

APVS180027552022



**IN THE COURT OF ADDITIONAL CIVIL JUDGE (Jr. DIVISION) – CUM –
ADDITIONAL JUDICIAL FIRST CLASS MAGISTRATE
NARSIPATNAM.**

CALENDAR AND JUDGMENT in CC No:63/2023

Date of offence	:	15.06.2021
Date of Complaint or report	:	15.06.2021
Date of apprehension of accused	:	15.06.2021
Date of release on bail	:	22-06-2021
Date of commencement of trial	:	15-04-2026
Date of close of trial	:	15-04-2026
Date of sentence or order	:	23-04-2026
Explanation for delay	:	Due to non production of witnesses by prosecution
Name of the complainant	:	The State represented by the Proh. & Excise Sub-Inspector, Narsipatnam PS.
Name of the Accused	:	Dammu Sathibabu, S/o.Perumallu Aged about 46 years, Caste: Setti Baliya, R/o.Dalimpeta, Makavarapalem Mandal
Offence	:	U/sec.7(B) r/w 8(B) of A.P.Prohibition and Amendment Act 2020.
Finding	:	Found not guilty
Sentence or Order	:	In the result , the accused is found not guilty for the offence under section 7(B) r/w 8(B) of A.P.Prohibition and Amendment Act 2020, hence he is acquitted under section 248(1) of Criminal Procedure Code, 1973. The bail bonds and surety bonds of the accused shall remain in force for further period of Six months from today as prescribed in Section 437-A of Criminal Procedure Code, 1973. The case property/MO1 sample bottle of 250 ML shall be destroyed after expiry of appeal time.

ADDITIONAL CIVIL JUDGE (Jr. DIVISION),
cum ADDL. JUDL. FIRST CLASS MAGISTRATE,
NARSIPATNAM.

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE (Jr. DIVISION) – CUM –
ADDITIONAL JUDICIAL FIRST CLASS MAGISTRATE: NARSIPATNAM**

Present: Sri M. Rohith,
Additional Civil Judge (Jr. Division) – cum -
Addl. Judl. First Class Magistrate,
Narsipatnam.
Thursday, this is the 23rd day of April, 2026

CALENDAR CASE NO: 63/2023**Between:**

The State represented by the Proh. & Excise Sub-Inspector, Narsipatnam PS.
...Complainant.

And:

Dammu Sathibabu, S/o.Perumallu Aged about 46 years, Caste: Setti Baliya,
R/o.Dalimpeta, Makavarapalem Mandal
.....Accused.

This case is coming before me for final hearing on 20-04-2026 in the presence of Learned Assistant Public Prosecutor for the complainant and of Sri.K.Satyanarayana, Learned Counsel for Accused having stood over till this day for consideration, this court delivered the following:-

J U D G M E N T

1) The Sub Inspector of Police, Narsipatnam PS filed charge sheet in Cr. No.285/2021 against the accused for the offence punishable under section 7(B) r/w 8(B) of A.P.Prohibition and Amendment Act 2020.

2) **The brief facts of the prosecution case are that :**

On 15.06.2021 at 18.30 hours, on reliable Information of illicit arrack selling, LW.3 SI of Police, Narsipatnam PS left from the police station along with his staff LWs 1 and 2 on motor cycles and reached at Dalimpeta Village about at 18.30 hours, in the meantime, the accused was present at the spot and having a plastic can, on seeing the police, the accused was tried to escape from that place along with the above plastic can, and then LW.4 along with LW.1 and 2 caught the accused and enquired about him. The accused disclosed his name and address, while asked to him about the plastic can, he informed that he has ID arrack in her possession and he used to selling the same and earn money in a short period. Later, LW.4 asked to his, having any permission or license, he

informed that he didn't have no permission or license to selling the ID arrack. Then LW.4 seized ID arrack 02 liters along with plastic can from the possession of the accused and informed that illegally selling of ID arrack are liable to punished. Later LW.4 brought the accused along with seized property to the PS by the occurrence report while no one was available to act as mediators at the time of offence. LW.1 collected 250 ml of sample ID arrack from the seized contraband for chemical analysis. Later, they brought the accused and seized property to the Police Station.

2-a) LW.3, basing on the above said occurrence report, registered FIR in Cr.No.285/2021 for the offence punishable under section 7(B) r/w 8(B) of A.P.Prohibition Act and Amendment Act 2020 of Narsipatnam Police Station and took up investigation. During the course of investigation, LW.4 examined the witnesses i.e., LW1 and LW2, recorded his statements in Case Diary Part-II, arrested the accused and produced him before this Court seeking Judicial Remand. LW4 sent the samples of the seized property to Chemical Examiner for Prohibition and Excise, Regional Prohibitory Excise Laboratory, Visakhapatnam for chemical analysis and LW3 issued Chemical Analysis report opining that the sample is illicitly distilled arrack, unfit for human consumption and injurious to health and after completion of investigation, LW3 filed charge sheet against the accused for the offence punishable under section 7(B) r/w 8(B) of A.P.Prohibition and Amendment Act 2020.

3) This Court took cognizance of the offence under section 7(B) r/w 8(B) of A.P.Prohibition and Amendment Act 2020 against the accused and issued summons.

4) On appearance of the accused before this court, the copies of the case records were furnished to him as contemplated U/sec.207 of Criminal Procedure Code, 1973.

5) Accused was examined U/Sec.239 of Criminal Procedure Code, 1973 and the charges under section 7(B) r/w 8(B) of A.P.Prohibition and Amendment Act 2020 are framed against him and the same was read over and explained to him in Telugu for which the accused pleaded not guilty and claimed

to be tried. Hence, the trial.

6) In order to prove its case, the prosecution examined PW1 and got marked Ex.P1 to Ex.P3 and M.O.1 and the Learned APP gave up evidence of LW1 A.Narayana Rao, LW2 S.Bhimalingeswara Rao

7) After closure of the evidence of the prosecution accused was examined U/Sec.313 of Criminal Procedure Code, 1973 stating the particulars of the incriminating material made against him in the evidence of the prosecution witness, for which he denied the same and reported no defense evidence.

8) Heard learned Assistant Public Prosecutor for complainant and the learned counsel for Accused and perused the material on record.

9) Now the point for determination is:

Whether the prosecution is able to bring home the guilt of the accused for the offence under section 7(B) r/w 8(B) of A.P.Prohibition Act and Amendment Act 2020 beyond all reasonable doubt or not ?

POINT:

10) In order to prove the case of prosecution, it has to be seen whether the evidence of PW1 coupled with Ex.P1 to Ex.P3 and MO1 are sufficient to base the conviction of the accused for the offence punishable under section 7(B) r/w 8(B) of A.P. Prohibition Act and Amendment Act 2020 after scrutinizing them with due care and caution.

11) PW1 deposed before the Court that, on 15.06.2021 at before 6.30 PM, LW3 received credible information about transportation/selling of ID Arrack at the outskirts of Dalimpeta Village, then he along with LW1 proceeded to the scene of offence, wherein they found one person was selling ID Arrack, on seeing them the said person ran away and they could not catch him along with 02 liters of ID Arrack, they informed him selling, manufacturing, transporting, possession of ID Arrack is an offence, as no mediators are available they drafted Ex.P1 occurrence report at the scene of offence and drawn MO1 sample bottle of 250 ML for the sake of chemical examination and return to the police station along with accused and seized property, basing on Ex.P1 occurrence report he registered as a case vide Ex.P2 FIR in Cr. No.285/2021 for the offence under

section 7(B) r/w 8(B) of A.P.Prohibition Act and Amendment Act 2020 examined witnesses LWs.1 and 2 and recorded his statements, he also arrested the accused and produced him before this Court seeking Judicial Remand, he also sent MO1 sample (quantity 250 ML) to the chemical analysis and subsequently obtained Ex.P3 REL report, and after completion of investigation he filed charge sheet.

12) It is the specific case of the prosecution that, PW1 got a credible information about transportation of ID arrack on such he proceeded to the Dalimpeta village along with other staff members and caught hold the accused and enquired. On enquiry the accused confessed the alleged offence. On such, he arrested the accused and seized 02 liters of ID arrack from the possession of the accused. To prove the alleged offence against the accused, the prosecution has to establish, the alleged seizure of case property i.e., 02 liters of ID arrack from the possession of the accused beyond all reasonable doubt. In the present case, the prosecution examined PW1 who is none other than police official, out of which LW1 is the raiding party and PW1 registered the FIR, examined the witnesses and investigated into the material part of the case failed to speak about the non securing the independent witnesses to corroborated the seizure from the possession of the accused. From the evidence of PW1 it is very much evident that the police raiding party did not make efforts to secure the presence of the mediators at the time of arrest of accused and seizure of case property. Further, no evidence was placed with regard to purchasing of ID arrack by the accused or selling of the same. Except the contents of Ex.P1 occurrence report, the prosecution has not placed positive material to connect the accused with the alleged offence.

13) With regard to the seizure the Hon'ble High Court of A.P. Observed that if any seizure is made in contravention of Section 100 (4) of Criminal Procedure Code, 1973, entire seizure proceedings are deemed to have been vitiated. In this case also the search was made in the absence of any independent witnesses.

Section 100(4) of Criminal Procedure Code, 1973 makes it clear that

“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 situated 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 observations of the Hon'ble High Court of A.P. in the case of *S. Babu Saheb @ Babu Vs. State of A.P.*, reported in 2010(1) ALT (Cr.) 32 AP, are very much relevant which are extracted hereunder:

“Admittedly PW-1 accompanied the excise officials from Srikalahasti. The excise officials were proceeding on information. When they were proceeding on information they were right in taking mediators along with them where there is no possibility of securing any local mediators then probably they will be justified in conducting seizure proceedings in the presence of mediators brought by them from a different place. But when they are conducting the search in a colony or at a place wherein there is possibility of securing the presence of independent mediators, the excise officials or Prohibition officers are bound to take the local respectable independent inhabitants. They must make sincere efforts to secure the local respectable mediators, that is the mandate of Section 100(4) of Cr.P.C., but excise officials are also authorized to issue an order in writing asking them to act as mediators under Section 100(4) of Cr.P.C. The object of section 100(4) of Cr.P.C., is to ensure confidence in the neighbours and in the public in general. That is genuine search has been made and incriminating material has been really found and not planted. The presence of independent respectable mediators at a search is always desirable and the persons of mediators of any other locality would not only weakened but sometimes destroy the prosecution case.”

14) It is not the case of the prosecution witnesses that they examined any independent witness at the scene of offense though the scene of offence is a grama panchayat and it consists of Panchayat Secretary, VRO, VRA, Village Sarpanch and Ward members are available. The entire case of the prosecution relies on the testimony of PW1 who is police official. If no independent persons were examined then it is the duty of the prosecution to explain as why it could not secure independent witnesses. Non-mentioning of the reasons for not securing independent witnesses is fatal to the case of the prosecution. Further the Hon'ble High Court of Andhra Pradesh in the case reported on 27-11-2001 ***Yeduru Srinivasulu Reddy Vs. State of Andhra Pradesh*** observed that the prosecution has to bring on record while charge in the accused that they have followed the procedure contemplated U/sec.100(4) of the code. If it fails to prove that they had followed such procedure the search and seizure becomes vitiate.

15) Here, it is exactly stated as to the mandatory requirement of the police to secure independent witnesses from local inhabitants. While conducting such arrest and seizure or the seizing officer has to mention the reasons as to why section 100(4) could not be followed. But in the present case, it is seen that there has been no such thing done by PW1. Further other witnesses who participated in the raid also did not depose supporting the prosecution to the reasons best known to them. Hence in view of foregoing discussion, this Court finds that though the prosecution examined PW1 and got marked Ex.P1 to Ex.P3 and MO.1, it failed to prove the seizure of the contraband from the possession of the Accused, on which the entire case of the prosecution rests. So, this Court finds the charges against the Accused for the offence under section 7(B) r/w 8(B) of A.P.Prohibition Act and Amendment Act 2020 is not proved beyond reasonable doubt and the Accused is entitled for acquittal.

16) **In the result**, the accused is found not guilty for the offence under section 7(B) r/w 8(B) of A.P.Prohibition Act and Amendment Act 2020 hence he is acquitted under section 248(1) of Criminal Procedure Code, 1973. The bail bonds and surety bonds of the accused shall remain in force for further period of Six months from today as prescribed in Section 437-A of Criminal Procedure Code, 1973. The case property/MO1 sample bottle of 250 ML shall be destroyed after expiry of appeal time.

Typed to my dictation by the Stenographer on computer system, corrected, signed and pronounced by me in open court on this the 23rd day of April, 2026.

ADDITIONAL CIVIL JUDGE (Jr. DIVISION),
cum ADDL. JUDL. FIRST CLASS MAGISTRATE,
NARSIPATNAM.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution:

For Defence: None

PW1 G.Srinivasu, Prohibition and Excise Inspector, Pakayaraopeta

EXHIBITS MARKED**For Prosecution:**

Ex.P1 Occurrence report
Ex.P2 FIR
Ex.P3 REL report

For Defence: Nill**Material Objects**

MO1 i.e., sample bottle of 250 ML

ACJ(Jr.D)/NRPM