

**IN THE COURT OF THE ADDITIONAL JUDICIAL MAGISTRATE OF
FIRST CLASS- CUM – ADDITIONAL JUNIOR CIVIL JUDGE
GUDIVADA.**

Present: **Smt. K.Naga Lakshmi,**

Additional Judicial First class Magistrate, Gudivada

Tuesday, this the 12th day of September, 2023

CALENDER CASE NO. 909 of 2022

Between:

State represented by the Inspector of Police,
Special Enforcement Bureau, Gudivada.

... Complainant

And

Konduru Suguna Sarma, S/o. Lazaru, Aged 29
years, R/o. Goodmenpeta, 15th ward, Gudivada
Town.

... Accused

This case is coming on 16.08.2023 for final hearing in the presence of Kum.Satyavani, learned Assistant Public Prosecutor for the State/Complainant; Sri P.Rama Mohana Rao, Advocate for accused and upon hearing on both sides and the matter having stood over for consideration till this day, this court delivered the following:

J U D G M E N T

1. The Inspector of Police, Special Enforcement Bureau, Gudivada, has filed charge sheet against the accused in Crime No.68/2020 alleging that the accused committed the offence punishable under Section 34(a) of A.P Excise Act.

2. The case of the prosecution in brief is that:-

(i). On 09.07.2020 at about 01.30 p.m., P.W.1 along with his staff were patrolling for detection of Prohibition and Excise offences at Flyover bridge towards Gudivada to Vijayawada road of Gudivada Town and Municipality and found the accused carrying one black plastic cover in his right hand, in suspicious manner. Then they caught hold him and on enquiry, the accused confessed that he was having possession of liquor bottles i.e 1). Old timer Deluxe Whisky 180 ml – 10 bottles and

2). Good Friends Deluxe Whisky 180 ml – 15 bottles (Total 25 bottles). Further he confessed that he purchased the liquor bottles from unknown persons at Gudivada town with an intention to sell the same at higher price in his village. Then, PW.1 seized the liquor bottles under the cover of a special report and drawn one bottle as sample from the seized contraband. Later, he handed over the case record to P.W.2 for further investigation.

(ii). PW.2 registered the Special Report as a case in crime No.68/2020 under Section 34(a) of A.P Excise Act. He served notice to the accused U/S.41-A Cr.P.C. After receipt of chemical analysis report and destruction orders and completion of investigation, PW.3 filed charge sheet against the accused.

3. Basing on the material available on record, this case was taken on file for the offence punishable under Section 34(a) of A.P Excise Act against the accused.

4. On appearance of the accused, case copies were furnished to him as contemplated under Section 207 of Cr.P.C.

5. The Accused was examined under Section 239 of Cr.P.C., Charge for the offence punishable under Section 34(a) of A.P Excise Act has been framed, read over and explained to him in Telugu for which he denied, pleaded not guilty and claimed to be tried.

6. During the course of trial, the prosecution examined P.Ws.1 to 3 and got marked Exs.P.1 to P.7 and MOs.1 & 2 on behalf of the prosecution. The learned Assistant Public Prosecutor given up the evidence of LW.2/V.V.Venu Gopala Rao.

7. After completion of prosecution side evidence, accused was examined under Section 313 Cr.P.C, explaining the incriminating

material available in the evidence of prosecution witnesses, for which he stated that entire incriminating evidence appearing against him is false and reported no defense evidence.

8. Heard both sides. Perused the material on record.

9. Now the point for determination is:

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

POINT:

10. The case of prosecution is that accused was in the possession of 25 liquor bottles without license or permit. In order to prove its case, the prosecution has examined P.Ws. 1 to 3 and got marked Exs.P.1 to P.7 and M.Os.1 and 2.

11. The learned Assistant Public Prosecutor argued that P.Ws.1 to 3 are the official witnesses. They found that the accused was in the possession of liquor bottles without valid license. The prosecution could establish the essential ingredients of the offence alleged against the accused and prayed to convict the accused.

12. The learned counsel for the accused argued that the accused did not commit any offence. This false case was filed against the accused only for the statistical purpose. Hence, prayed to acquit the accused.

13. In the instant case, unfolding the case of prosecution, P.W.1/Inspector of police deposed that on 09.07.2020 at about 01.30 p.m., on receipt of credible information, he along with his staff proceeded to Fly Over bridge, which is proceeding from Gudivada to Vijayawada in Gudivada. Then they found the accused holding a bag in suspicious manner. On seeing police people, he tried to skulk away.

Then, they caught hold him and on enquiry, he disclosed his identity particulars and confessed that he was in possession of 25 liquor bottles i.e., 1). Old Timer Deluxe 180 ml - 10 bottles and 2). Good Friends Deluxe 180 ml- 15 bottles (Total 25 bottles). Then, they got opened the bag and seized 25 liquor bottles and arrested the accused under cover of special report. One sample bottle was drawn from each bottle in his presence and identity slips were affixed.

14. P.W.2/Sub-Inspector of police deposed that on 09.07.2020, basing on Ex.P.1/special report, registered a case in Crime No.68/2020 and issued FIR, served notice to the accused under Section 41-A Cr.P.C and received the chemical analysis report. Thereafter, he handed over the case record to P.W.3 for further investigation.

15. P.W.3/Inspector of police deposed that on 09.06.2022, he sent requisition for destruction of the seized contraband and after obtaining permission, destroyed the seized contraband in the presence of mediators. Thereafter, he conducted auction for empty bottles of seized contraband and after completion of investigation, he filed charge sheet.

16. From the evidence of above prosecution witnesses, the Court has observed that except P.Ws.1 to 3, who are interested witnesses, no other evidence from independent witness is available to prove the guilt of accused.

17. The search as contemplated under Section 100 of Cr.P.C., shall be made in the presence of two or more independent and respectable inhabitants of that locality in which the place to be searched is situated. In this regard, PW1 admitted that:

"It is true the place of offence is busy locality. It is true I did not mention about non-availability of local inhabitants. It is true I did not examine VRO and VRA of that village. Ex.P1 drafted by our constable."

18. Thus, it is clear that people available at the place of seizure. But, P.W.1 failed to secure them to act as mediators and also failed to comply mandatory provisions under section 100 of Cr.P.C. It was held by the Hon'ble High Court of Andhra Pradesh in **S.Baba Saheb Babu Vs. State of Andhra Pradesh** reported in 2009 (4) APLJ 57 HC that:-

"Before making a search, the officer or other person about to make it, shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or any other locality. If no such inhabitant of the said locality is available or is willing to be a witness to the search and may issue an order in writing to them or any of them so to do."

19. Moreover, except Ex.P1/Special Report, which is confessional statement of the accused recorded by police and the same is hit by Section 25 of Indian Evidence Act that the accused purchased the said seized liquor bottles from various shops and to sell the same for higher prices as mentioned in Ex.P.1- Special Report, P.W.1 did not try to examine anybody in that shops or the place where the accused alleged to have been selling the said seized liquor, to prove the guilt of the accused. Moreover, PW.1 has not recorded the grounds of his suspicion and no notice served on accused before searching the bag, which was in the possession of the accused. Therefore, on that ground the proceedings can be vitiated. Thus, the prosecution has failed to prove that the accused was found in possession of the liquor bottles and that he was selling the same.

20. In view of the above discussion, this court is of view that the prosecution has miserably failed to bring home the guilt of the

accused for the offence with which he was charged and, he is entitled for acquittal. Point is answered accordingly.

21. IN THE RESULT, accused is ***found not guilty*** for the offence punishable under Section 34 (a) of AP Excise Act and he is ***acquitted*** for the said offence under Section 248 (1) of Cr.P.C. Bail bonds of accused and his sureties, if any, shall remain in force for a period of 6 months, in view of Section 437-A of Cr.P.C. The case property i.e., M.Os.1 & 2 in CPR No.204/2022 shall be destroyed after appeal time is over.

Typed to my dictation by the Stenographer, corrected and pronounced by me in open court, on this the 12th day of September, 2023.

**Additional Judicial I Class Magistrate,
Gudivada.**

Appendix of Evidence
Witnesses examined

On behalf of prosecution	On behalf of accused
PW.1- Ch.V.Rama Krishna.	...NIL...
PW.2- T.Gopala Krishna.	
PW.3- R.B.Peddiraju.	

Exhibits marked on behalf of Prosecution:

Ex.P1 : Special report.

Ex.P2 : FIR.

Ex.P3 : Attested copy of Letter of advice.

Ex.P4 : Chemical Analysis Report.

Ex.P5 : Attested copy of Destruction Orders.

Ex.P6 : Attested copy of Destruction Proceedings.

Ex.P7 : Attested copy of challan, dated 18.06.2022.

Exhibits marked on behalf of Defence: ... NIL...

Material Objects marked:

M.Os.1 & 2 : Sample bottles.

**Additional Judicial I Class Magistrate,
GUDIVADA.**

CALENDAR AND JUDGMENT
Calendar Case No: 909/2022 ON THE FILE OF
ADDITIONAL JUDICIAL I CLASS MAGISTRATE GUDIVADA

1. Date of Offence :: 09.07.2020.
2. Date of Report/
Complaint :: 09.07.2020.
3. Date of Apprehension :: -----
4. Date of Release :: ----
5. Commencement of trial :: 09.05.2023.
6. Date of Closure of trial :: 20.06.2023.
7. Date of Judgment :: 12.09.2023.
8. Name of the
Complainant :: State: Represented by the
Inspector of Police, Special
Enforcement Bureau, Gudivada
9. Name of the Accused :: Konduru Suguna Sarma, S/o.
Lazaru, Aged 29 years, R/o.
Goodmenpeta, 15th ward, Gudivada
Town.
10. Section of Law :: 34(a) of AP Excise Act.
11. Plea of Accused :: Pleaded Not guilty.
12. Finding of the court :: **Found not guilty.**

13. **Result:** IN THE RESULT, accused is ***found not guilty*** for the offence punishable under Section 34 (a) of AP Excise Act and he is ***acquitted*** for the said offence under Section 248 (1) of Cr.P.C. Bail bonds of accused and his sureties, if any, shall remain in force for a period of 6 months, in view of Section 437-A of Cr.P.C. The case property i.e., M.Os.1 & 2 in CPR No.204/2022 shall be destroyed after appeal time is over.

14. **Explanation for Delay:** This case was taken on file under Section 34(a) of AP Excise Act against the accused and numbered as C.C.909/2022. On appearance of accused, copies of documents were furnished to him and on 14.03.2023, the accused was examined under Section 239 of Cr.P.C. The trial commenced in this case on 09.05.2023 and closed on 20.06.2023. On 11.07.2023, the accused was examined under Section 313 Cr.P.C and posted for arguments. Heard arguments on 16.08.2023 and Judgment pronounced on 12.09.2023. Hence, delay.

**Additional Judicial I Class Magistrate,
Gudivada.**

Copy submitted to:-

The Hon'ble I Additional Sessions Judge, Machilipatnam.