

APWG030017822022



**IN THE COURT OF IV ADDITIONAL CIVIL JUDGE (JUNIOR
DIVISION)-CUM-SPECIAL JUDICIAL MAGISTRATE OF FIRST
CLASS (EXCISE):: ELURU**

Present: Smt.K.Spandana

IV Addl. Civil Judge (Junior Division)-Cum-
Special Judicial Magistrate of I Class (Excise), Eluru

Tuesday, the 17th day of February, 2025

C.C.No.881 of 2022

Between:-

Sub Inspector of Police,
Eluru III Town Police Station
Crime No.44/2022.

...Complainant

And

Yerra Sudhakar, S/o Madhusudhana Rao, Age 51 years, Near
Anjaneyaswamy Temple, Ammapalem Village, Pedavegi Mandal.

...Accused

This case is coming before me on 28.1.2026 for final hearing in the presence of Learned Assistant Public Prosecutor for State and of Sri M.Ramesh Babu, Counsel for the accused, upon hearing both sides and matter having stood upon for consideration till this day, this court delivered the following:

J U D G M E N T

01. The Sub Inspector of Police, Eluru III Town Police Station, filed a charge sheet in Cr.No.44/2022 for the offence punishable U/Sec.34(a) of A.P. Excise (Amendment) Act 2020 against the accused.

02. The case of the prosecution in brief is that on 2.2.2022 at about 5.00 p.m., as per instructions of my higher officers, on reliable information to SEB., Additional SP., L.W.8/K.Nageswara Rao, S.I of

Police, Eluru III Town P.S along with his staff LWs.1 to 3 went to Siri Hospital road, Narasimharaopet, Eluru. As mediators are not available, himself typed occurrence report in his laptop. He had information that accused by name Yarra Sudhakar, S/o Madhusudhana Rao is coming on Honda Activa Bearing No.AP 39 CN 3631, for selling ID Arrack and liquor bottles. L.W.8 stopped the accused and on searching the bike and found 11 liquor bottles Brilliant Blend 180 ml whisky-5 bottles, Silver Stripes whisky 180 ml-3 bottles, Mansion house brandy 180 ml-2 bottles, Andhra Gold whisky, 180 ml-1 bottle, total worth of Rs.1,950/- and he lifted 04 bottles as sample, one from each variety and affixed identity slips signed by the accused. L.W.8/S.I of Police arrested accused, seized case property and came to the police station. From 5.00 p.m. to 6.00 p.m. he typed occurrence report. Later, he registered case in Cr.No.44/2022 under Section 34(a) of AP Excise (Amendment) Act. On the same day, he visited the scene, secured LWs.1 to 5 and recorded their statements. He prepared rough sketch. On the next day, he produced the accused for judicial remand. He sent letter of advice to DSP., Eluru, for deputing a constable for sending samples to FSL, Kakinada. On proceedings of DSP., Eluru, he sent sample bottles to FSL and he received analysis report. Later, he handed over the case file to LW.9 for further investigation. LW.9 obtained SDPO proceedings and destroyed remaining case property in the presence of mediators vide destruction mediator report. After completion of investigation by LW.9, he filed charge sheet against the accused in this case.

03. On receipt of charge sheet, this case was taken on file for the offence U/Sec.34(a) AP Excise Act, against the accused.

04. On appearance of the accused, copies of documents were furnished to him as contemplated U/Sec.207 of Criminal Procedure Code, 1973 (herein after referred as 'Cr.P.C.' for the sake of brevity).

05. When examined U/Sec.239 of Cr.P.C., the accused denied the allegations leveled against him. After perusing the entire material on record and on hearing both sides, a charge had been framed against him U/Sec.34(a) of A.P Excise (Amendment) Act, which was read over and explained to him in Telugu, for which, he pleaded not guilty and claimed to be tried.

06. During the course of trial, on behalf of the prosecution, PW.1 to PW.6 were examined and Ex.P1 to Ex.P8 and MO.1 to MO.4 were marked.

07. On closure of evidence let in by the prosecution, the accused was examined U/Sec.313 of Cr.P.C., with regard to the incriminating material available against him, for which, he denied the same and reported no defence evidence.

08. Heard the learned APP and counsel for the accused.

a) The learned Assistant Public Prosecutor argued that the evidence of P.W.1, P.W.2, P.W.4 and P.W.5 coupled with Ex.P2 to Ex.P7 and M.Os.1 to 4 clearly goes to show that the contraband seized from the possession of the accused is a Indian made liquor and he has no valid license to sell the same in open market for profit which contravene the provision U/Sec.34(a) of AP Excise (Amendment) Act. As such, the accused is liable for punishment for the above section.

b) Per contra the counsel for the accused argued that the police failed to follow the provisions as contemplated U/Sec.55 of AP Excise Act and Sec.100(4) of Cr.P.C., at the time of seizure of contraband from the possession of the accused. As such, the entire proceedings conducted by the police are vitiated. As per the case of prosecution, P.W.4 are the mediator in whose presence the entire contraband was seized, but while giving evidence P.W.4 pleaded ignorance with regard to the seizure of liquor bottles at the scene of

offence. Even they did not speak about the preparation of mediator report in their presence, except their signatures on Ex.P2 mediator report. As such, Ex.P2 mediator report was not prepared at the scene of offence. The entire proceedings were prepared in the police station and foisted this false case against the accused for their statistical purpose. Hence, the accused is entitled for acquittal.

09. After hearing both side arguments and considering the entire material on record, now the points for determination before the Court is:

“1. Whether the police seized the entire contraband from the possession of the accused under the cover of Ex.P5?”

“2. Whether the Police gathered any evidence with regard to sale of liquor bottles by the accused?”

“3. Whether the prosecution able to prove the guilt of the accused beyond all reasonable doubt for the offence U/Sec.34(a) of A.P. Excise (Amendment) Act?”

POINT No.1:

10. In order to prove the case of prosecution and to establish the seizure of liquor bottles from the possession of the accused, the prosecution got examined PW.1 to PW.6 and exhibited the documents Ex.P1 to Ex.P8 and MOs.1 to 4. PW.1 is the Head Constable, P.W.2 is another Head Constable, who participated in the raid along with P.W.5, who is S.I of Police and other police personnel. P.W.4 is the mediator in whose presence the entire contraband was seized from the possession of accused. PW.3 and PW.6 are the alleged eyewitnesses. PW.6 is the Sub Inspector of Police, who participated in the raid and registered the mediator report and filed the charge sheet after receipt of analysis report.

11. PW.1 the Head Constable deposed that “on 2.2.2022, at about 5 p.m., on credible information received by SEB, Additional SP., Eluru,

and on his instructions, he along with LWs.1, 3 and SI of police went to Siri Hospital, Road, Narasimharaopet, Eluru. On reaching there, we found one person suspiciously. On enquiry, he confessed his name as Yarra Sudhakar, S/o Madhusudhanarao, age 50 years, R/o Ammapalem village of Pedavegi Mandal. The accused is in possession of White Colour Honda Activa Scooty Bearing No. AP 39 CN 3631. They searched the bike and found Brilliant 180 ml-5 bottles, Silver sprint 180 ml-3 bottles, Mansion house brandy bottles 180 ml-2 bottles and Andhra Gold whisky-1 bottle, total 11 bottles. On enquiry, the accused confessed he is in possession of the contraband. In their presence, SI of police typed scene observation report in his laptop. S.I of Police arrested the and brought him to the police station along with seized property. He do not remember where the print of the scene observation report was obtained and whose signatures are obtained on it. S.I of Police sent the property for chemical analysis.”

12. The P.W.2, who is Head Constable, deposed that “while he was present in the police station, SI of police received information about illegal sale of liquor at Siri Hospital, Road, Narasimharaopet, Eluru, he along with LWs.2 and 3, S.I of Police went there. On reaching there, they found accused suspiciously. On enquiry, he confessed his name as **Yarra Sudhakar**. The accused is in possession of liquor bottles contained in a bag. Police arrested the accused, seized his motorbike bearing No. AP 39 CN 3631, seized liquor bottles and brought accused and seized property to the police station. S.I of police lifted 50 ml as sample. S.I of Police typed mediator report”.

13. The PW.4, who is mediator deposed that “on 26.09.2022, at about 09.00 AM, he received a phone call from C.I of Police, Eluru III Town PS and asked him to come to the police station to act as mediator. He along with LW.6 went at the back side of Eluru III Town police station, destruction held for 19 cases, total 148 180 ml liquor

bottles, 05 650 m.l bottles, 03 750 m.l bottles are destroyed. The destruction held on instructions of Superintendent of Police. In this crime 180 ml, 07 liquor bottles are destroyed i.e., Brilliant blend whisky 180 ml, 4 bottles and Silver stripes whisky 2 bottles and Mansion house brandi, one bottle and one bottle from each brand is retained, as sample, total 04 bottles are retained as sample. To that effect, destruction mediator report prepared by the police on their dictation. P.W.4 was confronted with the destruction mediator report, he admitted its contents and identified his signature and signature of LW.6 on it. SEB C.I and Superintendent, C.I and S.I of police, Eluru III Town PS, DSP, and other police are also present during the destruction and affixed their signatures on the report. Ex.P2 is destruction mediator report.

14. PW.3 and PW.6, who are eyewitnesses turned hostile and they did not support the case of prosecution stating that they does not know anything about this case and their contradictory 161 Cr.P.C. statements were marked as Ex.P1 and Ex.P8.

15. PW.5, who is the Sub Inspector, Eluru III Town Police Station deposed in his evidence that "On 2.2.2022 at about 5.00 pm., as per instructions of his higher officers, on reliable information to SEB., Additional SP., he along with his staff PW.2, PW.1, LW.3 went to Siri Hospital road, Narasimharaopet, Eluru. As mediators are not available, himself typed occurrence report in his laptop. Ex.P3 is the occurrence report. He had information that accused by name Yarra Sudhakar, S/o Madhusudhana Rao is coming on Honda Activa bearing No.AP 39 CN 3631, for selling ID arrack and liquor bottles. He stopped the accused and on searching the bike, he found 11 liquor bottles Brilliant Blend 180 ml whisky-5 bottles, Silver Stripes whisky 180 ml-3 bottles, Mansion house brandy 180 ml-2 bottles, Andhra Gold whisky 180 ml-1 bottle total worth of Rs.1950/-. He lifted 04 bottles as sample, one from

each variety and affixed identity slips signed by the accused. He arrested accused, seized case property and came to the police station. From 5.00 p.m. to 6.00 p.m. he typed Ex.P3. MOs.1 to 4 are sample bottles. Later, he registered case in Cr.No.44/2022 under Section 34(a) of AP Excise (Amendment) Act. Ex.P4 is FIR. On the same day, he visited the scene, secured LWs.1 to 5 and recorded their statements. He prepared rough sketch. Ex.P5 is the rough sketch. On the next day, he produced the accused for judicial remand. He sent letter of advice to DSP., Eluru., for deputing a constable for sending samples to FSL, Kakinada. On proceedings of DSP., Eluru, he sent sample bottles to FSL. he received analysis report. Ex.P6 is the analysis report. Later, he handed over the case file to LW.9 for further investigation. LW.9 obtained SDPO proceedings and destroyed remaining case property in the presence of mediators vide Ex.P2. Ex.P7 is the destruction proceedings. After completion of investigation by LW9, he filed charge sheet against the accused in this case.

16. Before going into the merits in the case of prosecution, it is pertinent to mention the important provisions basing on which the entire case is rests.

SECTION 34 of AP Excise Act: Penalties for illegal import etc.

*Whoever, in contravention of this Act or of any rule, notification or order made, issued or passed thereunder or of any license or permit granted or issued under this Act, _
(a) imports, exports, transports, manufactures, collects or possesses or sells any intoxicant;*

SECTION 55 of AP Excise Act : Power to search without warrant

Whenever the Commissioner or a Collector or any police officer not below the rank of an officer-in-charge of a police station or any Prohibition and Excise Officer not below the rank of an Excise Sub-Inspector has reason to believe that an offence under Section 34, Section 35, Section 36, Section 37 or Section 37-A has been, is being or is likely to be, committed and that a search warrant

*cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may after recording the grounds of his belief, _
(a) at any time by day or by night enter and search any place and seize anything found therein which he has reason to believe to be liable to confiscation under this Act; and*

(b) detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid.

Section 100(4) in The Code Of Criminal Procedure, 1973

Before making a search under this Chapter, 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 situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

The above referred provisions clearly discloses that if any police officer wants to seize any articles from the possession of suspected person, he must follow the procedure as contemplated U/Sec.100(4) of Cr.P.C. If he fails to secure any independent mediator, he must prepare a report as per Sec.55 of AP Excise Act and proceed with the preparation of Special Report.

17. Coming to the present case on hand, the case of prosecution is that, the police found the accused in possession of bag containing liquor bottles to Siri Hospital road, Narasimharaopet, Eluru. During the course of interrogation, the accused voluntarily confessed before them that he was not possessed any valid license and the said liquor bottles were purchased by him for the purpose of selling the same in open market to gain profit illegally. When such is the case, the Eluru III Town Police are at liberty to intercept the said person by following proper procedure. As per the analysis report marked under Ex.P8, the

contraband seized from the possession of accused is a Indian Made Liquor. Ex.P8, the analysis report also concur with the same. The quantity seized from the possession of accused is not a permissive one as per orders in GOMs.No.310 Revenue (Excise) Department, dt.26.10.2020. As such, the police has every authority to question the illegal possession of liquor bottles by the accused as it is not a permissive quantity. The only question remained before the Court is whether the said liquor bottles are in possession of accused for the purpose of selling the same in open market, as alleged by the police. It is an admitted fact that the accused didn't possess any valid license to sell the liquor bottles to third parties in open market for gain.

18. Now, the clinching issue before the court is whether the said contraband was seized from the possession of accused by following the proper procedure or not. For which the Court has to verify entire prosecution evidence available before this Court. PW.3 and PW.6 are no other than the eyewitnesses to the scene of offence turned hostile and did not support the case of prosecution. They also pleaded ignorance with regard to the seizure of MOs.1 to 4 from the possession of accused under the cover of mediator report. As per the testimony of P.W.4, the Police did not seize any liquor bottles from the scene of offence. The very case of the prosecution is that PW.6 along with his staff and mediators went to the scene of offence and found the accused in possession of liquor bottles. To that effect a mediator report was drafted under Ex.P2. But during the course of evidence, P.W.4 pleaded ignorance with regard to preparation of mediator report in their presence and seizure of liquor bottles, as contended by the police. Except, the evidence of P.W.5, there is no other positive evidence on record to depose with regard to the seizure of liquor bottles at the scene of offence. As such, the only evidence available before the Court i.e. PW.1, PW.2, PW.4 and P.W.5, who are the official witnesses. The

Court has to evaluate the evidence of PW.1, PW.2, PW.4 and P.W.5 to come to a proper conclusion with regard to the seizure of MOs.1 to 4 under the cover of Ex.P2 mediator report. Moreover, Ex.P5 is silent whether it was prepared at the scene of offence or elsewhere. The name of scribe of Ex.P5 was not mentioned in it. Moreover, the mediator i.e., P.W.5 did not support the case of prosecution stating that nothing was happened in his presence. The bag in which the liquor bottles were seized not produced before the Court. As per the mediator report an identity slips were affixed on the said bag. But they were not produced before the Court to believe the contention of police. Moreover, the persons who alleged to have present at the time of preparation of Ex.P5 did not support a case of prosecution. All the referred circumstances clearly goes to show that Ex.P5 was not prepared at the scene of offence. There is every possibility to prepare the said mediator report in the police station, as argued by the counsel for the accused. Even though, P.W.5 identified their signatures on the mediator report, but they did not speak about the seizure of contraband from the possession of accused. It clearly shows that they were not accompanied with the police officials. As such, the said contention should not be taken into consideration. As could be seen from the evidence of PW.5, it can clearly understood that he never visited the scene of offence along with mediators and his staff members as stated by him before the Court. Further, Ex.P5 is silent with regard to the name of the scribe and where it was drafted. In this regard, this Court is not inclined to believe the evidence of PW.5 with regard to the alleged offence in this case. In view of the aforesaid mentioned reasons, this Court is not inclined to believe the evidence of PW.5 and the possession of liquor bottles by the accused. Accordingly, point No.1 is answered.

POINT No.2:

19. Further the other allegation of prosecution is that the accused was intend to sell the said liquor bottles in open market for illegal gain. But there is no scrap of paper before the Court that, to whom the accused sell the said liquor bottles on that day. The police didn't examine any person to whom the accused sold away the liquor bottles. It is an admitted fact that no measurements were seized from the possession of accused at the scene of offence. Moreover, Ex.P5 was also silent with regard to cash seized from the possession of the accused towards the sale proceeds of liquor bottles at the time of seizure of MOs.1 to 4 along with other contraband. It is an admitted fact that the seized contraband was readily available in the open market and same was admitted by PW.5 in his evidence. Further, it is an admitted fact that at the time of alleged seizure of liquor bottles from the possession of the accused all the licensed wine shops were opened. In those circumstances, there is no necessity for anybody to purchase liquor bottles for higher price from the accused as alleged by the prosecution. Without producing any evidence, it cannot be said that the said liquor bottles were in possession of accused for the purpose of selling the same in open market. Without producing cogent evidence, it is not proper to believe the evidence of prosecution to convict the accused for the offence U/Sec.34(a) of AP Excise (Amendment) Act. Moreover, the police failed to follow the provisions at the time of seizure of contraband from the possession of the accused. After evaluating the entire evidence on record, this Court is also relied upon a decision reported in **2002 (1) ALT (Cri.) 251 AP between Y.Srinivasa Reddy v. State of AP**. I have gone through the above referred decision. Our lordships categorically discussed with regard to this effect of case of prosecution for non complying of the provisions U/Sec.55 of AP Excise Act and Sec.100 (4) of Cr.P.C., at the time of search and seizure of any

property from the possession of accused. The facts and circumstances in the above referred decision and the facts and circumstances in the present case on hand are one and the same. As such, the above referred decision is squarely applicable to the present case on hand. Hence, I am not believe the evidence of prosecution witnesses to punish the accused for the offence U/Sec.34(a) of AP Excise (Amendment) Act. Viewed from any angle, the prosecution failed to prove the guilt of the accused beyond all reasonable doubt for the offence U/Sec.34(a) of AP Excise (Amendment) Act. As such, the benefit of doubt certainly goes in favour of the accused. Accordingly, Point No.2 is answered.

POINT No.3 :

20. In view of the answers to Point Nos.1 and 2, the accused is entitled for acquittal. Accordingly, Point No.3 is answered.

21. In the result, Accused is found not guilty of the offence punishable U/Sec.34(a) of AP Excise (Amendment) Act, 1968. Accordingly, he is acquitted U/Sec.248(1) Cr.P.C. The bail bond of the accused, if any, shall be in force for a period of Six Months U/Sec.437-A Cr.P.C. The case property i.e., MOs.1 to 4 Sample of I.D Liquor Bottles deposited vide C.P.No.168/2025, shall be destroyed after the expiry of appeal time.

Typed to my dictation by the Stenographer Grade-III, corrected and pronounced by me in open Court, this the 17th day of February, 2026.

Sd/ K.Spandana

IV Addl. Civil Judge (Junior Division)-cum-
Spl. Judl. Magistrate of I Class (Excise), Eluru.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution :

For Defence:

PW.1: K.Yedukondalu, HC

None

PW.2: T.Radha Krishna, HC

PW.3: Burma Venkata Rao

PW.4: Vanamala Ramanjaneyulu, Mediator

PW.5: K.Nageswara Rao, S.I of Police

PW.6: R.Chalapathi Rao

DOCUMENTS MARKED

For Prosecution :-

For Defence:-Nil

Ex.P1: 161 Cr.P.C. statement of LW.5

Ex.P2: Destruction Mediator report

Ex.P3: Occurrence Report

Ex.P4: First Information Report

Ex.P5: Rough sketch.

Ex.P6: Chemical analysis report

Ex.P7: Destruction Proceedings

Ex.P8: 161 Cr.P.C. statement of LW.5

MATERIAL OBJECTS:

MO.1: Sample Bottle of Brilliant Blend, 180 m.l Whisky

MO.2: Sample Bottle of Silver Stripes Whisky, 180 m.l

MO.3: Sample Bottle of Mansion House Brandy, 180 m.l

MO.4: Sample Bottle of Andhra Gold Whisky, 180 m.l

Id/ K.S
IV ACJ(JD)-CUM-
SJFCM(E), ELURU.

CALENDAR AND JUDGMENT

CALENDAR AND JUDGMENT IN **C.C.No.881/2022** ON THE FILE OF THE
IV ADDITIONAL CIVIL JUDGE (JUNIOR DIVISION)-CUM-SPECIAL
JUDICIAL MAGISTRATE OF FIRST CLASS, (EXCISE), ELURU.

DATE OF							
Offence	Complaint or report	Apprehension of accused	Release on bail	Taken on file	Commencement of trial	Close of trial	Order of sentence
2.2.2022	2.2.2022	2.2.2022	7.2.22	8.12.22	15.7.2024	15.7.24	16.2.26

Explanation for delay: No avoidable delay took place.

Complainant : State: The Sub Inspector of Police, Eluru III Town Police Station, Crime No.44/2022

ACCUSED:

Yerra Sudhakar, S/o Madhusudhana Rao, Age 51 years, Near Anjaneyaswamy Temple, Ammapalem Village, Pedavegi Mandal.

Offence: u/Sec. 34(a) of A.P. Excise (Amendment) Act
Crime No.44/2022 of Eluru III Town Police Station

Finding: Found not guilty.

RESULT: Accused is found not guilty of the offence punishable U/Sec.34(a) of AP Excise (Amendment) Act, 1968. Accordingly, he is acquitted U/Sec.248(1) Cr.P.C. The bail bond of the accused, if any, shall be in force for a period of Six Months U/Sec.437-A Cr.P.C. The case property i.e., MOs.1 to 4 Sample of I.D Liquor Bottles deposited vide C.P.No.168/2025, shall be destroyed after the expiry of appeal time.

Sd/ K.Spandana

IV Addl. Civil Judge (Junior Division)-Cum-
Spl. Judl. Magistrate of I Class (Excise), Eluru.

Copy submitted to:

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