



**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: 230/2021

COMPLAINANT :The State by
Kalaghatagi Police Station,
Kalaghatagi.

(State by APP)

v/s

- ACCUSED:**
- 1 Girimallayya S/o. Basayya Kambi
Aged 35 years, Occ: Coolie,
R/o Hirehonnihalli village,
Tq: Kalaghatagi, Dist: Dharwad.
 2. Ravi @ Perappa S/o. Fakkirappa Bhajantri
Age: 36 years, Occ: Coolie,
R/o. B Gudihal village,
Tq: Kalaghatagi, Dist: Dharwad.

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

Date of filing of complaint	09.10.2020
Name of the complainant	K M Mathapati
offenses complained of :	U/Sec. 32 and 34 of Karnataka Excise Act.



Date of commencement of recording of the evidence :	19.10.2022
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 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 02.04.2020 at 8.00 a.m the SHO, attached to Kalaghatagi PS had found the accused Nos.1 and 2 were selling liquor sachets near the Bus stand at a public place in B. Gudihal village. Accused Nos.1 and 2 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.

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 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 Persons 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 Persons for the said offences.

(ii) The charges duly framed were read over and explained to the accused persons, and were



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asked whether or not they plead guilty for the said offenses. The Accused Persons pleaded innocence and claimed to be tried.

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

(i) The prosecution had examined CW1/PW1, CW3/PW2, CW2/PW3, CW4/PW4 and CW9/PW5 and got marked Ex.P1 to Ex.P12(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 persons 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 Nos.1 and 2 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

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

(ii) The Kalaghatagi police had proceeded to cause the arrest of the accused and had proceeded with investigation without having registered the FIR prior to the investigation. 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 ಮಾಲಿನೊಂದಿಗೆ ಪೊಲೀಸರ ತಾಣೆಗೆ ಬಂದು ಚಾಸಾ-8 ರವರಿಗೆ ನಿಜಿ-1 ರಂತೆ ನಾನು ದೂರು ದಾಖಲಿಸಿದನು."

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(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.P1 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.

9. Point No.1:

(i) The case of the prosecution is that on 02.04.2020 at about 08.00 a,m the Accused persons were unauthorizedly selling liquor sachets to the public on the road near B Gudihal bus stand. At that moment, CW.1 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 satchets from the accused persons and had taken the accused into their custody.

(ii) In this backdrop of the prosecution case, the prosecution had examined CW1/PW1, CW3/PW2, CW2/PW3, CW4/PW4 and CW9/PW5.

(ii) The prosecution had examined CW2 and CW3 being the panch witnesses 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.

(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 02.04.2020 having received an information had summoned two panch witnesses and he is having proceeded, had arrested the accused persons and had seized MO.1 from them in the presence of pancha witnesses. The very factum of the conduct of panchanama and seizure of MO1 is specifically denied by CW3/PW2 and CW2/PW3 in their evidence as they had turned completely hostile against the prosecution case. 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 persons 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 CW4/PW4 being eye witness in this case. The said witness had deposed in alignment with CW1. Both CW1 and CW4 are police officials. On perusal of the entire evidence, it clarifies that no part of the evidence denotes that the police had complied the mandate of law prescribed under Sec.54 of Karnataka Excise Act specific to obtaining a search warrant or preparing a search memo prior to the raid. Perhaps, no



explanation is provided either in the charge sheet or in the deposition of this witness regarding the non compliance of the same. Surprisingly, the witness does not whisper anything regarding the fact what prevented the police from obtaining statements from the inhabitants of the village, more specifically when the offence is alleged to have been committed at a public place in broad day light. In the light of these, no credence can be attached to the evidence of this witness in support of the prosecution case.

(v) The prosecution had examined CW9/PW5. The said witness was the investigation officer in this case. On perusal of the chief examination of this witness, he had deposed that he had obtained the case file from CW8 and had proceeded to investigate the matter. All that this witness had done is that he had sent the seized material objects to the FSL and had obtained the report, and had file the final report in this case. Nothing substantial was deposed in his chief examination. However, during the course of cross examination of this witness, it is specifically elicited that the accused persons were apprehended 7-8 months after the registration of this case.



Furthermore, it is also elicited that the material objects produced before the Court and marked as M.O.1 are empty liquor sachets. It is pertinent to note that no representative sample is produced before this Court to lay a link between the seized material objects and the one produced before this Court and marked as M.O.1.

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;

ORDER



Acting U/sec.248(1) of Cr.P.C the Accused Nos.1 and 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 : Kallayya Mathapati
PW2 : Basavaraj Hosavakkal
PW3 : Shivarudrappa Gabbur
PW4 : Gurunath Hebballi



PW5 : Vijay Biradar

List of documents examined on behalf of Complainant:-

- Ex.P1 : Panchanama
- Ex.P1(a) : Signature of PW1
- Ex.P1(b) : Signature of PW3
- Ex.P2 : Complaint
- Ex.P2(a) : Signature of PW1
- Ex.P2(b) : Signature of PW3
- Exs.P3 to 8: Specimen seal
- Ex.P9 : FSL Letter
- Ex.P9(a) : Signature of PW5
- Ex.P10 : Inventory
- Ex.P10(a) : Signature of PW5
- Ex.P11 : Property form
- Ex.P11(a) : Signature of PW3
- Ex.P12 : FSL Report
- Ex.P12(a) : 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.