IN THE COURT OF THE ADDL JUDICIAL MAGISTRATE OF FIRST CLASS, BOBBILI.

Present : Smt J. SOWMYA JOSPHINE,
Addl Judicial Magistrate of First Class,
Bobbili.

Friday the 19th day of May, 2023.

CALENDAR CASE No. 920/2022

Between :
State, represented by the Enforcement Inspector,
Special Enforcement Bureau Station, Terlam. ..... Complainant.

And:
Suggu Santhosh Kumar. .... Accused.

This case coming on 16.05.2023 for final hearing before me in the presence of Learned Assistant Public Prosecutor for the Complainant/State and Sri K. Simhachalam, Learned Counsel for Accused and the matter having stood over for determination till this day, this Court delivers the following :-

JUDGMENT

01. State represented by the Enforcement Inspector, Special Enforcement Bureau Station, Terlam filed Charge Sheet against the Accused in Crime No.33/2022 for the offence punishable under Section 34(a) of AP Excise Act.

02. The Case of the Prosecution in brief is as follows:

On 06.07.2022 at about 9.15 hours LW4-SI of Special Enforcement Bureau Station, Terlam along with staff while conducting patrolling for prohibition and Excise Crimes, noticed the accused at Gudepuvalasa village road junction while he was in possession of a polytehne bag. On seeing the uniform party, the accused perturbed and tried to run away from that spot. Then LW4-Sub Inspector and staff caught the accused, verified the said bag and found six nip bottles of Manjeera Classic Reserve Whiskey each 180 ml in it. The accused was in possession of the said liquor bottles without license, transport permit and receipt. On that LW4-SI of SEB lifted one bottle as sample and seized the property under the cover of occurrence report as they could not secure mediators and registered the occurrence report as case in Cr.No.33/2022 u/sec.34(a) of AP Excise Act. During the course of investigation LW4 SI of police sent the samples to the chemical examiner, Prohibition and excise Visakhapatnam for analysis. After due analysis, the Chemical examiner opined the sample is Indian Liquor.

03. The Court took cognizance of the offence punishable under Section 34(a) of AP Excise Act against the Accused. On appearance of the Accused before the Court, Copies of documents were furnished to him, as required under Section 207 of Cr.P.C.

04. The Accused was examined under Section 239 of Cr.P.C by explaining the particulars of offence for which he denied the offence. Charge punishable under Section 34 (a) of AP Excise Act was framed against the accused, read over and explained to him in Telugu for which he pleaded not guilty and claimed to be tried.

05. To prove the guilt of the Accused, the Prosecution has examined P.W.s 1 and 2 and Exs. P1 to P3 and MO1 was got marked through them. After closure of the Prosecution evidence, the Accused was examined under Section 313 of Cr.P.C. by explaining the incriminating evidence appearing against him. He denied it totally and reported no Defence evidence.

06. Heard the Learned Assistant Public Prosecutor and the Learned Counsel for the Accused.

07. Now the point for determination is whether the Prosecution has proved the guilt of the Accused for the offence under section 34(a) of AP Excise Act beyond all reasonable doubt ?

08. POINT:

On scrutinizing the entire evidence of prosecution, PW1 is the Sub Inspector of SEB in his evidence that on the date of incident they proceeded to the scene of offence on credible information received by him and found the accused along with case property. On noticing them when the accused tried to run away from that place, on suspicion, they caught the accused and found a polythene bag containing liquor bottles. Then he deputed LW1-Constable of SEB for securing mediators but in vain and later PW1 drawn sample from the contraband which was marked as MO1 under the cover of occurrence report Ex.P1 and based on the occurrence report he registered a case in Cr.No. 33/2022 for the offence punishable under section 34(a) of AP Excise Act.

09. Much was argued by both sides, scrutinizing the evidence of prosecution PW1 is the Sub Inspector of SEB. PW1's evidence is supported by the evidence of PW2. Basing on the occurrence report, PW1 registered a case in Cr.No. 33/2021 for the offence punishable under section 34(a) of AP Excise Act.

10. The evidence of PW1 and PW2 who are excise personnels cannot be discarded on the sole ground that their evidence is found to be incredible or it is unsafe to rely upon their evidence. There is possibility for securing independent mediators, but that was not done. There is no specific reason or explanation offered by the excise officials for the non securing of local mediators. in such circumstances the evidences of PW1 and PW2 needs corroboration by independent evidence. The evidence of PW1 and PW2 that the accused was found in possession of liquor cannot be relied on, when the evidence of PW1 and PW2 was excluded from consideration, there remains no evidence on record to connect the accused with the commission of said offence.

11. When the prosecution failed to prove the seizure in the presence of mediators as contemplated under section 100(4) of code of criminal procedure the case of prosecution is clouded with shadow of doubt.

12. The Search,seizure and arrest of the accused is in contravention of section 100 (4) of Cr.P.C., as the above section itself envisages to secure any of the inhabitants of the locality as mediators. So

non-availability of village revenue officer and sarpanch is not just and reasonable explanation for their non securing independent mediators since any of the villagers are available to act as mediators and the evidence of PW1 is found to be artificial, stereotype and conviction is not proper basing on this type of evidence without independent corroboration.

13. Therefore, in such circumstances, the accused in this case is entitled for benefit of doubt. Hence from the discussion made supra prosecution has failed to prove the guilt of the accused for the offence charged under section 34(a) of AP Excise Act beyond all reasonable doubt.

14. ***In the result***, that the accused is found not guilty for the offence punishable under Section 34(a) of A.P. Excise Act and accordingly he is acquitted under Section 248(1) of Cr.P.C., for the said offence. Bail Bonds of the Accused shall be in force for a period of six months, as per Section 437-A of Cr.P.C.. MO1 shall be destroyed after expiry of appeal time.

Typed to my dictation by Typist, corrected and pronounced by me in the open Court, this the 19th day of May, 2023.

Sd/- J. Sowmya Josphine

ADDL. JUDL. MAGISTRATE OF I CLASS,
B O B B I L I.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution:	For Defence
PW1: A. Sravan Kumar, SI of SEB.	- None -
PW2: M. Srivani, SEB Constable	

Exhibits Marked

For Prosecution:
Ex.P1: Occurrence Report
Ex.P2: FIR in Cr.No.33/2022
Ex.P3: Chemical Analysis Report

MATERIAL OBJECTS MARKED

MO1 Sample bottle.

Sd/- J. Sowmya Josphine

ADDL. JUDL. MAGISTRATE OF I CLASS,
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