

Received on	22-12-2022		
Registered on	22-12-2022		
Decided on	13-03-2024		
Duration	Year	Month	Days



IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

AT DEVGADH BARIA, DIST. DAHOD.

(Presided by: G. L. Pareek)

EX-31

Criminal Case No. 1535/2022

The State of Gujarat

(Devgadhi Baria Police Station)

.....Prosecution

Versus

(1) Shanabhai Rupabhai Harijan,

Age about 36 years (then),

R/o. Ruvabari, Muvada Faliya, Ta. Devgadhi Baria, Di. Dahod.

(2) Maheshbhai Ramanbhai Bhuvaliya,

Age about 25 years (then),

R/o. Rai, Bhuvaliya Faliya, Ta. Devgadhi Baria, Di. Dahod. **.....Accused**

Offence U/s. 65E, 81 of the Gujarat Prohibition Act.

Learned Public Prosecutor	Ms. D. M. Prajapati
Learned Advocate of the Accused No. 1	Shri B. K. Rana
Learned Advocate of the Accused No. 2	Shri K. G. Piplodiya

JUDGMENT

1. The prosecution case in brief is that on 09-03-2022 the accused was found in possession of indian made foreign liquor without any license, pass, permit or

authorisation.

2. After completion of investigation, the chargesheet was filed. Upon appearance of the accused before the Court, the copy of police papers along with chargesheet was supplied to the accused, in accordance with Section 207 of the CrPC. Thereafter, charges were framed against the accused at Exh. 17. U/S 65E, 81 of the Gujarat Prohibition Act and thereafter plea of the accused was recorded at Exh. 18, 19 to which the accused pleaded not guilty and claimed to be tried.

3. In order to establish guilt of the accused, the following witnesses were examined and documents were exhibited by the prosecution side.

Oral Evidence

Sr. No.	Name Of The Witness	Exhibit
1	Mr. Dilipbhai Khatubhai Bharwad - Complainant & I.O.	23
2	Mr. Laxmanbhai Gopsingbhai Patel - Panch Witness	25
3	Mr. Rameshbhai Dipsingbhai Harijan - Panch Witness	28

Documentary Evidence

Sr. No.	Name of the witness	Exhibit
1	Complaint	24
2	Panchnama	26

4. Thereafter, further statement, as per Section 313, CrPC, was recorded and the accused has plainly denied the evidence adduced against him and chose not to lead any defense evidence. Thereafter, the arguments were heard.

5. From the facts and evidence on record, the following point has arisen for just determination.

point of determination

1) Whether the prosecution proves beyond reasonable doubt that on 09-03-2022 at about 16:00 accused was found in possession of the prohibited indian made foreign liquor without any license, pass, permit and thereby the accused committed the

offences punishable U/sec. 65E, 81 of the Gujarat Prohibition Act.?

2) What order?

Findings- My findings on the above points are as under.

Point No. (1) In the negative.

Point No. (2) As per the final order.

DISCUSSION OF EVIDENCE AND DECISION AND REASONS THEREOF.

6. In order to establish the guilt of accused, it was incumbent upon the prosecution to prove beyond reasonable doubt that the accused was found in possession of liquor without pass or permit and thereby committed offence punishable section under Gujarat Prohibition Act. The prosecution eventually failed to discharge its burden.

7. The prosecution failed in proving their case beyond reasonable doubt because the panchnama witnesses did not support the prosecution case and hence, the recovery of the liquor itself does not stand proved in view of the hostile panchnama witnesses who did not support the prosecution case. The basic premise of the whole case stands shaken in the wake of hostile panchnama witnesses. No F.S.L. certificate showing that the alleged muddamal was liquor has been produced on record as admitted by the I.O. during his cross examination done by Ld. defence advocate. Forensic report forms foundation of cases under the prohibition Act ; in its absence, the prosecution case falls ground. Importantly the final report/challan submitted in the instant case did not contain the F.S.L. report and in view of that without the filing of the F.S.L. report, the case under the prohibition Act could not stand. Moreover, in the present case the complainant and the investigating officer is a same person, hence, the accused is entitled for acquittal in view of the judgment by Hon'ble Supreme Court in the case of **Mohanlal Vs. State of Punjab.**

8. In the decision of **Lilubha Mahobatsing Vs. State of Gujarat ; 1991(1)GLR 226**, the Hon'ble Gujarat High Court held that in criminal trial, necessity of proving the guilt of the accused beyond reasonable doubt rests on prosecution and where the result rests only on inferences, that approach which helps the accused must be accepted.

9. Thus, in view of the foregoing discussion and in the light of the above exposition of the law, this court is inclined to pass the following ;

ORDER

1. In view of section 248(1) of the Cr.P.C. the accused (1) Shanabhai Rupabhai Harijan, R/o. Ruvabari, Muvada Faliya, Ta. Devgadhi Baria, Di. Dahod., (2) Maheshbhai Ramanbhai Bhuvaliya, R/o. Rai, Bhuvaliya Faliya, Ta. Devgadhi Baria, Di. Dahod stands acquitted giving benefit of doubt from the charges leveled against him under section 65E, 81 of the Gujarat Prohibition Act and set at liberty forthwith if not wanted in other case.
2. The seized prohibition muddamal as mentioned in the muddamal pavati of the present case is ordered to be disposed of as per the rules and procedure after the appeal period is over, if not disposed of earlier.
3. The bail bonds of the accused are extended for six months from today u/s. 437A of the Code of Criminal Procedure.

Signed and pronounced in the open court on this 13th day of March, 2024.

Sd/-

Date: 13-03-2024
Place : Devgadhi Baria

(Gopal Lal Pareek)
Judicial Magistrate First Class
Devgadhi Baria, Dist.Dahod
CODE : GJ01404