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**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, PANCHMAHALS, AT GHOGHAMBA**

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**Criminal Case No.81 of 2026
Exh.**

Complainant

The State of Gujarat, Gandhinagar

V/s

Accused

Age Res:
(Yrs.)

- | | | |
|------------------------------------|----------------|---|
| 1. Nileshbhai Sarjanbhai
Damor | Both-
Adult | 1.Paroli Dungari Faliyu, Ta.-
Ghoghamba, Dis. Panchmahals. |
| 2. Vishnubhai Arvindbhai
Rathod | | 2. Govindpuri, Jalaramnagar, Ta.- Halol,
Dis. Panchmahals. |

**Subject :- Offence Punishable Under Section 65-A,65-E,98-2,116-B,81 of the
Gujarat Prohibition Act.**

Mr.A.D. Kamol, Id. APP for the State of Gujarat.
Mr. D.G. Peshrana Advocate for the accused.

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JUDGEMENT

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(1) The brief fact of the prosecution's case that on 10.11.2025 in the prohibited area at Ghoghamba, the accused has illegally kept intoxicant Indian made liquor- 180ml Plasti whiskey bottles 1000 amount of Rs.2,80,500/- and Tata Pic-up Dala amount of Rs. 50,000/- total amount of Rs. 3,30,500/- at Bariya to Ghoghamba road. The complainant had lodged the complaint before the Rajgarh Police Station vide FIR No.11207055250701/2025, U/s. 65-A,65-E,98-2 and 116(B),81 of the

Prohibition Act. After necessary examination, I.O. has filed charge-sheet against the accused before the Court.

(2) On the filing of the charge-sheet, the Court has issued summons against the accused. On serving the summons the accused appeared before the Court and the copy of police papers have been provided to the accused as per law. Thereafter, charge has been framed, and the facts of the charge were read over to the accused and the accused has pleaded not guilty, therefore, his statement has been recorded. Thereafter, the evidence of the prosecution was started in the present case.

(3) The complainant has produced following evidence in support of offence:

Oral Evidence:

Sr. No.	Particulars	Exh.-
1.	Deposition of Complainant Devrajsinh Naravatsinh Gohil	05
2.	Deposition of Panch Ashwinkumar Natavarsinh Chauhan	07
3.	Deposition of Panch Jigneshkumar dilipbhai Daraji	09
4.	Deposition of I.O. Rajendrasinh Samarsinh Rathod	11

Documentary Evidence:

Sr. No.	Particulars	Exh.-
1.	Panchnama	08
2.	Complaint	06

(4) After adducing above evidences on prosecution side, as per Section 313 of the Criminal Procedure Code, the further statement of the accused has been recorded, wherein the accused has accepted that procedure of this case has been conducted in his presence and all other facts have been denied by the accused. Further, he stated that he is innocent.

(5) Heard the ld. APP Mr. A.D. Kamol on behalf of the State of Gujarat and ld. Advocate of accused Mr. D.G. Peshrana. Perused the record the oral as well as documentary evidence produced on record.

(6) The learned Advocate for the accused argued that panch witnesses have been examined in the case on hand and they have been turned hostile by the prosecution itself. In the present case, the Investigating Officer has not recorded any statement of independent witness who are living nearby the incident. Except panch witnesses, the complainant and other witnesses in the charge-sheet are police witnesses and it is natural that the police witnesses are interested in succeeding in decision with regard to the complaint. Hence, the accused cannot be convicted only on the basis of police witnesses without supportive evidence of independent witnesses and therefore, it has not been proved that the said muddamal liquor has been recovered by the accused. The prosecution has failed to prove the case against the accused and requested to acquit the accused.

(7) Looking to the facts & circumstances of the present case, following issues are required to be framed:

1. Whether the complainant undoubtedly proved that on 10.11.2025 in the prohibited area at Ghoghamba, the accused has illegally kept intoxicant Indian made liquor- 180ml Plasti whiskey bottles 1000 amount of Rs.2,80,500/- and Tata Pic-up Dala amount of Rs. 50,000/- total amount of Rs. 3,30,500/- at Bariya to Ghoghamba road. The complainant had lodged the complaint before the Rajgarh Police Station vide FIR No.11207055250701/2025, U/s. 65-A,65-E,98-2 and 116(B),81 of the Prohibition Act ?
2. What order?

(8) The findings of this court on the above issues for the reasons stated herein are as under:

1. Negative.
2. As per final order.

REASONS

Issue No.1:

(9) It is case of prosecution that on 10.11.2025 in the prohibited area at Ghoghamba, the accused has illegally kept intoxicant Indian made liquor- 180ml Plasti whiskey bottles 1000 amount of Rs.2,80,500/- and Tata Pic-up Dala amount of Rs. 50,000/- total amount of Rs. 3,30,500/- at Bariya to Ghoghamba road. The complainant had lodged the complaint before the Rajgarh Police Station vide FIR No.11207055250701/2025, U/s. 65-A,65-E,98-2 and 116(B),81 of the Prohibition Act.

(10) In support of proving the accusation against the accused, the prosecution has examined the panch witnesses Ashwinkumar Natavarsinh Chauhan and Jigneshkumar dilipbhai Daraji vide Exh.07 & 09 respectively. The witnesses have accepted their signature in the Panchnama produced at Exh.08, but they have not mentioned any other contents of the panchnama in their deposition therefore, the learned APP has requested to the Court to turn the panchas hostile hence, the Court has turned hostile the panchas and then the learned APP has cross-examined the panchas, but even they have not supported the case of the prosecution. Hence, from the deposition of this panch the prosecution has failed to prove any other specific fact, except the signatures of the panchas.

(11) Further, in the case on hand, the prosecution side has examined the Complainant Devrajsinh Naravatsinh Gohil vide Exh.05 wherein the I.O. has supported the version of prosecution and identify the signature of Complainant as

well as PSI in the plaint vide Exh.06. Further the prosecution side has Examined the I.O.Rajendrasinh Samarsinh Rathod vide Exh.11. By supporting the facts of the prosecution side, he has not obtained any evidence to show that at Bariya to Ghoghamba road where he made checking. The witness identified complaint. Moreover, the witness stated in his deposition that he was present during the checking and as stated in the panchnama, the liquor kept at Bariya to Ghoghamba road from the accused has been recovered. After investigation, charge-sheet has been filed against the accused. But witness has not obtained any evidence to show that at Bariya to Ghoghamba road where he made checking from the accused.

(12) Considering the evidence of the prosecution side, as discussed above, the prosecution could not prove the fact of Muddamal Recovery Panchnama through the deposition of panch witnesses. Moreover, it is not mandatory that the fact of panchnama can be proved only by the deposition of the panchas. The fact of panchnama can also be proved by the Officer who has conducted Panchnama or by any other person in whose presence entire procedure of panchnama has been conducted and who has personally seen the panchas and such procedure of Panchnama should be conducted in the presence of such Officer. There is no strict rule that the fact of the panchnama is said to be proved only when the panchas have supported to such facts. But if the police officer who has prepared such panchnama or in whose presence entire procedure of panchnama has been conducted and such person is giving deposition regarding the important contents of the panchnama, then the facts of such panchnama can be specifically believed. But in the present case, the panchas have not supported the facts of the panchnama and even by way of deposition of the police witness examined by the prosecution side also, the fact of Muddamal Recovery Panchnama has not been proved. Hence, the prosecution side could not prove the material fact of the panchnama. Further in case of **Gulabbhai Ranchhodbhai vs State of Gujarat Reported in 1992 (2) GLH (U.J) pg**

11CR.Rev.Appn No 435/03 2012 TLGL pg 753 & DILIP SURESH SANSI VS Gujarat Hon'ble Gujarat High Court held that “What is also required under section 116B of the act is that the sealed bottles must bear the original label indicating the name of the known brand and the name of its manufacturer. The prosecution, therefore, should establish that the labels on the bottles which indicate the name of the brand as well as manufacturer are the original labels. In absence of examination of any manufacturer of the product as appeared form the labels on the bottle, it can't be presumed that the labels appearing on the bottles are the original one. To draw presumption under section 116B of the Act, the prosecution has to establish that the labels found on the sealed bottles indicating the names of the known brand and the name of the manufacturer, are the original one. In absence of this evidence as to the label being original, requirements of section 116B are not satisfied. As presumption cannot be drawn and as there is no evidence to prove by evidence of the Chemical Analyser that the accused were in possession of prohibitory liquor, the conviction under section 65-A 5 and 66(1)B cannot be sustained.”.

(13) Now the question arises whether the quantity of liquor was found from the accused. Here in the case on hand, the allegation is put against the accused that liquor was found with the the accused. However, the prosecution side could not produce any concrete evidence to prove that such place with muddamal was kept from the accused. It is the case of the prosecution that accused raid handed before the Panchas but the Panchas has not supported the Panchnama and the panchas turned hostile. Therefore handed over of the accused with Muddamal as doubtful.

(14) Hence, considering the entire oral as well as documentary evidences of the prosecution, the prosecution could not prove that on the date, time and place of checking, by way of the raid on the basis of information by the police, the quantity of liquor has been found at Bariya to Ghoghamba road by the accused and thereby

the accused committed offence under Section 65-A,65-E,98-2 and 116(B),81 of the Prohibition Act. Therefore, the accused cannot be convicted for the offence punishable under Section 65-A,65-E,98-2 and 116(B),81 of the Prohibition Act. Hence, my answer to issue No. 1 is in negative and for issue No. 2, I pass following final order:

ORDER

1. The accused **1. Nileshbhai Sarjanbhai Damor Age: Adult, Resi. Paroli Dungari Faliyu, Ta.- Ghoghamba, Dis. Panchmahals. 2. Vishnubhai Arvindbhai Rathod, Aged : Adult, Resi. Govindpuri, Jalaramnagar, Ta.- Halol, Dis. Panchmahals** are hereby acquitted from the accusation of the offence alleged against him under the provision of Section 248(1) of Cr.P.C., in connection with the offence registered U/s 65-A,65-E,98-2 and 116(B),81 of the Prohibition Act for want of sufficient evidence.
2. Accused No. 2 Vishnubhai Arvindbhai Rathod, Resi. Govindpuri, Jalaramnagar, Ta. Halol, Dis. Panchmahals be released from the Jail Custody, unless required in any other offence.
3. As per provisions of Section 437A of the Criminal Procedure Code, accused is directed to furnish fresh bond and like surety of Rs. 5000/- (Rupees Five Thousands Only) before this Court.
4. The Muddamal & liquor be destroyed as per rule after expiry of appeal period.If any Muddamal articles remains, it shall be returned to the original owner after verifying the ownership of the same by I.O..

5. The bail as given by the accused in the present case under the provisions of Section-437(A) of the Criminal Procedure Code is ordered to continue till period of six months.
6. Pronounced & signed in the open Court today.

Date : 10/04/2026.

Place : Ghoghamba

Ansari

(H.S. LANGA)

**ADDITIONAL CHIEF JUDICIAL
MAGISTRATE AT GHOGHAMBHA**

UIC CODE NO.GJ01000