

**IN THE COURT OF II ADDL., CIVIL JUDGE & JMFC.,
HASSAN**

Dated on this the 24th day of July, 2014

–: Present:–

Smt. Nisaratanu Babasaheb Shaikh,
B.A. LLB. (Spl)
II Addl., Civil Judge & JMFC.,
Hassan

CC No.1691 / 2009

Complaint: State by: Excise Inspector, Hassan
[By Assistant Public Prosecutor]

Vs.

Accused:– 1) Rangaswamy S/o Javaregowda, 50
years, Driver, Vallabai Road, Door
No.264, 2nd Stage, 5th Cross, Hassan
Town, Hassan.
2) Sunil Kumar @ Sunil, S/o Kadlekayi
Sannappa, Aged about 30 years,
Vallabai Road, 2nd Cross, Hassan.

[Rep. by Sri T.Nagaraju., Advocate]

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J U D G M E N T

This is the charge sheet filed by the Excise Sub-Inspector, Hassan, against the accused Nos.1 and 2 alleging the commission of offences punishable U/s.13(1)(a)(f) r/w Sec. 32(1) and 38(A) of Karnataka Excise Act.

2. The brief case of the prosecution is that:-

On 19.12.2008 at about 11.30 p.m. CW.6 got credible information and on the said information CW.6 went along with his staff and panchas at Vallabai Road, 5th Cross, house No.264, belonging to one Rangaswamy / accused No.1, Wherein he found that the accused was possessing;

- 1) 48 bottles of liquor with label as choice whiskey each bottle contents of 180 ml.
- 2) About 250 grams liquor with label of original choice whiskey
- 3) Caps of the bottle label as super Joxes Whiskey
- 4) About 2000 labels of original choice deluxe whiskey

- 5) About 300 grams liquor with label of Super Jak whiskey.
- 6) 35 liters empty 25 canes contents of alcohol smell.

The accused No.1 was possessed all these material for the manufacturing of liquor illegally. When C.W.6 asked about this, the accused stated that taking 10,000/- per month rent from one Sunil Kumar @ Sunil / accused No.2 who is the relative of the accused No.1 doing illegal manufacture of these liquor. The accused produced no single document either to retained these liquors nor for the manufacturing. C.W.6 conducted spot panchanama and seizer mahazar as per Ex.P.1 in presence of panchas C.W.1 Rajegowda, C.W.2 Rangnath. C.W.3 is also a spot panchanama witness. The prosecution further alleged that the house from which these properties were recovered is belonging to accused No.2 / Sunil Kumar @ Sunil s/o Kadalekai Sannappa and which was taken on rent by accused No.1 Rangaswamy S/o Javaregowda were manufacturing the liquors illegally in the name of various

brands. The accused No.1 not produced document either to retain these liquors not for manufacturing. The criminal case was registered against the accused persons and after completion of investigation charge sheet was registered against the accused persons.

3. The accused Nos.1 and 2 appeared before the Court and enlarged on bail. In compliance of provisions of Section.207 of Cr.P.C., the charge sheet and other prosecution papers had been furnished to the accused persons.

4. The charge read over to the accused persons and explained in Kannada language known to them, for which the accused persons pleaded not guilty and claimed to be tried.

5. The prosecution has examined four witnesses as C.W.1 as P.W.1, C.W.3 as P.W.2, C.W.6 as P.W.3 and C.W.2 as P.W.4 and got marked documents as per Ex.P.1 to P.6 and got marked material objects as per M.O.1. After closure

of the prosecution evidence, the accused persons have been examined as required U/Sec.313 of Cr.P.C. who denied the incrementing evidence made against them by the prosecution. The accused persons have not chosen to lead any evidence in their defence.

6. I have heard the arguments of learned A.P.P., and the learned counsel for the accused.

7. In order to bring home the guilt of the accused, prosecution has to prove the following points beyond all reasonable doubt:-

- (1) Whether the prosecution proves beyond reasonable doubt that on 19-12-2008 at about 11.30 p.m. within the limits of Excise Police Station, Hassan Range No.2, Hassan, at vallabai Road, while C.W.6 was patrolling along with his staff went to the house of accused No.1 on credible information, wherein he found that the accused Nos.1 and 2 were possessing Superior Liquor, Duplicate caps, duplicate labels and other equipment for the purpose of selling without any valid

license or permit and thereby accused persons have committed an offence punishable under section 13(1)(a)(f) r/w Sec. 32(1) and 38(A) of Karnataka Excise Act?

(2) What order?

8. My finding on the above points are as follows:-

Point No.1 :- In the Negative

Point No.2 :- As per final order
for the following:-

R E A S O N S

POINT NO.1:-

9. To prove the guilt of the accused Nos.1 and 2 the prosecution examined C.W.6/P.W.3 Manjunatha G.B., Excise Sub-Inspector, who deposed in his evidence that on 19-12-2008 at about 11.30 p.m, he got credible information and on the said information he went along with his staff and panchas to the place wherein, he found that accused persons were possessing;

- 1) 48 bottles of liquor with label as choice whiskey each bottle contents of 180 ml.
- 2) About 250 grams liquor with label of original choice whiskey
- 3) Caps of the bottle label as super Joxes Whiskey
- 4) About 2000 labels of original choice deluxe whiskey
- 5) About 300 grams liquor with label of Super Jak whiskey.
- 6) 35 liters empty 25 canes contents of alcohol smell.

The accused possessed all these material for the duplicate manufacturing and for sale of liquor illegally. He conducted spot and seizer panchanama as per Ex.P.1 in presence of panchas C.W.1 Rajegowda, C.W.2 Rangraju and C.W.3 Rahim. He had taken samples from each bottle for chemical examination. The prosecution further alleged that the house from which these properties were recovered is belongs to one Sunil Kumar @ Sunil / accused No.2 and was taken on rent by accused No.1 and these persons were

manufacturing the duplicate liquors illegally in the name of various brands. The accused not produced a single document either to retained these liquors nor for the manufacturing. He registered a criminal case against them.

10. The prosecution examined C.W.3 Rahim as P.W.2 who deposed in his evidence that he went along with his higher officer as per his direction to the place wherein they found that the accused were manufacturing the liquors illegally in the name of various brands. This witness further deposed that they found 48 x 180 ml. original choice whiskey, 250 grams original choice whiskey, duplicate caps in the name of Super Jak Whiskey, about 2000 duplicate caps in the name of Original Choice Whiskey and 300 grams Super Jak whiskey's duplicate labels and 33 liter empty 25 canes contents of alcohol smell. This witness further deposed that C.W.6 conducted spot panchanama in his presence and had taken samples from various bottles for chemical examination.

11. The prosecution has examined C.W.1–Rajegowda as P.W.1 and C.W.2–Rangaraju as P.W.2 who are panchas to the recovery panchanama. Both the panchas turned hostile and not supported the case of the prosecution.

12. The prosecution has to prove that the liquor bottles were recovered from the possession of accused. If the prosecution has proved the possession of liquor bottles, then entitle to avail the presumption available under Sec.40 of Karnataka Excise Act.

13. Herein this C.W.6 is the complainant and interested witness to the prosecution and his interested testimony requires corroboration. Accordingly to him he has seized the liquor bottles from the possession of accused in the presence of panchas, but panchas to the recovery panchanama has turned hostile. Therefore, the prosecution has failed to establish that the accused having possession of the liquor bottles.

14. On further perusal of the entire prosecution case it can be seen that the prosecution as sighted as many as six witnesses. However, in spite of several opportunities the prosecution only examined 4 witnesses among these 4 witnesses C.W.1/P.W.1 Rajegowda and C.W.2/P.W.4 Rangaraju are the witnesses to the seizer panchanama conducted by the C.W.6/P.W.3 turned hostile to the prosecution case. Except the evidence of C.W.3/P.W.2 and C.W.6/P.W.3 there is no material evidence available before this Court to prove the guilt of the accused persons and further these two witnesses who were supported are interested witnesses.

15. Accordingly as there are no material evidence available before the Court to prove the guilt against the accused Nos.1 and 2 beyond all reasonable doubt, I hold that prosecution utterly failed to prove the guilt of the accused Nos.1 and 2. Hence, in view of the above, I answer the above Point in the Negative.

POINT NO.2:-

16. In the light of the above-mentioned discussion, I am of the opinion that the prosecution has not proved the guilt of the accused Nos.1 and 2 beyond reasonable doubt. Hence, the accused Nos.1 and 2 are entitled for an order of acquittal. In the result, I proceed to pass the following:-

ORDER

Acting Under section 248(1) of Criminal Procedure Code the accused Nso.1 and 2 are acquitted of the offences punishable U/s. 13(1)(a)(f) r/w Sec. 32(1) and 38(A) of Karnataka Excise Act, 1965.

The bail bond of the accused Nos.1 and 2 and their sureties stands cancelled.

The property seized by Excise Sub-Inspector, Hassan as per M.O.1 - 26 sample whiskey bottles to be destroyed as worth less after appeal period is over.

Accused Nos.1 and 2 are directed to execute the personal bonds for Rs.10,000/- each along with one surety for the like sum as per Section 437(A) of Cr.P.C. 1973.

[Dictated to the Stenographer directly on computer, typed by her, the same is corrected and then pronounced by me in the open Court on this the 24th day of July 2014]

(Nisaratanu Babasaheb Shaikh)
II Addl., Civil Judge & JMFC.,
Hassan

ANNEXURE

1. List of witnesses examined for the complainant:-

PW1	-	Rajegowda	08-07-2013
PW2	-	Rahim	08-07-2013
PW3	-	Manjunatha J.B.	23-03-2014
PW4	-	Ranganatha	25-06-2014

2. List of documents marked for the prosecution:-

Ex.P.1	-	Spot and Seizer Mahazar
Ex.P.1(a)	-	Signature of P.W.1
Ex.P.1(b)	-	Signature of P.W.2
Ex.P.1(c)	-	Signature of P.W.3
Ex.P.1(d)	-	Signature of P.W.4

- Ex.P.2 – Sample Seal
- Ex.P.2(a) – Signature of P.W.3
- Ex.P.2(b) – Signature of P.W.4
- Ex.P.3 – Search warrant
- Ex.P.3(a) – Signature of P.W.3
- Ex.P.3(b) – Signature of accused No.1
- Ex.P.4 – List of Articles
- Ex.P.4(a) – Signature of P.W.3
- Ex.P.4(b) – Signature of accused No.1
- Ex.P.5 – FSL Report
- Ex.P.5(a) – Signature of P.W.3
- Ex.P.6 – Statement of P.W.4

3. List of witnesses examined for the accused:- NIL

4. List of documents marked for the accused :- NIL

5. List of material objects:-

- M.O.1 – 26 sample whiskey bottles

II Addl., Civil Judge & JMFC.,
Hassan