows;

“Sec.42 : Presumption as to commission of offence in certain cases:-

In prosecutions U/s.34, [Sec.37 and 37-A], it shall be presumed, until the contrary is proved, that the accused person has committed the offence punishable under that section in respect of -

(a) any intoxicant, or

(b) any still utensil, implement or apparatus whatsoever in the manufacture of any intoxicant other than toddy, or

(c) any materials which have undergone any process towards the manufacture of an for the possession of which he is unable to account satisfactorily”.

The above said section would make it clear that there shall be a presumption stood in favour of the prosecution for the offences U/s.34, 37, 37-A, which mandates that it shall be presumed until the contrary is proved that the accused persons have committed the offence punishable under that section in respect of any intoxicant, any utensil, implement or apparatus in the manufacture of any intoxicant other than toddy or any materials which have undergone any process to the manufacture of an intoxicant and from which intoxicant has been manufactured when the accused is unable to account satisfactorily. To avail the said presumption, it is initially for the prosecution to establish that the accused

was possession of liquor bottles. To prove the same, the prosecution has examined PW.1 & 2.

5) On reading of the testimony of P.W.2, this Court does not find any inconsistent statement made by him with regard to seizure of the property from the possession of accused and the ocular evidence of P.W.2 is corroborated by the documentary evidence under Exs.P.1 to P.4 and as such the prosecution has successfully discharged the initial burden and as such, the prosecution is entitled to the presumption under Section 42 of the A.P. Excise Act.

16) The burden of rebutting the presumption by the accused is not as high as that of the burden of proving the case by the prosecution. If the accused succeeds in placing positive evidence, the presumption will be disappeared and again the prosecution is not entitled to the said presumption and it has to prove its case against the accused beyond reasonable doubt.

17) Before conducting any search as per sub-section (4) of Section Sec.100 of Cr.P.C, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available or willing to be a witness to the search to attend and witness the search and may issue an order in writing to them or any of them so to do.

The above said section would deal about before making the search under that chapter i.e., Chapter VII the procedure to be followed by the Investigating Officer.

18) In the present case P.W.1 and PW.2 who are police officials deposed that except them no independent mediators participated in the raid creates a doubt in very case of the prosecution and the same would be sufficient to rebut the presumption stood in favour of the prosecution and as such the accused has successfully rebutted the presumption stood in favour of the prosecution. Now, it is for the prosecution to prove the guilt of the accused beyond reasonable doubt. The entire testimony of PW.1 & P.W.2 are silent as to from which shop the accused person purchased the liquor bottles and no investigation was done to that effect

to drag the accused into the offence under Section 34(a) of A.P. Excise Act. Admittedly no identity slips were affixed on the seized property and no explanation has been offered to that effect. The reasonable doubt left by the prosecution with regard to the very seizure of the bottles from the possession of the accused persons creates doubt in the mind of the court as to the entire case of the prosecution.

19) At this juncture it is pertinent to refer a decision made in **1994 (2) ALT (Cri. P.69 (AP) Botcha Raju VS State Rep. By the Inspector of Police,Vizianagaram Rural Circle.** Where in it was held that the conviction cannot be given basing on the sole evidence of the police officer without corroboration by disinterested witnesses. Hence, the prosecution has failed to prove its case against the accused for the offence punishable under Section 34(a) of A.P. Excise Act. Hence, the point is answered against the prosecution.

20) In the result, the accused 1 & 2 are found not guilty for the offence punishable U/s.34 (a) of A.P. Excise Act and they are acquitted U/s.248 (1) of Cr.P.C and they are set at liberty. The bail bonds of accused and their sureties shall remain in force till six months as per the provisions of Section 437-A Cr.PC.

Typed to my dictation by the stenographer, corrected and pronounced by me in open court, this the 17th day of April, 2023.

Sd/- Sri.A.Omkar,
Special Judl Magistrate of I Class,
Prohibition and Excise Cases,
Ananthapuramu.

Appendix of Evidence
Witnesses Examined

Prosecution

PW1 : C.Narendra Babu
PW2 : V.Kiran Kumar Reddy

Defence

Nil

Exhibits marked for Prosecution

Ex.P1 : Police proceedings.
Ex.P2 : First information Report
Ex.P3 : Analysis Report

Exhibits marked for Delfence:Nil
Mos marked on behalf of :NIL

Spl. J.F.C.M, P&E/ATP.

CALENDAR AND JUDGMENT**District :: ANANTHAPURAMU.****CALENDAR CASES TRIED IN THE COURT OF SPECIAL JUDICIAL FIRST CLASS
MAGISTRATE FOR PROHIBITION AND EXCISE CASES, ANANTAPURAMU.**

Date of Offence	Report or Complaint	Apprehension of accused	Released on bail	Commencement of trial	Close of trial	Sentence Order
26.03.2021	26.3.2021	26.3.2021	01.04.2021	21.2.2023	28.02.23	03.04.2023

Calendar and Judgement in C.C.No.1923/2022 on the file of Special Judicial First Class Magistrate for Prohibition and Excise Cases, Ananthapuramu.**Complainant:** The Sub-Inspector of Police, Anantapuram SEB Police Station.**Crime No: 259/2019**

Name of the Accused	Age	Father's or Name	Religion	Calling	Residence	Mandal
G.Pothunna	40 yrs	Late G.Linganna	Hindu	---	Madigubba Village	Atmakur
T.Ramanjineyulu	66 yrs	Late T.Anjineyulu	Hindu	---	Madigubba Village	Atmakur

Offence: U/Sec.34 (a) of AP Excsie Act.**Finding:** Accused is found not guilty.

Sentence: In the result, the accused 1 & 2 are found not guilty for the offence punishable U/s.34 (a) of A.P. Excise Act and they are acquitted U/s.248 (1) of Cr.P.C and they are set at liberty. The bail bonds of accused and their sureties shall remain in force till six months as per the provisions of Section 437-A Cr.PC.

Explanation for delay: On 12.12.2022 accused 1 & 2 were examined under Section 239 Cr.P.C. During the course of trial, PW.1 & 2 were examined and marked Exs.P1 to P4. On 27.03.2023 accused 1 & 2 were examined U/s.313 Cr.P.C, they denied the same and reported no defence evidence. Heard both sides. Judgment pronounced on 17.04.2023. Hence, the delay.

Sd/- Sri.A.Omkar,
Spl.Judl Magistrate of First Class
Prohibition and Excise Cases,
Ananthapuramu.

Copy submitted to the Hon'ble I Addl. Sessions Judge, Anantapuramu.

//True Copy//

Spl. Judicial Magistrate of I Class,
Proh. & Excise Cases, Anantapuramu

Dis. No. _____ Dt. _____