

KATK920010262023



1

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC, AT
TIPTUR**

-: Present:-

**SRI. BHARATH CHANDRA K. S. B.A.L.L.B,
PRL. CIVIL JUDGE & JMFC,
TIPTUR.**

**Dated, the 14th day of July 2026
Criminal Case. No.763/2023**

Complainant: State by Excise Police Station Tiptur
(By : Learned Asst. Public Prosecutor)

- V/s -

Accused: Shivashankar S/o Late Sankappa
a/a: 45 year,
R/at: Kotanayakanahalli village,
Kasaba Hobli, Tiptur.

(By Sri. CV Advocate)

- | | |
|------------------------------------|------------|
| 1. Date of commission of offence : | 11.10.2022 |
| 2. Date of report of offence: | 11.10.2022 |
| 3. Date of recording evidence: | 27.11.2023 |
| 4. Date of closing evidence: | 25.02.2026 |



5. Offence complained of : U/sec. 32 and 38(A) of K E Act 1965
6. Opinion of the Judge : As per the final order

Sd/-
(BHARATH CHANDRA K.S.)
PRL. CIVIL JUDGE & JMFC,
TIPTUR.

J U D G M E N T

The jurisdictional Excise Inspector has filed the Police report U/sec 173 (2) of Code of Criminal procedure, 1973 (hereinafter referred to as 'Cr.P.C') and U/Sec 56 of Karnataka Excise Act, 1965 (hereinafter referred to as 'K.E.Act) against the accused alleging the commission of offences punishable U/sec. 32 and 38(A) of K E Act 1965.

2. The case of the prosecution in nutshell is as under:-

It is the case of the prosecution that on 11.10.2022, at about 11:30 a.m., when CW.1, along with his staff, was on routine rounds on B.H. Road, Tiptur Town, he received credible information over the telephone that the accused was illegally in possession of liquor at his residence. Acting upon the said information, CW.1, along with his staff, proceeded to the house of the accused and conducted a raid at about 12:00 noon. During the raid, they found a cloth bag kept in the kitchen of the accused's house containing several tetra packs of liquor measuring a total quantity of 10.440 litres.



Upon enquiry, it was revealed that the accused was in possession of the said liquor without holding any valid licence or permit as required under law. Thereby, the accused is alleged to have committed the offence punishable under Section 32 and 38(A) of the Karnataka Excise Act.

3. Thereafter, based on the seizure panchanama conducted by the CW-1, Cw-1 himself registered the FIR under Cr.No.16/2022 for the offences punishable **U/sec. 32 and 38(A) of K. E. Act**, against the accused. It is stated that the investigation has been conducted and upon completion of the investigation, I.O. has submitted the Final Police Report U/sec 173 (2) of Cr.P.C and U/Sec 56 of Karnataka Excise Act, against the Accused for the offences punishable **U/sec. 32 and 38(A) of K. E. Act**.

4. As there were sufficient materials available in the Final report to proceed against the accused, this Court took cognizance for the offences punishable **U/sec. 32 and 38 (A) of K. E. Act**, against the accused. Accordingly this criminal case was registered and summons was issued to the Accused.

5. in pursuance of the summons issued, the accused appeared before the court through his counsel and was enlarged on bail. Copy of the Police Report and other related documents were furnished to the accused in compliance of Sec.207 of Code of Criminal procedure, 1973.

6. Heard both sides on framing of charges. Upon consideration of the of the police report and the documents sent along with it under section 173 and after hearing both



sides, this court found that there were sufficient materials to frame charge against the accused. The charge for the offences punishable **U/sec. 32 and 38(A) of K. E. Act** was framed against the accused and the same was read over and explained to the Accused in the language best known to him. The accused pleaded not guilty and claimed to be tried. Thereby the case was set down for prosecution evidence.

7. To establish the guilt of the accused the prosecution got examined PW.1 to 5 witnesses. The prosecution in support of its case, got marked Ex.P.1 to 13 documents with sub markings. Further the prosecution got marked material object as MO.1 and closed its side.

8. As there were material incriminating circumstances available against the accused in the evidence lead by the prosecution. The accused was called upon and examined under section 313 of Cr.P.C. The accused denied all the incriminating circumstances available against him. The accused did not choose to lead any evidence on his behalf. Hence case was posted for arguments after the compliance of Section 437-A of Cr.P.C, i.e. after taking surety.

9. Heard the arguments of Learned APP as well as the learned advocate appearing on behalf of the accused and perused the materials available on record.

10. Upon going through the facts and circumstances of the prosecution case, the following points arise for the consideration of this court: -



1) Whether the prosecution beyond all reasonable doubt prove that on, 11-10-2022 the accused being the owner has used his house to store illegal liquor and thereby committed the offences punishable U/sec. 38(A) of K E Act?

2) Whether the prosecution beyond all reasonable doubt proved that on the above said date, time and place the accused person without having license he had stored the alcohol illegally for the purpose of sale and thereby the accused committed an offence punishable U/sec. 32 of K E Act ?

3) What Order?

11. On hearing the arguments and on perusal of the materials placed on record, this court answers the above points as hereunder :-

Point No.1:- In the Negative

Point No.2:- In the Negative

Point No.3:- As per final order

for the following :-

REASONS

12. Point No.1 and 2:- As these points are interlinked with each other and also similar evidence is led on all these points, this court has taken all these points together for common discussion, in order to avoid repetition of facts and discussion. Further, the case of the prosecution is already narrated in detail at the inception of this judgment, hence,



without repeating the same, this court proceeds to appreciate the evidence on record.

13. In order to prove its case, the prosecution has examined 8 witnesses as P.W-1 to P.W-5. P.W.1 and 2 are the pancha witness, PW 3 and 4 are the eye witnesses and also official witnesses who conducted the raid, PW 5 is the investigation officer.

14. Further the prosecution got marked 13 documents through its witnesses as per Ex. P-1 to Ex. P-13. Wherein, Ex. P1 is the Panchanama, Ex. P-2 and 3 are list of articles an seal samples, Ex. P-4 and 5 are statement of Pw-1 and 2, Ex.P-6 and 13 are the requisition and FSL report, Ex.P-7 is the FIR, Ex. P-8 is the search report under section 54 of KE act, Ex. P-9 is the PF of the samples sent to the Fsl and also the sample seal which was put upon the material objects sent for examination, Ex. P-10 is the letter issued to Cw-5, Ex.P-11 is the report issued by Cw-5, Ex.P-12 is the notice.

15. The principle of "innocent until proven guilty" is a foundational tenet of our criminal jurisprudence, placing the burden of proving guilt solely on the prosecution while safeguarding the rights of the accused. Enshrined in the Indian Constitution and international human rights declarations, this principle ensures that individuals are not unjustly convicted based on mere suspicion. The Hon'ble Apex Court, in **P.N. Krishna Lal v Government of Kerala** reported in **1995 Supp (2) SCC 187**, affirmed this principle, emphasizing that the burden of proof always rests on the prosecution and that any attempt to shift it to the accused



would violate their fundamental rights. Thus, "innocent until proven guilty" stands as a critical safeguard against wrongful convictions, ensuring fairness and justice in the legal process.

16. All the independent witnesses, CW 2 and CW 3 (the panchanama witnesses) examined as Pw-1 and 2, have turned completely hostile to the prosecution's case.

17. There is not complainant in the present case. The Excise police have registered the FIR on the basis of the Ex.P-1 panchanama. The FIS was not reduced into writing at all. After completion of 75% of the investigation the FIR was registered. No doubt section 54 of KE act provides that when there is imminent threat of the accused absconding or leaving the place of offence or not being able to catch hold of the accused in the illegal act, the police officer who has received the credible information can go to the spot directly without wanting to seek for a search warrant from the magistrate, as it will cause unnecessary delay. However the provision does not state that the FIS need not be reduced into writing. In excise cases, usually the person who gives information are not disclosed to encourage the society to provide information whenever there is any act of violation of the KE act. Nevertheless it is the duty of the officer who receives the credible information to reduce the same into writing and then proceed with the investigation.

18. However, in the present case, the information allegedly received by CW1 was not reduced into writing. Instead, upon receiving the alleged credible information, CW1 proceeded



directly to the scene of the offence, namely, the house of the accused, where he prepared a report under Section 54 of the Karnataka Excise Act, marked as Ex.P-8. Thereafter, he conducted a raid on the house of the accused and allegedly seized MO.1 from the possession of the accused.

19. A perusal of Ex.P-8 reveals that it is a printed format containing typed matter, with only the particulars relating to the name, address, place and time left blank. These blanks have subsequently been filled in by hand using blue ink. Thus, Ex.P-8 gives an impression that it has been prepared in a routine and mechanical manner. Significantly, the facts and circumstances necessitating the non-obtaining of a search warrant have not been recorded therein. Likewise, the specific reasons for invoking Section 54 of the Karnataka Excise Act in the facts of the present case have not been mentioned. The reasons assigned in Ex.P-8 are vague, generic and appear to be intended for application in all cases alike, rather than being based on the peculiar facts of the present case. This indicates that the raid on the house of the accused was conducted in a routine manner without due regard to the mandatory requirements of the Karnataka Excise Act.

20. Further, Ex.P-8 discloses that the alleged credible information was received at about 11.30 a.m., whereas the raiding party reached the house of the accused at about 12.00 noon, leaving an interval of approximately thirty minutes. Even assuming that the said interval was spent in travelling to the spot, CW1 had sufficient opportunity to reduce the information into writing before proceeding with



the raid. Despite such opportunity, no such information was recorded.

21. Moreover, even after completion of the raid, preparation of the seizure mahazar, seizure of the articles, arrest of the accused and production of the seized properties at the police station, CW1 did not reduce the information into writing. No complaint or report was lodged by CW1 setting the criminal law into motion. Instead, the FIR came to be registered solely on the basis of the seizure mahazar, and the investigation was thereafter proceeded with. In fact, by the time the FIR was registered, a substantial portion of the investigation had already been completed by CW1. The subsequent Investigating Officer, namely PW5, has merely obtained the FSL report pertaining to MO.1 and recorded the statements of the witnesses. Such a serious procedural lapse strikes at the very root of the prosecution case and casts a considerable doubt on the fairness and legality of the entire investigation.

22. More importantly, the independent witnesses, namely CWs.2 and 3, who were examined before this Court as PWs.1 and 2 and were cited as panch witnesses to the seizure mahazar, have turned completely hostile to the case of the prosecution. They have not deposed anything in support of the prosecution regarding the preparation of the seizure mahazar in their presence or the alleged seizure of MO.1, namely the tetra packets containing liquor, from the possession of the accused.

23. The evidence of panch witnesses assumes considerable significance in proving the due conduct of a seizure mahazar.



In the absence of any supporting evidence from the independent panch witnesses, it becomes difficult for the prosecution to establish that the alleged seizure was, in fact, effected from the possession of the accused.

24. The only witnesses who have spoken about the alleged seizure are PW.3 and PW.4, namely CW.1 and CW.4, both of whom are official Excise Officers and members of the raiding party. In view of the serious procedural lapses discussed hereinabove, it would not be safe to place implicit reliance solely upon the testimony of the official witnesses to conclude that MO.1 was seized from the conscious possession of the accused. Consequently, the prosecution has failed to establish the alleged seizure beyond all reasonable doubt.

25. Further, PW 3 before proceeding to search the accused has not obtained any search warrant or followed the procedure laid down under **Sec. 54 of Karnataka Excise Act.**

The Hon'ble High Court of Karnataka in its judgement between **Vinayak Ramdas Bidikar vs State of Karnataka**, reported in **LAWS (KAR) 2022 (9) 291**, has held that:-

“Section 54 of the Excise Act which deals with power to search without warrant, provides that said power can be exercised only when the investigating officer has reason to believe that there is likelihood of the offender escaping or concealing the evidence of the offence and after recording grounds of his belief may proceed to conduct raid



or search without warrant. If the above criteria is not followed than the entire proceedings stand vitiated.”

26. The Hon’ble High court of Karnataka has made it very clear that, the grounds of his belief must be mentioned in the report. It cannot be made in a routine manner where a pre-format is prepared which will apply to all cases similarly. Each case has a different facts and circumstances. There is no justification provided for the procedural lapse with respect to the specific facts and circumstances of the present case.

27. The Hon’ble High Court of Karnataka in a recent judgement between **Dayananda and Anr. v The State of Karnataka** in **Crl.R.P.No. 129/2021** dated **04.04.2024**, has by referencing sections 154 and 157 of the CrPC, delineated between two types of FIRs: those filed by informants and those filed by police officers based on credible information. However, it emphasized that regardless of the type, the information or complaint must be reduced to writing before the investigation commences. Given that the FIR was registered based on a panchanama, the court deemed the registration improper and invalidated the subsequent proceedings. Consequently, it set aside the convictions of the petitioners. The ruling underscores the importance of adherence to procedural requirements in criminal cases and highlights the judiciary's commitment to upholding the rule of law. By scrutinizing the legality of the FIR registration, the court ensures the protection of individuals' rights and safeguards against procedural irregularities.



28. The sequence of events in this case is crucial for understanding the legal concerns raised. The search and seizure predates the complaint and the registration of the FIR. The FIR is a foundational document in criminal proceedings as it marks the formal initiation of an investigation into an alleged offence. It typically includes details about the alleged crime, the parties involved, and any pertinent circumstances. In this instance, conducting the search and seizure before the FIR was registered raises several legal red flags. According to established legal principles, the proper procedure is to first register the FIR, which serves as the basis for subsequent investigative actions, including searches and seizures. This procedural order is crucial for maintaining the integrity of the investigation and safeguarding the rights of the accused.

29. By conducting the search and seizure prior to registering the FIR, the authorities deviated from standard protocol. Further a FIR cannot be registered based upon the Panchanama. This deviation undermines the legal framework designed to ensure fairness and due process in criminal proceedings. It suggests a departure from the principles of law enforcement that prioritize procedural correctness and respect for individual rights. Therefore, the timing of the search and seizure, occurring before the registration of the FIR, casts doubt on the legality of the entire process. Subsequently registering the FIR after these actions took place raises suspicions about the motive and validity of the investigation. As such, any evidence obtained through this irregular sequence of events may be called into question, as it was obtained outside the bounds of established legal



procedures. Hence the entire case stands vitiated. Accordingly this Court answers Point No.1 and 2 in the **NEGATIVE.**

30. Point No.3: For the reasons stated and findings given to Point No.1 and 2, this court proceeds to pass the following :-

::O R D E R::

In exercise of powers conferred U/Sec. 248(1) of code of criminal procedure, 1973, the accused person is acquitted for the offences Punishable U/sec 32 and 38 (A) Karnataka Excise Act, 1965 .

The accused is set at liberty.

The Bail bond and surety bond executed in compliance of Sec. 437(A) of Cr. P C shall be continued till the appeal period is over or for six months. The Bail bond and surety bond executed earlier stands cancelled.

The property seized under P R NO. 132/2023, M.O-1 being worthless is hereby ordered to be destroyed, after expiry of statutory appeal period.

(Directly dictated to the stenographer on computer, typed by her, and revised and corrected by me and then pronounced by me in the open Court on this the 14th day of July 2026)

Sd/-
(BHARATH CHANDRA K.S.)
PRL. CIVIL JUDGE & JMFC,
TIPTUR.



ANNEXURE

1. List of witnesses examined for the prosecution:

PW 1 : Kowshic
PW 2 : Santhosh
PW 3 : Prasanna .S
PW 4 : T.P.Nanjundaswamy
PW 5 : H.S. Manjunatha

2. List of witnesses examined for the defense:

- NIL -

3. List of documents exhibited for the prosecution:

Ex.P 1 : Panchanama
Ex.P 1 (a) : Signature of PW1
Ex.P 1 (b) : Signature of PW2
Ex.P 1 (c) : Signature of PW4
Ex.P 1 (d) : Signature of PW3
Ex.P 2 & 3 : List of articles an seal samples
Ex.P 2 (a) : Signature of PW1
Ex.P 2 (b) : Signature of PW2
Ex.P 2 (c) : Signature of PW4
Ex.P 3 (a) : Signature of PW1
Ex.P 3 (b) : Signature of PW2
Ex.P 3 (c) : Signature of PW4
Ex.P 4 &5 : Statement of Pw-1 and 2
Ex.P 6 &7 : Requisition and FSL report
Ex.P 7 (a) : Signature of PW4
Ex.P 8 : The search report under section 54 of KE act
Ex.P 8(a) : Signature of PW4
Ex.P 9 : PF of the samples sent to the Fsl and also
the sample seal which was put upon the
material objects sent for examination
Ex.P 9(a) : Signature of PW4
Ex.P 10 : The letter issued to Cw-5

KATK920010262023



15

- Ex.P 10(a)** : Signature of PW5
Ex.P 11 : The report issued by Cw-5
Ex.P 11(a) : Signature of PW5
Ex.P 12 : Notice
Ex.P 12(a) : Signature of PW5
Ex.P 13 : FSL report
Ex.P 13(a) : Signature of PW5

4. List of documents exhibited for the defense:

-NIL-

Sd/-
(BHARATH CHANDRA K.S.)
PRL. CIVIL JUDGE & JMFC,
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KATK920010262023

