

KABG510009252011



Presented on : 21-11-2011
Registered on : 21-11-2011
Decided on : 13-07-2026
Duration : 14 years, 7 months, 22 days

**IN THE COURT OF THE II ADDL. CIVIL JUDGE AND
JMFC, AT: GOKAK**

-:Present:-

Sri. Abhinay

B.C.A, LL.B, LL.M.

II Addl. Civil Judge & JMFC, Gokak.

C.C. No.1672/2011

Dated this the 13th day of July 2026

<u>COMPLAINANT:-</u>	State through Gokak Excise PS, Gokak
<i>(Asst. Public Prosecutor)</i>	
<i>// Versus //</i>	
<u>ACCUSED:</u>	Adivappa Ningappa Nayik Age: 24 Yrs, Occ: Coolie R/o. Budryanur village, Tal: Gokak, Dist: Belagavi.
<i>(R/by Sri. S.C.P Adv)</i>	

Date of Offence	20.08.2011
Date of FIR	20.08.2011
Date of Chargesheet	21.11.2011
Date of Framing of Charges	09.01.2023
Date of Commencement of evidence	24.03.2025

Date on which judgment is reserved	13.07.2026
Date of the Judgment	13.07.2026
Opinion of the Judge	Accused is acquitted

: J U D G E M E N T :

The accused is facing trial for the offences punishable U/Sec.32, 38A of Karnataka Excise Act, U/sec. 273 of IPC for the charge sheet submitted by the Gokak Excise Police Station, Gokak.

2) The brief facts of the case are as follows :

It is the case of the prosecution that on 20.08.2011, at about 4.00 a.m., within the limits of Gokak Excise Police Station, near the canal situated on Panjanatti-GhodKundaragi Road, the accused was found in illegal possession of 40 litres of illicitly distilled liquor contained in two black rubber tubes while transporting the same on his motorcycle without possessing a valid licence issued by the Government. It is further alleged that the accused, knowing that the said illicitly distilled liquor was noxious and unfit for human consumption, intended to sell it to the public and thereby committed offences punishable under

Section 32(1) and Section 38A of the Karnataka Excise Act and Section 273 of the Indian Penal Code.

3. After filing charge sheet, cognizance is taken for the offences punishable U/Sec.32(1), 38A of K.E. Act, U/sec. 273 of IPC against the accused. The presence of accused is secured by issuing process against him as he is on bail. Copy of the prosecution papers are furnished to the accused as per provisions of Section 207 of Cr.P.C. Heard, before charge. Charge is framed and read over to the accused. The accused has denied the charge and claim to be tried. Hence, the matter has been posted for recording of evidence.

4. To prove the charges leveled against the accused, the prosecution has examined 03 witnesses as PW-1 to PW-3 and got marked 07 documents as per Ex.P.1 to Ex.P.7 and one material object got marked as M.O.1.

5. After completion of the prosecution side evidence, statement of the accused is recorded as contemplated

U/Sec.313 of Cr.P.C and incriminating materials appeared in the evidence has been read over and explained to the accused. Accused has denied all the incriminating circumstances that appeared against them and not chosen to adduce any defense evidence.

6. Upon hearing arguments advanced from both side and on perusal of materials placed on record, following points arise for consideration:

POINTS

1. Whether the prosecution proves beyond reasonable doubt that on 20.08.2011, at about 4.00 a.m., near the canal situated between Panjanatti Village and Ghod Kundaragi Village, the accused was found in illegal possession of 40 litres of illicitly distilled liquor and thereby committed an offence punishable under Section 32(1) of the Karnataka Excise Act?

2. Whether the prosecution proves beyond reasonable doubt that on the aforesaid date, time and place, the accused was transporting 40 litres of illicitly distilled liquor in two

rubber tubes on his motorcycle and thereby committed an offence punishable under Section 38A of the Karnataka Excise Act?

3. Whether the prosecution proves beyond reasonable doubt that, on the aforesaid date, time and place, the accused, knowing that the 40 litres of illicitly distilled liquor was noxious and unfit for human consumption, intended to sell the same to the public and thereby committed an offence punishable under Section 273 of the Indian Penal Code?

4. What order?

7) My finding to the above point is as under:-

Point No.1 : In the Negative
Point No.2 : In the Negative,
Point No.3 : In the Negative,
Point No.4 : As per final order
for the following:

:: REASONS ::

8. POINT NO.1 to 3: These points are inter connected to each other, therefore, these points are taken up together for common discussion.

9. **Appreciation of Evidence**

The complainant examined himself as PW.1. He deposed that he worked as an Excise Inspector in the Gokak Excise Range from the year 2010 to 2012. He stated that on 19.08.2011, at about 6.00 p.m., he secured two panch witnesses, namely CW.2 and CW.3, and informed them that they would be conducting night patrolling in Gokak Taluk. He requested them to act as panch witnesses in the event of detection of any excise offence, and they agreed. At about 9.30 p.m., PW.1, along with his staff and the panch witnesses, commenced patrolling in a Government Jeep bearing Registration No. KA-22/G-454. They patrolled through Kanasageri, Urbinahatti, Kundaragi, Dasanatti, Mallapur and Ankalagi villages. At about 3.00 a.m. on 20.08.2011, while proceeding from Panjanatti Village towards Kundaragi, they reached the canal situated between the said villages. Finding the place suspicious, they kept surveillance from both sides of the road.

10. After a few minutes, they noticed a motorcycle approaching the spot. On seeing the excise officials in uniform, the rider became frightened, abandoned the vehicle at the spot and attempted to flee. The excise staff chased and apprehended him. Thereafter, in the presence of the panch witnesses, PW.1 inspected the motorcycle, which was a Bajaj scooter without any registration number. Two black rubber tubes were found beside the vehicle. On examination, the tubes were found to contain illicitly distilled liquor. On enquiry, the accused disclosed his name as Adivappa Ningappa Naik, resident of Budryanur Village, Gokak Taluk.

11. PW.1 informed the accused that transportation of illicitly distilled liquor without a valid licence constituted an offence under the Karnataka Excise Act. Out of the total quantity of 40 litres, samples of 180 ml each were drawn from the liquor contained in the two tubes and transferred into two separate bottles for chemical examination. The sample bottles were sealed with the Government seal, tied

securely, and signed by the panch witnesses and the complainant.

12. The seizure mahazar was drawn at the spot on 20.08.2011, between 4.00 a.m. and 5.00 a.m., under the light of the Government vehicle. Thereafter, PW.1 returned to the Excise Police Station along with the accused and the seized articles, registered the complaint, and submitted the FIR before the jurisdictional Court. On the same day, the accused was produced before the learned Magistrate to be sent to judicial custody. PW.1 further deposed that on 20.08.2011, he addressed a letter to the Deputy Commissioner of Excise seeking permission to retain the seized property in safe custody. On 22.09.2011, he forwarded the sealed liquor samples to the Forensic Science Laboratory, Bengaluru, through CW.6 for chemical examination. CW.6 returned with the chemical examination report on 24.09.2011.

13. PW.1 also stated that on 17.09.2011, he addressed a letter to the Regional Transport Officer, Gokak, seeking particulars of the owner of the seized vehicle. By reply dated 29.09.2011, the RTO informed him that, in the absence of the registration number and engine number, the ownership details could not be furnished. After recording the statements of CW.4 to CW.6 and completing the investigation, PW.1 filed the charge sheet before the Court. PW.1 identified MO.1, consisting of two sample bottles containing 180 ml of liquor each, and also identified the accused before the Court.

14. The search warrant was marked as Ex.P1, and the signature of PW.1 thereon was marked as Ex.P1(a). The seizure mahazar was marked as Ex.P2, and the signature of PW.1 thereon was marked as Ex.P2(a). The complaint was marked as Ex.P3, and the signature of PW.1 thereon was marked as Ex.P3(a). The FIR was marked as Ex.P4, and the signature of PW.1 thereon was marked as Ex.P4(a).

The letter addressed to the Deputy Commissioner of Excise was marked as Ex.P5, and the signature of PW.1 thereon was marked as Ex.P5(a). The forwarding letter addressed to the Forensic Science Laboratory was marked as Ex.P6, and the signature of PW.1 thereon was marked as Ex.P6(a). The Chemical Examination Report was marked as Ex.P7. Though the learned counsel for the accused cross-examined PW.1 at length, nothing worthwhile was elicited from the mouth of witness.

15. PW.2, an Excise Guard, deposed that he worked in the Gokak Excise Range from 2010 to 2015. He corroborated the testimony of PW.1 regarding the night patrolling conducted on 20.08.2011, the interception of the accused near the canal between Panjanatti and Kundaragi villages, the seizure of the Bajaj scooter without a registration number, the recovery of 40 litres of illicitly distilled liquor contained in two black rubber tubes, the drawing of sample bottles of 180 ml each, and the preparation of the seizure mahazar at the spot. PW.2

further identified MO.1 and also identified the accused before the Court. During cross-examination, the learned counsel for the accused merely suggested that the contents of the chief examination were false. PW.2 denied all such suggestions. Nothing material was elicited from the mouth of witness.

16. CW.3, one of the panch witnesses, was examined as PW.3. However, he did not support the case of the prosecution. In his chief examination, PW.3 deposed that he did not know CW.2 or the accused and had no knowledge of the alleged incident. He admitted his signature on the seizure mahazar, which was marked as Ex.P2(b). During cross-examination by the learned Assistant Public Prosecutor, PW.3 denied the contents of the seizure mahazar and did not support the prosecution case.

17. It is the primary burden of the prosecution to prove that on that relevant point of time, the accused was selling illicit distilled liquor without having license. In the present

case, the prosecution examined one panchanama witnesses and another panchanama witness i.e., CW-2 is reported to be dead, but the witness has not supported the prosecution case. He has deposed that, the police obtained his signature on panchanama and nothing was recovered in his presence. The learned APP with the leave of this court cross-examined the witness, but nothing has been elicited from his mouth to establish that what he has stated in his chief examination is untrue. The prosecution has not offered any plausible explanation to discard the evidence of the witness. Since, the witness firmly deposed that he has not at all visited the place of occurrence, it cast a cloud of suspicion on prosecution case. Prosecution has not satisfactorily proved the possession of through independent witnesses.

18. The prosecution has failed to prove the possession of illicit distilled liquor from the accused for the purpose of sale. Therefore, without the corroborative evidence of

complainant, independent panchas witnesses, evidence of Police official is not safe to rely and convict the accused.

19. On Scrupulous reading of the entire evidence adduced by prosecution, this court is of the opinion that the prosecution has utterly failed to prove the guilt of the accused beyond all reasonable doubt and always benefit of doubt is to be given to the accused, accordingly, it has been given. Hence, accused deserves to be acquitted. Hence, I answer point No.1 to 3 are in the “**Negative**”.

20. **Point No.4:** In view of my above discussion and the reason stated therein on point No.1 to 3, I proceed to pass the following:

ORDER

In exercise of powers conferred U/Sec.248(1) of Cr.P.C., the accused is hereby acquitted of the offences punishable U/Sec. 32(1), 38A of Karnataka Excise Act, U/Sec. 273 of Indian Penal Code.

The accused is set liberty. The bail bonds and surety bonds of the accused shall be in force for 6 months in view of the amended provision U/Sec.437(A) of Cr.P.C.

MO-1 is hereby ordered to be destroyed as worthless after the appeal period is over.

(Dictated to the Stenographer directly on the Computer, computerised by him, corrected, and pronounced by me in the open Court on this the 13th day of July 2026)

(ABHINAY)

II Addl. Civil Judge & JMFC,
Gokak.

: ANNEXURE :

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES)
PW-1	Amruta Gudi	Complainant
PW-2	Siddappa Durgappa Hosamani	Other witness
PW-3	Ashok Hanamant Harijan	Pancha witness

B. Defence Witnesses, if any:

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES)
DW		NIL

C. Court witness, if any:

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES)
CW		NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit P-1/PW-1	Search warrant
2	Exhibit P-1(a)/PW-1	Signature of PW-1
3	Exhibit P-2/PW-1	Panchanama
4	Exhibit P-2(a)/PW-1	Signature of PW-1
5	Exhibit P-2(b)/PW-3	Signature of PW-3
6	Exhibit P-3/PW-1	Complaint
7	Exhibit P-3(a)/PW-1	Signature of PW-1
8	Exhibit P-4/PW-1	FIR
9	Exhibit P-4(a)/PW-1	Signature of PW-1
10	Exhibit P-5/PW-1	Letter addressed to DCE Belagavi
11	Exhibit P-5(a)/PW-1	Signature of PW-1
12	Exhibit P-6	Letter addressed to FSL Belagavi
13	Exhibit P-6(a)/PW-1	Signature of PW-1

14	Exhibit P-7/PW-1	FSL report
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B. Defence:

Sr. No.	Exhibit Number	Description
1	Exhibit D-1/DW-1	NIL

C. Court Exhibits

Sr. No.	Exhibit Number	Description
1	Exhibit C-1/CW-1	NIL

D. Material Objects:

Sr. No.	Material Object Number	Description
1	MO-1/PW-1	180 ml of illicitly distilled liquor contained in a two rubber tubes

(ABHINAY)

II Addl. Civil Judge & JMFC,
Gokak.