

IN THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS :: BOATH ::
ADILABAD DISTRICT.

Tuesday, this the 30th day of April, 2024

PRESENT:- SRI B.HUSSAIN
Judicial Magistrate of First Class,
Boath.

CC.No.462 OF 2022

Between :

The state of Telangana through
Sub-Inspector of Police, Police Station, Bazarhathnoor.

..... Complainant.

// A n d //

**Gutte Jairam, S/o. Hari, Age:40 years, Caste: BC-Wanjari, Occ: Driver, R/o.
Wanjari Bhuthai village of Bazarathnoor Mandal.**

..... Accused.

This case having come before me for final hearing on 29.04.2024 in the presence of **Sri H.Sridhar, learned Assistant Public Prosecutor**, for the state and of **Sri G.Dhammapal, learned Advocate for the Accused**, upon perusing the material papers on record and upon hearing the counsel on either side, this Court delivers the following :

J U D G M E N T

The Sub-Inspector of Police, Excise Police Station, Bazarhathnoor filed charge sheet against the Accused for the offence Punishable U/Sec.34(a) TS Excise Act, in Cr. No.20 of 2022.

2. The brief facts of the prosecution case are as follows :-

That, on 17.02.2022, at 13.30 hrs, LW9 along with Lws 1 and 2 while performing village patrolling received credible information that illegal Desi Daru

liquor is transporting in Vehicle B.No.TS01EK6787, on that information they rushed and stopped the Vehicle B.No.TS01EK6787 outskirts of Chandunaik thanda village and found Accused with liquor Deshi Daru bottles on huge quantity transporting towards Wanjari Bhuthai village. Immediately, Lw9 have apprehended him and interrogated thoroughly. During the course of interrogation, the Accused person disclosed his identity. Immediately, Lw9 secured the presence of the two mediators and conducted Confessional and Seizure Panchanama and seized 1) Desi Daru 90 ml 492 bottle worth of Rs.14,760/- and vehicle Honda CD Shine B.No. TS01EK6787 from the possession of Accused. Out of which one each bottle has been taken as sample for forwarding the same to the FSL Red Hills Hyderabad for Chemical Analysis and report. Later, the arrested accused person and the above seized case property has been brought to PS, Bazarhathnoor at 1430 hours, and suo-motu registered a case in Cr.No.20/2022 for the offence punishable U/Sec. 34(A) of TS Excise Act, issued FIR and took up the investigation.

During the course of investigation, LW9 examined and recorded Sec. 161 Cr.P.C statements of LWs 1 and 2. A notice U/Sec. 41-A Cr.P.C issued to Accused and instructed him to appear before the Hon'ble Court on receipt of summons.

On 24.04.2022, Lw9 received FSL report vide C.E.No. 294/2022 dated 24.04.2022 laboratory authorities analysis the material objects and issued report. On 01.06.2022 the Lw9 prepared a letter addressed to Deputy commissioner Proh and Excise, Adilabad with request to accord permission to confiscation order in this case and sent the same through PC 3225 and obtained proper acknowledge receipt from them. On 26.10.2022, Lw9 collected confiscation order in this case vide Proc.No. Cr.No. B1/127/DCA/2022 Dt. 26.10.2022 in which the Dy.Commissioner Proh. Excise, Adilabad issued orders that, the SI of Police, Bazarhathnoor is permitted to destroy the Desi Daru bottles excluding samples in the presence of the Dist. Proh and Excise officer, Adilabad. Later, on 07.11.2022, the Lw9 summoned two mediators i.e., Lws5 and 6 for destruction of the case property in the presence of the conducted destroy panchanama in the presence of LW5 and 6. After completion of investigation and collection of all relevant documents, Lw9 filed charge sheet against the Accused for the offence punishable U/Sec.34-(A) TS Excise Act.

3. This case was taken on file for the offence punishable U/Sec.34-(a) of TS Excise Act against the Accused.

4. On appearance of the Accused, copies of case documents were furnished to him as contemplated U/sec.207 of Cr.P.C.

5. The Accused was examined U/Sec.239 of Cr.P.C. The charge U/Sec.34 (a) TS Excise Act was framed. The contents of charge were read over and explained to him in Telugu. For which, he denied the same,pleaded not guilty and claimed to be tried.

6. To bring home the guilt of the Accused, the prosecution has examined Pws 1 to 6 and got marked Exs.P1 to P6. Ample opportunity given to the prosecution to produce the witnesses. Though, they failed to produce the witnesses i.e., Lws 7 to 9. Hence,this court was constrained to suo-motu closed their evidence.

7. Pws 1 & 2 who assisted to Lw9. Pws 3 and 4 are the panch witness for Confession Cum-Seizure Panchanama and CDF. PW5 and 6 are the panch witness for Destruction Panchanama. Ex.P1 is the signature of PW3 on Confession Cum-Seizure Panchanama. Ex. P2 is the signature of PW3 on CDF. Ex.P3 is the signature of PW4 on Confession Cum-Seizure Panchanama. Ex. P4 is the signature of PW4 on CDF. Ex.P5 is the Destruction Panchanama.Ex.P6 is the signature of PW6 on Destruction Panchanama.

8. After closure of the prosecution evidence, Accused was called upon to explain the incriminating circumstances that are appearing from the evidence

of prosecution witnesses as contemplated U/Sec.313(1)(b) of CrPC. He denied the same and reported no defence evidence.

9. Heard arguments.

10. Now, the point for consideration is :

“Whether the prosecution has succeeded in proving its contention levelled against the Accused beyond all reasonable doubt that the A1 committed the offence punishable U/Sec.34(a) TS Excise Act ?”

POINT:

11) (i) PW1/T. Champath who assisted to LW9, testified that on 17.02.2022, at about 07:30 PM, he along with LW1 assist to Lw9, and conducting patrolling duty at Chandu Naik Thanda, where Lw9 received a credible information that unknown person illegally transporting Desi Daru liquor bottles (492) total worth of Rs. 14,760/-, through two wheeler bike B.No. TS01EK6787 from Maharastra to Bhutai village. Immediately, we rushed to the chandu Naik Thanda and apprehended the Accused. Later, Lw9 secured two panch witnesses and conducted confession-cum-seizure panchanama and CDF panchanama in their presence. Later, they brought the Accused along with seized case property to the police station Bazarhathnoor.

During the course of cross examination he admitted that, as per his Sec.161 Cr.P.C statement, no panchanama was conducted in his presence.

(ii) To place sufficient corroboration to the testimony of PW1, the prosecution has relied upon the testimony of PW2/S.Srinivas, who assisted to LW9 inturn deposed the same lines of PW1.

(iii) To place sufficient corroboration to the testimony of PW1 and 2, the prosecution has relied upon the testimony of PW5/G.Dowlaji who is the panch witness for destruction panchanama deposed that on 07.11.2022, at 11.00 a.m., police Excise called him to the Bazarhathnoor Police station and requested him to act as panch witness for destruction panchanama and police conducted destruction panchanama and destroyed (491) Desi Daru bottles in hiss presence. LW5 also present at the time of destruction. After completion of destroy of above said bottles, the police prepared destruction panchanama. After read over the contents of said panchanama, he along with LW5 signed on said panchanama.

12. On perusal of entire material on record, it is evident that, Pws 1 and 2 who assisted to LW9 and went to the Chandunaik Thanda village and apprehended the Accused along with Desi Daru bottles (492) and one Two wheeler bike. To prove their contention the prosecution has examined Pws.3 and 4 who are the Panch Wtness for Confession-Cm- Seizure and CDF Panchanama, turned hostile and did not support the prosecution case. Fruther, PW6 who is the panch witness for Destruction Panchanama also turned hositle

and did not support the prosecution Case. PW5 who is the panch witness for Destruction Panchanama, his evidence is only to the extent that the Police Bazarhathnoor conducted Destruction Panchanama in his presence. Pws 1 and 2 who are the Police Personnels naturally support the prosecution case.

13. Ample opportunity given to the prosecution to produce the witnesses. Though, they failed to produce the witnesses i.e., Lws 7 to 9. Hence, this court was constrained to suo-motu closed their evidence.

14. In view of the above discussion, the prosecution has failed to prove that the Accused illegally transporting Desi Daru (492) Bottles through Crime Vehicle without having license as on the date of commission of offence beyond all reasonable doubt. As such, the Accused was given the benefit of doubt for the same.

15. **In the result**, the Accused is found not guilty for the offence punishable U/Sec.34(a) TS Excise Act. Accordingly, he is acquitted U/Sec.248(1) of Cr.P.C. His bail bonds shall stand cancelled after appeal time is over. The unmarked property if any shall be made absolute to the owner after appeal time is over.

(Typed to my dictation by Typist, after correction, pronounced by me in the open Court on this the 30th day of April, 2024).

**Judicial Magistrate of First Class-
Boath.**

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution:-

PW1: T. Champath
PW2: S. Srinivas
PW3: Shaik Razaq
PW4: P. Kavinder
PW5: G. Dowlaji
PW6: D. Mohan

For Defence:

-- NIL --

EXHIBITS MARKED.

For Prosecution:

Ex.P1: Signature of PW3 on Confession Cum-Seizure Panchanama.
Ex.P2: Signature of PW3 on CDF.
Ex.P3: Signature of PW4 on Confession Cum-Seizure Panchanama.
Ex.P4: Signature of PW4 on CDF.
Ex.P5: Destruction Panchanama.
Ex.P6: Signature of PW6 on Destruction Panchanama.

For Defence:

- NIL -

**Judicial Magistrate of First Class-
Boath.**

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-CUM- JUNIOR
CIVIL JUDGE, BOATH
CC.No. 462 of 2022

1.	Date of offence	17.02.2022
2.	Date of Report/Complaint	17.02.2022
3.	Date of Apprehension of Accused	17.02.2022
4.	Date of Release	17.02.2022
5.	Date of Commencement of Trial	22.02.2024
6.	Date of Closure of Trial	13.06.2024
7.	Date of Sentence/Order	30.04.2024
8.	Explanation for Delay	-
9.	Remarks	--
10.	Name of Complainant	The state of Telangana through Sub-Inspector of Police, Police Station, Bazarhathnoor.
11.	Name of the accused	
Ki	Gutte Jairam, S/o. Hari, Age:40 years, Caste: BC-Wanjari, Occ: Driver, R/o. Wanjari Bhuthai village of Bazarathnoor Mandal	
12.	Offence Under Section(s)	U/Sec.34 (a) TS Excise Act
13.	Finding of the Court	Found not guilty .
14.	Sentence/order	
	In the result, the Accused is found not guilty for the offence punishable U/Sec.34(a) TS Excise Act. Accordingly, he is acquitted U/Sec.248(1) of Cr.P.C. His bail bonds shall stand cancelled after appeal time is over. The unmarked property if any shall be made absolute to the owner after appeal time is over.	

**Judicial Magistrate of First Class-
Boath.**