

Dt. 08.11.2023

C C. No. 638/2022
JCJ-CUM-JMFC, BDL

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

Present: Sri T.A.S.S. Rama Aditya Rishik,
Junior Civil Judge-cum-Judicial Magistrate of I Class, Bhimadole.

Wednesday, the 08th day of November 2023

CALENDAR CASE. No. 638/2022

Between:

State: Proh. Excise Inspector of Police,
Bhimadole Police Station
in Cr. No. 79/2020

.....Complainant

and

Borra Mangaraju, S/o Lakshmayya, Aged 25 years, C/Gowda, R/o
Godugupeta Village, Dwaraka Tirumala Mandal.

.....Accused

This case is coming on before me for a final hearing on 30.10.2023 in the presence of the Assistant Public Prosecutor for the complainant and Sri. A. Gangadhara Rao, Advocate for the accused; and upon perusing the material on record; and having stood over for consideration till this day, the Court delivered the following:

J U D G M E N T

1. The Proh. & Excise Inspector of Police, Bhimadole Police Station, Bhimadole, has filed Charge-Sheet against the Accused in Crime No. 79/2020 for the offence punishable under Section 7(A) r/w 8(e) of A.P. Prohibition Act.

2. The brief averments of the prosecution case are that:

- i.** On 07.05.2020 at 05:00 P.M., the **L.W.1. K. Srinubabu**, Proh. & Excise Sub-Inspector of Police, Bhimadole, along with his staff, conducted patrolling, proceeded to Godugupeta village, and found the accused possessing I.D. Arrack. On seeing them, the accused tried to run away. Then, on suspicion, the L.W.1 detained the accused and, on verification, found:

- (1) 10 liters of ID arrack in possession of the accused.
- ii. During interrogation, the accused stated his name and identity particulars. As such, he arrested the accused, seized the contraband from them, and drew samples for analysis.
- iii. Based on the special report, L.W.1 r a case in Cr. No. 79/2020 under Section 7(A) r/w 8(e) of A.P. Prohibition Act. Later, he issued a Section 41-A Cr.P.C. notice to the accused and sent the samples for analysis. The chemical examiner who analysed the samples opined in the Chemical Analysis Report, i.e., C.E. No. 736/2020 and sample at Sl. No. 8434, Dt. 18.05.2020, as the samples are **“Illicitly distilled liquor, unfit for human consumption and injurious to health”**.
- iv. Later, on 24.05.2020, L.W.1. destroyed the seized property, before the mediators, as per the orders of the Deputy Commissioner of Proh. Excise, Eluru vide efile No. 1792106/2020/A7, Dt. 22.05.2020. After completion of the investigation, the Proh. & Excise Inspector filed the charge sheet in this case.
3. The Court has taken cognizance of the offence punishable under Section 7(A) r/w 8(e) of A.P. Prohibition Act. On the accused's appearance before the Court, copies of the documents were furnished to them as contemplated under Section 207, Cr.P.C. The accused was examined under Section 239, Cr.P.C., 1973. The contents of the charge were explained and read over to him for the offences punishable under Section 7(A) r/w 8(e) of the A.P. Prohibition Act in Telugu, and the accused pleaded not guilty and claimed to be tried.

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4. During the trial, the prosecution examined L.W.1. K. Srinubabu as **P.W.1**, L.W.4. K. Subbarao as **P.W.2**, and got marked **Ex.P1 to Ex.P5 and M.O.1**. Later, the Learned Public Prosecutor gave up the evidence of L.W.2. B. Rajendra Prasad, and L.W.3. M Santosh Kumar, Proh. & Excise, Police Constables, Bhimadole.

5. After completion of the prosecution evidence, the accused was examined under Section 313, Cr.P.C., by explaining the incriminating evidence appearing against him in Telugu, which he denied and reported no evidence from his side. No exhibits were marked in the "D" Series.

6. Heard both the Learned Assistant Public Prosecutor and the Learned Counsel for Defence.

Point For Determination:

7. Whether the prosecution proved the accused's guilt for the offence punishable under Section 7(A) r/w 8(e) of A.P. Prohibition Act beyond all reasonable doubt?

POINT:

8. P.W.1 is the investigating officer. As per P.W.1, he, along with L.W.2 and L.W.3, arrested the accused on 07.05.2020 at 05:00 P.M., drafted the **Ex.P1 Special Report**, and collected M.O.1 Sample bottle. As per the evidence of P.W.1, he registered the **Ex.P2 F.I.R.** after preparing the Ex.P.1 Special-report, and thereafter, issued Section 41-A, Cr.P.C., notice to the accused. Later, he forwarded M.O.1 for chemical analysis and received **Ex.P3 Chemical Analysis Report** with the result that the M.O.1 **Illicitly distilled liquor**. Subsequently, based on **Ex.P4 Attested copy of Destruction Proceedings**, the P.W.1 destroyed the

unmarked case property in the presence of mediators, and the **Ex.P5 Attested copy of the Mediator's report**, was drafted to such effect.

09. As per the evidence of P.W.1, it is evident that P.W.1 did not make any effort to secure the presence of any independent witness or Village Sarpanch, Ward Members, or V.R.O. to act as mediators. It should not be forgotten that the raid was during the evening hours when pedestrians would possibly have been trekking on the road or a hawker moving around on the pavements. Despite having sufficient time, P.W.1 did not secure independent witnesses as mediators.

10. Having given my anxious consideration to the facts of the case, I deem it appropriate to refer to "**Kalp Nath v. State (Through CBI), 1997 (2) A.L.D. Cri 805**", wherein it was observed by the Hon'ble Apex Court that *"Indeed, the evidence of the official (Police) witnesses cannot be discarded merely on the ground that they belong to the Police force and are, either interested in the investigation or the prosecuting agency, but prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence, in material particulars should be sought. Their desire to see the success of the case based on their investigation; requires greater care to appreciate their testimony."* The rule of prudence is that the testimony of a Police Official witness shall be corroborated in order to prove the case of the prosecution beyond all reasonable doubt. The evidence of P.W.1 failed to establish any cogent proof of the same. The evidence of P.W.1 and P.W.2 that the Accused was found possessing I.D. Arrack cannot be relied upon without any corroboration.

11. Even it was held by Hon'ble High Court in **Botcha Raju v. State Represented by Inspector of Police, 1994 (2) A.L.T. 69 (A.P.)** that

the conviction could not be based on the sole evidence of Police officers without corroboration by a disinterested witness. Even in **Gyam Singh and Ors v. State of U.P., 1995 Supp (4) SCC 658**, the Hon'ble Supreme Court of India observed that conviction could not be based on the uncorroborated testimony of an official witness.

12. Thus, it is undoubtedly clear that if the police officer's evidence is credible, it would be erroneous to conclude that the prosecution's version must be rejected because no independent witness was examined. However, despite having a chance of securing evidence in their support, the non-examination of the independent witness or even the presence of such a witness during the raid would cast an added duty on the Court to adopt greater care while scrutinising the evidence of the police officers, especially when the police failed to show any reasonable cause as to what prevented them in securing the presence of independent witnesses.

13. At this stage, it is pertinent to note that the complainant and the investigation officer, in this case, are P.W.1 alone. Then again, it may be noted that the entire prosecution case rests solely on the testimonies of P.W.1 and P.W.2, the police officials. Moreover, the mediators, in whose presence the unmarked case property was destroyed, were also not brought onto the record to buttress the fact of seizure.

14. Indeed, the prosecution's version does not become vulnerable, and no doubt would be cast upon it merely because the complainant investigated the case because the matter must be decided on a case-to-case basis without any universal generalisation. But, in view of the facts mentioned earlier, viz., failure to secure the presence of an independent

witness though the police officials had sufficient time, failure to bring the mediators before whom the unmarked case property was destroyed, onto the record, I feel that the complainant being the investigation officer is an infirmity which is bound to reflect on the credibility of the prosecution case. If a police officer who registers a complainant is subsequently asked to investigate the matter, it would not be inappropriate to consider the possibility of a biased investigation, which could undermine the very foundation of a fair trial, thereafter, serves as an affront to the public conscience. Such a complainant, in charge of investigating a matter, could go to any extent to justify his complaint. A fair and just investigation should not only be carried out but must also manifestly be seen to be carried out. This is essential to maintain society's faith in the apparatus of criminal investigations.

15. All this raises serious doubt about the involvement of the accused in the present case. When the evidence of P.W.1 and P.W.2 is excluded from consideration, there remains nothing on record to connect the accused with the commission of the said offence. Therefore, in view of the foregoing analysis, I find the accused entitled to the benefit of the doubt as the prosecution has failed to prove the guilt of the accused beyond a reasonable doubt for the offence charged against him.

16. As a result, the Accused is not found guilty of the offence punishable under Section 7(A) r/w 8(e) of the A.P. Prohibition Act; hence, he is acquitted of the same under Section 248(1) of Cr.P.C. The bail bonds of the accused shall lapse after a period of six months from the date of this judgment.

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The M.O.1 sample bottle, deposited vide **C.P. No. 113/2023**, shall be destroyed after the expiry of the appeal time.

Typed to my dictation by the Stenographer, corrected and pronounced by me in open Court, this the 8th day of November 2023.

Sd/- T.A.S.S. Rama Aditya Rishik/-
Junior Civil Judge -cum-
Judicial Magistrate of I Class,
Bhimadole.

Appendix of Evidence
Witnesses Examined

For Prosecution:

PW.1: K. Srinubabu, Proh. & Excise S.I. of Police
PW.2: K. Subbarao, Proh. Excise S.I of Police

For Defence:

None

Documents Marked

For Prosecution:

Ex.P1/-- : Special Report
Ex.P2/-- : FIR
Ex.P3/--: Chemical Analysis Report
Ex.P4/--: Attested copy of Destruction Proceedings
Ex.P5/--: Attested copy of mediators report.

For Defence: Nil.

Material Objects Marked

M.O.1. sample bottle

Id/- T.A.S.S.R.A.R/-
J.C.J. -cum-
J.M.F.C., BDL.

Dt. 08.11.2023

C C. No. 638/2022
JCJ-CUM-JMFC, BDL**CALENDAR AND JUDGMENT****IN THE COURT OF JUNIOR CIVIL JUDGE-CUM-JUDICIAL
MAGISTRATE OF I CLASS, BHIMADOLE.****CALENDAR CASE NO. 638/2022**

1. Date of offence	:	07-05-2020
2. Date of complaint or report	:	07-05-2020
3. Date of apprehension of Accused	:	Sec. 41-A Cr.P.C
4. Date of release on bail of Accused	:	Sec. 41-A Cr.P.C
5. Date of commencement of trial	:	30-10-2023
6. Date of close of trial	:	30-10-2023
7. Date of sentence or Order	:	08-11-2023
8. Explanation of delay if any	:	---

COMPLAINANT:

State: Proh. Excise Inspector of Police,
Bhimadole Police Station
in Cr. No. 79/2020

ACCUSED:

Borra Mangaraju, S/o Lakshmayya, Aged 25 years, C/Gowda, R/o
Godugupeta Village, Dwaraka Tirumala Mandal.

...Accused

Section of Law : U/S. 7(A) r/w 8(e) of A.P. Prohibition Act.
Finding of the Court : Not found guilty

Sentence/Order:

The accused is not found guilty of the offence punishable under Section 7(A) r/w 8(e) of the A.P. Prohibition Act; hence, he is acquitted of the same under Section 248(1) of Cr.P.C. The bail bonds of the accused shall lapse after a period of six months from the date of this judgment.

The M.O.1 sample bottle, deposited vide **C.P. No. 113/2023**, shall be destroyed after the expiry of the appeal time.

Sd/- T.A.S.S. Rama Aditya Rishik/-
Junior Civil Judge -cum-
Judicial Magistrate of I Class,
Bhimadole.

Seal:

Copy submitted to:

The Hon'ble I Additional District and Sessions Judge, West Godavari
District, Eluru.