

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

Present: Sri P. Rajan Uday Prakash,
Judicial Magistrate of First Class, Movva.
Friday, this the 06th day of October, 2023.

Calendar Case No. 708 of 2022

Between:

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

... Complainant.

Versus

Dikkollu Vijaya Kumari, w/o.Srinivasarao,
Hindu, 47 years, Movva village and mandal.

... Accused.

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This case came before me on 01-09-2023 for final hearing in the presence of the learned Assistant Public Prosecutor for the state and of Sri.B.Venkata Seshagiri Rao, 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.45/2021 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 26-04-2021 at 06:30 A.M., the Inspector, Special Enforcement Bureau, Movva/PW-1 along with his staff was conducting raids in Jai Bheem Nagar. They found one female person with a mica bag who tried to escape upon seeing them. PW-1, along with his staff apprehended the person and the person revealed her identity particulars as those of the accused herein. The accused confessed that she used to purchase liquor bottles for cheaper prices and sold them for higher prices. PW-1 tried to secure the presence of mediators but in vain. PW-1 searched the mica bag and found 30 bottles of Bangalore whiskey – 180 ml each. PW-1 arrested the accused after informing the grounds of her arrest and seized the 30 bottles of liquor from the possession of the accused under the cover of a special report. PW-1 drew one sample bottle from the above bottles. Basing on the report, PW-1 registered a case in crime No.45/2021 for the offence punishable under section 34(a) of the Andhra Pradesh Excise Act and investigated into it. After completion of the investigation, he filed the charge sheet against the accused.

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 her.

4. Upon the appearance of the accused, copies of documents were furnished to her as mandated under section 207 of the Code of Criminal Procedure. The accused was examined under Section 239 of the Code of Criminal Procedure for which she denied the accusations levied against her. Charge under section 34(a) of the Andhra Pradesh Excise Act was framed against the accused. The charge was read over and explained to her in Telugu for which she 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 Mo.1 were marked.

6. After the completion of the evidence on behalf of the prosecution, the accused was examined under Section 313 of the Code of Criminal Procedure by putting forth the incriminating circumstances appearing against her in the evidence of the prosecution. The accused 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 was in possession of 30 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 and PW-2 belong to the police department. 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-1, along with the other police personnel, 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 also happens to be the investigating officer in the present case. It is borne by record that PW-1 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. It is also admitted that the said confession was made to none other than the police personnel. Even going by the version of the prosecution, it is an admitted fact that the entire witnesses are police personnel. Save for the aforesaid contention, there is no other argument in favour of the prosecution. It is seen that PW-1 and PW-2 are police personnel. Thus, there is no witness examined on behalf of the prosecution who does not belong to the police department.

12. At this juncture, the learned counsel for the accused contended that despite the availability of independent witnesses, PW-1 failed to secure their presence. The record reveals that even as per the version of the prosecution, no efforts were made efforts to secure an independent and impartial witness. Regarding this contention, the record does not actually reveal any steps or efforts taken to secure an independent and impartial witness or mediator to the offence. The record does not even reveal if PW-1 instructed anyone to act as mediators and the steps taken against such person(s), upon such a refusal on his(their) part. Thus, this inaction on the part of PW-1 is fatal to the case of the prosecution and thus, the contention of the learned counsel for the accused does hold water.

13. As such, it stands that the said confession is admitted to have been made by the accused in the presence of the police personnel and to 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. In such a scenario, it follows that the seizure was done by the police personnel while the accused was in the custody of the police personnel without the presence of any mediator whatsoever let alone the presence of an independent and impartial witness. That being the case, the very seizure of the bottles from the possession of the accused has not been proved by the prosecution.

14. One other thing that needs to be pondered over is that the seized property i.e., 30 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. However, a perusal of the record reveals that the Station House Officer, Special Enforcement Bureau, Movva, sent proposals for the destruction of 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.

15. Keeping in view the fact that there is no independent and impartial witness to the offence, the inability or reluctance of PW-1 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 that cannot be proved against her, 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.

16. In the result, the accused is found not guilty of the offence punishable under section 34(a) of the Andhra Pradesh Excise Act, 1968. Accordingly, she is 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.O.1 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 06th day of October, 2023.

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

Appendix of Evidence
(Witnesses examined)

Prosecution

PW1: S.Srinivasareddy.

PW2: Ch.Venkateswararao.

Defense

-None-

Exhibits marked

Prosecution

Ex.P1: Special report.

Ex.P2: First Information Report in crime No.45/2021.

Ex.P3: Letter of advice.

Ex.P4: Analysis report.

Ex.P5: Confiscation proposals.

Defense

-Nil-

Material objects marked

M.O.1: Sample bottle .

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
26.04.21	26.04.21	26.04.21	28.04.21	19.04.23	01.09.23	06.10.23	--

Judgment in C.C. No.708/2022 on the file of the Judicial Magistrate of First Class, Movva.

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

Accused : Dikkollu Vijaya Kumari, w/o.Srinivasarao,
Hindu, 47 years, Movva village & mandal.

Offence : Under Section 34(a) of the Andhra Pradesh Excise Act,
1968.

Finding : Accused is found not guilty.

Sentence : In the result, the accused is found not guilty of the offence punishable under section 34(a) of the Andhra Pradesh Excise Act, 1968. Accordingly, she is 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.O.1 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.

Judicial Magistrate of First Class,
Movva.

**CC. No.708/2022
2023**

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Copy submitted to the Hon'ble I Addl. Dist. Judge, Krishna at Machilipatnam.
Dis.No. Dt: