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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: 147/2020

COMPLAINANT :The State by
Kalaghatagi Police Station,
Kalaghatagi.

(State by APP)

v/s

ACCUSED: Nagaraj S/o. Basappa Savanur
Aged 28 years, Occ: Hotel Business,
R/o Tabur village,
Tq: Kalaghatagi, Dist: Dharwad.

2. Gurushiddappa Basappa Tavergeri
Age: 40 years, Occ:Coolie
R/o. Tabur village, Tq: Kalaghatagi,
Dist: Dharwad.

**(A1 abated)
(By Sri. K.B.G., Advocate)**

Date of filing of complaint	01.12.2019
Name of the complainant	C N Karaveerappanavar
offenses complained of :	U/Sec. 32 and 34 of Karnataka Excise Act.

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Date of commencement of recording of the evidence :	25.01.2021
Date of which the Judgment was pronounced:	27.03.2026

(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 Nos.1 and 2 charging them for the offenses punishable U/Sec. 32 and 34 of Karnataka Excise Act.

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

On 01.12.2019 at 09.05 a.m the police attached to Kalaghatagi PS had found the accused persons were selling liquor sachets near Basavannadevar Temple at Tambur village. The accused persons had 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.

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

The police attached to Kalaghatagi PS, had filed a final report against the accused persons U/Sec.173 of Cr.P.C. charging them 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) Accused No.1 has died during the pendency of the proceeding. The charges duly framed was read over and explained to the accused No.2, and was asked whether or not he pleads guilty for the said

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offenses. The Accused Person pleaded innocence and claimed to be tried.

5 EVIDENCE FOR PROSECUTION AS PER SEC.242 OF CR.P.C :

(i) The prosecution had examined CW2/PW1, CW3/PW2, CW1/PW3, CW9/PW4 and CW6/PW5 and got marked Ex.P1 to Ex.P9(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 :

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

Point No. 2 : As per the final order

REASONS

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 regarding 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

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

(ii) The 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/ 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:

"ಪಂಚನಾಮೆಯನ್ನು 9-05 ನಿಮಿಷದಿಂದ 10-15 ನಿಮಿಷದವರೆಗೆ ಸ್ಥಳದಲ್ಲಿ ಪಂಚನಾಮೆ ಮಾಡಿರುತ್ತೇನೆ. ಮುಧೆಮಾಲನ್ನು ಬಿಳಿ ಪಟ್ಟಿಯನ್ನು ಸುತ್ತಿ ತೀಲ್ ಮಾಡಿರುತ್ತೇನೆ. ನನ್ನ ಮತ್ತೂ ಪಂಚನಾಮೆ ಇರುವ

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ಚೀಟಿಯನ್ನು ಅಂಟಿಸಿರುತ್ತೇವೆ. ಆರೋಪಿತನು ಮುದ್ದೆಮಾಲು ಸಮೇತ
 ಠಾಣೆಗೆ ಬಂದು ನನ್ನ ದೂರು ತಯಾರಿಸಿ ಚಾಸಾ-10 ರವರಿಗೆ
 ವಹಿಸಿಕೊಟ್ಟಿರುತ್ತೇನೆ. "

* * * * *

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

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prosecution's case, stands on a fragile footing. The following points are discussed based on the said factum.

9. Point No.1:

(i) The case of the prosecution is that on 01.12.2019 at about 09.05 am the Accused persons were unauthorizedly selling liquor sachets to the public on the road leading to Basavannadevar Temple of Tambur village. At that moment, CW1 being the police officer had conducted raid in the presence of two panchas being CW2 and CW3. During the course of the said raid, the police had seized the liquor sachets from the accused persons and had taken the accused persons into his custody.

(ii) In this backdrop of the prosecution case, the prosecution had examined CW2/PW1, CW3/PW2, CW1/PW3, CW9/PW4 and CW6/PW5.

III) The prosecution had examined CW1/PW3. 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 01.12.2019 having

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received an information had summoned two panch witnesses and having proceeded, had arrested the accused person and had seized MO.1 from them in the presence of pancha witnesses. However the pancha witnesses being CW2 and CW3 had turned completely hostile against the prosecution case. 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. It is pertinent to note that, CW1 has not deposed anything regarding the preparation of search report prior to conducting the search of the accused persons and property. Thus, it clarifies that the police had conducted the raid without any authority from the Court or in compliance with Sec.54 of karnataka Excise Act. 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

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prosecution theory is supported with cogent evidences to prove its case.

(iv) The prosecution had examined CW2 and CW3 being the panchwitnesses who had participated in the raid. The said witnesses had turned completely hostile against the prosecution case and they had denied every suggestions made to them by learned APP touching upon the very factum of the conduct of panchanama. This casts a cloud on the very panchanama and seizure made by the police during the raid. Hence no credence can be attached to the evidence of these witnesses in support of the prosecution case.

(v) The prosecution had examined CW6/PW5. The said witness was an ASI attached to Kalaghatagi Police Station, The witness has deposed in his ocular evidence that he had received the seized material objects and the accused persons as produced before him by CW1. Consequently, he had registered an FIR against the said accused persons and had duly entered the seized material objects in the PF and had sent the same to the Court. Furthermore, the witness had obtained statements from CW4 and CW5. This

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witness in his cross examination had admitted that he had not visited the spot during the period of his investigation and that he has no knowledge regarding the persons who had affixed their signatures to Ex.P1. These admissions tendered by the witness contemplates that, he had mechanically registered an FIR and had not conducted investigation in accordance with law. The very investigation stands eclipsed as the witness admits that he had not visited the spot during the course of his part of investigation. Thus the evidence of this witness tenders itself wholly unreliable.

(vi) The prosecution had examined CW9/PW4. This witness had deposed in his chief examination that he had merely sent seized material objects to FSL and had obtained the report from the said FSL. Further, the witness asserts that he had prepared the charge sheet and had filed the same in the Court. On perusal of the cross examination of this witness, he admits that he had not visited the spot during the course of his investigation and that he had proceeded to investigate the case solely based on that part of investigation that was made by CW8. These admissions by the witness clarifies that he had

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mechanically prepared final report in this case without applying his mind to the investigation that were made earlier. Furthermore, the role played by this witness is purely ministerial and does not project any probe made by this witness being an investigation officer. Hence, no credence can be attached to the evidence of this witness in support of the prosecution case.

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

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**ORDER**

Acting U/sec.248(1) of Cr.P.C the Accused No.2 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.

(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 : Basavaraj Jinnur

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- PW2 : Ajisab Koppad
PW3 : Chidanand Karaveerappanavar
PW4 : Vijay Biradar
PW5 : Kallayya Mathapati

List of documents examined on behalf of Complainant:-

- Ex.P1 : Panchanama
Ex.P1(a) : Signature of PW1
Ex.P1(b) : Signature of PW3
Ex.P1(c) : Signature of PW2
Ex.P2 : Complaint
Ex.P2(a) : Signature of PW3
Ex.P2(b) : Signature of PW3
Exs.P3 : Specimen seal
Ex.P3(a) : Signature of PW3
Ex.P4 : FSL Letter
Ex.P4(a) : Signature of PW4
Ex.P5 : Inventory
Ex.P5 : Signature of PW4
Ex.P6 : Property form
Ex.P6(a) : Signature of P
Ex.P7 : FSL letter
Ex.P7(a) : Signature of PW4
Ex.P8 : Property form

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Ex.P8(a) : Signature of PW4

Ex.P9 : FIR

Ex.P9(a) : Signature of PW5

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.