

KABK200009042021



IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,

AT:- MUDHOL

:: PRESENT ::

SRI.VIVEK GRAMOPADHYE., B.S.L., LL.B.
Addl. Senior Civil Judge & JMFC, MUDHOL.

Dated this the 6th day of March 2026

C.C. No.116/2021

Complainant:

1. **The State of Karnataka,**
By Sub Inspector, Excise
Mudhol.
(By Learned A.P.P)
- V/s -

Accused:

1. **Shri.Ramanna S/o Siddappa Muttur**
Age: 35 years, Occ: Labourer,
R/o: Halagali,Tq: Mudhol,
Dist: Bagalkot.
2. **Shri.Nagappa S/o Channabasappa
Bhushannavar**
Age: 31 years, Occ: Labourer,
R/o: Halagali,Tq: Mudhol,
Dist: Bagalkot.

**(Accused-1 Rep. by Shri.G.S.P. Advocate,
Accused-2 Rep. by Shri.M.A.H.Advocate)**

Offence : U/s.32, 34 of Karnataka
Excise Act and 273 of I.P.C

Plea of the accused : Pleaded not guilty

Date of Judgment : 06.03.2026

(VIVEK GRAMOPADHYE)
Addl. Senior Civil Judge & JMFC
Mudhol.

J U D G M E N T

The accused is facing trial for alleged commission of offence punishable under Section 32, 34 of Karnataka Excise Act and under Section 273 of I.P.C., on the basis of charge sheet filed by P.S.I of Mudhol Police Station.

2. The case of the prosecution in brief can be seen as under.

It is the case of the prosecution on 17.03.2019 at 06-00 A.M., when the complainant was in police station, he received information that near Kariyappa Temple in Halagali Village at a public place, one person is selling illicit liquor in a can and as soon as he got the information, he secured the presence of subordinate officials and secured the presence of two panchas

through HC-1393 and as the said panchas agreed to cooperate, in the government vehicle, they proceeded from the station at 06-30 A.M and reached the spot at 07-00 A.M. There, they kept a watch and found one person pouring illicit liquor in a glass and another person was handing it over to the public and taking money from them. Therefore, he got confirmed the information and caught hold of the persons selling the liquor. At 07-10 A.M., the said person was arrested and when enquired he told his name as Nagappa Channabasappa Bhushannavar and when they checked the white colour can, they found it containing 3.5 litres of illicit liquor. Thereafter, they confiscated the said illicit liquor and out of it 180 M.L of illicit liquor was taken apart for chemical examination and on enquiry he told that the person who ran away is Ramanna Siddappa Muttur. Thereafter, they conducted the panchanama between 07-10 A.M to 08-10 A.M and also confiscated ₹180/- from the accused person. Then, he came to the Mudhol Police Station and gave complaint. On filing of the complaint, it was registered as Crime No.58/2019 and thereafter, the Investigating Officer has conducted the investigation and as sufficient material was available against the accused

No.1 and 2, he filed charge sheet against the accused No.1 and 2.

3. At crime stage itself, the accused No.2 is released on bail and thereafter, on 18.06.2019 the accused No.1 appeared before the court along with the anticipatory bail order and accordingly accused No.1 is released on bail. After filing of the charge sheet, cognizance of the offences punishable under Sections 32 and 34 of Karnataka Excise Act was taken and summons was issued to accused No.1 and 2. In lieu of the summons, the accused persons has appeared before the court and in compliance of Section 207 of Cr.P.C., the copy of the charge-sheet was furnished to the accused person.

4. Heard learned advocate for the accused and learned A.P.P., before framing charges and as sufficient material was available against the accused persons, the charges are framed, read over and explained to the accused persons and accused persons pleaded not guilty and claimed to be tried.

5. To substantiate the case of the prosecution, the prosecution has examined 4 witnesses as P.W-1 to P.W.4

and has got marked at Ex.P.1 to Ex.P.10 and M.O.1 is marked during the prosecution evidence.

6. Section 313 statement of the accused persons are recorded. The accused persons refuted the incriminatory evidence appearing against them and stated that they have no defense evidence to lead. The charges are re-framed, read over and explained to the accused persons and accused persons pleaded not guilty and claimed to be tried. Both learned A.P.P and learned advocate for the accused No.1 and 2, submitted that they have no further evidence to lead on re-framed charges.

7. After compliance of Section 437-A of Cr.P.C, heard arguments of learned A.P.P and learned advocate for the accused No.1 and 2.

8. The following points arise for my consideration.

POINTS

1. Whether the prosecution proves beyond all reasonable doubt that on 17.03.2019 at 07-10 A.M., the accused persons are found in possession of 3.5 litres of illicit liquor near Kareppa Temple in Halagali Village of Mudhol Taluka and thereby they have

committed 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, the accused No.1 and 2 were found in possession of illicit liquor with an intention to sell it and earn profit and thereby they have committed offence punishable under Section 34 of Karnataka Excise Act?
3. Whether the prosecution proves beyond all reasonable doubt that on the above said date, time and place the accused persons were found in possession of illicit liquor knowing it to be noxious drink not fit for human consumption and thereby they have committed offence punishable under Section 273 of I.P.C?
4. What order ?

9. My answers to the above points are 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,, |

: R E A S O N S :

10. **Point No.1 to 3:-** To substantiate the case of the prosecution, the prosecution has examined the police official who accompanied C.W.1 at the time of raid Shekhargoud Basavangouda Hanamangoudar/C.W.4 as P.W.1. During the course of his examination-in-chief, he deposes that on 17.03.2019 C.W.1 called him, C.W.5 and C.W.6 and informed that he has received information that near Kareppa Temple of Halagali Village, two persons are selling illicit liquor in a can and directed them to accompany for a raid. Further, he deposes that C.W.1 directed him to secure the presence of panchas and accordingly he has secured the presence of C.W.2 and C.W.3 and on information given by C.W.1 the said panchas agreed to cooperate. Therefore, along with the panchas and the police officials C.W.1 went near Kareppa Temple of Halagali Village in government jeep and kept a watch and there, they found one person pouring the illicit liquor and another person handing it over to the public approaching them and taking money from them. When they tried to get hold of the said persons, one person ran away from the spot and another was caught hold of.

The person who was caught hold of told his name as Nagappa Bushannavar and told that the person who ran away is one Ramappa Muttur. When they checked the can, they found it containing 3.5 litres of illicit liquor and they found ₹180/- on his person. Thereafter, out of the illicit liquor confiscated, 180 M.L of illicit liquor was taken apart for chemical examination and panchanama was conducted. The witness recognises the accused persons and further, he states that accused No.2 was arrested by the police on the spot and accused No.1 obtained anticipatory bail.

11. Learned advocate for the accused has cross-examined P.W.1 and during the course of his cross-examination, he denies the suggestion that C.W.1 has never received information, has never told the said information to him and other subordinate police officials. He has never Secured the presence of panchas through him, has never went to the spot and has never found accused person selling illicit liquor and they have never conducted the raid and caught hold of accused No.2 and accused No.1 never ran away from the spot and they have never confiscated 3.5 litres of illicit liquor and ₹180/- was also never confiscated and panchanama was

never conducted by taking apart 180 M.L of illicit liquor for chemical examination and further, he denies the suggestions made by Learned Advocate for the accused.

12. To further substantiate the case of the prosecution, the prosecution has examined the pancha witnesses Rajesab Akbarsab Momin and Abdulrazak Turubuddin Jamadar/C.W.2 and CW3 as P.W.2 and P.W.3. Both the witnesses recognized their signature on Ex.P.1 Panchanama and their signatures are marked at Ex.P.1(a) and Ex.P.1(b). They state that as per the directions of the police they have signed upon the Panchanama and they do not know the contents of the Panchanama and nothing was confiscated in their presence and they do not recognize the accused persons shown to them. The witnesses do not recognize 180 M.L of glass bottle shown to them and state that no cash was confiscated in their presence.

13. Learned A.P.P has treated the said witnesses as hostile and has cross-examined them and they denied the suggestion that on 17.03.2019 their presence were secured to act as panchas and accordingly they agreed and went to Kariyappa Temple of Halagali Village and

there the accused was found selling illicit liquor and the said accused persons were found selling illicit liquor and one of the accused person ran away and another was caught hold of and 3.5 litres of illicit liquor and ₹180/- of cash was confiscated and the 180 M.L of illicit liquor was taken apart for chemical examination and panchanama was conducted between 07-10 A.M to 08-10 A.M. Further, they deny the suggestions made by learned A.P.P.

14. It is relevant to note that, in respect of the complainant/C.W.1, summons were issued on several occasions. Despite repeated issuance of summons, C.W.1 has failed to appear before the Court. The record discloses that summons were issued to C.W.1 from 17.12.2021, and thereafter on 18.02.2022, 16.07.2022, 17.09.2022, 03.12.2022, 21.01.2023, 25.05.2023, 21.06.2023, 20.07.2023, 14.12.2023, 25.01.2024, 06.04.2024, 06.07.2024, 03.08.2024, 22.11.2024, 21.12.2024, 18.01.2025, 22.03.2025, 27.09.2025 and 06.12.2025. In spite of repeated issuance of summons on the aforesaid dates, the complainant/C.W.1 remained absent and did not step into the witness box. Therefore, this Court was of the opinion that no sufficient grounds were made out

to further adjourn the matter. Accordingly, the evidence of C.W.1 came to be dropped vide order dated 06.12.2025.

15. To further substantiate the case of the prosecution, the prosecution has examined the Investigating Officer Shahuhusen Badami/C.W.7 as P.W.4. During the course of his examination-in-chief, he deposes on 17.03.2019 at 09-00 A.M., when he was station-in-charge, the complainant came along with the confiscated material, panchnama and gave complaint and he received it and registered it as Crime No.58/2019 and sent copy of the F.I.R to the court and another copy to his higher official. The statement of C.W.4 to C.W.6 was recorded and he submitted P.F to the court. On 16.04.2019, he sent the confiscated material for chemical examination to F.S.L Belagavi and on 21.07.2019 received F.S.L report and kept it in the file. On 31.07.2019 he sought for permission to hand over the excised material from Excise Department, received the permission and handed it over accordingly. On 16.08.2019, accused No.1 appeared by obtaining anticipatory bail and he was released on bail and restatement of C.W.1, C.W.4 to C.W.6 was recorded and on 16.08.2019, as sufficient material was available

against the accused persons, he filed charge sheet against the accused persons.

The witness recognises his signature on the complaint, FIR and the said documents are marked at Ex.P.2 and Ex.P.3 and the witness's signature are marked at Ex.P.2(a) and Ex.P.3(a). The witness recognizes his signature on P.F No.31/2019 and letter written to F.S.L, Belagavi and the said documents are marked at Ex.P.4 and Ex.P.5 and the witness's signature are marked at Ex.P.4(a) and Ex.P.5(a). The witness recognizes his signature on the F.S.L report and the F.S.L report is marked at Ex.P.6 and the witness's signature is marked at Ex.P.6(a). The witness recognises his signature on the letter written seeking to hand over the excised material and the letter written with respect to handing over the excised material and the said documents are marked at Ex.P.7 and Ex.P.8 and the witness's signature are marked at Ex.P.7(a) and Ex.P.8(a). The report given by P.C No.762 and PC No.1094 are recognised by the witness and they are marked at Ex.P.9 and Ex.P.10 and the witness's signature are marked at Ex.P.9(a) and Ex.P.10(a). The witness recognises the accused person and he also recognises one bottle shown to him which is marked at

M.O.1 and states that he can recognise ₹180/- shown to him.

16. Learned advocate for the accused has cross-examined P.W.4 and during the course of his cross-examination, he denies the suggestion that without receiving any complaint, without taking any statement, without submitting any P.F without sending any material for chemical examination, without receiving the report and without seeking permission to hand over the excise material and without handing over the excise material and though no material is available against the accused only for statistical purpose he has filed a false charge sheet against the accused. Further, he denies the suggestions made by learned advocate for the accused that there is no nexus between M.O.1 and the accused person.

17. It is relevant to note that in criminal cases, it is the prosecution which is saddled with the burden to substantiate its case beyond all reasonable doubt. In this case, if we examine the evidence lead by the prosecution it can be seen that the very complainant in spite of repeated issuance of summons has remained absent.

Moreover, two pancha witnesses are examined as P.W.2 and P.W.3 and both the pancha witnesses have entirely turned hostile to the case of the prosecution and in spite of the cross-examination at length by Learned A.P.P. nothing substantial is elicited during the course of cross-examination of P.W.2 and P.W.3. They have refused to recognize not only the material objects shown to them, but they have also not recognized the accused persons and therefore, the very nexus between the accused persons and the confiscated material, is not substantiated by the prosecution beyond all reasonable doubt.

Further it is relevant to note that as per the complaint averments itself the complainant was in station, when he received the information. But instead of registering the F.I.R, he has proceeded with the investigation which is not at all permissible in the eyes of law and with respect to the post-facto F.I.R, it is relevant to note the dictum of Hon'ble High Court of Karnataka in the case of ***Mr Joel Preetham D'Souza vs The State Of Karnataka in WP No.17937 of 2023 dated 01/04/2025*** at paragraph No.11 has observed as under,

“11. This Court, in the case of DAMERA UPENDRA RAO AND ANOTHER VS. STATE BY EXCISE DEPARTMENT POLICE in Criminal Petition No.2121/2022 decided on 14.12.2022, has considered the aforesaid aspect and quashed the proceedings. Further, in the case of G. PUTTARAJU Vs. STATE OF KARNATAKA AND ANOTHER in Writ Petition No.20816/2023 decided on 31.01.2024, this Court has already held that without registering FIR, commencement of investigation, is in violation of the provisions of the Cr.P.C. 12. That apart, sending the less quantity of the bottles than the seized quantity of bottles for examination, and without recording the reasons for not obtaining warrant, seizing the articles and commencing the investigation without registering FIR, is violative of the provisions of the K.E. Act as well as Cr.P.C. Therefore, the criminal proceedings is not sustainable in law.”

18. On perusal of the said dictum and applying it to the facts and circumstances of the case, I am of the opinion that as the complaint is a post-facto complaint, as both the pancha witnesses have turned hostile to the case of the prosecution and as the nexus between the accused persons and the confiscated material is not substantiated by the prosecution beyond all reasonable doubt, I am of the opinion that and hence, I answer **Point No.1 to 3 in the Negative** against the prosecution.

19. **Point No.4:-** Therefore, I proceed to pass following,,

ORDER

Acting Under Section 248(1) of Cr.P.C., the accused No.1 and 2 are acquitted for the offences punishable Under Section 32 and 34 of Karnataka Excise Act and Section 273 of I.P.C .

Bail bond stand cancelled.

Bail bond executed under section 437A will be in force till its validity.

M.O.1 being worthless shall be destroyed after appellate period.

Rs.180/- confiscated with respect to the case shall also stand confiscated to the State after appellate period.

(Dictated to the Stenographer, typed by her, corrected, signed & then pronounced in the Open court on this the **6th day of March 2026**).

(VIVEK GRAMOPADHYE)
Addl. Senior Civil Judge & JMFC
Mudhol.

-: ANNEXURES :-**1. No. of witnesses examined for Complainant :-**

- PW-1 : Shri.Shekhargouda S/o Basavanagoud
Hanamanagoudar
- PW-2 : Shri.Rajesab S/o Akbarsab Momin
- PW-3 : Shri.Abdulrazak S/o Turubuddinn
Jamadar
- PW-4 : Shri.Shahusen S/o Saiyad Badami

2. List of documents marked for Complainant :-

- Ex.P.1 : Panchanama
- Ex.P.1(a) : Signature of P.W.2
- Ex.P.1(b) : Signature of P.W.3
- Ex.P.1(c) : Signature of P.W.3
- Ex.P.2 : Complaint
- Ex.P.2(a) : Signature of P.W.4
- Ex.P.3 : F.I.R
- Ex.P.3(a) : Signature of P.W.4
- Ex.P.4 : P.F
- Ex.P.4(a) : Signature of P.W.4
- Ex. P.5 : Acknowledgment
- Ex.P.5(a) : Signature of P.W.4
- Ex.P.6 : F.S.L report
- Ex.P.6(a) : Signature of P.W.4
- Ex.P.7 : Memorandum
- Ex.P.7(a) : Signature of P.W.4
- Ex.P.8 : Letter written Excise Department, Mudhol
- Ex.P.8(a) : Signature of P.W.4
- Ex.P.9 : Report received from PC-762
- Ex.P.9(a) : Signature of P.W.4
- Ex.P.10 : Report received from PC-1094
- Ex.P.9(a) : Signature of P.W.4

3. No. of witnesses examined for Accused:-

-NIL-

4. List of documents marked for Accused:-

-NIL-

5. Material objects marked for prosecution :-

M.O.1 : 180 M.L glass bottle

**(VIVEK GRAMOPADHYE)
Addl. Senior Civil Judge & JMFC
Mudhol.**

