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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 30th DAY OF JUNE, 2026

C C No: 729/2024

COMPLAINANT : The State by
Kalaghatagi Police Station,
Kalaghatagi.

(State by APP)

v/s

ACCUSED: Dyamanagouda S/o. Basanagouda Patil
Aged 46 years, Occ: Coolie,
R/o Galagihulakoppa village,
Tq: Kalaghatagi, Dist: Dharwad.

(By Sri. A.T.O., Advocate)

Date of filing of complaint	25.12.2023
Name of the complainant	C Karaveerappanavar
offenses complained of :	U/Sec. 32 and 34 of Karnataka Excise Act.
Date of commencement of recording of the evidence :	11.06.2025
Date of which the Judgment was pronounced:	30.06.2026

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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 24.12.2023 at about 8.15 p.m the police attached to Kalaghatagi PS had found the accused persons was selling liquor sachets at public place Gandhi Circle of Galagi Hulakoppa village, Kalaghatagi Taluka. The accused had no license to sell the same. In this pretext the Kalaghatagi police had registered a case against the accused for the aforementioned offences, triable by this Court.

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

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The police attached to Kalaghatagi PS, had filed a final report against the accused person U/Sec.173 of Cr.P.C. charging him for the offences U/Sec. 32 and 34 of Karnataka Excise Act and had impleaded 8 witnesses in support of the prosecution (i.e., CW1 to CW8).

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, CW4/PW2 and CW2/PW3 and got marked Ex.P1 to Ex.P3(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) In the case at hand, the police had prepared a search report marked as Ex.P3 being a search report endorsing that the police had proceeded with search of the property belonging to the accused based on an assumption that he would flee from the place.

(ii) It is pertinent to note that, CW1 has not whispered anything regarding preparation of search report as per Sec.54 of Karnataka Excise Act., However, a document marked as Ex.P6 denote that a search report was prepared prior to the seizure. The mandate of law embodied in Sec.54 of Karnataka Excise Act postulates that, the detection officer shall obtain search warrant from the competent Court before proceeding to conduct search. However, an exemption can be taken for obtaining search warrant in case of exigencies prior

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to the conduct of search. In case of which, search report shall be prepared.

(iii) In case at hand, CW1 has not stated anything regarding what prevented him from obtaining search warrant from the jurisdictional Court. In the absence of which, the contents of Ex.P6 stands clouded.

(iv) Further, 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/s State of U P*** which mandates the registration of FIR before proceeding with the investigation.

(v) 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

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the deposition of CW1/PW1 which excerpt is provided as below:

"ರಾತ್ರಿ 10.15 ಗಂಟೆಗೆ ಆರೋಪಿ ಮತ್ತು ಮಾಲು ಸಮೇತವಾಗಿ
ತಾಣೆಗೆ ಹಾಜರಾಗಿ ಚಾಸಾ-ರಿ ರವರಿಗೆ ಕರ್ನಾಟಕ ಅಬಕಾರಿ ಕಾಯ್ದೆ
ಯ ಅಡಿಯಲ್ಲಿ ಪ್ರಕರಣವನ್ನು ದಾಖಲಿಸಲು ಸೂಚಿಸಿ ಮಾಲು,
ಪಂಚನಾಮೆ ಮತ್ತು ಆರೋಪಿಯನ್ನು ಒಪ್ಪಿಸಿದ್ದೇನೆ."

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(vi) 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).

(vii) 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.

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Hence, a clear violation of the mandate of law prescribed under Sec.154 of Cr.P.C.

(vii)i 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 24.12.2023 at about 7.00 pm the Accused was unauthorizedly selling liquor sachets at public place Gandhi Circle of Galagi Hulakoppa village, Kalaghatagi Taluka. At that moment, CW1 being the police officer had conducted raid in the presence of one pancha being CW2. During the course of the said raid, the police had seized the liquor satchets 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, CW4/PW2 and CW2/PW3.

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(III) The prosecution had examined CW1/PW1. The said witness was the PSI and the complainant who was present in this case during its investigation. The witness in his chief examination had adduced that, on 24.12.2023 having received an information had summoned one panch witness and having proceeded, had arrested the accused person and had seized MO.1 from him in the presence of pancha witnesses. However the prosecution had examined two panch witnesses i.e., CW2 who 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 not whispered anything regarding the proper compliance of Sec.54 of Karnataka Excise Act. The witness ought to have either obtained search warrant from the competent Court or ought to have prepared search memo clearly stating the reasons for not obtaining search warrant from the competent Court, prior to conducting the said raid. Thus, the deposition of this witness clarifies a position that he had adopted a procedure in

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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 CW2 being the panch witness who had participated in the raid. The said witness has turned completely hostile against the prosecution case and he has denied every suggestions made to the, 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 this witness in support of the prosecution case.

(v) The prosecution had examined CW4/PW2 as raiding witness in this case. The said witness had deposed in alignment with CW1. The evidence of this witness also does not whisper anything regarding the

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preparation of a search report as mandated U/s.54 of Karnataka Excise Act. It is pertinent to note that, non compliance of the said mandate would render the entire investigation futile. The force of this proposition can be found in the decision of Hon'ble Supreme Court in the matter of ***K L Subbaiah V/s State of Karnataka.***

(vi) It is pertinent to note that, despite giving several opportunities, the prosecution has not examined the investigation officer in this 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 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 **30th day of June, 2026**)

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

-: ANNEXURE :-**List of witnesses examined on behalf of Complainant:-**

PW1 : Chidanand Karaveerappanavar

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PW2 : Sridhar Guggari

PW3 : Yunisth Bengeri

List of documents examined on behalf of Complainant:-

Ex.P1 : Complaint

Ex.P1(a) : Signature of PW1

Ex.P2 : Panchanama

Ex.P2(a) : Signature of PW1

Ex.P2(b) : Signature of PW3

Ex.P3 : Search warrant

Ex.P3(a) : Signature of PW1

List of Material Objects examined on behalf of Complainant:-

M.O.1 : Sample Tetra Packets

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.