

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

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

Friday, the 16th day of February, 2024

CALENDER CASE No.713 of 2022

Between:-

State, represented by The Sub - Inspector of Police,
Roddam P.S. (Cr.No.170 of 2020). ... Complainant

-Versus-

- 1) K.Rajasekhar, age 32 years, S/o Nagaraju,
R/o Kotrageri of Penukonda Village and Mandal.
- 2) A.Siva Kumar, age 35 years, S/o Late Venkateshulu,
R/o Kotrageri of Penukonda Village and Mandal. ... Accused

This case is coming before me on 15.02.2024 for final hearing in the presence of the learned Assistant Public Prosecutor for the State and of Sri S.Vishwanath Naik, Advocate for 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, Roddam Police Station laid charge sheet against the accused in Crime No.170 of 2020 for the offence U/Sec. 188 IPC r.w 34 IPC, Sec. 51 (b) of Disaster Management Act, 2005 and 34 (a) of Andhra Pradesh Excise Act, 1968 (hereafter called as A.P. Excise Act, 1968).

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

a) On 30.05.2020 upon receiving credible information P.W.2/M.Maruthi along with other staff members were conducting raids to detect Excise offences and at 6-00 P.M. they reached to the Dandepalli Village which is situated between P.Roppala to Nalluru Village road and there they found the accused were coming on a motorcycle bearing reg.No.AP02-BF-9107 with one polythene bag and that

upon seeing them the accused tried to flee away. P.W.2 with the assistance of his staff caught hold of the accused and questioned them and they stated to P.W.2 that the bag in their 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 1) 2 bottles of Radico 8 PM rare blend of Indian Whiskey and malts of 1000 ml each, 2) 1 bottle of Original choice deluxe whiskey VSOP Indian Brandy of 750 ml each, 3) 7 packets of Old Tavern whiskey of 180 ml each, 4) 6 packets of Original choice deluxe whiskey of 90 ml each and 5) 8 packets of Radico 8 PM rare blend of Indian Whiskey and malts of 180 ml each in quantity without labels and printed as for sale in Karnataka State only. On questioning, the accused confessed that they purchased said packets from shops at Karnataka State to sell the same at higher rates. P.W.2 seized liquor packets and bottle from the possession of accused and arrested the accused and also took two bottles and three packets among them for the chemical analysis under the cover of Police proceedings, dt.30.05.2020. Adverting to the above, basing on the Police proceedings, dt.30.05.2020 a case in Crime Number 170/2020 was registered by P.W.3/V.Narayana and investigated into.

b) During the course of investigation, P.W.2 served Sec.41-A Cr.P.C. notice to the accused and P.W.3 sent the samples to the Chemical Examiner, Chittor for analysis, who in turn analysed and issued report that the samples are "Indian made liquor". After completion of investigation L.W.5/M.Nagaswamy laid charge sheet against the accused.

3. Cognizance of the offence under section U/Sec. 34 (a) (1) of A.P. Excise Act, 1968 against the 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 them, for which they denied the same. On that charge under section 34 (a) (1) of A.P. Excise Act, 1968 against them have been framed, read over and explained to them in vernacular language, for which they pleaded not guilty and claimed to be tried.

6. In support of the case of prosecution, the prosecution has examined P.Ws.1 to 3, marked Exs.P.1 to P.3 and M.Os.1 to 5. The learned Assistant Public Prosecutor (in short A.P.P.) has given up the evidence of L.W.1/C.Mallikarjuna and L.W.5/M.Nagaswamy.

7. After closure of prosecution evidence, the accused were examined under Sec.313 of Cr.P.C. The incriminating circumstances against the accused was read over and explained to them. They 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 witnesses coupled with exhibits P.1 to P.3 and M.Os.1 to 5 in this case clearly establish that the accused committed the offence and hence they are liable for conviction.

11. The learned counsel for the accused argued that the accused are 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 Roddam 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 to 3 and got marked Ex.P1 to Ex.P3 and M.Os.1 to 5. 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/K.Manohar is the Constable. He deposed as per contents of the Police proceedings. In his cross examination he deposed that there was complete lockdown in the year 2020 all over the World. P.W.1 deposed that there were no shops and movement of vehicles during the Covid-19 period as such there is no possibility of accused purchasing liquor. P.W.1 denied the suggestion that he foisted this false case against the accused for statistical purpose.

14. P.W.2/M.Maruthi is the Head Constable 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 serving Sec.41-A Cr.P.C. notices to A1 and A2 and handing over the case file and property to P.W.3/V.Narayana for further investigation. Through him Exs.P1 and Ex.P.2 and M.Os.1 to 5 are received in evidence. In his cross examination he deposed that he received information at about 5-30 P.M. P.W.2 deposed that the distance from Dandepalli village to their Police station is about 9 kms. P.W.2 deposed that there was complete lockdown in the year 2020 all over the World. P.W.2 deposed that there were no shops and movement of vehicles during the Covid-19 period as such there is no possibility of accused purchasing liquor. P.W.2 denied the suggestion that he foisted this false case against the accused for statistical purpose.

15. P.W.3/V.Narayana is the Sub-Inspector of Police who is the another investigating officer in this case, he tried to depose as per the records prepared by him as to receiving of C.D. file from P.W.2 for further investigation and verifying the C.D. file and found it on correct lines, sending of sample to chemical analysis and

receiving of analysis report. Through him Ex.P3 is received in evidence. In his cross examination he admitted that he had not prepared rough sketch of the scene of offence. P.W.3 deposed that there was complete lockdown in the year 2020 all over the World. P.W.3 deposed that there were no shops and movement of vehicles during the Covid-19 period as such there is no possibility of accused purchasing liquor. P.W.3 denied the suggestion that he foisted this false case against the accused for statistical purpose.

16. A careful perusal of evidence of P.Ws.1 to 3 shows that their evidence is not consistent. It has come on record from the evidence of P.Ws.1 to 3 that they had not secured independent witnesses to act as mediators at the scene of offence. It is highly impossible for the accused to be at the scene of offence when there is no movement and several check posts to curb violations due to Covid-19 pandemic. It has come on record from the evidence of P.Ws.1 to 3 that there is no chance of accused moving out of his house as there was strict restriction of movements due to Covid-19.

17. It is clear that the alleged incident said to have occurred during Covid-19. As glean from evidence of P.Ws.1 to 3, it is undoubtedly culled-out that the Police foisted false case against accused for statistical purpose. 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.

18. P.Ws.1 to 3 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 to 3 who are the Roddam Police officials.

19. 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 Nos.1 and 2 are entitled for benefit of doubt and the benefit of doubt is given to them.

RESULT:-

20. In the result, this Court found the accused Nos.1 and 2 are 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 bonds 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 bottle of Radico 8 PM rare blend of Indian Whiskey and malts, M.O.2 sample bottle of Original choice deluxe whiskey VSOP Indian Brandy, M.O.3 Old Tavern whiskey, M.O.4 Original choice deluxe whiskey and M.O.5 sample packet of Radico 8 PM rare blend of Indian Whiskey and malts are 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 16th day of February, 2024.

Judicial Magistrate of First Class,
Penukonda.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution :-

P.W.1: K.Manohar
P.W.2: M.Maruthi
P.W.3: V.Narayana

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 bottle of Radico 8 PM rare blend of Indian Whiskey and malts.
- M.O.2 : Sample bottle of Original choice deluxe whiskey VSOP Indian Brandy.
- M.O.3 : Sample packet of Old Tavern whiskey.
- M.O.4 : Sample packet of Original choice deluxe whiskey.
- M.O.5 : Sample packet of Radico 8 PM rare blend of Indian Whiskey and malts.

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
30.05.20	30.05.20	Sec.41-A Cr.P.C. notices		29.11.23	15.02.24	16.02.24

Explanation of delay and remarks

NIL.

JUDGMENT IN CALENDAR CASE NUMBER 713/2022 IN CRIME NUMBER 170/2020 OF RODDAM P.S. ON THE FILE OF JUDICIAL MAGISTRATE OF FIRST CLASS AT PENUKONDA.

COMPLAINANT

Sub-Inspector of Police, Roddam P.S.

Name of the accused

Father's name

Religion

Sex /Age

Calling

Village

Mandal

- 1) K.Rajasekhar, age 32 years, S/o Nagaraju, R/o Kotrageri of Penukonda Village and Mandal.
2) A.Siva Kumar, age 35 years, S/o Late Venkateshulu, Kotrageri of Penukonda Village and 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 Nos.1 and 2 are 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 bonds 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 bottle of Radico 8 PM rare blend of Indian Whiskey and malts, M.O.2 sample bottle of Original choice deluxe whiskey VSOP Indian Brandy, M.O.3 Old Tavern whiskey, M.O.4 Original choice deluxe whiskey and M.O.5 sample packet of Radico 8 PM rare blend of Indian Whiskey and malts are 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	713/2022
DATE OF JUDGMENT	16-02-2024
DATE OF DISPATCH OF CALENDAR	16-02-2024

