

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE
BERHAMPUR, GANJAM.**

**Present : Smt. Pragyan Paramita Pratihari, B.A. LL.B. (Hons).,
S.D.J.M., BERHAMPUR, Dist- Ganjam.**

JO CODE-OD-00653

Dated this the 17th day of February, 2024.

2(a)CC. 185/2022

T.R. No. 09/2024

(Arising out of Berhampur No.1, Excise station PR No.29/2021-2022 U/s. 52
(a) of Orissa Excise Act)

DATE OF OFFENCE:	27.01.2022
DATE OF FIR:	27.01.2022
DATE OF CHARGESHEET/P. R:	27.01.2022
DATE OF FRAMING OF CHARGE/ SUBSTANCE OF ACCUSATION STATED:	18.07.2023
DATE OF COMMENCEMENT OF EVIDENCE:	03.11.2023
DATE ON WHICH JUGDMENT IS RESERVED/ARGUMENT:	17.02.2024
DATE OF THE JUDGMENT:	17.02.2024
DATE OF THE SENTENCING ORDER:	
COMPLAINANT:	STATE OF ODISHA
REPRESENTED BY:	M. Palo, A.P.P, BERHAMPUR
ACCUSED:	MUKESH SAHU, AGED ABOUT 22 YEARS, S/O- PRADEEP KUMAR SAHU, AT-NITRA SAHI, NEAR GATE BAZAR,

	PO- OLD BUS STAND, PS-B.TOWN, DIST- GANJAM
REPRESENTED BY:	SRI KISHORE CHANDRA SAHU, ADVOCATE AND ASSOCIATES, BERHAMPUR

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 UNDERGON E DURING TRIAL FOR PURPOSE OF SECTION 428, Cr.P.C
1	MUKESH KUMAR SAHU	IO SERVED 41 (A) Cr.P.C No- tice	18.07.2023	U/s. 52(a) of Orissa Excise Act	ACQUITTED	-	-

J U D G M E N T

The above named accused faced his trial for the commission of offence punishable U/s. 52(a) of Orissa Excise Act on the allegation of possessing 8 ltrs of I.D liquor, without having any valid license or authority.

2. The prosecution case in brief is that:- on dtd.27.01.2022 at about 2.00 P.M., when the Berhampur-I Excise station performed patrolling duty at Gate Bazar area. During that they found the accused to be proceeding in a village road by holding a plastic jerrycane in a suspicious manner. Then they detained him and on search recovered 08 ltrs of I.D liquor from the possession of the accused. On demand the accused could not produce any document to justify his possession for which they seized the liquor in presence of witnesses and brought the accused along with the seized liquor to the P.S. Thereafter, IO took up investigation of this case and during investigation he examined witnesses. After completion of investigation, he submitted Prosecution Report U/s. 52(a) of Orissa Excise Act against the accused person to face his trial in the court of law.

3. The plea of the defence is one of complete denial of the alleged occurrence and of false implication in this case.

4. The points need to be determined in this case are as follows:-

(I) Whether on dtd 27.01.2022 at about 02.00 P.M., At village Nitra Sahi, Gate Bazar area, the accused was in possession of 8 ltrs of I.D liquor without having any license or authority ?

(II) Whether aforesaid date, time and place the alleged poly pouches were recovered and seized from the exclusive and conscious possession of the accused person ?

(III) Whether the seized articles were nothing but I.D liquor ?

5. In order to substantiate the case, prosecution examined three witnesses i.e., P.W.1 is the Excise constable, P.W.2 is the Independent witness. P.W.3 is the ASI of Excise. Prosecution has marked some exhibits vide Ext.1 to Ext.2³ in its side. On the other hand, the defence did not adduce any oral or documentary evidence No.M.Os.

6. To warrant a conviction U/s. 52 (a) of Orissa Excise Act, the prosecution must prove that the accused was in exclusive and conscious possession of one jerry bag containing I.D liquor without any authority.

7. During the course of evidence P.W.3, ASI of Excise in his cross examination stated that they went to patrolling duty in their official vehicle. Driver of that vehicle maintains a log book for such vehicle. But he has not submitted the extract of log book entry of that patrolling date in this case. He stated that the place of seizure was a crowded place having some residential structures adjacent to it. He admitted that blue litmus turns red if comes in contact with any acidic substance. He further stated that he sealed the sample and rest liquor in this case on spot and he pasted P.W.2 independent witness in his cross examination stated that the he was not examined by police in connection to this case. He put his signatures on some papers at the instance of police. P.W.1 in her cross-examination stated that he has not submitted any documents to prove his patrolling duty on that day. He further stated that though the spot was a local public place having some houses but he does not know the name of the house owners. He further stated that he went to patrolling duty in their office vehicle but he does not remember its number. He stated that ASI measured that liquor on spot with one liter measurement and kept it

aside with another jarkin. He stated that he cannot see the seized liquor in side the court.

8. It was held in ***Minaketan Muduli Vrs. State of Orissa 2002(II) OLR 647*** that prosecution should make all endeavour to get the seized materials tested by chemical analysis. That may be regarded as one of the surest test to establish that the seized material was any kind of Liquor. Further burden lies on the prosecution to prove to establish through clear cogent and unimpeachable character of evidence that the police officer who intending to prove the seized articles to be liquor must have past experience as well as special training so as to bring his evidence within the fold of expert of evidence. But in the present case in hand no chemical examination report is exhibited as a documentary evidence on behalf of the prosecution and the reasons for such is also not explained in the case record by the prosecution in any manner.

9. During the course of argument, the learned defence Counsel vehemently urges that there is no evidence on record that the seizure was made from the exclusive and conscious possession of the accused and he has been

falsely implicated in this case. He also submits that the seized article has not been produced in court. On the above score, he submits to acquit the accused. On the other hand, the learned A.P.P. contends that the evidence is sufficient to prove the occurrence. While two contrary contentions are raised, it is felt essential to scrutinize the evidence available on record to examine the pros and cons of the prosecution case as well as the defence plea.

10. On scrutinization of evidence available on record, it is found that there is no witness supported the factum of seizure. Thus, the entire case of prosecution is based upon the evidence of P.Ws. 1 and P.W.2. Law is well settled that conviction can be based on the evidence of official witnesses, if the same is found to be consistent and credible. Even the evidence of official witness can be assessed and accepted.

The Hon'ble High Court of Orissa in the case of Jhadia Naik V. State reported in 2010 (46) OCR 659, vide Para-6 has observed inter-alia that:-

“In cases of this nature where substantive sentence of imprisonment is compulsory after conviction, a heavy duty is cast upon the prosecution to establish the case beyond any reasonable doubt.”

From the above discussions, it is found that the evidences of prosecution witnesses is wholly inconsistent, non-corroborative and doubt in respect of the alleged recovery and seizure, especially, when the entire case revolves round the seized articles. For all the aforesaid reasons, it is found that a doubt is created as regards to the alleged conscious and exclusive possession of the accused over the seized articles.

11. In a case U/s. 52(a) of Orissa Excise Act the fact of seizure from the exclusive and conscious possession of the accused should be proved strictly but in the case in hand there is one witness to the seizure who has not corroborated regarding the factum of seizure. The fact of seizure of the I.D liquor from the exclusive and conscious possession of the accused has not been proved.

Considering the above fact and circumstances of this case, I am of the view that there is no iota of evidence against the accused to substantiate his involvement in commission of the alleged offence. Therefore, it can safely be concluded that prosecution has been failed to prove its case against the accused beyond all reasonable doubt for which the accused is entitled to an acquittal.

12. In the result the accused is found not guilty of the offence U/s.52(a) of Orissa Excise Act and he is acquitted there from U/s.248 (1) of Cr.P.C. Accused be set at liberty forthwith and his bail bonds be cancelled. The accused is on bail. He is directed to furnish bail bond as per the provision of Sec. 437(A) of Cr.P.C.

The seized liquor be destroyed after expiry of four months of period of limitation of appeal if no appeal is preferred and in case of appeal subject to the order of the Hon'ble Appellate Court.

Enter this case as 'mistake of fact'.

Sub- Divisional Judicial Magistrate.

Berhampur.

The judgment is typed as per my dictation corrected by me and pronounced in the open court on this the 17th day of February, 2024 given under my hand and seal of the court.

Sub- Divisional Judicial Magistrate.

Berhampur.

A. PROSECUTION WITNESSES:

RANK	NAME	
P.W.1	Sachita Dungdung	Excise constable
P.W.2	Sankar Kumar Sahu	Independent witness

P.W.3	Ajaya Kumar Sahoo	ASI of Excise
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B. DEFENCE WITNESSES:

RANK	NAME	NATURE OF EVIDENCE
-	-	-

C. COURT WITNESSES:

RANK	NAME	NATURE OF EVIDENCE
-	-	-

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**A. PROSECUTION EXHIBITS:**

SL NO.	EXHIBIT NO.	DESCRIPTION
1	Ext.P-1-P.W.1	Seizure list
2	EXT.P-1 ¹ -P.W.1	Signature of P.w.1 on Ext.P-1
3	EXT.P-1 ² - P.W.3	Signature of P.W.2 on Ext.P-1
4	Ext.P-1 ³ -P.W.3	Signature of P.W.3 on Ext.P-1
5	Ext.P-2-P.W.1	Signature of P.W.1 on Spot Map
6	Ext.P-2 ¹ -P.W.1	Signature of P.W.2 on Spot Map
7	Ext.P-2 ² - P.W.3	Spot map
8	Ext.P ³ -P.w.3	Signature of P.W.3 on Ext.P-2 ²

B. DEFENCE EXHIBITS:

SL NO.	EXHIBIT	DESCRIPTION
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	NO.	
-	-	-

C. COURT EXHIBITS:

SL NO.	EXHIBIT NO.	DESCRIPTION
-	-	-

D. MATERIAL OBJECTS:

SL NO.	M.O NO.	DESCRIPTION
-	-	-

S.D.J.M., Berhampur