


GJPM050003642024 	Date of Filing	09.02.2024
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	Decided on	02.04.2026
	Duration	Year Month Days

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE,
SHAHERA, DIST. PANCHMAHALS**

CRIMINAL CASE NO. 286/2024

Exh-

Complainant:

Government of Gujarat.

VERSUS

Accused:

01. Hareshbhai Bhupatbhai Baria.
Age: 23,
At. Palikhanda, Ta. Shahera, Dist. Panchmahals.
02. Natvarbhai Amrabhai Baria.
Age: 35,
At. Dhamniya, Ta. Lunawada, Dist. Mahisagar.

SUBJECT: Offense U/s 65AA, 81 of Gujarat Prohibition Act.

APPEARANCE:

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APP Ms. K. N. Parmar : For Prosecution

Mr. R. L. Parmar : Learned Advocate for Accused

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J U D G M E N T

1. The brief facts of the prosecution case are that, on 18.10.2023 informer- Constable- Ganpatsinh Budhabhai with other police personnel were on patrolling, meanwhile got a tip off that the accused person Hareshbhai Bhupatbhai Baria in companion with accused no. 02 is illegally possessing and selling the Indian Made Foreign Liquor (IMFL) at village Palikhanda. In accordance with this tip off, police personnel with the Panchas, apprehended the accused no.01 and searched the house where complainant found 10 bottles of Royal Blue Mault Whiskey worth of Rs. 1000/- and seized them by performing Panch Rojkaam in presence of Panchas. This act of the accused is contravene of the Gujrat Prohibition Act hence police registered an offence vide C.R.No.0864/2023 under Section U/s 65AA, 81 of Gujarat Prohibition Act at Shahera Police Station against the accused and thereafter investigation was carried out. Finally, the chargesheet was filed in this Court against the accused.
2. On issuing the summons, the accused appeared before this Court with his advocate. He has been provided copy of Police report and other documents of the case under Section 207 of Cr.P.C. Thereafter, as per Section 240 of Cr. P.C. Charge was framed against the accused at Exh. 03. Accused denied content of the charge in their plea which was recorded at Exh.04 to 05 respectively. Hence, the trial has been proceeded and evidence has been recorded.

3. The following oral evidence adduced by the prosecution:

P.W.	Name of witness	Exh.
01	Ganpatsinh Budhabhai	18
02	Mahendrabhai Motibhai	11
03	Mukeshbhai Manabhai	16

3.1. Following documentary evidence is produced by the prosecution:

No.	Name of document	Exh.
01	FIR	19
02	Panchnama	12

- 4.** After recording the evidence of the prosecution learned APP orally declared the closure of prosecution evidence. Thereafter, further statement of the accused U/s 313 of the Criminal Procedure Code is recorded in which accused has denied all the allegations against him and also declared that he is not willing to adduce any evidence for his defense.
- 5.** Heard the oral argument of both the sides.
- 5.1** Learned APP argued that prosecution witnesses has proved FIR and Panchnama and they are remained unchallenged. Further stated that If Panch witnees turned hostile whole case of prosecution cannot be thrown out. Prosecution has proved his case with strong evidence and proved guilty to the accused, hence, he may be punished as per the law.
- 5.2** Learned Advocate of the accused vehemently argued that

prosecution miserably failed to prove case against the accused. As prosecution has not produce a single documentary evidence regarding the ownership of the place of the raid. Further argued that the so called place of the raid is within the residential area from where Investigation Officer could get independent witness though Investigation Officer has not produced single witness from the locality. Prosecution failed to prove Panchnama. In these circumstances, police personnel cannot be believe and relying on the prosecution evidence cannot be said that prosecution has proved his case hence prosecution failed to prove case against the accused and accused may be acquitted.

6. For the final conclusion of the case the following issues are framed.

(I) Whether the prosecution proves that the accused persons were having in illegal possession of 10 bottles of Royal Blue Mault Whiskey worth of Rs. 1000/- Indian made Foreign Liquor on 13.11.2023 at village Palikhanda and made an offence U/s 65AA, 81 of the Gujarat Prohibition Act?

(II) What order?

7. The following answer is concluded all the above mentioned issues.

(I) Negative

(II) As per final order.

Reasonings

Issues No. 1 & 2-

- 8.** To prove its case, prosecution has examined Panch witnesses namely Mahendrabhai Motibhai vide Exh-11. The panch witness denied the prosecution case and stated that no prohibited Muddamal i.e. Indian Made Foreign Liquor has been seized in presence of them. They admitted the signature on Panchnama which is produced by Exh-12.
- 8.1** Prosecution witness constable- Ganpatsinh Budhabhai who lodged the FIR against the accused has examined vide Exh-18. In his chief examination he stated as per the fact of the FIR which is produced vide Exh.19. While in cross examination on behalf of the accused he admitted that- place of raid is within residential area and many people reside there, no documentary evidence of ownership of place of raid was given to the investigation officer by me and it was not on record.
- 8.2.** Prosecution has examined Investigation Officer- Mukeshbhai Manabhai vide Exh-16 wherein he stated in chief examination as per the FIR which is on record vide Exh-19. While in cross examination on behalf of the accused they admitted that- place of raid is within residential area and many people reside there, no documentary evidence of ownership of place of raid was on record, he has not recorded statements of any independent witnesses except panchas.
- 8.3.** Looking to the evidence of the prosecution side it is the case of the prosecution that at the time of raid accused was not present at the place of raid. Despite that prosecution has not produced any single documentary evidence of ownership of

the place of the raid from where Indian Made Foreign Liquor has been seized. Further, Panch witnesses have not supported the prosecution case and they declared hostile. The prosecution has failed to prove the panchnama vide Exh-12. Prosecution has failed to prove the said muddamal as a known brand of IMFL or original Label of the said muddamal. No forensic report has been produced from which one can make inference the sample collected by the Investigation Officer is of Indian Made Foreign Liquor. In this circumstances, it cannot be presumed that the Muddamal seized by police was Indian Made Foreign Liquor (IMFL) and it was in the possession of the accused.

Hence, at this juncture, it is pertinent to refer the Judgment of Hon'ble Supreme Court in para 15 of the case of "**Satish Mehra Vs. Delhi Administration & Anr** 31.07.1996 in which it has been held that "*when the judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date.*" Perusing the the judgment and observation of the Hon'ble Supreme Court it can be said that whenever court finds that there is no sufficient evidence and the final result would not be concluded in conviction, the court should not waste its valuable time to prolong the trial proceedings.

9. As discussed the evidence and facts of the case above, this court has come to conclusion that prosecution failed to

prove it's case against the accused and so answer issue No.1 in negative and hence passed the following final order.

Final Order

1. The accused person, U/s 255 (1) of the Criminal Procedure Code, Hareshbhai Bhupatbhai Baria & Natvarbhai Amrabhai Baria are hereby acquitted from the alleged offence U/s 65AA, 81 of the Gujarat Prohibition Act.
2. Mudammal Liquor be destroyed as per rule after expiry of appeal period.
3. If any muddamal article remains it shall be released to its rightful owner, subject to verification of ownership by the Investigating Officer, with effect from the date of pronouncement of this judgment.
4. Accused person is hereby directed to submit the bail bond U/s 437-A of the Criminal Procedure Code till the appeal period.

Pronounced in the open Court on 2nd Day of April, 2026.

Date : 02. 04.2026

Place:-Shahera.

[M. V. Choksi]
Code No. GJ-00831
Additional Chief Judicial Magistrate,
Shahera, Panchmahals