

**IN THE COURT OF THE I ADDITIONAL JUNIOR CIVIL JUDGE-CUM-
I ADDITIONAL JUDICIAL MAGISTRATE OF FIRST CLASS,
NARSAPUR.**

Present : Sri K.Srinivas, I Additional Junior Civil Judge-cum-I Additional
Judicial Magistrate of First Class, Narsapur.

Monday, this the 19th day of June, 2023

C.C.NO.596/2022

Between:

State represented by the Sub-Inspector, Special Enforcement Bureau Station,
Narsapur.

...Complainant.

And:

Kavuru Nageswara Rao, S/o. Subrahmanyam, Age 70 years, Caste:
Settibalija, Kothota village, Mogaltur Mandal.

...Accused.

This case is coming on for final hearing before me on 12.06.2023 in the presence of the Incharge Assistant Public Prosecutor for the State and Sri T.Venkateswara Rao, Advocate for the accused and after perusing the material available on record and upon hearing the arguments and having stood over for consideration to this day, the Court delivered the following:

J U D G M E N T

1. The State represented by the Sub-Inspector, Special Enforcement Bureau Station, Narsapur filed charge sheet against the accused in Crime No.152/2020 for the offence under Section 34(g) of the A.P.Excise Act, 1968, as amended by the A.P.Excise (Amendment) Act, 2020.

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

On 15.09.2020 at about 04.00 p.m. near Lakshmaneswaram village the accused was found in possession of 5 bottles of Old Timer Whisky, each containing 180 ml. The prosecution further alleged that on seeing the police, accused ran away from the spot, then PW.1 Y.Durga Prasad, Sub-Inspector, SEB Station, Narsapur and his staff caught hold the accused and recorded special proceedings. Further, PW.1 had drawn one sample from the seized contraband. Later, accused and the contraband were taken to the SEB Station. Basing on the special report, PW.1 was registered a case in Crime

No. 152/2020 for the offence under Section 34(g) of A.P.Excise Act, 1968. Thereafter he sent the M.O.1 sample for chemical analysis. As per the chemical analysis report, the contraband seized by the PW.1 is Indian Made Liquor. Thereafter he got transferred and he handed over the CD file to PW.2 R.V.L.Narasimha Rao, who filed charge sheet against the accused.

3. Cognizance was taken for the offence under Section 34(a) of A.P.Excise Act, 1968.

4. After furnishing the copies of the relevant documents as contemplated under Section 207 of the Cr.P.C., the accused was examined under Section 239 of the Cr.P.C. and he denied the offence. Charge under Section 34(g) of A.P.Excise Act, 1968 was framed, read over and explained to him in Telugu for which he pleaded not guilty and claimed to be tried.

5. During the course of trial, in order to prove its case, the prosecution examined PWs.1 and 2 and got marked Exs.P.1 to P.3 and M.O.1 sample bottle.

6. After closure of the evidence on the side of the prosecution, when the accused was called upon to explain the incriminating circumstances appearing against him in the evidence of the prosecution as envisaged under Section 313 of the Cr.P.C., he denied the same and reported no defence evidence.

7. Heard both sides and perused the material available on record.

8. Now the points for determination is -

Whether the prosecution has established the guilt of the accused beyond all reasonable doubt for the offence under Section 34(g) of A.P.Excise Act, 1968?

POINT :

9. To substantiate the prosecution case, prosecution examined PWs.1 and 2 and got marked Exs.P1 to P3 and M.O.1. PWs.1 and 2 are the excise officials, Ex.P1 is the special report, Ex.P2 is the FIR, Ex.P3 is the chemical analysis report and M.O.1 is the sample bottle.

10. PW.1 Y.Durga Prasad, Sub-Inspector, SEB Station, Narsapur, deposed that on 15.09.2020 at about 04.00 p.m. he received credible information about transportation of liquor at Lakshmaneswaram village. Therefore, he proceeded to the aforesaid place, there he found the accused was in possession of 5 bottles of Old Timer Whisky, each containing 180ml. Then he instructed the LW.2 G.Phani Bhushan, Constable, SEB Station, Narsapur, to secure the mediators, but no one come forwarded to act as mediators. Thereafter, he drafted special report. In the cross-examination, through PW.1 it is elicited that the scene of offence is a busy area and number of civilized persons are available at the place of seizure.

11. PW.2 R.V.L.Narasimha Rao is one of the investigation officer who filed charge sheet.

12. According to PW.1 on the date of seizure, no independent witnesses were available at the scene of offence, therefore he alone drafted Ex.P1 special report. As per the Judgment of the Hon'ble High Court of Andhra Pradesh between **Yeduri Srinivasa Reddy v. State of Andhra Pradesh reported in 2002(1) ALT (Cri.) 251 (A.P)**, wherein it is held that Section 100(4) of the Cr.P.C. the procedure for search and seizure in the absence of panch witnesses and not filing the written order to be passed that, no one was willing to act as panch witnesses, the entire search without jurisdiction and conviction vitiated.

13. Coming to the present case, admittedly, the seizure had taken place in a brought day light and in a residential area. It is not the serious case of prosecution that investigation officer made a serious attempt to secure independent witnesses by serving notices contemplated under Section 100(4) of the Cr.P.C. Therefore investigation officer did not follow the procedure contemplated under Section 100(4) Cr.P.C. Therefore it is unsafe to convict the accused basing on the sole testimony of PW.1. Accordingly point is answered in favour of the accused and against the prosecution.

14. In the result, the accused is found not guilty for the offence punishable under Section 34(g) of A.P.Excise Act, 1968 and he is acquitted under Section 248(1) of the Cr.P.C. Bail bonds of the accused shall be in force for a period of six months from as contemplated under Section 437-A of the Cr.P.C. M.O.1 shall be destroyed after expiry of appeal time.

Dictated to the Stenographer, corrected, and pronounced by me in open Court, on this the 19th day of June, 2023.

Sd/- Sri K. Srinivas,
I Addl. Junior Civil Judge-cum-I Addl.
Judicial Magistrate of First Class,
Narsapur.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PROSECUTION:

PW.1: Y.Durga Prasad, Sub-Inspector, SEB Station,
Narsapur.
PW.2: R.V.L. Narasimha Rao, Sub-Inspector, SEB Station,
Narsapur.

FOR DEFENCE:

-- None --

EXHIBITS MARKED

FOR PROSECUTION:

Ex.P1: Special report dated 15.09.2020
Ex.P2: FIR in Crime No.152/2020 dated 15.09.2020.
Ex.P3: Chemical Analysis Report dated 28.10.2020.

FOR DEFENCE:

-- Nil --

MATERIAL OBJECTS MARKED

FOR PROSECUTION:

M.O.1: Sample bottle.

FOR DEFENCE:

-- Nil --

Sd/- Sri K. Srinivas,
I Addl. Junior Civil Judge-cum-I Addl.
Judicial Magistrate of First Class,
Narsapur.

CALENDAR AND JUDGMENT

District of West Godavari

Calendar of Cases tried by I ADDITIONAL JUNIOR CIVIL JUDGE-CUM-I ADDITIONAL JUDICIAL MAGISTRATE OF FIRST CLASS, NARSAPUR

Date of offence (1)	Report of complaint (2)	Apprehension of Accused (3)	Release on bail (4)
15.09.2020	15.09.2020	15.09.2020 (Sec.41-A Cr.PC.)	15.09.2020 (Station bail)
Commencement of trial (5)	Close of trial (6)	Sentence of order (7)	Explanation for delay (8)
16.05.2022	12.06.2023	19.06.2023	Due to non-production of witnesses from time to time.

Judgment of Calendar Case No.596/2022 on the file of I Additional Junior Civil Judge-cum-I Additional Judicial Magistrate of First Class, Narsapur.

Complainant: The State Rep. by the Sub-Inspector, Special Enforcement Bureau Station, Narsapur in Crime No.152/2020.

Name of the Accused	Father Name	Age	Caste/Religion:	Calling	Village
---------------------	-------------	-----	-----------------	---------	---------

Kavuru Nageswara Rao, S/o. Subrahmanyam, Age 70 years, Caste: Settibalija, Kothota village, Mogaltur Mandal.

Offence : Under Section 34(g) of A.P.Excise Act, 1968.

Finding : Accused is found not guilty.

Sentence : In the result, the accused is found not guilty for the offence punishable under Section 34(g) of A.P.Excise Act, 1968 and he is acquitted under Section 248(1) of the Cr.P.C. Bail bonds of the accused shall be in force for a period of six months from as contemplated under Section 437-A of the Cr.P.C. M.O.1 shall be destroyed after expiry of appeal time.

Sd/- Sri K. Srinivas,
I Addl. Junior Civil Judge-cum-I Addl.
Judicial Magistrate of First Class,
Narsapur.

Copy submitted to the I Additional District Judge, West Godavari, Eluru.
Copy to the Superintendent, Special Enforcement Bureau, Bhimavaram.