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 First Class (Excise), Eluru.

Friday, the 17th day of January, 2025

C.C.No.901 of 2022

Between:-

State: Enforcement Sub Inspector,
Special Enforcement Bureau Station, Eluru.
Crime No.163/2019 of P&E Station, Eluru.

...Complainant

And

1) Madu Subba Raju, s/o Venkayya, 56 years,
2) Madu Verayya, s/o Venkateswara Rao, 35 years,
Both are r/o Vegiwada village, Pedavegi Mandal.

...Accused

This case is coming before me on 16.01.2025 for final hearing in the presence of Learned Assistant Public Prosecutor for State and of *Sri.M.Satish,* Counsel for A1 and A2, 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 Enforcement Sub Inspector, Special Enforcement Bureau Station, Eluru, filed a charge sheet in Cr.No.163/2019 of Prohibition and Excise Station, Eluru for the offence punishable U/Sec.34(a) of A.P. Excise Act, 1968 against the accused.

02. The case of the prosecution in brief is that on 16.11.2019 at about 7.30 PM, as per the instructions of Excise Superintendent, Eluru, PW.1 along with his staff conducting raids for detection of Excise Offences and when they reached at Anjaneyaswamy temple, Eluru to Jangareddigudem road, Vegiwada village, Pedavegi Mandal and found A1 coming on motorcycle bearing No.AP37CY 9164 with white mica bag containing liquor bottles. On suspicion, they questioned about the source of said liquor bottles. In turn, A1 disclosed his identity and stated that as per the instructions of A2, A1 purchased the said liquor bottles from different brandy shops and selling the same in open market more than the MRP price to gain profit and failed to produce any valid license to possess the said liquor. Then they tried to secure independent mediators, but none came forward to act as mediator. Then PW.1 opened the said bag and found 1) Old Label fine grain whisky 180 ml bottles-6 and 2) Old Admiral deluxe VSOP brandy 90 ml bottles-10. Then a special report was prepared by incorporating all the events happened in their presence and seized the contraband from the possession of A1. They also sealed all the bottles by affixing identity slips. PW.1 also drew MO.1 and MO.2 sample bottles for the purpose of chemical analysis. Later they returned to station along with A1 and seized contraband and handed over entire case file to LW.5/M.Rama Swamy-SEB SI. Later basing on Ex.P1 special report, LW.5 registered the same as a case in Cr.No.163/2019, U/Sec.34(a) of AP Excise Act, 1968 and investigated into. LW.5 served Sec.41-A Cr.P.C. notice on A1. LW.5 received analysis report. After receipt of destruction proceedings, LW.5 destroyed the remaining contraband. On 26.03.2021 at about 8.30 AM, LW.5 along with his staff went to Veigwada village and found A2 and served Sec.41-A Cr.P.C. notice on him. After completion of investigation, PW.1 laid the charge sheet against A1 and A2 for the offence U/Sec.34(a) of AP Excise Act, 1968.

03. On receipt of charge sheet, the case was taken on file for the offence U/Sec.34(a) AP Excise Act, 1968 against A1 and A2.

04. On appearance of A1 and A2, copies of documents were furnished to them 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., A1 and A2 denied the allegations leveled against them. After perusing the entire material on record and on hearing both sides, a charge had been framed against A1 and A2 U/Sec.34(a) of A.P Excise Act, which was read over and explained to them in Telugu, for which, they pleaded not guilty and claimed to be tried.

06. During the course of trial, on behalf of the prosecution, PW.1 and PW.2 were examined and Ex.P1 to Ex.P4 and MO.1 and MO.2 were marked.

07. On closure of evidence let in by the prosecution, A1 and A2 were examined U/Sec.313 of Cr.P.C., with regard to the incriminating material available against them, for which, they denied the same and reported no defence evidence.

08. Heard both sides.

a) The learned Assistant Public Prosecutor argued that the evidence of PW.1 and PW.2 coupled with Ex.P1 to Ex.P4 and MO.1 and MO.2 clearly discloses that the contraband seized from the possession of A1 is a Indian made liquor and A1 and A2 have no valid license to sell the same in open market for profit which contravene the provision U/Sec.34(a) of AP Excise Act. As such, A1 and A2 are liable for punishment for the above section.

b) Per contra, the counsel for the accused argued that the Excise Officials 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 A1. As such, the entire proceedings conducted by the Excise Officials are vitiated. Though the scene of offence is situated in a busy locality, the Excise Police failed to secure any independent mediators at the time of preparing Ex.P1 special report to believe the seizure from the possession of A1. The entire proceedings were prepared in the police station and foisted this false case against A1 for their statistical purpose. Moreover the seized contraband from the possession of A1 is readily available in the open market. No confession statement was recorded by the police at the time of arrest of A2. As such, no offence is made out against A1 and A2 U/Sec.34(a) AP Excise Act. Hence, A1 and A2 are 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 Excise police seized the entire contraband from the possession of A1 under the cover of special report?"***
>
> ***"2. Whether the Excise Police gathered any evidence with regard to sale of liquor bottles by A1 and A2?"***
>
> "***3***. ***Whether the prosecution able to prove the guilt of A1 and A2 beyond all reasonable doubt for the offence U/Sec.34(a) of A.P. Excise Act, 1968?"***

POINT NO.1 :

10. In order to prove the case of prosecution, PW.1 and PW.2 were examined, who participated in the patrolling duty for detection of excise offences, who deposed in their evidence that "on 16.11.2019 at about 7.30 PM, as per the instructions of Deputy Commissioner, Prohibition and Excise, Eluru, PW.1 along with PW.2 and other staff were patrolling for detection of Excise Offences and when they reached near to Anjaneya Swamy temple, Vegiwada village, Pedavegi Mandal and found A1 coming on motorcycle bearing No.AP37CY 9164 in possession of white mica bag containing 1) Old label fine grain whisky 180 bottles-6 and 2) Old Admiral deluxe whisky 90 ml bottles-10. On seeing them, A1 tried to skulk away from that place. On suspicion they intercepted and interrogated A1. During the course of interrogation, A1 confessed his identity and further stated that as per the instructions of A2, the said liquor bottles are purchased by A1 in licensed liquor shops and sell the same in open market for higher price to gain profit. But he failed to produce any valid license for the above said purpose. Then PW.1 tried to secure any independent mediators, but in vain. PW.1 seized the said liquor bottles from the possession of A1. Then PW.1 arrested A1 and seized the contraband under a cover of special report. A1 also signed on the said report. They also affixed identity slips on the said liquor bottles for the purpose of chemical analysis and returned to station along with A1 and case property and handed over entire case file to LW.5/SEB SI. Basing on the said report, LW.5 registered the same as a case in Cr.No.163/2019, U/Sec.34(a) of A.P Excise Act and forwarded original FIR to the Court and copies to all concerned. LW.5 served Sec.41-A Cr.P.C. notice on A1. LW.5 also sent sample bottles to the chemical analysis. On 26.03.2021 at 8.30 AM, LW.5 arrested A2 at Vegiwada village and served Sec.41-A Cr.P.C. notice on him. After receipt of destruction proceedings, LW.5 destroyed the remaining liquor bottles. After completion of investigation, PW.1 filed charge sheet against A1 and A2.

11. 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 the Act or of any rule, notification or order made, issued or passed thereunder or of*

any license or permit granted or issued under the 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 her 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 the 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 the 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. The special report drafted by PW.1 is nothing but the confessional statement of accused. As such the said report is hit by the provisions U/Sec.25 and 27 of Indian Evidence Act. In those circumstances, the prosecution must establish the recovery of contraband from the possession of accused by placing cogent evidence before the Court.

12. Coming to the present case on hand, the case of prosecution is that, while they are patrolling for excise offences, they found A1 in possession of liquor bottles without having any valid license. During the course of interrogation, A1 voluntarily confessed before them that he was not possessed any valid license and as per the directions of A2, A1 purchased the said liquor bottles for the purpose of selling the same in open market to gain profit illegally. When such is the case, the Excise Police are at liberty to intercept the said person by following proper procedure. As per the analysis report marked under Ex.P3 the contraband seized from the possession of A1 is a Indian Made Liquor. As such, the Excise police has every authority to question the illegal possession of liquor bottles by A1 as it is not a permissive quantity. The only question remained before the Court is whether the said liquor bottles are in possession of A1 for the purpose of selling the same in open market. It is an admitted fact that A1 didn’t possess any valid license to sell the liquor bottles to third parties for gain.

13. Now, the clinching issue before the Court is whether the said contraband was seized from the possession of A1 by following the proper procedure. As per contention of accused counsel, the scene of offence is situated in a busy locality. There is every possibility to secure any independent mediator at the time of preparing the special report under Ex.P1 soon after the detection of A1 with liquor bottles. As per the evidence of PW.1, he tried for the independent mediators, but none came forward to act as a mediator. At the same time no notice was served on the person who refused to act as mediator. The police officer has got power to summon any person U/Sec.175 of Cr.P.C., to secure the presence at the time of any enquiry. But Ex.P1 is silent with regard to the details of the person who refused to act as mediator. Even the boundaries of the scene of offence were not reflected in Ex.P1. As seen from Ex.P1, there is no endorsement with regard to the name of the scribe. It creates a doubt in the mind of the Court with regard to the preparation of Ex.P1 at the scene of offence as alleged by the prosecution. As such, it is clear that the Excise Police failed to secure any independent mediator at the time of preparation of Ex.P1 report though it was prepared in a busy locality. As such, the evidence of PW.1 is not trustworthy and the visit of scene of offence by the Excise Police is also doubtful. Even PW.1 did not mention the boundaries of scene of offence in Ex.P1 special report. If really, Ex.P1 special report was drafted at the scene of offence, there is every possibility to mention the boundaries in it. The non-mentioning of any particulars in Ex.P1 creates a doubt in the mind of the Court with regard to the actual visit of PW.1 along with other staff members. There is every possibility to prepare the said special report in the police station itself for their statistical purpose. In this regard, I find force in the contention of accused. In view of the aforementioned reasons, I am not believe the evidence of PW.1 and PW.2 with regard to the visit of scene of offence and seizure of liquor bottles from the possession of A1 under Ex.P1. Accordingly, point No.1 is answered.

POINT NO.2

14. Further the other allegation of prosecution is that A1 and A2 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 A1 and A2 sell the said liquor bottles. The Excise police didn’t examine any person to whom A1 and A2 sold the liquor bottle. Moreover Ex.P1 is silent with regard to seizure of any amount from the possession of accused towards the sale proceeds of liquor bottles at the time of seizure of MO.1 and MO.2. At the time of preparation of Ex.P1 no incriminating material was seized at the place of scene of offence. During the course of cross examination, PW.1 categorically admitted with regard to non seizure of any incriminating material at the scene of offence. At the same time, Ex.P1 is also silent the particulars of persons to whom A1 and A2 sell the liquor bottles and collects the amounts from them. No measurements were seized by the police under the cover of Ex.P1. Without producing any evidence, it cannot be said that the said MO.1 and MO.2 along with other bottles are in possession of accused for the purpose of selling the same in open market which doesn’t attract the offence U/Sec.34(a) of AP Excise Act. Without producing cogent evidence, it is not proper to believe the evidence of prosecution to convict A1 and A2 for the offence U/Sec.34(a) of AP Excise Act. Moreover, the police failed to follow the provisions at the time of seizure of contraband from the possession of accused. After evaluating the entire evidence on record, this Court is also relied upon a decision reported in **2002 (1) ALT (Crl.) 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 the 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 A1 and A2 for the offence U/Sec.34(a) of AP Excise Act. Viewed from any angle, the prosecution failed to prove the guilt of A1 and A2 beyond all reasonable doubt for the offence U/Sec.34(a) of AP Excise Act. As such, the benefit of doubt certainly goes in favour of A1 and A2. Accordingly, point No.2 is answered.

POINT NO.3 :

15. In view of the answers point Nos.1 and 2, A1 and A2 are entitled for acquittal.

16. In the result, A1 and A2 are found not guilty of the offence punishable U/Sec.34(a) of AP Excise Act, 1968. Accordingly, they are acquitted U/Sec.248(1) Cr.P.C. The bail bonds of A1 and A2, if any, shall be in force for a period of six months U/Sec.437-A Cr.P.C. The case property i.e., MO.1 and MO.2 are ordered to be destroyed after 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 January, 2025.

KOLLA SPANDANA

Digitally signed by KOLLA SPANDANA
Date: 2025.01.17 15:12:41 +0530

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: P.Subbi Reddy-SEB SI	**None**
PW.2: K.Srinivas-HC	

DOCUMENTS MARKED

For Prosecution :-

For Defence:- Nil

Ex.P1: Special report

Ex.P2: Original FIR

Ex.P3: Chemical Analysis Report

Ex.P4: Destruction Proceedings

MATERIAL OBJECTS

MO.1: Sample bottle of Old Label fine grain whisky 180 ml

MO.2: Sample bottle of Old admiral deluxe whisky 90 ml

KOLLA SPANDANA

Digitally signed by KOLLA SPANDANA
Date: 2025.01.17 15:12:52 +0530

IV ACJ(JD)-CUM-
SJFCM(E), ELURU.

CALENDAR AND JUDGMENT

CALENDAR AND JUDGMENT IN **C.C.No.901/2022** 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	Commence-ment of trial	Close of trial	Order of sentence
16.11.19	16.11.19	Sec.41-A Cr.P.C. notice	--	24.12.22	03.01.25	16.01.25	17.01.2025

Explanation for delay: No avoidable delay took place.

Complainant : State: The Enforcement Sub Inspector,
Special Enforcement Bureau Station, Eluru
Crime No.163/2019

S.No. Name of the Accused Father's name Age Religion Sex Calling Village Mandal
1) Madu Subba Raju, s/o Venkayya, 56 years, Male, 2) Madu Verayya, s/o Venkateswara Rao, 35 years, Male, Both are r/o Vegiwada village, Pedavegi Mandal.

Offence: U/Sec.34(a) of A.P. Excise Act.

Crime No.163/2019 of Prohibition and Excise Station, Eluru

Finding: Found not guilty.

RESULT: A1 and A2 are found not guilty of the offence punishable U/Sec.34(a) of AP Excise Act, 1968. Accordingly, they are acquitted U/Sec.248(1) Cr.P.C. The bail bonds of A1 and A2, if any, shall be in force for a period of six months U/Sec.437-A Cr.P.C. The case property i.e., MO.1 and MO.2 are ordered to be destroyed after expiry of appeal time.

KOLLA SPANDANA

Digitally signed by KOLLA SPANDANA
Date: 2025.01.17 15:13:17 +0530

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

Seal:
Copy submitted to:

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