

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

Present: Sri Muzeeb Pasapala Syed,
Judicial Magistrate of First Class, Penukonda,

Tuesday, the 23rd day of January, 2024

CALENDAR CASE No.661 of 2022**Between:**

State Rep., by Sub - Inspector of Police,
Gorantla Police Station. (Cr.No.424/2021).

.... Complainant

-Versus-

Thimmannagari Sreeramulu, aged 42 years,
S/o Ashwarthappa, M.Mallapalli Village, Gorantla Mandal.

.... Accused

This case is presented before me on 22-01-2024 for final hearing in the presence of the learned Assistant Public Prosecutor for the State and of Sri L.Viswanath Naik, Advocate for the accused and upon hearing on both sides and upon perusing the material available on record, this court delivered the following:-

J U D G M E N T

1. The Sub - Inspector of Police, Gorantla Police Station laid charge sheet against the accused in Crime No.424/2021 for the offence U/Sec. 34 (a) of A.P Excise Act, 1968.

2. The brief averments of the charge sheet are as follows:-

a) On 03.11.2021 upon receiving credible information P.W.2/P.Iqbal Basha along with his staff members were conducting raids to detect Excise offences and at about 7-00 A.M. they reached to the outskirts of Mallapalli village of Gorantla Mandal and there they found accused coming by walk with one plastic bag and that upon seeing them the accused tried to ran away. P.W.2 with the assistance of his staff caught hold of the accused and questioned him and he stated to P.W.2 that the bag in his possession contains liquor packets and that P.W.2 sent his staff to secure mediators but due to unavailability of government officers and as none

came forward to act as mediators he returned to the scene of offence. Later P.W.2 verified the bag and found 45 packets of Haywards cheers whiskey of 90 ml in quantity without labels and printed as for sale in Karnataka State only. On questioning, the accused confessed that he purchased said packets from shops at Karnataka State to sell the same at higher rates. P.W.2 seized liquor packets from the possession of accused and arrested the accused and also took one packet among them for the chemical analysis under the cover of Police proceedings, dt.03.11.2021. Adverting to the above, basing on the Police proceedings, dt.03.11.2021 a case in Crime Number 424/2021 was registered and investigated into.

b) During the course of investigation, P.W.2 sent the sample to the Chemical Examiner, Chittor for analysis, who in turn analysed and issued report that the sample is "Indian made liquor". After completion of investigation charge sheet has been laid against the accused.

3. Cognizance of the offence U/Sec. 34 (a) (1) of A.P Excise Act, 1968 against accused was taken and proceeded.

4. The accused was served with copies of case documents as contemplated under section 207 Code of Criminal Procedure Code (herein after referred as Cr.P.C.).

5. The accused was examined under Sec.239 Cr.P.C., for the accusation leveled against him, for which he denied the same. On that charge under section 34 (a) (1) of A.P. Excise Act, 1968 against him have been framed, read over and explained to him in vernacular language, for which he pleaded not guilty and claimed to be tried.

6. In support of the case of prosecution, the prosecution has examined P.Ws.1 and 2, marked Exs.P.1 to P.3 and M.O.1. The learned Assistant Public Prosecutor (in short A.P.P.) has given up the evidence of L.W.2/B.Sudhakar.

7. After closure of prosecution evidence, the accused was examined under Sec.313 of Cr.P.C. The incriminating circumstances against the accused was read over and explained to him. He denied the same and reported no defence evidence.

8. Heard arguments. Perused the material available on record.

9. **The point for determination is: -**

Whether the prosecution is able to establish the guilt of the accused for the offence under Section 34 (a) (1) of A.P. Excise Act, 1968 beyond all reasonable doubt?

ARGUMENTS

10. The learned A.P.P. argued before this court that the evidence of prosecution witness coupled with exhibits P.1 to P.3 and M.O.1 in this case clearly establish that the accused committed the offence and hence he is liable for conviction.

11. The learned counsel for the accused argued that the accused is innocent, falsely implicated in this case and no such incident was happened as stated by the prosecution. He further argued that the evidence available is only the evidence of Gorantla Police officials who are interested witness. He further argued that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt. Finally, prays to acquit the accused.

EVIDENCE:-

12. To substantiate the case of the prosecution, the prosecution has examined P.Ws.1 and 2 and got marked Ex.P1 to Ex.P3 and M.O.1. This court has perused the material available on record and gave thoughtful consideration to the arguments advanced by Learned A.P.P. and Learned Counsel for accused.

13. P.W.1/T.Chandra Sekhar is the Constable of Gorantla Police Station. He deposed as per contents of the Police proceedings. In his cross examination he admitted that they have not secured mediators to the arrest of accused and seizure of contraband. P.W.1 denied the suggestions that he foisted this false case against the accused for statistical purpose.

14. P.W.2/P.Iqbal Basha is the Sub-Inspector of Police in this case, who is the investigating officer in this case, he tried to depose as per the records prepared by him as to conducting of raids over illegal possession of liquor, seizure of contraband from the possession of the accused under Police proceedings, registering of F.I.R against the accused, arresting the accused and producing him before this Court for Judicial custody and sending of sample to Chemical Analysis and filing of charge sheet. Through him Exs.P1 to P3 and M.O.1 are received in evidence. In his cross examination he admitted that they have not secured mediators to the arrest of accused and seizure of contraband. P.W.2 denied the suggestions that he foisted this false case against the accused for statistical purpose.

15. A careful perusal of evidence of P.Ws.1 and 2 shows that their evidence is not consistent. It has come on record from the evidence of P.Ws.1 and 2 that they had not secured independent witnesses to act as mediators at the scene of offence. It is not the case of P.Ws.1 and 2 that the scene of offence is an isolated area where no one would be available to secure mediators. It is a common prudence that there is no chance of unavailability of even a single person when the scene of offence is busy locality. Admittedly, the Investigating Officer failed to secure any independent panchayatdars to the seizure of the contraband from the possession of accused, though there is possibility to secure them. There is no explanation from the prosecution or from the Investigating Officer during the course of evidence.

16. P.Ws.1 and 2 are the Police officials and interested witnesses in the case of the prosecution. In these circumstances it creates a doubt in the mind of the court whether really the Police officials seized the contraband from the possession of the accused under cover of Ex.P.1 as stated by the prosecution. There is no report from any person that the accused is selling the liquor at higher price. Merely because the analyst opined that the sample is "Indian made liquor" it cannot be presumed that the same was recorded from the possession of the accused. In view

of the above evidence, it is not safe to base conviction basing on the interested testimony of P.Ws.1 and 2 who are the Gorantla Police officials.

17. On conglomeration of the above evidence, this Court is of the opinion that the case of the prosecution is filled up with unexplained doubts which are reasonable in nature. The prosecution failed to prove the guilt of the accused beyond all reasonable doubt. The accused is entitled for benefit of doubt and the benefit of doubt is given to him.

RESULT:-

18. In the result, this Court found the accused is not guilty for the offence under section 34 (a) (1) of A.P. Excise Act, 1968 and thereby he is acquitted under section 248 (1) of Cr.P.C. The bail bond of the accused shall be in force for a period of Six months as per the provision of Sec.437-A Cr.P.C. The case property i.e., M.O.1 sample packet of Hayward's cheers whiskey is ordered to be destroyed after expiry of appeal time.

Typed to my dictation by the Stenographer Gr.III, Corrected and pronounced by me in open Court on this the 23rd day of January, 2024.

Judicial Magistrate of First Class,
Penukonda.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution :-

P.W.1: T.Chandra Sekhar
P.W.2: P.Iqbal Basha

For Defence :-

- NONE –

EXHIBITS MARKED

For Prosecution :-

Ex.P1: Police proceedings.
Ex.P2: F.I.R.
Ex.P3: Chemical Analysis Report.

For Defence :-

- NIL -

Material objects :-

M.O.1 : Sample packet of Hayward's cheers whiskey.

Judicial Magistrate of First Class,
Penukonda.

CALENDAR AND JUDGMENT
DISTRICT OF ANATHAPURAM
CALENDAR OF CASE TRIED BY THE JUDICIAL MAGISTRATE OF FIRST
CLASS AT PENUKONDA

Date of offence	Date of report or complaint	Apprehension of accused	Date of released on bail	Date of commencement of trial	Date of close of trial	Date of sentence or order
1	2	3	4	5	6	7
03.11.21	03.11.21	03.11.21	10.11.21	11.07.23	22.01.24	23.01.24

Explanation of delay and remarks NIL.

JUDGMENT IN CALENDAR CASE NUMBER 661/2022 IN CRIME NUMBER 424/2021 OF GORANTLA P.S. ON THE FILE OF JUDICIAL MAGISTRATE OF FIRST CLASS AT PENUKONDA.

COMPLAINANT	Sub-Inspector of Police, Gorantla P.S.
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Name of the accused Father's name Sex /Age Calling Village Mandal

Thimmannagari Sreeramulu, aged 42 years,
S/o Ashwarthappa, M.Mallapalli Village, Gorantla Mandal.

OFFENCE	U/Sec. 34 (a) (1) of A.P. Excise Act, 1968.
FINDING	Accused found not guilty.
SENTENCE	In the result, this Court found the accused is not guilty for the offence under section 34 (a) (1) of A.P. Excise Act, 1968 and thereby he is acquitted under section 248 (1) of Cr.P.C. The bail bond of the accused shall be in force for a period of Six months as per the provision of Sec.437-A Cr.P.C. The case property i.e., M.O.1 sample packet of Hayward's cheers whiskey is ordered to be destroyed after expiry of appeal time.

SEAL:

Judicial Magistrate of First Class,
Penukonda

Copy submitted to:

The Hon'ble II Additional District & Sessions Judge, Hindupur.

CALENDAR CASE NUMBER	661/2022
DATE OF JUDGMENT	23.01.2024
DATE OF DISPATCH OF CALENDAR	23.01.2024