

IN THE COURT OF ADDITIONAL JUDICIAL MAGISTRATE OF FIRST CLASS, PITHAPURAM.

Present: Sri Modadugula Leela Sai Subhash
Additional Judicial Magistrate of First Class, Pithapuram

Tuesday, the 11th day of July, 2023.

CALENDER CASE NO. 696/2022

Between:

State: Sub-Inspector of Police,
Pithapuram Rural Police Station.

...Complainant

And

Medisetti Nookaraju, S/o.Kamaraju,
41 years, C/Settibalija, D.No.3-141,
Subbarayudupeta, Mallam Village,
Pithapuram mandal.

... Accused

This case is coming on 05.07.2023 for final hearing before me in the presence of Learned Assistant Public Prosecutor for complainant-State and of Sri K.Uma Maheswara Rao, Advocate for Accused and the matter having stood over for consideration till this day, this court delivered the following:

J U D G M E N T

1. The Sub-Inspector of Police, Pithapuram Rural Police Station filed charge sheet against the accused in Cr.No.160/2021 on its file for the offence punishable under section 7(B) r/w 8(B) of A.P.Prohibition Amendment Act, 2020.

2. Brief facts of the charge sheet are that on 10.10.2021 at about 06.00 A.M, while P.W.4 was present in the police station, he received credible information about an illegal arrack batti at field of Medisetti Nookaraju, Subbarayudupeta, Outskirts of Mallam Village, Pithapuram mandal. Then P.W.4 along with his staff L.W.1-PC 351, L.W.2-PC 3493 and P.W.1 rushed to the above place with two mediators, L.W.6-Chittarapu Nookalu and P.W.3 and found the accused while he was distilling arrack illegally for sale. On noticing the arrival of police, the accused absconded from the spot. P.W.4 found 2000 litres of putrefied jaggery wash and destroyed the same on the spot after drawing 350 ml putrefied jaggery wash as sample into a separate plastic bottle for the purpose of chemical analysis and affixed slips on the sample bottle containing the signatures of P.W.4, P.W.3 and L.W.6 and the mediators report was drafted from 06.30 A.M to 07.30 A.M by L.W.6 and P.W.3.

(b) Basing on the strength of the mediators report, P.W.4 registered a case in

Crime No.166/2021 under Section 7(B) r/w 8(A) of A.P.Prohibition Amendment Act on 10.10.2021 at 08.00 A.M and investigated into. During the course of investigation, P.W.4 visited the scene of offence, examined the same, prepared rough sketch, examined the witnesses, sent the sample to chemical examiner for analysis. The Chemical examiner in his report opined that the sample is "Putrefied Jaggery Wash, Fermented Wash fit for Distillation". During the course of investigation, accused was produced on PT warrant in Crime No.164/2021 on 09.10.2021 by P.W.4. After completion of entire investigation, charge sheet was filed against accused.

3. This case was taken on file against the accused for the offence under Section 7(B) r/w 8(A) of A.P.Prohibition Act.

4. On appearance of the accused, copies of documents were furnished to the accused as required under section 207 Cr. P. C.

5. Accused was examined under section 239 of Code of Criminal Procedure. A charge under section 7(B) r/w 8(A) of A.P.Prohibition Act is framed against the accused, read over and explained to accused in Telugu. Having heard and understanding the same, accused pleaded not guilty and claimed to be tried.

6. In support of the case of the prosecution, P.Ws.1 to 4 are examined and Exs.P.1 to P8 and MO1 are marked.

7. After closure of prosecution evidence, accused was examined under Section 313 Cr.P.C by explaining the incriminating material available against him for which he denied the same. Accused did not choose to examine any defence witnesses and no documents were marked on behalf of the defence.

8. Heard both sides. Perused the oral and documentary evidence on record.

9. Now the point for determination is,

Whether the prosecution is able to establish the guilt of the accused for the offence under section 7(B) r/w 8(A) of A.P.Prohibition Act beyond all reasonable doubts?

10. **POINT:**

PW1, V,Gopala Krishna PC 4196 deposed that on 10.10.2021 at about

05.30 A.M on receipt of information regarding manufacturing of ID arrack the SI of Police/P.W.4 secured the presence of mediators and that he along with L.W.1-PC 351 and L.W.2-PC 3493 accompanied by P.W.4 rushed at the outskirts of Subbarayudu Peta near the fields of Nookaraju and found a person drawing jaggery wash from the land for preparation of ID arrack. He deposed that on seeing the police the said person escaped from there and they found 2000 litres of jaggery wash which was kept in the plastic drums kept in the earth. He deposed that P.W.4 seized the FJ wash and destroyed the same along with the drums under mediator nama prepared by mediators. He deposed that on enquiry they came to know that the person escaped is the resident of Subbaraudupeta.

During his cross examination, he admitted that none informed them the name of accused and that the SI of Police/P.W.4 did not conduct any test identification parade and that he had seen the accused in the Court hall and further admitted that the scene of offence is a busy locality. He denied the suggestion that he did not accompany the SI of police to the scene of offence and nothing was destroyed at the scene of offence.

11. PW 2, who is independent witness in this case turned hostile and did not support the prosecution case,

During his cross examination, he admitted that the police came to his adjacent fields and tried to apprehend the accused while he was drawing jaggery wash and that the police destroyed the jaggery wash at the scene of offence.

12. P.W.3 who is volunteer turned hostile and did not support the prosecution case.

During his cross examination he admitted that he accompanied the police and when the police tried to apprehend the accused, the accused absconded from the scene of offence and the police destroyed the 2000 litres of fermented jaggery wash at the scene of offence.

13. PW4, S.I of police deposed as on the same lines of PW1 regarding conducting of raid, seizure of I.D arrack after drawing sample under the cover of

mediators report. PW4 further deposed that basing on Ex.P3 mediators report, he registered a case in Cr.No.166/2021 under section 7(B) r/w 8(A) of A.P.Prohibition Act, sent the sample to the chemical examiner for analysis, visited the scene of offence, prepared rough sketch, recorded the statements of witnesses and after receipt of analysis report, he filed charge sheet against the accused. He deposed that he destroyed the fermented jaggery wash at the scene of offence.

During his cross examination, he admitted that he registered a case in Crime No.164/2021 against the accused and did not arrest the accused at the scene of offence and admitted that the accused was produced before this Court on execution of PT warrant. P.W.4 further admitted in his cross examination that he did not file any photographs relating to destruction of 2000 litres of fermented jaggery wash and he denied the suggestion that the accused is no way concerned with the offence and that Ex.P3 is prepared at the police station and that he filed this false case against the accused for statistical purpose.

13. The learned APP argued that by examining PWs 1 to 4 and by marking Ex.P1 to Ex.P8 and MO.1, the prosecution established the guilt of the accused beyond reasonable doubt and prays to convict the accused according to law.

14. The defence counsel argued that there are no independent witnesses except the police officials to establish that the accused is selling ID arrack and that while conducting raid and seizure PW4 failed to follow the prescribed procedure as contemplated U/sec.100 (4) of Cr.P.C. He further argued that the accused is no way concerned with the offence and that MO1 is planted for the purpose of this case. Thus he prays to acquit the accused under benefit of doubt.

15. As can be seen from the record, the search and seizure was conducted by PW4 along with mediators and P.W.1 is police Constable who accompanied PW.4 during the course of search and seizure. On a careful perusal of the evidence of P.Ws 1 to 4, PW2, who is said to be independent mediator did not support the case of the prosecution.

16. The evidence of P.W.1 is replica of evidence of P.W.4 and it reveals about the investigation and the way they reached the scene of offence, prepared mediators report. Except self serving testimonies and evidence of P.Ws.1 and 4,

prosecution has not produced any other evidence or material to corroborate their evidence. Thus the evidence does not inspire confidence as to fasten a liability or conviction to the accused. In the absence of any corroborating material to the evidence of P.Ws.1 and 4 , it cannot be taken as gospel truth to lay conviction against the accused.

17. With the above said observation, I safely come to conclusion that the prosecution miserably failed to establish the guilt of the accused for the offence under section 7(B) r/w 8(B) of A.P.Prohibition Act beyond all reasonable doubt and the accused are entitled for acquittal. Accordingly point is answered.

18. In the result, the accused is found not guilty for the offence under Section 7(B) r/w 8(A) of A.P.Prohibition Act. Accordingly, accused is acquitted for the said offence under Section 248(1) Cr.P.C. Bail bonds of accused shall be in force for further period of six months from the date of judgment as per Section 437-A of Cr.P.C and thereafter shall stand cancelled. MO.1 shall be destroyed after appeal time is over.

Typed to my dictation to the stenographer, corrected and pronounced by me in open court, this the 11th day of July, 2023.

Sd/- M.Leela Sai Subhash
Additional Judicial Magistrate of First Class,
Pithapuram

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution:

PW.1/06.02.2023: V.Gopala Krishna
PW2/07.02.2023: Medisetti Seha Giri
P.W3/07.02.2023: Ravuru Gangadhar
PW4/28.06.2023: B,Jagan Mohan Rao (SI of Police)

For Defence: None.

EXHIBITS MARKED

For Prosecution:

Ex.P1/11.10.2021: Section 161 Cr.P.C statement of P.W.2
Ex.P2/10.10.2021: Signature of P.W.3 on mediators report
Ex.P3/10.10.2021: Mediators report
Ex.P4/10.10.2021: Original FIR
Ex.P5/11.10.2021: Rough sketch

Ex.P6/23.10.2021: Attested copy of mediators report.

Ex.P7/12.10.2021: Letter of advice

Ex.P8/25.10.2021: Chemical analysis report.

For Defence: Nil.

MATERIAL OBJECTS MARKED

MO.1: sample bottle.

Sd/- M.Leela Sai Subhash
Additional Judicial Magistrate of First Class,
Pithapuram

CALENDAR AND JUDGMENT

IN THE COURT OF THE ADDITIONAL JUDICIAL MAGISTRATE OF FIRST CLASS,
PITHAPURAM.

C.C.No.696/2022

Date of offence	:	10.10.2021
Date of report or complaint	:	10.10.2021
Date of apprehension of the accused	:	25.10.2021
Date of Release on bail	:	09.11.2021
Date of commencement of trial	:	06.02.2023
Date of close of trial:	:	30.06.2023
Date of sentence or order	:	11.07.2023
Explanation of delay or remarks	:	Due to non production of witnesses by the prosecution.
Name of the Complainant	:	State: Sub-Inspector of Police, Pithapuram Rural P.S.
Name of the accused	:	Mediseti Nookaraju, S/o.Kamaraju, 41 years, C/Settibalija, D.No.3-141, Subbarayudupeta, Mallam Village, Pithapuram mandal.
Offence	:	Under Section 7(B) r/w 8(A) of A.P.Prohibition Act
Finding	:	Found not guilty.
Sentence	:	

In the result, the accused is found not guilty for the offence under Section 7(B) r/w 8(A) of A.P.Prohibition Act. Accordingly, accused is acquitted for the said offence under Section 248(1) Cr.P.C. Bail bonds of accused shall be in force for further period of six months from the date of judgment as per Section 437-A of Cr.P.C and thereafter shall stand cancelled. MO.1 shall be destroyed after appeal time is over.

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Additional Judicial Magistrate of First Class,
Pithapuram

Copies submitted to:

1. The Hon'ble Chief Judicial Magistrate, East Godavari, Rajamahendravaram.