

KADG320069162025



**IN THE COURT OF THE HON'BLE PRL. CIVIL JUDGE
& JMFC., AT HARIHAR.**

PRESENT

Sri. BIRAPPA KAMBLE,
B.A., LL.B.

PRL. CIVIL JUDGE & JMFC,
HARIHAR.

DATED THIS 04th DAY OF AUGUST, 2026

CRIMINAL CASE NO. 5791/2025

COMPLAINANT:

The State through Excise Police Station, Harihar.

(By Asst. Public Prosecutor)

//Versus//

ACCUSED:

Nilappa S/o Guddappa Aralikatti
Age: 45 years,
R/o : Jai Bhim nagar, Harihar Taluk,
Davanagere District.

(By Sri P.S.J., Advocate)

1.	Date of commission of offence	31-05-2025
2.	Date of report of offence	31-05-2025
3.	Name of the informant	State through Excise P.S. by name Smt Rekha.S.H
4.	Date of recording evidence	04-06-2026
5.	Date of closing evidence	01-07-2026

6.	Offences complained of	Secs 14, 15, 32(1)), 38(A) of Karnataka Excise Act.
7.	Opinion of the Judge	As per final order

J U D G M E N T

The accused has faced trial for the offence punishable U/Secs.14, 15, 32(1), 38(A) of Karnataka Excise Act, on the basis of charge sheet filed by Excise Police.

2. Brief version of the case of prosecution as unfolded during the trial is as under :

It is alleged by the prosecution that, on 31.05.2025 at about 06-30 pm the Excise officer Smt. Rekha S.H., when she is on patrolling duty at that of time she has received incredible information a intoxicants was selling without having any license or permit from the Competent Authority. The Excise officer and along with staff on went to the spot I.e in the shop of the accused Jai Bhim Nagar Harihar, at that time they found one person having possession and transporting the intoxicant to the public when the excise officials conducted the raid. after conducted the search in the presence of panchas they have found the accused kept the intoxicants in the bag for the purpose of sale without having a valid permit from Competent Authority. Immediately the excise officer along with staff and panchas conducted the raid on

the spot and found 90 ml of 25 O.C. visky tetra packets, 90 ml Hywards visky 50 Tetra packets in his possession and seized the above contraband. On enquiry they found that the accused without having any license or permit, he has possession and transporting the contraband. Thereafter, she drawn seizure panchanama in the presence of pancha witnesses and staff and returned to their office along with seized materials and lodge the complaint.

3. After filing of the charge sheet, since there were sufficient materials to proceed against the accused cognizance for the above said offence was taken against him and since he was already on bail during investigation, summons was issued to him. In pursuance of service of summons, the accused appeared before the Court through his advocate. The accused was supplied with the prosecution papers in compliance of mandatory requirements U/Sec.207 of Cr.P.C.

4. Heard learned A.P.P. and learned Advocate appearing for the accused on the charge. As there were sufficient materials to frame charge, charge was framed against the accused for the offence punishable U/Secs.14,15, 32(1),38(A) of Karnataka Excise Act. The same was read-over and explained to the accused person in the language known to him. He pleaded not guilty and claimed

to be tried.

5. In order to prove its case, the prosecution examined the seizure mahazar and raiding team member as CW. 3 as PW. 2, and informant/complainant CW.1 as P.W.-1 and I.O is CW.5 as PW.3 and documents are got marked as per Ex.P-1 to P.8 and M.O.1 to 27 are identified and the prosecution side evidence was taken as closed.

6. As there were incriminating circumstances appearing in the prosecution evidence, the statement of the accused U/Sec.313 of Cr.P.C. was recorded and the incriminating circumstances were read-over, explained and made known to the accused in the language known to him. The accused denied the same and did not choose to lead any evidence in his defence.

7. On perusal of the materials placed on record and upon hearing, the following points arise for consideration:

POINTS

1. Whether the prosecution has proved beyond reasonable doubt that, on 31.05.2025 at about 06-30 p.m., when the CW1 is in patrolling duty she has received credible information that the accused having possession of intoxicant and try to transporting at that time she went to Jai Bhim Nagar, at that time they found one person having possession, selling the intoxicant to the public and transporting the same for the purpose of sale without having a valid permit

from Competent Authority and transporting the same thereby accused has committed an offence punishable u/Section U/Secs.14,15, 32(1), 38(A) of Karnataka Excise Act?

2. What Order?

8. My findings to the above points are as follows:

POINT NO.1 : In the Negative

POINT NO.2 : As per final order
For the following: -

REASONS

9. **POINT NO.1 :** It is alleged by the prosecution that the accused was found in possession and selling of intoxicants in violation of the provisions of the Karnataka Excise Act, accused having possession of intoxicants and transporting the same for the purpose of sale without having permit to transport and thereby accused has committed an offence punishable U/Secs. 32 of Karnataka Excise Act.

10. In order to bring home the guilt of the accused person, the prosecution has got examined 03 witnesses as P.W.1 to P.W.3 and got marked Ex.P.1 to 8 documents. The seizure mahazar CW.3 and a raiding team member as CW.3 as PW.1 and informant/complainant CW.1 as P.W.-1 and I.O., is CW.5 as P.W.3 and documents are got marked as per Ex.P-1 to P.8 and

M.O.1 to 27 are identified and the prosecution side evidence was taken as closed.

11. The P.W.1 who is the informant in this case and who is stated to have conducted raid, she has testified that on 31.05.2025 the Excise officer Smt Rekha S.H. has received credible information an intoxicants was selling and transporting without having any license or permit from the Competent Authority. she along with staff, panchas at about 06-30 p.m., went to the spot I,e shop of the accused Jai Bhim Nagar Harihar at that time they found one person in his shop he has having possession and selling intoxicant to the public. Immediately the police officer along with staff and panchas conducted the raid on the spot, at that time accused ran away from the spot and found 90 ml 25 o.c tetra packets, 90 ml 50 pipers Hywards visky tetra packets for sample. On inquiry they found that the accused without having any license or permit, he transporting the intoxicants. Thereafter, she has drawn seizure panchanama in the presence of panch witnesses and staff and returned to their office along with seized materials and lodge the complaint.

12. The seizure mahazar is marked as Ex.P-2 and her signature on Ex.P.- 2 marked at Ex.P.2(a). and marked the

search warrant marked as Ex P.1 and her sign as Ex P.1(a) and MO 1 to 27.

13. A riding team member and mahazar witness CW.3/P.W.-2, he completely supported to the prosecution who is stated to be the member of the raiding team and who accompanied P.W.-1 in the raid. This witnesses have testified in consonance with the testimony of P.W.- 2 in every aspect. Thus the testimony of P.W.- 2 is corroborated by the testimony of P.W.1 and. The counsel for the accused has cross-examined P.W.2 at length but nothing worthwhile is elicited from their mouth except bare denials. The I.O.,CW. 5 as P.W.3 official witness is corroborated by the testimony of P.W.1 & 2. However, it may be noted that P.Ws. 1,2 have stated in the cross-examination that they did not make any enquiry with the persons who had purchased intoxicants from the accused person.

14. These witnesses support the case of the prosecution. The counsel for accused person nothing is elicited from the mouth of the witnesses. P.W.1 and 2 are the official witnesses examined by the prosecution they are supported the case of the prosecution. But the prosecution has not examined the independent eye witnesses. This aspect raises doubt over the case of the prosecution as if the accused having possession of intoxicants and

transporting the same for the purpose of sale without having valid permit. further mahazar witness are not supported the case of the prosecution.

Of course, the prosecution has able prove that the CW.1 has seized the intoxicant. but the excise act is special act any police officer or the Excise officer has to follow the mandatory rules of excise act. As per section 52 the police officer or the excise officer before conduct the ride he or she shall get the search warrant from the judicial magistrate, if he or she has no time she or he has to give the proper reasons why she has not taken the permission from court and prepare search warrant as contemplated under section 53 of act. In the present case the cw1 has prepared search warrant, but she has simply stated that due to shortage of time he could not get the permission of court. Moreover the accused was in the spot than cw1 has enough time to get the search warrant from the magistrate.

In this regard, I have relied on the Judgment of the Hon'ble Apex court reported in the case of **K.L.Subbayya v/s State of Karnataka reported in 1979(2) SCC 115**. The Hon'ble Apex court has Observed in the said case as under :

In the instant case, it is admitted that the inspector who searched the car of the appellant had not made any record of any

ground on the basis of which he had to reasonable belief that an offence under the act, was being committed before proceeding to search the car and thus the provisions of sec 54 were not at all complied with.

This , Therefore renders the entire search without jurisdiction and as a logical corollary, vitiates the conviction, we feel that both section 53 and 54 contain valuable safeguards for the liberty of the citizen in order to protect them from ill founded or frivolous prosecution or harassment.

Further as per Sec. 100(4) of Cr.P.C. Panch witness should be a local witness and if they are not cooperate than the police officer or excise inspector shall give the notice than they can proceed, but in the present case on hand the CW.1 has not attempt to secure the local panch witness from the locality. but official witness cw 3 as mahazar witness. Sec 53 of excise act Explanation there is no mandatory that the panch witness should be a locality. But the prosecution has examined the panch witnesses as PW 2. he has supported the case of the prosecution. off course the PW. 2 has supported the case of the prosecution. but the said witness is an official witness, it can not be believable one.

15. Considering all these aspects and totality of circumstances, the Court is of the considered opinion that, the prosecution has failed to prove the guilt of the accused and the charge leveled against him beyond all reasonable doubts. Therefore, without any hesitation, **I answer the Point No.1 in the NEGATIVE.**

16. POINT NO.2:- For foregoing reasons, I proceed to pass the following :

:O R D E R:

In exercise of the power conferred under Section 248(1) of Cr.P.C., 1973, the accused is acquitted for the offences punishable U/Secs.14, 15, 32(1), 38(A) of Karnataka Excise Act.

Bail bond of the accused and his surety shall stand canceled.

Acting under Section 43 of Karnataka Excise Act 1965, M.O.1 to 27 i.e., Samples of tetra packets of intoxicants are sent to the Excise Department, Harihar for disposal after appeal period is over.

(Dictated to the Stenographer on Computer directly, typed by her, Judgment corrected and signed by me, then pronounced by me in the Open Court on this the **04th day of August 2026**).

**(SRI BIRAPPA KAMBLE)
PRL. CIVIL JUDGE JMFC.,
HARIHAR.**

ANNEXURES**List of the Witnesses examined by the Prosecution:**

P.W.-1 : Smt. Rekha .S.h
P.W.-2 : Arunkumar .K.M
P.W.-3 : Devasingh Naik

List of the Documents exhibited for the Prosecution:

Ex.P-1 : Notice Search warrant
Ex.P-1(a) : Signature of P.W1
Ex.P.2 : Mahazar
EXP 2(a) : Signature of PW.1
EXP 2(b) : Signature of PW.2
EXP 3 : Seized Articles list
EXP 3(a) : Signature of PW 1
EXP 3(b) : Signature of PW.2
EXP 4 : Madari moharin cheeti
EXP 4(a) : Signature of PW 1
EXP 4(b) : Signature of PW.2
EXP 5 : Photo
Exp 6 : CD
Ex.P-7 : Complaint
EXP 7(a) : Signature of PW.1
EXP 8 : FIR
EXP 8(a) : Signature of PW.1

List of the MOs marked on behalf of the Prosecution:

M.O.1 to 27 : Tetra packets and bag

List of the Witnesses examined for Defence:

--Nil--

List of the Documents exhibited for Defence:

--Nil--

List of the MOs marked on behalf of Defence:

--Nil---

**PRL. CIVIL JUDGE & JMFC.,
Harihar.**