

FORM-A

**IN THE COURT OF THE JUDICIAL MAGISTRATE
FIRST CLASS, RAJGANGPUR, SUNDARGARH**

Present: Ms. Pracheta Priyadarshini Mohapatra, LL.M.,
J.M.F.C., Rajgangpur

J.O. CODE :OD00837

Date of Judgment:- **31/07/2026**

2 (a) CC Case No. 29 of 2009

T.R. No. 346 of 2009

E.Reg No.1545 of 2014

(PR No.210 of 2008-09, Excise of EI & E.B Unit-1 Cuttack for
the offence U/s. 47(a) (f) B & O Excise Act)

Complainant	State of Odisha
REPRESENTED BY	Ld. APP, Rajgangpur
ACCUSED	Mukunda Xaxa
REPRESENTED BY	Sri S. Panigrahi Ld. Advocate, Rajgangpur

FORM-B

Date of Offence	15/03/2009
Date of P.R	15/03/2009
Date of Final P.R	15/03/2009

Date of Framing of charges	01/08/2009
Date of commencement of evidence	01.09.2009
Date on which judgment is reserved	31/07/2026
Date of Judgment	31/07/2026
Date of the Sentencing Order, if any	N/A

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	Sentenced imposed	Period of Detention undergone during Trial for purpose of section 428, Cr.P.C.

1	Mukund Xaxa, aged about 50 years, S/o-Rangatu Xaxa, Sagjore(Ranibandh), PS-Rajgangpur & Dist.-Sundargarh	-	20.09.2009	U/s- 47(a) (f) of B & O Excise Act,	Acquitted	N/A	N/A
---	--	---	------------	-------------------------------------	-----------	-----	-----

Status of the accused

Accused is on bail and he is present before this Court.

J U D G M E N T

1. The above named accused stands for the commission of offence U/s. 47(a)(f) B & O Excise Act.

2. The brief facts of the case is that on 15/03/2009 at about 11:15 AM at Sagjore village area under Rajgangpur while S.I of Excise EI & EB Unit-1 Cuttack namely Ramachandra Mishra along with their staffs were performing patrolling duty, they found that the accused was illegally preparing liquor in his backyard which was fenced. On ground of suspicion the accused was detained and on searching the accused they found one Aluminum pot containing 20 Kgs of FM wash & another two nos. of Aluminum pots each containing 10 kgs of FM wash a total of 20 Kgs of FM wash and 03 nos. of earthen pitchers each containing 10 kgs of FM

wash a total of 30 kgs of FM wash from his possession. The contraband articles were measuring using liter measure and one earthen pitcher with 500ml of hot I.D liquor. Thereafter they collected sample liquor and conducted blue litmus paper in which the litmus paper turned into red colour. Thereafter from the smell of those liquid, taste, colour & their departmental experience they confirmed that those liquid were nothing but FM wash. On demand he could not produce any documents towards such possession of liquor. Then the S.I of Excise EI and EB Unit-1 Cuttack measured the seized articles in presence of witnesses and prepared the seizure list at the spot. He inquired into the matter and submitted P.R U/s.47(a)(f) B & O Odisha Excise Act against the accused to face trial.

3. The accused has taken the plea of bare denial and false implication.
4. The point needs to be determined in this case is that:-

Whether on 15/03/2009 at about 11:15 AM at village area of Sagjore under Rajgangpur PS the accused was found in exclusive possession of 70 kgs of FM wash and 500ml of I.D liquor without having any

license or authority and thereby committed the offence U/s-47(a)(f) of B & O Excise Act ?

5. In order to prove its case, prosecution has examined as many as one witness on its behalf, who is also an official witness. In addition to this, prosecution has exhibited certain documents vide Ext.1(seizure list), Ext.1¹(Signature of P.W.1 on seizure list). On the other hand, defence has neither examined any witnesses nor exhibited any documents on its behalf.

6. On perusal of evidence led by prosecution it is found that P.W1(who is the official witness of this case) deposed that while he along with their S.I Rama Chandra Mishra were performing patrolling duty in the area of Sagjore under Rajgangpur P.S in the course of patrolling they got an information from reliable sources that one accused Mukunda Xaxa illegally preparing liquor in back side of his house. On ground of suspicion the accused was detained and searched. When they searched they recovered one aluminum pot containing 10 kgs of hot Mahua and other two nos. of aluminum pots each containing 10kgs of Mahua wash, two nos. of earthen pitchers containing of Mahua wash and one earthen pitcher containing some hot I.D liquor from his possession. Thereafter their senior Mishra babu

conducted blue litmus paper test in the sample of the liquor and wash which turned into red and also conducted Hydrometer test in the sample of the liquor and he also conducted smell test from the results of the above test his senior Mishra babu opined the liquid in one of the earthen pitcher is ID liquor as the wash is meant for the purpose of manufacturing of ID liquor. On being demand accused could not produce any document in respect of the wash and the liquor as a result Mishra babu had seized the above articles at the spot and prepared seizure list.

7. From heedful perusal of the record and from the evidence as deposed by the prosecution witnesses this court observes that the official witness (P.W.1) in his para-5 has deposed that they recovered the articles from an open place from the ridge. On being demand accused could not produce any document regarding the ownership of the land. He further deposed that the seized articles are not produced before the court during trial. In the case reported in **Simanchal Choudhary vrs. State, reported in (2005)32 OCR 173**, it was held that the seized liquor never produced before the trial court is another aspect, which goes against the case of prosecution.

8. From the above discussion made this court observes that the seized liquor were not produced before the court at the time of forwarding the accused, so also at the time of trial in order to establish that the liquid that was seized from the possession of the accused was liquor only, as nothing can be ascertained from the forwarding report or the evidence with regard to that particular fact. Under such circumstances it creates a cloud of suspicion as to whether the seized liquid or contraband articles as claimed by the prosecution, seized from the possession of the accused was liquor only or something else. That could have also refuted the version of the accused of nothing was seized from her possession. Hence, in this case the prosecution failed to produce the seized contraband article before the court for better appreciation. Thus, there is no iota of evidence found against the accused thereby rendering him benefit of doubt.

It is further deposed by P.W.1 in his Para-5 that the accused was spotted while he was concealing the material in his courtyard and the accused could not show the documents in support of his possession regarding court age. Thus under such circumstances booking the accused under the alleged charges by relying on the

version of the official witnesses without any independent corroboration is irrational one.

9. Further on careful scrutiny of that is deposed by the prosecution witnesses it is found that P.W1 in his para-2 deposed that when his senior conducted blue litmus paper test, the litmus paper turned into red colour on coming in contact with the seized articles. Under such substances it is highly risky to rely on such investigation without any independent corroboration as well any chemical examination report, which is not available in this case.

10. Furthermore it is noticed that the prosecution has not exhibited any document to support the fact of prosecution witness (PW1) being on duty on the alleged date 15.03.2009.

11. Hence, from the above discussions and the reasons recorded, prosecution has failed miserably to establish the offence U/s. 47(a)(f) B & O Excise Act against the accused beyond all reasonable doubts. In the result, it is held that, the accused is found not guilty of the offence punishable U/s. U/s. 47(a)(f) B & O Excise Act Act, and he is acquitted there from as per U/s. 248(1) of the Cr.P.C. He be set at liberty forthwith being discharged from his bail bond after expiry of six months as per the provision enshrined u/s-437(A) of Cr.P.C.

“Enter this case as Insufficient Evidence”

The seized articles be destroyed after expiry of appeal period if no appeal is preferred and if appeal is preferred, seized articles be dealt with as per the direction of appellate Court.

Sd/-
Judicial Magistrate First Class,
Rajgangpur

The judgment is typed as per my dictation, corrected by me and pronounced in the open court on this the **31st day of July, 2026** given under my hand and seal of the court.

Sd/-
Judicial Magistrate First Class,
Rajgangpur

FORM-C

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES		
A. Prosecution Witnesses		
Rank	Name	Nature of evidence
PW1	Basanti Bakli	Official witness
B. Defence Witness, if any:		
Rank	Name	Nature of evidence
	Nil	
C. Court Witnesses, if any		
Rank	Name	Nature of evidence
	Nil	

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS		
A. Prosecution Exhibits		
Sl No.	Exhibit Number	Description
1	Ext.1	Seizure list
2	Ext.1/1	Blue litmus paper
3	Ext.1/2	Signature of P.W.1 on Seizure list
4	Ext.2	Hydrometer chart
5	Ext.2/1	Signature of P.W.1 on Hydrometer chart
B. Defence Exhibits, if any		
Sl No.	Exhibit Number	Description
	Nil	
C. Court Exhibits, if any		
Sl No.	Exhibit Number	Description
	Nil	
D. Material Objects:		
Sl No.	Material Object Number	Description
	Nil	

Sd/-
Judicial Magistrate First Class,
Rajgangpur