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**IN THE COURT OF THE CIVIL JUDGE & JMFC AT
KALAGHATAGI.**

PRESENT : Sri.G.Sanjeev Kumar, MBA, LLB.,
Civil Judge & JMFC,
Kalaghatagi.

DATED ON THIS 27th DAY OF MARCH, 2026

C C No: 71/2021

COMPLAINANT : The State by
Kalaghatagi Police Station,
Kalaghatagi.

(State by APP)

v/s

ACCUSED: Irappa S/o. Laxman Harijan
Aged 50 years, Occ: Coolie,
R/o Hirehonnihalli village,
Tq: Kalaghatagi, Dist: Dharwad.

(By Sri. S.S.D., Advocate)

Date of filing of complaint	21.10.2020
Name of the complainant	K M Mathpati
offenses complained of :	U/Sec. 32 and 34 of Karnataka Excise Act.
Date of commencement of recording of the evidence :	03.06.2023
Date of which the Judgment was pronounced:	27.03.2026

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**(G SANJEEV KUMAR)**Civil Judge & JMFC,
Kalaghatagi.**J U D G M E N T****1. CASE OF PROSECUTION:**

It is the case of the prosecution that, the Kalaghatagi PS had filed a final report against the accused charging him for the offenses punishable U/Sec. 32 and 34 of Karnataka Excise Act.

2. THE FACTUAL MATRIX OF THE PROSECUTION CASE IS THAT;

On 21.10.2020 at 07.45 a.m the police attached to Kalaghatagi PS had found the accused person was selling liquor sachets of Dhulikoppa Cross at public place of Hirehonnihalli village. The accused has no license to sell the same. In this pretext the Excise police had registered a case against the accused persons for the aforementioned offences, triable by this Court.

3. CONTENTS OF FINAL REPORT FILED U/SEC.173 OF CR.P.C.:

The Excise police attached to Kalaghatagi PS, had filed a final report against the accused persons

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U/Sec.173 of Cr.P.C. charging him for the offences U/ Sec. 32 and 34 of Karnataka Excise Act and had impleaded 09 witnesses in support of the prosecution (i.e., CW1 to CW9).

4. FRAMING OF CHARGES U/SEC. 240 OF CR.P.C.:

(i) Upon consideration and hearing, this court was of the opinion that there are grounds sufficient for presuming that the Accused Person had committed offenses punishable U/Sec.32 and 34 of Karnataka Excise Act which are triable by this court. Accordingly this court, acting U/Sec.240 of Cr.P.C., had framed charges against the Accused Person for the said offences.

(ii) The charges duly framed were read over and explained to the accused person, and was asked whether or not he plead guilty for the said offenses. The Accused Person pleaded innocence and claimed to be tried.

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5 EVIDENCE FOR PROSECUTION AS PER SEC.242

OF CR.P.C :

(i) The prosecution had examined CW1/PW1, CW8/PW2 and CW9/PW3 and got marked Ex.P1 to Ex.P14(a) and **M.O.1.**

(ii) Based on the incriminating materials available from the evidence of prosecution witnesses, statement U/Sec.313 of Cr.P.C. was duly recorded and accused preferred to not to lead any defense evidence.

6. POINTS FOR CONSIDERATION :

Heard, the learned APP for the State and learned counsel for the defense. The following points arise for consideration;

Point No. 1: Whether the prosecution proves beyond reasonable doubt, that the Accused had committed offenses punishable U/Sec. 32 and 34 of Karnataka Excise Act 1965 ?

Point No. 2: What Order?

7. The finds of this court are as under :

Point No. 1 : In the **Negative**

Point No. 2 : As per the final order

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R E A S O N S

8. ANALYSIS OF THE FINAL REPORT:

On carefully analyzing the Final Report filed by the Police U/sec.173 of Cr.P.C., the following inference can be drawn:

(i) It is clear that the police had not properly complied the mandate of law prescribed U/Sec.54 of Karnataka Excise Act as duly affirmed in ***K L Subbaya V/s State of Karnataka, (1979) 2 SCC 115***. As per the said dictum, the Hon'ble Supreme Court had emphasized the compliance of Sec.54 of Karnataka Excise Act. In the case at hand, the final report and documents pressed into service by the prosecution does not contemplate that the police had either obtained search warrant from the Court nor the said report whisper anything regard the reasons made out by the police for conducting search and seizure of the place. Hence, the police had not properly complied the mandate of law prescribed U/sec.54 of Karnataka Excise Act. It is to be noted that the Police are required to give a detailed cogent reasons as to the factors that

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prevented them from obtaining search warrant U/sec.54 of Karnataka Excise Act.

(ii) The Excise police had proceeded to cause the arrest of the accused and had proceeded with investigation without having registered the FIR. Thus, violating the mandate of law prescribed U/sec.154 r/w 157 of Cr.P.C. and the law declared by Hon'ble Supreme Court in ***Lalitha Kumari and other V/s State of U P*** which mandates the registration of FIR before proceeding with the investigation.

(iii) On analysis of the entire final report it is clear that the police have not registered FIR upon receipt of an information i.e. that contains cognizable offence. In this regard, it is important to reproduce the deposition of CW1/PW1 which excerpt is provided as below:

"ನಂತರ ನಾವು ಮಾಲೀನೊಂದಿಗೆ ಮತ್ತು ಆಪಾದಿತನೊಂದಿಗೆ ಪೋಲಿಸ್ ಠಾಣೆಗೆ ಬಂದು ಚಾಸಾ-8 ರವರಿಗೆ ನಿಷಿ-1 ರಂತೆ ನಾನು ದೂರು ದಾಖಲಿಸಿದನು."

* * * *

(iv) On analysis of the aforesaid excerpt it is clear that the witness had deposed tendering an

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admission that the first information statement and the FIR were registered after conduct of panchanama and seizure of material objects. It is pertinent to note that the seizure and panchanama were conducted prior to registration of an FIR against the accused. The procedure thus adopted by the police runs contrary to the mandate of law prescribed U/Sec.154 of Cr.P.C. and the law declared by ***Hon'ble Supreme Court in Lalitha Kumari's*** case (supra).

(v) On analysis of Ex.P2 being the FIS made by Police and aforementioned deposition of CW1/PW1, it is clear that, police have registered an FIR after the conduct of investigation. Thus, amounting to putting the cart before the horse. Hence, a clear violation of the mandate of law prescribed under Sec.154 of Cr.P.C.

(vi) In the light of the aforementioned analysis, the FIR that forms the bedrock of the entire prosecution's case, stands on a fragile footing. The following points are discussed based on the said factum.

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9. Point No.1:

(i) The case of the prosecution is that on 21.10.2021 at about 07.45 am the Accused was unauthorizedly selling liquor sachets to the public on the road leading to Hirehonnihalli village. At that moment, CW.1 being the police officer had conducted raid in the presence of two panchas being CW. And CW,3. During the course of the said raid, the police had seized the liquor sachets from the accused and had taken the accused into his custody.

(ii) In this backdrop of the prosecution case, the prosecution had examined CW1/PW1, CW8/PW2 and CW9/PW3.

(iii) The prosecution had examined CW1/PW1. The said witness was the Assistance Sub-Inspector of police and the complainant who was present in this case during its investigation. The witness in his chief examination had adduced that, on 21.10.2020 having received an information had summoned two panch witnesses and having proceeded, had arrested the accused person and had seized MO.1 from him in the presence of pancha witnesses. However the

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prosecution had not examined either of the panch witnesses. However, On perusal of the entire cross examination of CW.1, the witness had denied all the suggestions made to him by the defense touching upon the incriminating substance. However, it is pertinent to note that, CW.1 in his ocular evidence had deposed that he had conducted raid without any authority to do the same i.e., by obtaining a search warrant from the Court. Thus, the deposition of this witness clarifies a position that he had adopted a procedure in violation of Sec.54 of Karnataka Excise Act. This procedural lapse has prejudiced the accused and suffers from want of proper procedural compliance. Thereby rendering the evidence of this witness wholly unreliable. In the light of this, no part of the prosecution theory is supported with cogent evidences to prove its case.

(iv) The prosecution had examined CW8/PW2. The said witness was an ASI attach to Kalaghatagi Police Station, The witness has deposed in his ocular evidence that he had entered the seized material objects in the PF and had sent the same to FSL. Further, he had also arrested the accused and

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produced him before the Court. The witness had denied to all the suggestions made to him by the defense during the course of his cross examination. Although no substantial investigation was made by this witness yet the lapse in registering the FIR after conducting the investigation has prejudiced the accused and moreover the police had conducted raid in contravention of the law in Sec.54 of Karnataka Excise Act. Hence, the evidence of this witness has no credence in support of the prosecution case.

(v) The prosecution had examined CW9/PW3 as investigation officer in this case. He had continued the investigation from CW.8 and had received FSL report being marked as Ex.P14. This witness had filed final report in this case. On perusal of the cross examination of this witness, except for suggestive denials nothing substantive was elicited from this witness. Since the witness had not conducted any substantial part of investigation, the evidence adduced by this witness does not have any credence in support of the prosecution case.

Furthermore, on analysis of entire procedure followed by the police with regards to search and

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seizure and the registration of FIR against the Accused Person, there is gross violation of the procedure establish by law contained in Sec.54 of K.E. Act and U/sec.154 of Cr.P.C. In the light of this, it is clear that there is apparent infringement of the fundamental right of the Accused Person enshrined under article 21 of Indian Constitution. Hence, and Point No.1 is answered in the **NEGATIVE**.

10. Point No.2:- That for the reasons mentioned supra, this court is inclined to pass the following;

ORDER

Acting U/sec.248(1) of Cr.P.C the Accused is hereby **ACQUITTED** for the offences punishable U/Sec. 32 and 34 of Karnataka Excise Act.

The M.O.1 is being worthless order to be destroyed after completion of appeal period.

The bail bond of the Accused and that of the surety will continue in view of 481 A of Cr.P.C till appeal period is over.

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(Dictated to stenographer directly on computer, computerized by him, corrected and then pronounced by me in the open court on this **27th day of March, 2026**)

(G SANJEEV KUMAR)
Civil Judge & JMFC.,
Kalaghatagi.

:- ANNEXURE :-

List of witnesses examined on behalf of Complainant:-

PW1 : Kallayya Mathapati
PW2 : Ramappa Sinkinadasar
PW3 : Vijay Biradar

List of documents examined on behalf of Complainant:-

Ex.P1 : Panchanama
Ex.P1(a) : Signature of PW1
Ex.P1(b) : Signature of PW2
Ex.P1(c) : Signature of PW2
Ex.P2 : Complaint
Ex.P2(a) : Signature of PW2
Ex.P2(b) : Signature of PW3
Exs.P3 to 8: Specimen seal
Ex.P9 : FIR

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- Ex.P9(a) : Signature of PW2
Ex.P10 : Property form
Ex.P10(a) : Signature of PW2
Ex.P11 : FSL Letter
Ex.P11(a) : Signature of PW3
Ex.P12 : Investory
Ex.P12(a) : Signature of PW3
Ex.P13 : Seizure panchanama
Ex.P13(a) : Signature of PW3
Ex.P14 : FSL report
Ex.P14 : Signature of PW3

List of Material Objects examined on behalf of Complainant:-

- M.O.1 : Sample tetra packets of liquor

List of witnesses examined on behalf of defence:-

--NIL--

List of documents marked on behalf of defence:-

--NIL--

(G SANJEEV KUMAR)
Civil Judge & JMFC.,
Kalaghatagi.