

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

Present : Smt. Pragyan Paramita Pratihari, B.A. LL.B. (Hons).,

**S.D.J.M, Dist-Ganjam.
JO CODE-OD-00653**

Dated this the 12th day of September, 2024.

2(a)CC No.453/2022

T.R. No. 223/2024

(Arising out of Golanthara, Excise Station PR No.49/2022-2023 dtd.28.08.2022 U/s.52(a) of
Odisha Excise Act)

Complainant	State of Orissa
Represented by	Ld. APP, Berhampur
Accused	1. Pabitra Gouda, aged about 32 years, S/o- Late Murali Gouda, at-Mantridi, P.S- Golanthara, Dist- Ganjam
Represented By	Sri Mahesh Kumar Jena, Advocate and Associates, Berhampur.
Date of Offence	28.08.2022
Date of FIR	28.08.2022
Date of Charge Sheet	28.08.2022
Date of Framing of Charges	05.05.2022
Date of commencement of Evidence	27.08.2024

Date on which judgment is reserved			12.09.2024				
Date of the Judgment			12.09.2024				
Date of sentencing Order, if any			Nil				
/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 Se.428 Cr.P.C.
1	Pabitra Gouda	IO served notice U/s. 41 (A) Cr.P.C	05.05.2022	U/s. 52 (a) (i) of Odisha Excise Act	Acquitted	Nil	Nil

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 one jaribag containing 20 ltrs of I.D liquor, without having any valid license or authority.

2. The prosecution case in brief is that:- on dtd. 28.08.2022 at about 11.45 A.M., when the Golanthara, Excise station performed patrolling duty at Mantridi area under

Golanthara P.S. During that they found the accused to be proceeding on the village road by holding a jerrybag in a suspicious manner. Then they detained him and on search recovered 20 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 28.08.2022 at about 11.45 A.M., at Mantridi village area, the accused was in possession of 20 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 one witness i.e., P.W.1 is the Excise constable. . Prosecution has marked some exhibits vide Ext.1 to Ext.3 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.1, Excise constable in his cross examination stated that the place of seizure is a crowded place. He further stated that around 20-25 persons gathered on the spot but he cannot say their names. He stated that he measured the seizure liquor in measuring scale. He stated that he cannot say the house owners of the adjacent houses mentioned in his spot map.

8. 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.

9. 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. 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.

10. 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.

11. 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. She 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'.

Sd/-

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 12th day of September, 2024 given under my hand and seal of the court.

Sd/-

Sub- Divisional Judicial Magistrate.

Berhampur.

A. PROSECUTION WITNESSES:

RANK	NAME	
P.W.1	Subash Chandra Mahakud	Excise constable

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.P1/P.W.1	seizure list
2	Ext.P1 ¹ /P.W.1	Signature of P.w.1 on Ext.P1
3	Ext.P1 ² /P.W.1	Blue litmus paper test
4	Ext.P1 ³ /P.W.1	Accused signature
5	Ext.P2/P.W.1	spot map
6	Ext.P2 ¹ /P.W.2	Signature of P.W.1 on Ext.P2

8	Ext.P3/P.W.2	Chemical Examination Report

B. DEFENCE EXHIBITS:

SL NO.	EXHIBIT NO.	DESCRIPTION
-	-	-

C. COURT EXHIBITS:

SL NO.	EXHIBIT NO.	DESCRIPTION
-	-	-

D. MATERIAL OBJECTS:

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

Sd/-**S.D.J.M., Berhampur**

Copy forwarded to the Superintendent of Excise, Berhampur for information and necessary action.