

IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., AT MUDIGERE

-:: PRESENT ::-

KUM. M.S.SHASHIKALA.,B.A.L.LL.B.,
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE

C.C. No.338/2019

DATED THIS 21st DAY OF JANUARY 2020

Complainant: **State by Gonibeedu Police**

(By Assistant Public Prosecutor)

V/s.

Accused : **CHANDRAPPA,**
S/o Late Basaiaha
Aged about 55 years,
R/o Chakramani Colony,
Haluru, Gonibeedu Hobli,
Mudigere Taluk.

(By Sri.D.K.P., Advocate)

-:: J U D G M E N T ::-

*The complainant/police has filed the charge sheet
against accused for the offence punishable u/s.32 and
34 of KE Act.*

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

It is alleged that on 15.11.2018 at 6.30 p.m. at Haluru Village accused at his provision store illegally stored 4 bottles of UB Export Strong Beer containing 650 ml each and 12 bottles of UB Export Strong Beer containing 330 ml each and without having any license illegally selling the liquor to the public. Accordingly charge sheet came to be filed against accused.

3. *During crime stage, accused got enlarged on bail. After filing of the charge sheet cognizance was taken, case was registered. Copy of the charge sheet supplied to accused u/s 207 Cr.P.C. As there was sufficient materials against accused was found, Charge framed against accused for the offence under section 32 and 34 of KE Act and explained to him in vernacular language known to him, for which he pleaded not guilty and claims to be tried for alleged offence. Hence case came to be posted for trial.*

4. *The prosecution in order to prove his case examined P.W.1 to P.W.6 and got marked documents as per Ex.P.1 to Ex.P.13 and got marked M.O.1 to M.O.3. After closure of the prosecution evidence accused*

was examined under section 313 of Cr.P.C., and he denied the incriminating circumstances found against him. Accused not chosen to adduce defence evidence.

5. Heard the arguments by learned APP for prosecution and Sri.D.K.P., Adv., for accused. Perused the materials on record.

6. The following points have been arisen for consideration:

1) Whether the prosecution proves beyond reasonable doubt that on 15.11.2018 at 6.30 p.m. at Haluru Village accused at his provision store illegally stored 4 bottles of UB Export Strong Beer containing 650 ml each and 12 bottles of UB Export Strong Beer containing 330 ml each and without having any license illegally selling the liquor to the public and thereby committed an offence punishable under section 32 of Karnataka Excise Act ?

2) Whether the prosecution proves beyond all reasonable doubt that on the above said date, time and place, accused selling liquor without having any license to the public and thereby committed an offence punishable under section 34 of Karnataka Excise Act ?

3) What order?

7. My finding to the above points are as follows:

Point No.1 : In the Negative;
Point No.2 : In the Negative;
Point No.3: As per final order
for the following:

REASONS

POINTS No.1 & 2 :

8. As these points are inter-linked with each other and requires common discussion in order to avoid repetition of discussion, therefore these points are discussed together.

9. It is the specific case of the prosecution has reflected in the charge sheet that on 15.11.2018 at 6.30 p.m. at Haluru Village accused at his provision store attached to the house illegally stored 4 bottles of UB Export Strong Beer containing 650 ml each and 12 bottles of UB Export Strong Beer containing 330 ml each and without having any license illegally selling the liquor to the public and thereby committed alleged offence.

10. Prosecution in order to establish the alleged offence against accused must prove that accused illegally stored 4 bottles of UB Export Strong Beer containing 650 ml each and 12 bottles of UB Export Strong Beer containing 330 ml each in provision and illegally selling the liquor to the public. Whether any convincing evidence is placed by prosecution to prove its case will have to be scrutinized.

11. Prosecution in order to prove his case examined P.W.1 to P.W.6 and got marked Ex.P.1 to Ex.P.13 and M.O.1 to M.O.3. Among these evidence examined before the court. P.W.1 & 4 are the panch witnesses to Ex.P.2 seizure and spot mahazar. P.W.3 is the PDO one who issued certificate stating that the house belongs to accused. P.W.2 is the CPI one who received information raided the provision store of accused and found liquor and directed to registered the case by giving his report. P.W.5 is the Police constable one who accompanied the P.W.2 for raid. P.W.6 is the investigation officer one who registered FIR, completed the investigation and filed charge sheet.

12. Now the question is whether evidence of P.W.1 to P.W.6 is sufficient to establish the guilt of the accused. P.W.1 and P.W.4 are the panch witnesses to seizure mahazar Ex.P.2. These witnesses admits their signature in Ex.P.2 but they are not supported the case of the prosecution. They specifically denied seizing of M.O.1 to M.O.3 in their presence and drawn mahazar as per Ex.P.2 and giving statement as per Ex.P.5 and Ex.P.8. The prosecution treated these witnesses hostile and cross-examined but nothing has been elicited from their mouth to attribute the guilt of the accused.

13. P.W.2 is the CPI and P.W.5 is the PC one who accompanied with P.W.2 for raid. These 2 witnesses specifically stated that on 15.11.2018 at 6.30.p.m. when he was is in station, he received that Chakaramani Village accused illegally selling liquor in his provision store attached to his house. Then along with his staff by calling panchas gone to the provision store of the accused. When they gone to the spot they found accused selling liquor to the public. The public and accused by seeing the police ranned away from the spot. When he search the shop under cash table found box. When it was opened there was a 4 bottles

of UB Export Strong Beer containing 650 ml each and 12 bottles of UB Export Strong Beer containing 330 ml each and on enquiry villagers revealed the name of accused and accused has no license to sell liquor. Hence, he drawn mahazar as per Ex.P.2 by seizing M.O.1 to M.O.3. Then by preparing is report as per Ex.P.6 and directed P.W.6 to registered the case. Accordingly P.W.6 registered the case, sent property to FSL, recorded the statement of witnesses and receiving reports, completed the investigation and filed charge sheet.

14. It is to be noted that the incident spot is provisional store. It is to be noted that the independent witnesses i.e., P.W.1 & 4 not supported the case of the prosecution. Further, it is to be noted that accused also ranned away from the spot. P.W.2 specifically deposed that on equiry of villagers he came to know accused running the ship and he has no licence to sell theliquor. But the P.W.2 not disclose the names whom he is enquired and also not recorded their statement which is drawback to the case of the prosecution. Under such circumstances, when P.W.1 and P.W.4 turned hostile it is unsafe to rely upon the evidence of P.W.2 & 5 to attribute the guilt of the accused. Hence, I am of the opinion that prosecution has miserably failed to prove

that accused illegally stored liquor in his shop. Accordingly, I answer point No.1 & 2 against the prosecution in the '**Negative**'.

POINT No.3 :

15. In view of the above findings to point No.1 & 2, I proceed to pass the following:

: ORDER :

Acting u/s. 248(1) of Cr.P.C., the accused is hereby acquitted for the offence punishable u/s.32 and 34 of Karnataka Excise Act.

The bail bond and surety bond furnished as per section 437(1) of Cr.P.C. by accused and surety shall be inforce for a period of 6 months from the date of judgment.

Office is directed to return M.O.1 to M.O.3 to the complainant and the complainant is hereby directed to

**dispose of the property in accordance
with law after appeal period is over.**

(Dictated to the stenographer, transcribed by her, then corrected by me and pronounced in the open court on this the 21st day of January 2020)

**Sd/-
(M.S. SHASHIKALA)
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE.**

: A N N E X U R E :

LIST OF WITNESSES EXAMINED FOR PROSECUTION:

PW.1 : Ganesh,
P.W.2 : Jagadeesha.M;
P.W.3 : Sushmitha.K.Gowda;
P.W.4 : Chandresh;
P.W.5 : B.C.Girish;
P.W.6 : Rakesh.C.

LIST OF WITNESSES EXAMINED FOR DEFENSE:

- NIL-

LIST OF DOCUMENTS MARKED FOR PROSECUTION:

Ex.P.1 : Notice;
Ex.P.2 : Seizure mahazar;
Ex.P.3 & 4 : Photos;
Ex.P.5 : Statement;
Ex.P.6 & 7 : Reports;
Ex.P.8 : Statement;
Ex.P.9 : FIR;
Ex.P.10 : PF;

Ex.P.11 : *CD;*
Ex.P.12 : *Requisition to FSL;*
Ex.P.13 : *FSL Report;*

LIST OF DOCUMENTS MARKED FOR DEFENSE:

-Nil-

LIST OF MATERIAL OBJECTS:

M.O.1 & 2 : *Bottles;*
M.O.3 : *Plastic bag.*

Sd/-

(M.S. SHASHIKALA)
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE.

MK