

**IN THE COURT OF THE JUNIOR CIVIL JUDGE – cum – JUDICIAL MAGISTRATE
OF FIRST CLASS, MYLAVARAM**

**Present: Sri K. Hari Babu,
II Additional Junior Civil Judge-cum-II Additional Judicial Magistrate of First
Class, Nuzvid.
FAC-Junior Civil Judge-cum-Judicial Magistrate of First Class, Mylavaram.
Friday, First day of March, Two Thousand Twenty Four [01.03.2024]**

Calendar Case Number 1978/2022

Between:

The State Rep. by
Sub-Inspector of Police,
Mylavaram P.S.

... COMPLAINANT

AND

1. P. Priya (hijra), S/o. Rajaiah, age 35 years,
C/Yadava, R/o. Ranigarithota, Krishnalanka,
Vijayawada.

2. Darnasi Ravi (died), S/o. Chinna, age 32
years, C/Mala, R/o. Ranigarithota,
Krishnalanka, Vijayawada.

...ACCUSED

This case came before me for arguments on 23.02.2024 in the presence Assistant Public Prosecutor for the state and in the presence of Sri A.D. Prasad, Advocate for the accused No.1, and the matter having stood over for consideration and on that this court has delivered the following:

::J U D G E M E N T::

This is a case in Cr.No.361/2020 of Mylavaram P.S. Police Station registered U/s.34 (a) of A.P. Excise Act against the accused.

1. The facts of the prosecution case are as follows:-

- a. On **13.06.2020**, on reliable information, he along with staff while patrolling for excise offences, found the accused coming on motor-cycle bearing No. AP39AQ2768 on suspicion and on noticing the police, they tried to skulk away, but they were caught and on verification, found them in possession of Telangana State liquor bottles– 172 bottles and he seized the liquor bottles from the possession of accused, and on further questioning, the accused revealed that they are selling them for higher prices, and they were served notice U/s.41-A of Cr.P.C. notice.
 - b. Basing on the confession of accused, the Investigating officer prepared the Special report, seized the liquor bottles and lifted samples. Basing on the Special report, the Investigating officer registered a case in Cr.No.361/2020 and investigated into. During the course of investigation, the Investigating officer secured the presence of witnesses, examined them recorded their detailed statements and after completion of investigation, and after receiving chemical analysis report, Charge-sheet is filed against the accused.
2. This court took cognizance of the offence U/s.34 (a) of A.P. Excise Act against the accused. On appearance of the accused No.1, accused No.1 was furnished with copies of case documents u/s. 207 Cr.P.C. At this stage, it is reported that Accused No.2 died and his D.C. is filed before this Court on 02.11.2023, as such, the case against A2 is abated on 02.11.2023.
3. Accused No.1 is examined U/s.239 Cr.P.C, charge under sections 34 (a) of A.P. Excise Act against accused was framed, read over and explained to accused No.1 in Telugu for which accused No.1 pleaded not guilty and claimed to be tried.

4. To prove the guilt of the accused prosecution has examined P.W.1 and got marked Exhibits P.1 to P.3 on their behalf. The learned prosecutor given up evidence of LWs 1 to 2 in order to avoid repetition of facts.
5. After completion of the prosecution evidence, the accused No.1 was examined U/Sec.313 Cr.P.C. The incriminating circumstances found in the evidence of the prosecution witnesses is read over and explained to the accused and the accused denied the same and reported no defence evidence. Hence, the defence evidence is closed.
6. Heard the arguments of both sides. Perused the material on record.
7. *Now the Point for determination of this court is:*

Whether prosecution has proved the guilt of the accused No.1 for the offence under section 34 (a) of A.P. Excise Act beyond all reasonable doubt?

8. **Point:**

- a) In order to prove the guilt of the accused, the prosecution got examined the Investigating officer is examined as PW1. Besides that the prosecution got marked Exs.P1 to P3 through the evidence of PW1. Ex.P1 is the Special report. Ex.P2 is original FIR. Ex.P3 is chemical analysis report. M.O.s 1 to 13 are sample bottles.
- b) Pw1 deposed in his chief-examination that on 13.06.2020, on reliable information proceeded to Check post, Ananthavaram village, Mylavaram and found the accused coming on motor-cycle bearing No. AP39AQ2768 who tried to escape from them and they verified and found him in possession of liquor bottles i.e. Downtown 180ML-47 bottles, 8 PM Whisky 750 ML-2 bottles, Imperial Blue whisky 750ML-2 bottles,

Mansion House Brandy 750 ML-2 bottles, Platinum whisky 750 ML-1 bottle, Officers choice whisky 750 ML-2 bottles, Sterling Reserve whisky 375 ML-2 bottles, 8 PM Whisky 180 ML-4 bottles, Aristrocot whisky 750 ML-2 bottles, Imperial Blue whisky 180ML-15 bottles, Good day whisky 180 ML-20 bottles, Mcdowells whisky 180 ML-10 bottles and Mansion House Brandy 180 ML-10 bottles, total-172 bottles, and he verified the details of the accused and he seized the contraband and took sample bottle from the contraband and affixed identity slip under the cover of Special report and the accused confessed about the offence that they are selling the same at higher prices for livelihood and took the accused to the police station and drawn samples of 01 bottle each from the contraband and sent the same for chemical analysis and basing on the report, he registered the crime in Cr.No.361/2020, for the offence U/s.34 (a) of A.P. Excise Act and investigated. He further got marked Exs.P1 to P3 and M.O.s 1 to 13 on his behalf.

- c) PW1 admitted in his cross-examination that the scene of offence place is a busy locality and he has not examined the VRO or panchayat secretary of the village and they have not issued summons to the independent witnesses. He denied the suggestion that he created the sample bottle and the accused is no way concerned with this case and Ex.P1 was prepared at the police station and that he has done table investigation in this case and he filed a false-case against the accused for statistical purpose.
- d) PW1 did not give any reason for non-securing any independent witnesses from local inhabitants. He did not mention in Ex.P1 report, the commencing of the proceedings and completion of proceedings. He did not mention the colour and complex of the accused in Ex.P1 report. The Investigating officer did not give any cogent reason for sending the seized sample with delay. Considering the evidence of Pw1 who is the

Investigating officer, it is evident that he did not follow the procedure laid down U/s.100 (4) of Cr.P.C. while affecting the search and seizure in open places.

e) Hence, this Court is of the opinion that the prosecution has miserably failed to prove the guilt of the accused. Thus, the Accused No.1 is entitled for clear acquittal for the offence charged against them. Accordingly, this point is answered in favour of accused and against the prosecution.

- 10) In the result, the Accused No.1 is found not guilty for the offence U/s.34 (a) of A.P. Excise Act and thereby Accused No.1 is acquitted under section 248 (1) Cr.P.C. The Accused No.1 is set at liberty immediately. The bail bonds of the accused shall stand cancelled after lapse of six months. The SHO, Mylavaram P.S. is directed to get destroy the M.O.s 1 to 13 through proper channel by obtaining M.O.s 1 to 13 by executing proper acknowledgment and to that effect, the SHO is directed to file the Destruction Report.

The above matter is typed to my dictation by the Stenographer Grade III, corrected and pronounced by me in open court on this 01st day of March, Two Thousand Twenty Four.

JCJ cum JMFC
Mylavaram

APPENDIX OF EVIDENCE

Number of witnesses examined for prosecution:

P.W.1/K. Eswara Rao 16.02.2024

Number of exhibits marked for prosecution:

Ex.P.1/P.W.1	Special report
Ex.P.2/P.W.1	Original FIR
Ex.P.3/P.W.1	Chemical analysis report.

No witness is examined and no exhibit is marked on behalf of **accused/defense side.**

MATERIAL OBJECTS MARKED

M.O.s 1 to 13 : Sample Bottle – 13

JCJ cum JMFC
Mylavaram

IN THE COURT JUNIOR CIVIL JUDGE-CUM-MAGISTRATE OF FIRST CLASS AT
MYLAVARAM

CALENDER IN C.C. No.1978/2022

Date of Offence	:	13.06.2020
Date of Complaint	:	13.06.2020
Date of Apprehension of Accused	:	U/s.41-A of Cr.P.C.
Date of taken on file	:	30.12.2022.
Date of Commencement of trial	:	24.11.2023
Date of Closure of trial	:	23.02.2024
Date of Sentence / Order	:	01.03.2024
Complainant	:	The Sub-Inspector of Police, Mylavaram P.S. Police Station, State: Represented by Asst. Public Prosecutor
Name of the Accused	:	1. P. Priya (hijra), S/o. Rajaiah, age 35 years, C/Yadava, R/o. Ranigarithota, Krishnalanka, Vijayawada. 2. Darnasi Ravi (died), S/o. Chinna, age 32 years, C/Mala, R/o. Ranigarithota, Krishnalanka, Vijayawada.
Nature of Offences	:	Subjecting that the Accused No.1 is liable for punishment.
Section of Law	:	under section 34 (a) of A.P. Excise Act .
Finding of the Court	:	Accused No.1 is found not guilty for the offence under sections 34 (a) of A.P. Excise Act.
<u>Sentence/ Order:</u> In the result, the Accused No.1 is found not guilty for the offence U/s.34 (a) of A.P. Excise Act and thereby Accused No.1 is acquitted under section 248 (1) Cr.P.C. The Accused No.1 is set at liberty immediately. The bail bonds of the accused shall stand cancelled after lapse of six months. The SHO, Mylavaram P.S. is directed to get destroy the M.O.s 1 to 13 through proper channel by obtaining M.O.s 1 to 13 by executing proper		

acknowledgment and to that effect, the SHO is directed to file the Destruction Report.

Explanation for delay: The prosecution did not secure witnesses in proper time. No witness is required to attend more than Four times.

Judicial Magistrate of First Class-Cum-
Junior Civil Judge,
Mylavaram.