

IN THE COURT OF THE JUDICIAL MAGISTRATE OF I CLASS: PIDUGURALLA

PRESENT: **Sri. M.MURALI GANGADHARA RAO,**
Judicial Magistrate of I Class, Piduguralla

Monday, this the 27th day of November, 2023.

C.C.No.468 of 2022**Between:**

The State: SEB Inspector,
Piduguralla.
(Cr.No.01/2021)

. . Complainant.

And

Sk.Hasan Basha @ Raja Babu, S/o Hasan, Age 40 years,
C/Muslim, R/o Panditivaripalem village, Piduguralla mandal.

. . Accused.

This case is coming before me on 23.11.2023 for final hearing in the presence of Learned Assistant Public Prosecutor for the State and of Sri.P.B.S.Raju and Sri K.Yedukondalu, learned Advocates for the Accused, and on hearing both the sides, this matter having stood over for consideration, till this day, this Court delivered the following:

J U D G M E N T

1. The SEB Inspector, Piduguralla SEB Station laid charge sheet against the accused in Cr.No.01/2021 for the offence punishable U/s.7-A r/w 8(e) of A.P. Prohibition(Amendment) Act, 2020.

The brief facts of the prosecution is that:

2. On 04.01.2021, during the course of Patrolling about SEB offences, LW.3-E.Kalyan Chakravarthy, SEB Sub-Inspector, Piduguralla, along with L.W.1-Sk.Rehman, EC and L.W.2-B.Subramanyam, EC and other staff started to conduct raids to detect SEB Offences, and they reached Kabbayya kunta located at 2 Kms west side of Guttikonda village, Piduguralla mandal and during the raid at about 03.30 p.m., observed pungent smell coming from the bushes on suspicion L.W.3 searched the nearby bushes and found accused distilling ID liquor, on seeing the SEB officials in uniform, he tried to escape from the scene of offence. On that LW.3-E.Kalyan Chakravathy, SEB Sub-Inspector, Piduguralla Station apprehended accused with the help of other staff and made enquiry as to his nature of escaping by seeing the Excise officials and asked about his identity particulars on that, accused admitted the possession of ID Arrack in white plastic bubble can, accused revealed that he distilled ID arrack and selling it for higher price in his village for his livelihood. LW.3 sent LW.1 for mediators, after some time LW.1 returned and informed that none of the villagers were willing to act as mediators, whereas VRO and VRA were not

available. On that, LW.3-E.Kalyan Chakravarthy, SEB Sub-Inspector, Piduguralla, verified the white plastic bubble can and found 20 litres of ID arrack in it and he verified the spot and at the distillation point and found Iron drum of 200 litres capacity with fermented jaggery ready for distillation. LW.3, seized above said contraband and drawn one sample from the seized contraband sample contains 180ml of ID Arrack for the sake of chemical analysis, at last LW.3, after giving reasons made arrest of the accused and prepared a Special Report as to confession, seizure and arrest of accused, after returning to the SEB Station, Piduguralla, he registered the same as a case in Cr.No.01/2021 for the offence punishable U/s.7-A r/w 8(e) of A.P.Prohibition (Amendment) Act, 2020, and submitted original FIR to the Hon'ble Court and copies to all concerned and produced the accused before the court and sent him for Judicial custody, later he was enlarged on bail. Thereafter L.W.3 sent the sample bottles to the Chemical Examiner Guntur, through letter of advice for analysis and the Chemical Examiner issued report vide Rc.No.1855/2021, dt.21.10.2021 in Sl.No.74951 opining that the samples are Illicit Distilled Liquor, not fit for Human consumption and later he made proposals to Deputy Commissioner P&E, accordingly he received confiscation orders in R.C.No.110/2022/C2, Dt.24.01.2022. Thereafter, LW.4-S.Konda Reddy, SEB Inspector, Piduguralla took the charge and found the investigation done by L.W.3 was on correct lines and filed the charge sheet. Hence the charge sheet.

3. Cognizance of the offence punishable U/s.7-A r/w 8(e) of A.P.Prohibition (Amendment) Act was taken against the Accused.

4. On appearance of the Accused before this Court, copies of documents were furnished to him as contemplated U/s.207 of Cr.P.C.

5. Accused was examined under section 239 Cr.P.C. and charge for the offence U/s.7-A r/w 8(e) of A.P.Prohibition(Amendment) Act, 2020, has been framed read over and explained to him in Telugu. The Accused denied the charge, pleaded not guilty and claimed to be tried.

6. During the course of trial, the Prosecution has examined L.W.3 as P.W.1 and Exs.P1 to P4 and M.O.1 sample bottle got marked.

7. After closure of prosecution evidence, accused was examined under Sec.313 Cr.P.C by explaining the incriminating material placed against the accused, for which the accused denied the same and did not choose to adduce any defence evidence on his behalf.

8. Heard the arguments of learned APP and learned counsel for the accused.

9. **Now the Point for determination is :-**

Whether the prosecution is able to prove the guilt of the accused for the offence punishable U/s.7A r/w 8(e) of A.P.Prohibition(Amendment) Act, 2020, beyond all reasonable doubt?

10. **Point :-**In order to bring home the guilt of the accused, the prosecution has examined P.W.1 and Exs.P1 to P4 and M.O.1 sample bottle got marked.

11. The case of the prosecution is that during the course of raid about the SEB offences, PW.1-E.Kalyan Chakravarthy, SEB Sub-Inspector, Piduguralla, along with L.W.1-Sk.Rehman, EC and L.W.2-B.Subramanyam, EC and other staff started to conduct raids to detect SEB Offences, and they reached Kabbayya kunta located at 2 Kms west side of Guttikonda village, Piduguralla mandal and during the raid at about 03.30 p.m., observed pungent smell coming from the bushes on suspicion L.W.3 searched the nearby bushes and found accused distilling ID liquor at the scene of offence they apprehended the accused herein and found the contraband of 20 Lts., of ID arrack along with Iron drum of 200 litres capacity with fermented jaggery from the possession of accused and on enquiry, on that P.W.1-E.Kalyan Chakravarthy, SEB Sub-Inspector, Piduguralla seized the said contraband from the possession of accused, as no mediators were available, for which, P.W.1- E.Kalyan Chakravarthy, SEB Sub-Inspector himself prepared Special Report as to seizure of contraband and confession made by the accused as well as apprehension of the accused. Basing on the Special report/Ex.P1, P.W.1 registered a crime and followed the procedure as per Criminal Procedure Code during the course of his investigation.

12. Whereas coming to the evidence of prosecution witness No.1 he is the Investigating officer who prepared Ex.P.1/special report and registered the crime as Ex.P.2/FIR and to getting of Ex.P.3/ Chemical Analysis report and received the Ex.P4/Confiscation orders and L.W.4 filed charge sheet. P.W.1 deposed his evidence into the procedural aspect only and no incriminating evidence is leveled against the accused.

13. Since there are no independent witnesses for the case of the prosecution and all are the SEB officials, therefore the evidence has to be scrutinized carefully and cautiously. P.W.1 in his cross-examination has

admitted that he along with L.Ws 1, 2 and driver of their vehicle went to scene of offence, but he did not examine L.Ws 1 and 2. He also admitted that scene of offence is a busy locality and did not mention the names of persons to whom they tried to secure them as mediators at the scene of offence. He further admitted that he cannot say the exact boundaries of scene of, and no incriminating material was leveled in his evidence against the accused.

14. In the present case, the entire case of the prosecution is based on the alleged seizure of ID Arrack from the possession of the accused. Therefore, it is to be noticed whether the investigating agency has followed the procedure relating to search and seizure, section 100 Cr.P.C. deals with the search and seizure. According to section 100 (4) of Cr.P.C., at the time of search and seizure, it is the obligation on the part of officer, who conducted search and seizure to secure the local inhabitants to prove the seizure and when the officials failed to secure the independent witnesses, the search and seizure is not free from doubtful and accused is entitled for benefit of doubt.

15. Further our **Hon'ble High Court in a case of Y. Srinivasulu Reddy Vs. State of A.P. 2002 (1) L.S. 242** held that :

"If no one was willing to act as punch witness, a written order should be passed for the purpose of conducting search and seizure and in the said case the entire search conducted by the prosecution is vitiated"

16. In **Mudavath Mothia Vs. State of A.P. 2002 (1) ALT (Crl.) 437 AP** wherein it is held that :

"The panchanama is hit by sec.25 and 27 of Indian Evidence Act and sec.161 of Cr.P.C and when the independent witnesses are not examined by the prosecution, the prosecution theory of seizing the sachets from the custody of the accused has to be looked with suspicion."

17. Coming to the present case, admittedly P.W.1 did not issue any written notice or Summons to any of the villagers or Revenue officials with a request to act as mediators. Merely, the Villagers refused to act as mediators does not entitle the PW.1 to proceed with recording of Special Report. PW.1 ought to have followed the procedure as contemplated under sec.100 (4) of Cr.P.C, and also law laid down by the **Hon'ble High Court in Sri Y.Srinivasulu Reddy case and also Mudavat Motia case**, which he did not do so. All these lacunas in the investigation of PW.1 shows that he has not done proper investigation in seizure of the alleged contraband from the possession of accused.

18. Since P.W.1 did not follow the dictum laid down by the Hon'ble High Court in **Srinivasulu Reddy case and in Mudavath Mothia** case and also the case of the prosecution is not believable and further P.W.1 is highly interested witness being SEB official, as such his evidence cannot be relied upon without any corroboration from the independent witnesses.

19. In the said circumstances, the entire search and seizure becomes doubtful. It is settled law that when there is a doubt in the prosecution case the benefit of doubt should be given to the accused. If it is so, the prosecution has no case at all. Hence, this court is of the opinion that the prosecution failed to prove that the accused was found in possession of 20 Lts of ID arrack.

20. In view of the above findings, it is appeared that the evidence of the prosecution is not free from doubtful circumstances as such the accused is entitled for benefit of doubt. Hence, this court is of the view that the prosecution has failed to bring home the guilt of the accused for the offence punishable U/s.7-A r/w 8(e) of A.P.Prohibition (Amendment) Act, 2020.

21. **In the result**, accused is found not guilty for the offence U/s.7-A r/w 8(e) of A.P.Prohibition (Amendment) Act, 2020 and he is accordingly acquitted U/s.248 (1) Cr.P.C. The bail bonds of the accused and his sureties shall remain in force for a period of six months from this day as provided under Section 437-A of Cr.P.C. The M.O.1 Sample bottle shall be destroyed after expiry of appeal time.

Typed to my dictation by Stenographer Grade-III corrected and pronounced by me in the Open Court, this the 27th day of November, 2023.

Sd/- M.Murali Gangadhara Rao
JUDICIAL MAGISTRATE OF I CLASS,
PIDUGURALLA.

APPENDIX OF EVIDENCE **WITNESSES EXAMINED**

FOR PROSECUTION:

FOR DEFENCE:

P.W.1: E.Kalyan Chakravarthy, SEB Sub Inspector, Piduguralla. None.

DOCUMENTS MARKED

FOR PROSECUTION:

FOR DEFENCE:

Ex.P1: Police proceedings.
Ex.P2: FIR in Cr.No.01/2021.
Ex.P3: Analysis report.
Ex.P4: Confiscation Orders.

-NIL-

MATERIAL OBJECTS MARKED

M.O.1: Sample bottle.

Sd/- M.Murali Gangadhara Rao
JMFC,PDRL.

CALENDAR AND JUDGMENT

District of Guntur
Calendar of case tried by the Junior Civil Judge’s Court :: Piduguralla
C.C.No.468/2022

Date of:

Offence	Report of complainant	Apprehension of accused	Date of remand/41-A Cr.P.C Notice	Release on bail	Commencement of trial	Closure of trial	Sentence or order
04.01.2021	04.01.2021	04.01.2021	04.01.2021	08.01.2021	29.09.2023	21.11.2023	27.11.2023

Between:-

State: SEB Inspector, Piduguralla.	. . . Complainant
And	
Sk.Hasan Basha @ Raja Babu, S/o Hasan, Age 40 years, C/Muslim, R/o Panditivaripalem village, Piduguralla mandal.	. . . Accused

Crime Number	01/21 of SEB, Piduguralla.
Offence	U/s.7-A r/w 8(e) of A.P.Prohibition (Amendment) Act, 2020
Plea of Accused	Not guilty
Finding of the Court	Found not guilty
Reasons for delay	Due to non production of witnesses

Judgment:

In the result, accused is found not guilty for the offence U/s.7-A r/w 8(e) of A.P.Prohibition (Amendment) Act, 2020 and he is accordingly acquitted U/s.248 (1) Cr.P.C. The bail bonds of the accused and his sureties shall remain in force for a period of six months from this day as provided under Section 437-A of Cr.P.C. The M.O.1 Sample bottle shall be destroyed after expiry of appeal time.

Sd/- M.Murali Gangadhara Rao
**JUDICIAL FIRST CLASS MAGISTRATE,
PIDUGURALLA.**

Copy submitted to :

1) The Hon’ble Chief Judl. Magistrate-Cum-Prl.Sr.Civil Judge, Guntur.