IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS: AVANIGADDA

Present: Sri Lanka Gopinath
Judicial Magistrate of First Class, Avanigadda

Thursday, this the 13th day of July, 2023.

C.C.No. 601/2022

Between:-
State rep., by
Sub-Inspector of Special Enforcement Bureau Station,
Avanigadda .. ***Complainant***

And

Yarlagadda Venkata Omkar, S/o Krishna, 40 years, R/o MerakaGowdapalem of Koduru village and Mandal.

...... Accused

This case is coming before me on 13.7.2023 for final hearing in the presence of Assistant Public Prosecutor, for prosecution and Sri Ch. NagamalleswaraRao, Advocate for Accused,and the matter having stood over for consideration till today, this court delivered the following:-

JUDGMENT

1. The accused is arraigned before the court for the offence under sections 34(a) of Andhra Pradesh Excise Act.

2. **The brief averments of the prosecution case are :-**

On 26.10.2022 at about 9.00 AM, P.W.3 along with his staff proceeded toKoduru village, P.w.1 and L.w.2/K. Rambabu, VRA act as mediators, all they reached the noodles shop of accused, checked the shop and found 35 liquor bottles each of 180 ml/1) BB Brilliant Blend Superior Grain Whisky-17 bottles, 2) Officers Choice Supreme Whisky-18 bottles. On enquiry accused confessed that he purchased the bottles from Government retail outlets to sell a higher prices. Then P.W.3 arrested the accused , seized the bottles, drawn the samples bottles/M.Os.1 and 2 and drafted Ex.P.1/mediators report.

Thereafter, P.w.3 registered Ex.P.1 as Ex.P.2/FIR in Cr.No.44/2022 under Section 34(A) of AP Excise (Amendment) Act. He sent M.O.1 and 2 to FSL for chemical analysis. After receipt of FSL report and after completion of investigation, he filed charge sheet.

3. This case was taken cognizance for the offence punishable under Sections 34(a) of Andhra Pradesh Excise Act against accused.

4. On appearance of the accused before the Court, copies of the documents were furnished to him as contemplated under Section 207 of Code of Criminal Procedure.

5. The accused was examined under Section 239 of Code of Criminal Procedure, the charge under section 34 (a) of Andhra Pradesh Excise Act was framed, read over and explained to the accused in Telugu for which, he denied the same and claimed to be tried.

6. On behalf of the prosecution, P.Ws. 1 to 3 were examined and Exs.P1 to P5 and MOs.1and 2 were marked.

7. After closure of prosecution evidence, the accused was called upon to explain the incriminating circumstances appearing against him from the prosecution evidence as contemplated under Section 313 of Code of Criminal Procedure and accused denied the same and reported no evidence in defense.

8. Heard both sides.

9. Now the point for determination is :-

Whether the prosecution proved the guilt of the accused for the offence punishable under Sections 34(a) of Andhra Pradesh Excise Act beyond reasonable doubt?

POINT :-

10. To prove its case, prosecution examined P.Ws 1 to 3 and got marked Exs.P1 to P5 and Mos 1 and 2.

11. Pw1 in his chief examination deposed that on 26.10.2022 at about 8.00 AM, onrequest of P.W.3, he along with L.W.2/K. Rambabu, VRA went to the Noodles shop of accused at Koduru village, P.W.3 asked the accused about liquor bottles, the accused shown them IML bottles in one carry bag, which he purchased from Government retailors to sell the same for higher prices. On opening the bag, they found 35 liquor bottles each of 180 ml/1) BB Brilliant Blend Superior Grain Whisky-17 bottles, 2) Officers Choice Supreme Whisky-18 bottles. P.W.3 lifted M.Os.1 and 2/sample bottles and drafted mediators report/Ex.P.1

12. In his cross examination, P.W.1 admitted that he has not mentioned his activity on the date of alleged offence in the movement register. He further admitted that he signed on the papers drafted by the police at the police station.

13. L.w.4/L. Rajsh the then Constable was examined as P.W.2. He deposed that on 26.10.2022 at about 9.00 AM, he along with P.W.3, secured P.W.1 and L.w.2, went to one noodles shop, there they found the accused and on

enquiry, accused disclosed that he purchased the liquor bottles in various shops to sell the same for higher prices. P.W.3 found 35 liquor bottles each of 180 ml/1) BB Brilliant Blend Superior Grain Whisky-17 bottles, 2) Officers Choice Supreme Whisky-18 bottles and drafted mediators report.

14. In this cross examination, he admitted that the place of offence is surrounded by residential houses and also admitted that they did not enquire the neighbours. They did not enquire from where the accused purchased the bottles. He also admitted that the distance between place of offence and the scene of offence is about 20 KM. Further admitted that one cannot ascertain the nature of the liquid unless the bottle is open and admitted that they did not open any bottle except M.Os.1and 2.

15. P.w.3/Investigating Officer deposed that on 26.10.2022, he along with P.Ws.1, 2 and L.W.2 reached the noodles shop of accused in Koduru village, there they found one mica bag containing 35 liquor bottles each of 180 ml/1) BB Brilliant Blend Superior Grain Whisky-17 bottles, 2) Officers Choice Supreme Whisky-18 bottles. He drafted mediators report/Ex.P.1. Sent M.Os.1 and 2 to FSL for chemical examination. After that he registered Ex.P.1 as Ex.P.2/FIR in Cr.No.44/2022 under Section 34(A) of AP Excise (Amendment) Act. After receipt of FSL report, sent remaining seized property to the Superintendent of Police, Krishna, Machilipatnam vide Ex.P.5/destruction proposal letter. After completion of investigation, he filed charge sheet.

16. In the cross examination, he admitted that the scene of offence is a busy locality surrounded by residential houses, commercial shops and Government offices and also admitted that he did not examine even the house owner of accused. He enquired the neighbours, but not shown as list of witnesses. He also admitted that from which shop the accused purchased the IML bottles. He categorically admitted that Ex.P.1 was drafted after accused was taken into custody.

17. Basing on the evidence of the P.Ws.2 and 3, it shows that scene of offence is busy locality surrounded by houses, offices etc., but they did not examine any local inhabitant in this case.More over Pw2 categorically admitted that he has not verified from which shop accused purchased IML bottles. If really confession was recorded by P.W.2, he should enquire and know the fact from where the accused purchased the said bottles. Hence the confession in mediators report made by the accused in the custody of police, can’t be believable.

18. As such, it stands that the said confession is admitted to have been made by the accused in the presence of the police personnel. That being the case, the said confession squarely falls within the ambit of sections 25 and 26

of the Indian Evidence Act. Consequently, the same cannot be proved against the maker/accused. It is not the case of the prosecution that the confession of the accused led to the discovery of any fact. As such, the application of section 27 of the Indian Evidence Act is categorically excluded. That being the case, the very seizure of the bottles from the possession of the accused has not been proved by the prosecution.

19. Now to prove the offence under Section 34(a) of Andhra Pradesh Excise Act the prosecution must prove that P.Ws. 1 to 3 found the accused in possession of MOs.1and 2 which are liquor bottles without any license which is prohibited under the Act.

20. P.W.3 did not follow the procedure prescribed under Section 100 (4) Code of Criminal Procedure, where in it mandates that “before making search the officer about to make it shall call upon two or more independent and respectable persons of the locality in which the place is to be searched to attend and witness the search and may issue an order in writing to them” and 100(5) Code of Criminal Procedure envisages that “the search shall be made in their presence and the list of things seized shall be prepared by the officer and signed by such witnesses” and Section 100(7) Code of Criminal Procedure shows that “a copy of the list of things seized shall be given to the persons from whom the property is seized”. Sothe Investigating Officer did not comply with the procedure prescribed under Sections 100 (4), (5) and (7) Code of Criminal Procedure while seizing the contraband from accused.

21. In view of the foregoing discussion it creates a reasonable doubt over the case of prosecution and hence, it is held that prosecution failed to prove the guilt of the accused for the offence Under Section 34(a) of Andhra Pradesh Excise Act beyond all reasonable doubt. Hence, accused is entitled for acquittal. Accordingly the point is answered.

In the result, the accused is found not guilty for the offence punishable under Section 34(a) of Andhra Pradesh Excise Act and he is acquitted under Section 248(1) of Code of Criminal Procedure for the said offence. The bail bonds of accused and that of his sureties shall be in force for a period of 6 months as contemplated under Section 437-A of Code of Criminal Procedure and MOs.1 and 2 shall be destroyed after appeal period is over.

Typed by Stenographer to my dictation, corrected and pronounced by me in open Court, on this, the 13th day of July, 2023.

Judicial Magistrate of I Class,
Avanigadda.

Appendix of evidence
Witnesses examined

FOR PROSECUTION
PW1 :K. Venkata Subba Rao
PW2 :L. Rajesh
P.W3: S.Md. Ali

FOR ACCUSED: None

Exhibits Marked :-

For Prosecution :-
Ex.P1: Mediators Report
Ex.P2: First Information Report
Ex.P3: Letter of advise..
Ex P4: FSL report
Ex P5: Destruction proposal letter.

For Accused :- Nil

Material Objects marked
M.Os.1 and 2: Sample bottles

Judicial Magistrate of I Class,
Avanigadda.

CALENDAR CASE No601/2022

ON THE FILE OF JUDICIAL MAGISTRATE OF I-CLASS, AVANIGADDA.

1	Calendar Case	:	**Calendar Case No.601/2022**
2	Complainant	:	State rep., by Sub-Inspector of Special Enforcement Bureau Station, Avanigadda
3	Description of the accused	:	Yarlagadda Venkata Omkar, S/o Krishna, 40 years, R/o MerakaGowdapalem of Koduru village and Mandal.
4	Date of occurrence	:	26.10.2022
5	Date of complaint	:	26.10.2022
6	Date of apprehension of accused	:	23.02.2023
7	Date of Judgment	:	13.07.2023
8	Charges	:	Under Sections 34(a) of Andhra Pradesh Excise Act.

RESULT:

Accused is found not guilty for the offence punishable under Section 34(a) of Andhra Pradesh Excise Act and he is acquitted under Section 248(1) of Code of Criminal Procedure for the said offence. The bail bonds of accused shall be in force for a period of 6 months as contemplated under Section 437-A of Code of Criminal Procedure. MOs 1 and 2 shall be destroyed after appeal period is over.

EXPLANATION FOR DELAY

On 28.12.2022, this case was taken on file against the accused for the offence under Section34(a) of Andhra Pradesh Excise Act. On 23.2.20232, accused was examined under Section 239 of Cr.P.C. Charge framed against for the offence under Section34(a) of Andhra Pradesh Excise Act. P.W.1 was examined on 23.3.2023, P.w.2 was examined on 28.4.2023 and P.W.3 was examined on 12.7.2023. Ex.P.1 to P.5 and M.Os.1 and 2 were marked. Accused was examined under Section 313 Cr.P.C. on 12.7.2023. On 13.7.2023 Heard arguments and on the same day, Judgment pronounced.

Judicial Magistrate of I-Class,
Avanigadda.

Submitted to: The Hon'ble I-Addl. District and Sessions Judge,
Krishna, Machilipatnam.