

IN THE COURT OF THE XI ADDITIONAL METROPOLITAN MAGISTRATE ::
ANAKAPALLI

Present: Sri A.Ramesh,
XI Additional Metropolitan Magistrate,
Anakapalli.

Monday, the 24th day of June, 2024.

Calendar Case.No.1712/2022

Between:

State represented by the Sub-Inspector of Police,
Anakapalli Town Police station.

..... Complainant.

And:

Sheik Ameer Basha, S/o. Late Shaik Valli, Aged about 60 years, Muslim, Pan
Shop, R/o. D.No. 10-18-12, Neyyila Veedhi, Anakapalli District.

..... Accused

This case coming before me on 19.06.2024 for final hearing in the presence of Assistant Public Prosecutor for complainant/State and of Sri T.Lakshmiprasad, Advocate for accused and having stood over for consideration to this day, this court delivered the following:

J U D G M E N T

1. The state represented by the Sub-Inspector of Police, Anakapalli Town Police station, filed charge sheet against the accused in Cr.No.266/2022 of Anakapalli Town Police station for the offence punishable under Section 34(a) of AP Excise, Rule 17(Amendment) Act - 2020.

2. The case of the prosecution, in brief, is that:

On 21.07.2022 at 11.30 hrs, ASI-1170 along with staff HC-571 while performing visible policing at Opp Fish Market, Beside Khazana Jewellery, Anakapalli on seeing the police, one male Person who found present there, he confusing and tried to escape away from spot along with cover. On that, ASI-

1170 caught hold him with the help of staff and on enquiry, he stated that he has been purchasing liquor bottles from Govt. wine shops at Anakapalli and kept in his house and selling secretly at higher price for his pecuniary gains. On seeing the police, he tried to escape from that spot along with liquor bottles in a plastic cover. On verification of said plastic cover, it was found i.e. Gold Reserve prestige whisky 180 ml- 09 bottles, Total bottles -09 bottles. ASI-1170 then questioned him about the permit or license for possession & selling liquor bottles and on that he informed that he did not have any license and permit and the police seized the above property after collected 01 sample for sending of REL, Visakhapatnam for analysis under cover of occurrence report. Basing on the occure report, SI of police registered a case in Cr.No. 266/2022 U/Sec. 34(a) of AP Excise, Rule 17(Amendment) Act - 2020, he visited the scene of offence, examined the witnesses and recorded the statements. On 10.10.2022 LW5/P.Simhachalam/SI of police received the Analysis report and after completion of investigation he filed the charge sheet.

3. The case is taken on filed U/Sec. 34(a) of AP Excise, Rule 17(Amendment) Act - 2020.

4. On appearance of the accused case copies were furnished to the accused as required under Section 207 of Criminal Procedure Code.

5. The accused was examined under Section 239 of Criminal Procedure Code and charge U/Sec. 34(a) of AP Excise, Rule 17(Amendment) Act - 2020, was framed, read over and explained to him in Telugu language, for which he denied the charge, pleaded not guilty and claimed to be tried.

6. In order to prove the guilt of the accused, the prosecution examined P.Ws 1 and 2 and got marked exhibits P.1 to P.3 documents and M.O.1.

7. After completion of the prosecution evidence, the accused was examined under Section 313 of Criminal Procedure Code, for which, he denied the incriminating evidence made out against him in the evidence of prosecution witnesses and reported no defence evidence on his behalf.

8. Heard arguments on both sides.

9. Now the point for determination is:

Whether the prosecution established the guilt of accused for the offence punishable U/Sec. 34(a) of AP Excise, Rule 17(Amendment) Act - 2020, beyond reasonable doubt?

POINT:

10. The learned Assistant Public Prosecutor submitted that the evidence of P.W.s 1 and 2 are corroborating with each other with regard to the offence committed by the accused. He further argued that there are no inconsistencies in the evidence of P.Ws 1 and 2. As such the Prosecution successfully established the case against the accused. Hence prayed to convict the accused.

11. On the other hand, the learned Counsel for the defence submitted that no independent mediator was examined by the prosecution, which is fatal to the case of the prosecution, as such the Prosecution miserably failed to prove the case against the accused. Hence he prayed to acquit the accused.

12. It is the case of the Prosecution that on 21.07.2022 at 11.30 hrs, ASI-1170 along with staff HC-571 while performing visible policing at Opp Fish Market, Beside Khazana Jewellery, Anakapalli on seeing the police, one male Person who found present there, he confusing and tried to escape away from spot along with cover. On that, ASI-1170 caught hold him with the help of staff and on enquiry, he stated that he has been purchasing liquor bottles from Govt. wine shops at Anakapalli and kept in his house and selling secretly at higher price for his pecuniary gains. On seeing the police, he tried to escape from that spot along with liquor bottles in a plastic cover. On verification of said plastic cover, it was found i.e. Gold Reserve prestige whisky 180 ml- 09 bottles, Total bottles -09 bottles. ASI-1170 then questioned him about the permit or license for possession & selling liquor bottles and on that he informed that he did not have any license and permit and the police seized the above property after collected 01 sample for sending of REL, Visakhapatnam for analysis under cover of occurrence report.

13. To substantiate the case of the Prosecution, D.Laxminarayana the then SI of police, Anakapalli Town P.S is examined as P.W.1. In his evidence he deposed that on 21.07.2022 at about 11.30 hrs, on receipt of occurrence report, along with accused and seized property i.e. Gold Reserve prestige whisky 180 ml- 09 bottles, Total bottles -09 bottles, he registered the case in Cr.No. 266/2022, U/Sec. 34(a) of AP Excise, Rule 17(Amendment) Act - 2020, vide Ex.P.1 FIR, send the samples for chemical analysis and on receipt of analysis report under Ex.P2, he filed charge sheet. In his cross examination, he denied the suggestion that this case is falsely foisted against the accused and filed charge sheet for the statistical purpose.

14. P.W.2 the then ASI of Police, Anakapalli Town P.S in his evidence deposed that on 21.07.2022, as per the instructions of their Inspector of Police, he along with his staff while conducting visible policing at Main Road, Khajana Jewellery, Anakapalli, they caught hold the accused in a suspicious manner and on verification they found 04 bottles of Golden Reserve Prestige Whiskey of 180 ml and drew one bottle out of 04 bottles for analysis report. In his cross-examination, he deposed that he did not mention in their occurrence report about the batch numbers or name of manufacturer of the seized contraband and also did not examine the owner of the said shop.

15. As seen from the evidence of Prosecution, only the official witnesses are examined. In their evidence they deposed that they did not secure mediators from the scene of offence. No independent mediators were examined to prove the case of the Prosecution.

16. As per the procedure laid down u/sec.100(4) Cr.P.C. while police or other Excise officials making search or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or any other locality, if no inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do. In this case, the police even did not try to secure any person requesting to act as a mediator. Moreover, P.W.2 in his cross examination clearly admitted that he did not mention in occurrence report about batch numbers or name of manufacturer of the seized contraband and also did not examined owner of the shop. This is contrary to procedure laid down under section 100(4) of Cr.P.C.

17. As per judgment of Hon'ble High Court of Andhra Pradesh, Hyderabad in 2010(1) ALT CrI.33, their Lordships held that when the police conducting search in a colony or at a place where there is a possibility of securing the presence of independent mediators, the Excise officials of Prohibition Officials are bound to take the local respectable independent inhabitants. They must make sincere efforts to secure local respectable persons that is mandate under section 100(4) of Cr.P.C. The Excise Officials also authorize to issue an order in writing, asking them to act as mediators under sub section 4 of section 100 Cr.P.C. The object of Section 100 Cr.P.C. is to ensure the confidence in the neighbours and in the general public that a genuine search has been made and incriminating material has been really found out. In our given case, though it appears that the offence was occurred at Main Road, Khajana Jewellery, Anakapalli, the police did not secure any witness nor issued any notice by ordering any person to stand as a witness in order to secure any VRO or VRA of the said village. In such a case, it is not possible to believe the version of the prosecution and the evidence of Official witnesses who are interested from outcome of this case that the accused was in the possession of the ID liquor and the same was seized by the police from out of the possession of the accused.

18. In view of the above circumstances, the Prosecution miserably failed to establish the guilt of the accused beyond reasonable doubt.

19. In the result, the accused is found not guilty of the offence U/Sec. 34(a) of AP Excise Act and accordingly, accused is acquitted under section 248(1) of Cr.P.C. The bail bonds of accused shall stands cancelled after expiry of appeal time as contemplated U/Sec. 437-A of Cr.P.C. M.O.1 case property shall be destroyed after expiry of appeal time.

Typed to my dictation by the Stenographer, corrected, signed and pronounced by me in the open court , this the 24th day of June, 2024.

XI Additional Metropolitan Magistrate,
Anakapalli.

Appendix of Evidence
Witnesses examined

For Prosecution

P.W.1: D.Laxminarayana,
P.W.2: S.Lingannadora.

For Defence

- None -

Documents Marked

For Prosecution

Ex.P.1: First Information Report
Ex.P.2 : Chemical analysis report
Ex.P.3 : Occurrence report dated 21.07.2022

For Defence:

- Nil -

Material Objects

M.O.1 : Sample bottle of Golden Reserve Prestige whiskey

XI Additional Metropolitan Magistrate,
Anakapalli.

CALENDAR AND JUDGMENT

IN THE COURT OF THE XI ADDL. METROPOLITAN MAGISTRATE :: AT ANAKAPALLE
DISTRICT: VISAKHAPATNAM

C.C.No. 1712/2022

Date of Offence	::	21.07.2022
Date of complaint/report	::	21.07.2022
Date of release on bail	::	22.07.2022
Date of taken on file	::	21.11.2022
Date of commencement of trial	::	07.03.2023
Date of closure of trial	::	19.06.2024
Date of sentence or order	::	24.06.2024
Reason for delay	::	The delay is due to non production of witnesses by the prosecution.
Name of the Complainant	::	State rep. by Sub-Inspector of Police, Anakapalli Town Police Station

Particulars of the accused:

Accused Sheik Ameer Basha, S/o. Late Shaik Valli, Aged about 60 years, Muslim, Pan Shop, R/o. D.No. 10-18-12, Neyyila Veedhi, Anakapalli District.

Nature of offence	U/Sec. 34(a) of AP Excise, Rule 17(Amendment) Act - 2020.
Finding of the court	Found not guilty

Sentence of Order : In the result, the accused is found not guilty of the offence U/Sec. 34(a) of AP Excise Act and accordingly, accused is acquitted under section 248(1) of Cr.P.C. The bail bonds of accused shall stands cancelled after expiry of appeal time as contemplated U/Sec. 437-A of Cr.P.C. M.O.1 case property shall be destroyed after expiry of appeal time.

XI Additional Metropolitan Magistrate,
Anakapalli.