

Sum. Cri. Case No. 614/2022
State v. Navalsingh
MHBU180009452022
Exh. 31



Presented On : 11-10-2022
Registered On : 11-10-2022
Decided On : 14-02-2025
Duration : 2 Y 4 M 3 D

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
SANGRAMPUR, BULDANA

(Presided over by Uday S. Ivare)

S.C.C. No. 614/2022

Exhibit No.31

The State of Maharashtra,
Through P.S.O.,
Police Station Sonala,
Tal. Sangrampur and Dist. Buldana

.....PROSECUTION

-Versus-

Navalsingh Lalsingh Khirale,
Aged: 36 years, Occupation: Labourer
Resident of Rohankhidki,
Tal. Sangrampur and Dist. Buldana

.....ACCUSED

.....

APPEARANCES:

Shri. F.A. Ahmed, learned Assistant Public Prosecutor for the State
Shri. A.S. Girjapure, learned Advocate for the accused.

.....

J U D G M E N T

(Delivered on 14th day of February, 2025)

1. The accused faced trial for the offence punishable under section 65(d) of the Maharashtra Prohibition Act, 1949.

2. The case of the prosecution is that on 31-08-2022 around 11:30 AM near Rohankhidki, Tal. Sangrampur, Dist. Buldana the accused was caught in possession of intoxicants without any license, pass, permit or authorization. During the police raid in presence of two panchas the accused was found in possession of 20 liter of country liquor. Consequently, the informant lodged the F.I.R. against the accused on 31-08-2022 at Sonala Police Station, Tal. Sangrampur and Dist. Buldana.

3. In pursuant to the F.I.R., Crime No. 152/2022 came to be registered against the accused. The investigation of the crime was handed over to Shri. Moinuddin Sayyad. During the course of investigation he recorded statement of the witnesses, seized muddemaal, conducted spot panchanama and arrested the accused. After collecting sufficient evidence he filed the chargesheet against the accused for the offence punishable under section 65(d) of the Maharashtra Prohibition Act, 1949.

4. Accordingly, the substance of accusation was stated to the accused on 26-04-2023. It was read over and explained to the accused in Marathi. The accused pleaded not guilty and claimed to be tried. Thereafter, the statement of the accused was recorded under section 313(1)(b) of the Code of Criminal Procedure at Exh. 19. The defence of the accused is of total denial and false implication in the case. The accused has preferred not to examine any witnesses in his defence.

5. Following points arose for my determination and my findings on each of them with reasons thereon are as under:

SR. No.	POINTS FOR DETERMINATION	FINDINGS
1.	Does the prosecution prove that on 31-08-2022 around 11:30 AM near Rohankhidki, Tal. Sangrampur, Dist. Buldana the accused was found in possession of intoxicants for sale without any license, pass, permit or authorization and thereby committed offence punishable under section 65(d) of the Maharashtra Prohibition Act, 1949 ?	No
2.	What order ?	The accused is acquitted.

REASONS

6. The prosecution has examined in all two witnesses. Ganesh Sitaram Dige (PW1) is the panch witness and Moinuddin Sultan Sayyad (PW2) is the investigating officer.

7. The prosecution has also placed reliance upon documentary evidence in the nature of the spot panchanama at Exh. 15.

AS TO POINT NO. 1

8. In order to prove the guilt of accused for the offence punishable under section 65(d) of the Maharashtra Prohibition Act, 1949, the

prosecution has to prove the following essential ingredients beyond reasonable doubt:

- i. The accused was found in possession of intoxicants;
- ii. The accused was in possession of the said intoxicants without any license, pass, permit or authorization as per the Maharashtra Prohibition Act, 1949;

9. The Investigating Officer (PW2) was the member of the raiding squad. He has deposed that on 31-08-2022 near the spot of the incident the accused was found in possession of intoxicants without any license, pass, permit or authorization. He has further deposed that after thorough investigation it was learned that the accused had committed the offence punishable under section 65(d) of the Maharashtra Prohibition Act, 1949. The prosecution has also examined Ganesh (PW1) as the panch witness. However, he has not supported the case of the prosecution.

10. In this background, the prosecution firstly needs to prove that the accused was found in possession of intoxicants without any license, pass, permit or authorization. Likewise, the prosecution alleged that the accused was found in possession of intoxicants at a public place i.e. Rohankhidki, Tal. Sangrampur. At the outset it is necessary to note that Ganesh (PW1) who is the panch witness has made several material admissions adverse to the case of the prosecution. He has admitted that the investigating officer did not

conduct spot panchanama in his presence. Moreover, he has also admitted that the investigating officer did not seize any muddemaal in his presence. In this regard, apart from the Investigating Officer (PW2) the prosecution has failed to examine any other independent witness as to the spot of the incident. In order to show the possession of the accused the investigating agency have also not filed on record any documents which show that the spot of the incident was a public place. Moreover, in order to prove recovery from the accused the prosecution has merely examined the member of the raiding party. The investigating agency in spite of having the opportunity to record statement of the independent eye witnesses relating with the incident failed to examine such independent witnesses. Hence, in the absence of an independent witness it could not be proved that the accused was in possession of the alleged intoxicants.

11. Secondly, the prosecution needs to prove that the muddemaal recovered from the possession of the accused was in the nature of intoxicant as per section 2(22) of the Maharashtra Prohibition Act, 1949. Likewise, as per the chargesheet the prosecution submitted that the samples collected from the spot of the incident were sent for Chemical Analysis Report. However, the final report of the same has not been filed on record. Hence, it could not be proved that the seized muddemaal was in the nature of intoxicant as per section 2(22) of the Maharashtra Prohibition Act, 1949. Hence, there is nothing on record to hold that the accused was in possession of intoxicants. Therefore, without there being cogent evidence in this

respect, no conviction can be based mainly on the basis of the Spot Panchanama (Exh. 15).

12. In the light of aforesaid observations, there is nothing on record to show that the accused was found in possession of intoxicants for sale without any license, pass, permit or authorization. Therefore, considering all the above discussion, I am of a view that the prosecution failed to prove that the accused committed the offence punishable under section 65(d) of the Maharashtra Prohibition Act, 1949. Hence, I have answered point no. 1 in the negative.

AS TO POINT NO. 3

13. It is a cardinal principle of criminal trial that the prosecution has to prove its case beyond all reasonable doubt. Considering the matter before the Court, it is clear that the accused has created doubts over the case of the prosecution. The prosecution has failed to clear the doubts as well as failed to satisfy all the essential ingredients of the charged offence beyond reasonable doubt. Accordingly, the prosecution failed to prove that, the accused was selling intoxicants without any license, pass, permit or authorization.

14. It is also necessary to note that the accused has already complied with the provisions of section 437-A of the Code of Criminal Procedure. Hence, the accused will have to be acquitted.

ORDER

1. The accused is acquitted of the offence punishable under section 65(d) of the Maharashtra Prohibition Act, 1949 vide section 255(1) of the Code of Criminal Procedure.
2. The bail bonds of the accused are cancelled.
3. The seized muddemaal i.e. 20 liters of country liquor be sent to the State Excise Department after the appeal period is over for disposal according to law. (if not sent earlier)
4. The seized article in the nature of tyre tube, plastic cans, bags, tubs and other manufacturing and storing equipment, if any, being worthless be destroyed after the appeal period is over (if not disposed off earlier)

(Pronounced in open court)

Date: 14-02-2025

(Uday S. Ivare)
Judicial Magistrate First Class,
Sangrampur, Buldana