**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND J.M.F.C AT GOWRIBIDANUR**

**Dated this 3rd day of August, 2026**

**:: PRESENT ::**
**Smt. PUSHPA D.**
**B.Com, L.L.B.,**

**Addl. Civil Judge & J.M.F.C,**
**Gowribidanur**

**CC No.950/2017**

Complainant : Gowribidanur Rural Police

**(State by Asst. Public Prosecutor)**

**// Versus //**

Accused : Sri. Narasimhappa
S/o. Late Nanjappa,
Aged about 50 years,
R/at. Kudumalakunte Village,
Kasaba Hobli,
Gowribidanur Taluk,
Chikkaballapur District.

**(Represented by Sri. H.L.V., Advocate)**

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| Date of Incident | 28.02.2017 |
| Date of First Information | 28.02.2017 |
| Date Registration of the Case | 01.11.2017 |
| Date of release of accused | 02.03.2017 |
| Name of the Complainant | Sri. Avinash.V |
| Offences alleged | Sections 32 and 34 of Karnataka Excise Act. |
| Opinion of the Judge | Acquitted |
| Total Duration | Year/s Month/s Day/s<br>08 09 02 |

**Sd/-**
**(PUSHPA D.)**
**ADDL. CIVIL JUDGE & JMFC**
**GOWRIBIDANURU**

## J U D G M E N T

The P.S.I. of Gowribidanuru has filed this charge sheet against the accused for the offences punishable under Sections 32 and 34 of Karnataka Excise Act.

2. **The brief case of the prosecution is as under:-**

It is alleged by the prosecution that, on 28.02.2017 at 03:30 p.m. PSI of Gowribidanuru Rural PS had raided the petty shop of accused in Kudumulakante Village, Kasaba Hobli, Gowribidanuru Taluk, and the accused was found in illegal possession of liquor bottles and plastic bag in order to sell the same to gain wrongfully without having valid license and thereby committed aforesaid offences.

3. After submission of charge sheet, this court took cognizance for the offence punishable Under Sections 32 and 34 of Karnataka Excise Act and registered in Criminal Register and issued summon to the accused person. In response to the summons, the Accused person has appeared before this Court through his Advocate and released on bail. After submission of charge sheet, copy of the prosecution papers was furnished to the Accused person as required under Section 207 of Cr.P.C. After hearing from both sides, Charges were framed Under Sections 32 and 34 of Karnataka Excise Act, read over and

explained to the accused person for which he has pleaded not guilty and claims to be tried.

4. In order to establish its case, prosecution has examined the witness as PW-1 to 06 and got marked the documents at Ex.P-1 to Ex.P-6 and M.O.1 to 48 are marked.

5. After conclusion of prosecution evidence, the statement of the Accused person under Sec.313 of Cr.P.C is recorded by way of explaining the incriminating evidence appearing against him. The Accused person has denied the incriminating evidence appearing against him and not led any defence evidence.

6. Heard the arguments on both the sides and perused the materials on record.

7. Upon hearing arguments and on perusal of material placed on record, the following points that would arise for my determination.

**<u>POINTS FOR CONSIDERATION</u>**

1. *Whether the prosecution proves beyond all reasonable doubts that, on 28.02.2017 at*

*03:30 p.m. near Kudamulakante Village, Gowribidanuru Taluk, the accused was found in illegal possession of liquor bottles and plastic bag in order to sell the same to gain wrongfully without having valid license and thereby committed aforesaid offences punishable Under Sections 32 and 34 of Karnataka Excise Act?*

2. *What order?*

8. My findings on the above points are as under:-

| | | |
|---|---|---|
| **Point No.1** | **:-** | In the **Negative;** |
| **Point No.2** | **:-** | As per the **final order, for the following:** |

**:: R E A S O N S ::**

9. **Point No.1 :**- In order to bring home the guilt of the accused person, the prosecution in support of this case has cited CW.1 to CW.7. The prosecution has examined PW.1 to PW.6 witnesses. The prosecution got exhibited Ex.P-1 to 6

documents. The evidence of C.W-5 has been given up by the prosecution.

10. The prosecution examined the then Police Sub-Inspector of Gowribidanur Police Station as PW6. He deposed that on 28.02.2017, at about 3.00 p.m., while he was present in the police station, he received credible information that a person was engaged in the illegal sale of liquor at Kudumulakunte Village. On receipt of the said information, after securing panch witnesses, he, along with his staff, proceeded to the spot. There, they found the accused engaged in the illegal sale of liquor. In the presence of the panch witnesses, they seized 48 tetra packs of 90 ml Haywards Cheers Whisky and one plastic bag. Samples were drawn from the seized liquor bottles for chemical examination, and a seizure mahazar was prepared at the spot. Thereafter, he arrested the accused, registered the case, and subsequently released the accused on bail upon execution of the requisite bonds. PW6 further deposed that on 28.02.2017, he recorded the statements of CWs.1 to 4. On 01.03.2017, he

obtained the assessment extract from CW4. On 16.05.2017, he forwarded the seized samples for chemical examination. After completion of the investigation, he submitted the charge sheet before the Court on 01.11.2017. During the course of cross-examination by the learned counsel for the accused, PW6 deposed that he had issued the arrest notice and arrest memo to the accused and his family members. He further stated that the accused was arrested on 28.02.2017 at about 3.30 p.m. near Kudumulakunte Village. He denied the suggestion that Ex.P1 was prepared at the police station. However, he categorically admitted that, at the time of drawing Ex.P1, the FIR had not yet been registered. He also denied the suggestion that he had falsely implicated the accused and filed a false charge sheet against him.

11. The prosecution has examined the panch witnesses as C.W-1 and C.W-2 as PW1 and PW5. They both have deposed that, no panchanama was conducted in their presence and they have identified their signatures on the panchanama and as

such the panchanama was marked as Ex-P.1 and their signatures were marked as Ex-P1(a) and Ex-P1(d). Further they have deposed that, they don't know as to the contents of the Ex-P.1 and in their presence no panchanama was conducted and no articles were seized. At the request of the learned A.P.P., these witnesses were treated as hostile and permitted to cross-examine them. Even though, these witnesses were subjected to cross-examination, but nothing worth has been elicited from the mouth of these witnesses. The hostile testimony of these material witnesses totally affecting the case of the prosecution and therefore the Prosecution has failed to prove the recovery of liquor from the accused person.

12. CW3 is examined as PW2, a police official, deposed that he accompanied CW4 and CW7 to conduct the raid on 28.02.2017. In his examination-in-chief, PW2 deposed in consonance with the averments made in the complaint. He further stated that MO1 to 48 were seized and Ex.P1 was drawn at the spot. He also identified the accused present before the

Court. During the course of cross-examination by the learned accused, he denied the suggestion that he did not visit the spot and did not seize MO1 to 48. He denied the suggestion that he has signed the Ex.P1 at the police station. He further denied the suggestion that he had falsely implicated the accused for statistical or counting purposes.

13. CW4 is examined as PW3, a police official, deposed that he accompanied CW7 to conduct the raid on 28.02.2017. In his examination-in-chief, PW3 deposed in consonance with the averments made in the complaint. He stated that MO Nos.1 to 48 were seized under the mahazar, which was marked as Ex.P1, and that the seized samples were sent to the Forensic Science Laboratory for chemical analysis. He also identified the accused present before the Court. During the course of cross-examination by the learned counsel for the accused, he deposed that the name of the informant was kept confidential. He further admitted that no notice had been issued to the mahazar witnesses before conducting the seizure. However, he denied the

suggestion that Ex.P1 was prepared and signed at the police station.

14. CW6 was examined as PW4. He is the Panchayat Development Officer (PDO). He deposed that, on the request of the police, he issued the assessment letter pertaining to the premises. He identified the said assessment letter, which was marked as Ex.P4, and also identified his signature thereon, marked as Ex.P4(a). He further stated that the assessment was standing in the name of the accused. During the course of cross-examination by the learned counsel for the accused, PW4 deposed that the police had given a request letter seeking issuance of the assessment extract. However, he stated that he did not know the name of the police officer who had given the request. He further deposed that he came to know that the police conducted a raid only after receipt of the request letter. He categorically stated that he had no personal knowledge regarding the alleged raid or the information received by the

police. He also deposed that he did not know whether the accused was selling liquor.

15. On careful perusal of the materials placed on record, it is seen that the case of the prosecution is primarily based on the allegation that accused was found in possession of illegal liquor without a valid license, and he was engaged in selling the said liquor. Section 40 of the Karnataka Excise Act creates a presumption of guilt in certain cases, particularly when a person is accused of offences under Sections 32 and 34. It presumes that the accused has committed the offences unless he is able to satisfactorily explain his possession of the excisable articles. This presumption generally applies where the accused is found in possession of any intoxicant, or materials used in the manufacture of intoxicants, or from which an intoxicant has been manufactured. Such presumption arises only after lawful seizure is proved.

16. However, it is the burden of the prosecution to first establish that the alleged excisable goods were seized from the

possession of the accused, and that such seizure was carried out in the presence of independent panchas under a valid seizure mahazar. In the present case, PW-1 and PW-5, who are the independent mahazar witnesses, did not support the prosecution case. They merely identified their signatures on the mahazar marked as Ex.P-1 but denied witnessing the seizure or having any knowledge of its contents. At the request of the learned APP, they were treated as hostile and were cross-examined. However, even in their cross-examination, nothing material was elicited to support the prosecution's version. As such, the evidence of mahazar witnesses would not support the prosecution case as mere marking of panchanama as an exhibit does not dispense with its proof and mere marking is no proof of its contents. Thus, the prosecution has failed to prove the drawing of the mahazar in the presence of the panch witnesses. In the absence of any independent corroboration, and with the seizure itself not being proved through reliable and independent witnesses, this Court is of the view that the presumption under

Section 40 of the Karnataka Excise Act, 1965 cannot be invoked in the present case. Apart from this, the case of the prosecution is that the raid and seizure were conducted in the petty shop of the accused. Ex.P4 has been produced to show that the petty shop belongs to the accused. However, the said document does not specifically mention the purpose for which it was issued, and its evidentiary value is limited. Further, no independent witness has come forward to depose that the accused was in possession of liquor or was selling the same illegally. The evidence of these official witnesses is not reliable in the absence of any corroboration by the other independent witnesses. The hostile testimony of panch witness is totally affecting the case of the prosecution. There is nothing on record to prove that accused person was guilt of the above said offences.

17. It is a settled principle of criminal jurisprudence that the prosecution must prove its case beyond all reasonable doubt. In the present case, the entire prosecution case rests solely on the testimony of official witnesses, namely PW-2, PW-3

and PW-6, without any independent corroboration. The panch witnesses to the seizure mahazar have not supported the prosecution, merely identifying their signatures without proving the contents or the seizure itself. Though the evidence of police officials cannot be rejected solely on that ground, their testimony in the present case suffers from material omissions and inconsistencies regarding the failure of the independent witnesses to support the prosecution and the procedure adopted for seizure, thereby creating doubts in relying upon the same. Therefore, in the absence of other corroborative evidence, the evidence given by PW.1 to 6 is not sufficient to prove the guilt against the accused beyond all reasonable doubt. Therefore, the evidence of PW.1 to 6 are not consistent with the contents of exhibited documents. Thus, the case of the prosecution is full of doubts and accordingly, the prosecution has failed to prove the guilt against the accused beyond all doubts. Accordingly, the **Point No.1 is answered in the Negative**.

18. **Point No.2** :- For the reasons stated above, I pass the following:

**O R D E R**

By exercising power conferred under Section 248(1) Criminal Procedure Code, the Accused is hereby acquitted for the offences punishable Under Section 32 and 34 of Karnataka Excise Act.

The bail bond executed by the Accused person and his surety bond shall stands cancelled.

MOs-1 to 48 are directed to be destroyed after the appeal period is over.

(Typed by me on my own computer and fed into the system, corrected, signed and pronounced by me on this day i.e., 3rd August, 2026)

**Sd/-**
**(PUSHPA D.)**
**ADDL. CIVIL JUDGE & JMFC**
**GOWRIBIDANURU**

**:: A N N E X U R E ::**

**List of witnesses examined on behalf of the Prosecution:**

| | | |
|---|---|---|
| P.W-1 | : | Sri. Murthy |
| P.W-2 | : | Sri. K.M. Ramachandra |

| | | |
|---|---|---|
| P.W-3 | : | Sri. Krishnappa |
| P.W-4 | : | Sri. Madhusudhan |
| P.W-5 | : | Sri. Murthy |
| P.W-6 | : | Sri. Avinash V |

**List of witnesses examined on behalf of the Defence:**

NIL

**List of documents marked on behalf of the Prosecution:**

| | | |
|---|---|---|
| Ex.P1 | : | Spot Mahazar |
| Ex.P1(a) | : | Signature |
| Ex.P2 | : | Sample |
| Ex.P2(a) | : | Signature |
| Ex.P3 | : | Statement of PW.1 |
| Ex.P4 | : | Land Tax Assessment |
| Ex.P5 | : | Statement of PW.5 |
| Ex.P6 | : | FSL report |

**List of documents marked on behalf of the Defence:**

| | | |
|---|---|---|
| Ex.D1 | : | Arrest Card |
| Ex.D2 | : | Notice |

**List of seized properties:**

| | | |
|---|---|---|
| M.O-1 to 48 | : | 90 ML Haywards Cheers Whisky Tetra Pockets Covers |

**Sd/-**

**(PUSHPA D.)**

**ADDL. CIVIL JUDGE & JMFC**
**GOWRIBIDANURU**