

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST
CLASS: MOVVA.**

Present: Sri P. Rajan Uday Prakash,

Judicial Magistrate of First Class, Movva.

Tuesday, this the Fourth day of March, Two Thousand and Twenty Five.

Calendar Case No. 709 of 2022

State represented by the Sub Inspector,

Special Enforcement Bureau, Movva.

... Complainant.

Versus

1. Pamarthi Prabhakararao, s/o.Subbarao,
41 years, Pedapudi village, Movva mandal.

2. Parasa Pavan Kumar, s/o.Rambabu,
22 years, Krishnapuram village, Pamidimukkala mandal.

3. Veeranki Naresh, s/o.Chiranjeevi, 25 years,
Krishnapuram village, Pamidimukkala mandal.

4. Tata Chandrarao, s/o.Veeraraghavaiah, **(Died)**
44 years, Pedapudi village, Movva mandal.

... Accused.

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This case came before me on 03-02-2025 for final hearing in the presence of the learned Assistant Public Prosecutor for the State and of Sri. B.Ashok, learned counsel for the accused, and upon hearing both sides, and 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, Special Enforcement Bureau, Movva filed the charge sheet against the accused in crime No.05/2020 of Special Enforcement Bureau, Movva for the offence punishable under section 34(a) of the Andhra Pradesh Excise Act, 1968.

2. **The averments of the charge sheet:**

On 27-01-2020 at 03:00 P.M., the *de facto* complainant/The Inspector, Special Enforcement Bureau, Movva/PW-2 left the police station along with his staff and secured the mediators. They reached Panchayat pond in Pedapudi village, and found one male person holding some bags. They caught him and enquired his details and he stated his details as that of

the accused No.1. He further stated that he was habituated to selling liquor. PW-2 verified the four bags in the possession of the accused No.1 and found that the bags contained 274 bottles of liquor belonging to six brands. The accused No.1 further stated that the accused No.4 provided the money to purchase the bottles and that he purchased the same from the authorized wine shop and that the accused Nos.2 and 3 colluded and sold the bottles to him. PW-2 drew eight samples and attached the slips contained his signature and that of the accused. PW-2 arrested the accused after informing the grounds of their arrest and seized the bottles from the possession of the accused under the cover of a mediators' report. Basing on the report, PW-2 registered a case in crime No.05/2020 for the offence punishable under section 34(a) of the Andhra Pradesh Excise Act, 1968 and investigated into it. After completion of the investigation, the chargesheet was filed against the accused Nos.1 to 4 for the offence punishable under section 34(a) of the Andhra Pradesh Excise Act, 1968.

3. The case was taken on file for the offence punishable under section 34(a) of the Andhra Pradesh Excise Act against the accused and

summons were issued to them. The accused No.4 died and the cse against him was abated.

4. Upon the appearance of the accused Nos.1 to 3, copies of documents were furnished to them as mandated under section 207 of the Code of Criminal Procedure. The accused Nos.1 to 3 were examined under section 239 of the Code of Criminal Procedure for which they denied the accusations levied against them. Charge for the offence punishable under section 34(a) of the Andhra Pradesh Excise Act was framed against the accused. The charge was read over and explained to them in Telugu for which they denied the same, pleaded “not guilty”, and claimed to be tried.

5. On behalf of the prosecution, Pws.1 and 2 were examined and Exs.P1 to P5 and M.Os.1 to 8 were marked. The evidence of the other witnesses was given up by the learned Assistant Public Prosecutor.

6. After the completion of the evidence on behalf of the prosecution, the accused Nos.1 to 3 were examined under section 313 of the Code of Criminal Procedure by putting forth the incriminating circumstances appearing against them in the evidence of the prosecution.

The accused Nos.1 to 3 denied the incriminating circumstances. No evidence, either oral or documentary was adduced on behalf of the accused.

7. Heard both sides and perused the material on record.

8. **The points for determination are :**

i) Whether the accused were in possession of liquor bottles ??

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

POINTS 1 and 2:

9. In the present case, Pws.1 and 2 were examined on behalf of the prosecution. The record reveals that PW-1 has been working as a Village Revenue Officer whereas PW-2 happens to be the Inspector of police. That being the case, it cannot be said that PW-1 is an independent witness to the offence. As such, it is borne by record that there is no independent witness to support the case of the prosecution. The pivotal

contention of the prosecution is that PW-2 along with the other police personnel and the mediators proceeded to the scene of offence, seized the bottles from the possession of the accused, arrested the accused, and drafted a report accordingly. Thus, the entire case of the prosecution rests on the report drafted at the scene of offence.

10. The learned counsel for the accused argued that the *de facto* complainant and the investigating officer in the present case are one and the same. It is borne by record that PW-2 happens to be one of the investigating officers as well as the *de facto* complainant. While the same does not entirely vitiate the case of the prosecution, the investigation could have been carried out by a different investigating officer to avoid the question of any vested interest, prejudice against the accused, and most importantly to uphold the principle that “*Justice must not only be done, it must also appear to be done.*” Be that as it may, the same cannot be a sole ground to discard the entire case of the prosecution.

11. It is stated that the accused confessed to having committed the offence in the presence of the police personnel and the mediators. It is also

admitted that the said confession was made to none other than the police personnel and the mediators. Save for the aforesaid contention, there is no other argument in favour of the prosecution. It is seen that PW-2 belongs to the police department. At this juncture, the learned counsel for the accused contended that despite the availability of independent witnesses, PW-2 failed to secure their presence. The record reveals that even as per the version of the prosecution, PW-2 secured the presence of PW-1 and LW-2/Telukala Veerabhadrarao, after receiving information regarding the bottles and thereafter, he proceeded to the scene of offence. It is not the case of the prosecution that PW-2 made efforts to secure an independent and impartial witness. That being the case, what precluded PW-2 from securing the presence of an independent and impartial witness is something that definitely needs to be pondered over and deliberated upon. No reason whatsoever has been adduced in this regard. Thus, this inaction on the part of PW-2 is fatal to the case of the prosecution and thus, the contention of the learned counsel for the accused does hold water.

12. As such, it stands that the said confession is admitted to have been made by the accused in the presence of the police personnel though strictly not to the police personnel. That being the case, the said confession squarely falls within the ambit of section 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. Even according to the prosecution, save for the confession of the accused No.1, there is no incriminating material against the accused Nos.2 and 3. When the confession itself cannot be proved, it would only stand that the prosecution failed to establish the guilt of the accused Nos.2 and 3 as well.

13. One other thing that needs to be pondered over is that the seized property i.e., 274 bottles of liquor has neither been destroyed nor has the same been produced before this Court. The learned counsel for the

accused contended that no steps were taken in this regard. A perusal of the record reveals that the Station House Officer, Special Enforcement Bureau, Movva, sent proposals for the destruction of the bottles seized in certain cases including the bottles purported to have been seized in the present case. As such, it cannot be said that the investigation officer has not taken steps to dispose of the property as per law. Thus, this contention of the learned counsel is devoid of merits. However the record does not reveal whether the aforesaid proposal has been implemented or not. Be that as it may, the production of the bottles or their disposal as per law would have little effect upon the case, more specifically when the very seizure of the bottles from the possession of the accused has not been proved.

14. Keeping in view the fact that there is no independent and impartial witness to the offence, the inability or reluctance of PW-2 in securing such a witness, one of the investigating officers himself being the *de facto* complainant, and the confession purported to have been made by the accused No.1 that cannot be proved against him or the other accused, this Court is inclined to hold that the prosecution failed to even make out a

solid case against the accused much less prove the same. Accordingly, these points are answered against the prosecution.

15. In the result, the accused Nos.1 to 3 are found not guilty of the offence punishable under section 34(a) of the Andhra Pradesh Excise Act, 1968. Accordingly, they are acquitted under section 248(1) of the Code of Criminal Procedure. The bail bonds of the accused, if any, shall be in force for a period of six months as contemplated under section 437A of the Code of Criminal Procedure. M.Os.1 to 8 shall be destroyed after the expiry of appeal or appeal time. The unmarked property i.e., the remaining bottles shall be disposed as per law.

Typed to my dictation by the Personal Assistant, corrected, and pronounced by me in the open Court on this the 04th day of March, 2025.

Sd/-Sri.P.Rajan Uday Prakash,
Judicial Magistrate of First Class,
Movva.

Appendix of Evidence

Witnesses examined

Prosecution

PW-1: Karra Syam Sundra Rao.

PW-2: S.Srinivasa Rao.

Defense

None.

Exhibits marked

Prosecution

Ex.P1: Mediators' report.

Ex.P2: First Information Report in crime No.05/2020.

Ex.P3: Letter of advice.

Ex.P4: Analysis report.

Ex.P5: Destruction proposals.

Defense

-NIL-

Material Objects marked

M.Os.1 to 8 : Sample bottles.

**Judicial Magistrate of First Class,
Movva.**

CALENDAR AND JUDGMENT**Calendar Case tried by the Judicial Magistrate of First Class, Movva.**

Date of Offence	Report of complaint	Apprehension of Accused	Date of release on bail	Commencement of trial	Close of Trial	Sentence or Order	Reasons for delay
							Remarks
27-01-20	27.01.20	Notice was served	--	07.11.24	10.01.25	04.03.2025	--

Judgment in C.C. No.709/2022 on the file of the Judicial Magistrate of First Class, Movva.

Complainant: State represented by the Sub Inspector,
Special Enforcement Bureau, Movva.

Accused : 1. Pamarthi Prabhakararao, s/o.Subbarao,
41 years, Pedapudi village, Movva mandal.

2. Parasa Pavan Kumar, s/o.Rambabu, 22 years,
Krishnapuram village, Pamidimukkala mandal.

3. Veeranki Naresh, s/o.Chiranjeevi, 25 years,
Krishnapuram village, Pamidimukkala mandal.

4. Tata Chandrarao, s/o.Veeraraghavaiah, **(Died)**
44 years, Pedapudi village, Movva mandal.

Offence : Punishable under section 34(a) of the Andhra Pradesh
Excise Act, 1968.

Finding : Accused is found not guilty.

Sentence : In the result, the accused Nos.1 to 3 are found not guilty
of the offence punishable under section 34(a) of the Andhra Pradesh Excise
Act, 1968. Accordingly, they are acquitted under section 248(1) of the
Code of Criminal Procedure. The bail bonds of the accused, if any, shall be
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bottles shall be disposed as per law.

Sd/-Sri.P.Rajan Uday Prakash,
Judicial Magistrate of First Class,
Movva.

Copy submitted to the Hon'ble I Additional District Judge, Krishna.