

CALENDAR AND JUDGMENT
IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS: DHONE
Present:- Smt. P. Haneesha,
Judicial Magistrate of 1st Class, Dhone
Calendar Case,No.2064 of 2022

Date of offence	04-05-2022
Date of Complaint	04-05-2022
Date of apprehension	---
Date of release	---
Date of commencement of trial	27-09-2023
Date of close of trial	11-01-2024
Date of Judgment	22-01-2024
Complainant	Sub-Inspector of Police, Veldurthy PS
Name of the Accused	1.Boya Lakshmid devi W/O Boya Narayana, aged 48 years, Boinapalli Village, Veldurthy Mandal, Kurnool District. 2.Venkateswarlu S/O Venkatanna, aged 58 years, Boinapalli Village, Veldurthy Mandal, Kurnool District. 3.Varte Gopal Naik, aged 64 years, resident of L.Thanda Village, Veldurthy Mandal.
Offence	Under Section 7(A) r/w 8(e) of APP Act, 1995
Findings	Found not guilty.
Sentence	In the result, accused No.1 to 3 are found not guilty for the offences under section 7(A) r/w 8(e) of APP Act, 1995 and they are acquitted under section 248 (1) Cr.P.C. Bail bonds of accused shall be in force for six months under section 437-A of Cr.P.C.

Judl. Magistrate of First Class,
Dhone.

Copy to Chief Judicial Magistrate-cum-Prl.Asst.Sessions Judge,
Kurnool.

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS
DHONE

Present:- Smt. P. Haneesha,
Judicial Magistrate of Ist Class, Dhone
22nd day of January 2024
Calendar Case. No. 2064 of 2022

Between:

The State, rep. by Station House Officer, Veldurthy PS.

...Complainant

AND

1.Boya Lakshmidevi W/O Boya Narayana,
aged 48 years, Boinapalli Village, Veldurthy Mandal, Kurnool District.

2.Venkateswarlu S/O Venkatanna, aged 58 years,
Boinapalli Village, Veldurthy Mandal, Kurnool District.

3.Varte Gopal Naik, aged 64 years,
resident of L.Thanda Village, Veldurthy Mandal.

...Accused.

This case is coming up before me on 22-01-2024 for final hearing in the presence of Assistant Public Prosecutor on behalf of State and Sri S.T.Haroon and Office, Advocates for Accused, and upon perusal of the material papers available on record, and having stood over for consideration till this day, the Court delivered the following:

J U D G M E N T

The Sub-Inspector, Veldurthy PS. filed Report as per Section 173 of Criminal Procedure Code in Cr.No.131/2022 against the Accused for the offences punishable under Sections 7(A) r/w 8(e) of A.P.Prohibition (Amendment) Act-2020.

2. Brief Averments of the Report are as follows:-

On 04-05-2022 at about 09-00 hours, near the house of the accused No.1 in Boinapalli Village, Veldurthy Mandal, PW2 along with his staff arrested the Accused No.1 and 2 and seized 102 small packets of ID liquor of 100 ml each from their possession under cover of Police Proceedings. PW2 also collected a sample from it, sealed and labeled. Basing on the Police Proceedings, a case in Cr.No. 131/2022 under Section 7(A) r/w 8(e) of A.P.Prohibition (Amendment) Act-2020 was registered and investigated into. Later, PW2 sent the sample to the Director, Excise Laboratory and after receiving the chemical analysis report, PW2 submitted Report under Section 173 of The Code of

Criminal Procedure.

3.) Report was taken on file against the Accused for the offences punishable under Sections 7(A) r/w 8(e) of A.P.Prohibition (Amendment) Act-2020.

4.) On appearance of Accused No.1 to 3, copies of documents are furnished to them under Section 207 of The Code of Criminal Procedure and Charge under Section 239 of The Code of Criminal Procedure for the offences under Section 7(A) r/w 8(e) of A.P.Prohibition (Amendment) Act-2020 was framed, for which they pleaded not guilty and claimed to be tried.

5.) To prove the charges, the Prosecution examined PW1 and 2 and marked Ex. P1 to Ex.P5. The learned A.P.P has given up the evidence of LW.1 and 3 to avoid repetition of evidence. On closure of the evidence on the side of the prosecution, the Accused were examined under Section 313 of The Code of Criminal Procedure and they denied the incriminating material available against them in the evidence of prosecution witnesses. For the defence, no witness is examined and no document is marked.

6.) Arguments of both sides are heard.

7.) *Now, the point for determination is "Whether the Prosecution has established the guilt of the Accused of the charges under Sections 7(A) r/w 8(e) of A.P.Prohibition (Amendment) Act-2020, beyond reasonable doubt?"*

POINT:-

8.) It is the case of the prosecution that the Accused were in illegal possession and found trying to sell ID Arrack after purchasing it from an unknown person. Charge for the offence punishable under Section 7(A) r/w 8(e) of A.P.Prohibition (Amendment) Act-2020 is framed against the Accused. The defence of the Accused is that they did not commit the offence and they are innocent. To prove the case against the Accused, prosecution relied on the evidence of PW1 and 2.

9.) Regarding the commission of offence, PW 1 and 2 in their evidence deposed that on 04-05-2022 at about 09-00 hours, near the house of the accused No.1 in Boinapalli Village, Veldurthy Mandal, PW2 along with his staff arrested the Accused No.1 and 2 and seized 102 small packets of ID liquor of 100 ml each from their possession under

cover of Police Proceedings. PW2 also collected a sample from it, sealed and labeled. Basing on the Police Proceedings, a case in Cr.No. 131/2022 under Section 7(A) r/w 8(e) of A.P.Prohibition (Amendment) Act-2020 was registered under Ex.P2 F.I.R and investigated into. Later, on receipt of Ex.P3 Chemical analysis report, PW2 destroyed the property under cover of Ex.P5 Panchanama.

10.) Section 100(4) of The Code of Criminal Procedure contemplates *“before making a search under this Chapter, the Officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do”*. The evidence of Pw.1 and Pw.2 reveals that they have not made any fruitful attempt to secure respectable inhabitants of the locality where the Accused was caught. Hence, Pw.1 and Pw.2 violated the mandatory provisions of Section 100(4) of The Code of Criminal Procedure. Coming to the confession made by the Accused, the confession made before a Police Officer is inadmissible as per Section 25 of Indian Evidence Act and this is not the case where the property was seized in pursuance of confession so that the confession made by the Accused may be considered as per Section 27 of Indian Evidence Act.

11.) In these circumstances, it is quite unsafe to place reliance on the testimony of PW1 and 2. For the aforementioned reasons, this Court holds that the Prosecution failed to establish the guilt of the Accused of the charges under Section 7(A) r/w 8(e) of A.P.Prohibition (Amendment) Act-2020 beyond reasonable doubt. Thus, the Accused are found not guilty of the charges under Sections 7(A) r/w 8(e) of A.P.Prohibition (Amendment) Act-2020.

12.) Result:-

In the result, accused No.1 to 3 are found not guilty for the offences under section 7(A) r/w 8(e) of APP Act, 1995 and they are acquitted under section 248 (1)

Cr.P.C. Bail bonds of accused shall be in force for six months under section 437-A of Cr.P.C.

Typed on dictation by Personal Assistant on dual computer, corrected and pronounced by me in the Open Court on this the 22nd day of January, 2024.

Judl. Magistrate of Ist Class, Dhone

APPENDIX OF EVIDENCE
WITNESSES EXAMINED FOR

Prosecution side

Pw1: U.Lingamaiah,
Pw2: N.Rama Mohan Reddy

Defence side

...Nil...

EXHIBITS MARKED FOR

Prosecution side

Ex.P1:Police Proceedings
Ex.P2:First Information Report.
Ex.P3:Chemical analysis report.
Ex.P4:Attested copy of destruction Proceedings
Ex.P5: Attested copy of Destruction Panchanama.

Defence side

...Nil...

Judl. Magistrate of Ist Class, Dhone

Copy submitted to :

- 1) The First Additional District & Sessions Judge Kurnool.
- 2) Chief Judicial Magistrate cum Prl.Asst.Sessions Judge, Kurnool.
- 3) The Superintendent Of Police Kurnool. 4) The Assistant Public Prosecutor.