

IN THE COURT OF THE III ADDITIONAL JUNIOR CIVIL JUDGE -CUM- XIII
ADDITIONAL METROPOLITAN MAGISTRATE :: ANAKAPALLE ::

PRESENT: SRI M. SIVA KIRAN,
III Additional Junior Civil Judge-cum-
XIII Additional Metropolitan Magistrate,
ANAKAPALLE.

Thursday, this the 30th day of November, 2023

C.C. No. 2143/22

Between

State represented by Sub-Inspector of Police,
Anakapalle Rural Police Station.

... Complainant.

And

Lekkala Satya Rao, S/o late Pydithalli, 60 years,
Cultivation, Venkupalem village,
Anakapalli Mandal

... Accused

This case came before me on 23.11.2023 for final hearing in open court in the presence of Ld. APP for the complainant and of Sri K. Siva Kesava and K. Lavanya, Ld. Counsels for accused and having stood over for consideration till this day, this court delivered the following:

J U D G M E N T

1. This case is filed by the Sub-Inspector of Police, Anakapalle Rural Police Station in Cr.No.535/2020 of his police station against the accused, for the offence punishable U/s. 51 (b) of Disaster Management Act, 2005 and Section 3 of Epidemic Diseases Act and 7(a) r/w 8 (e) of A.P. Prohibition Act 1995.

2. The brief facts of the prosecution case, is that, on 12.06.2021 at about 05.00 p.m., the L.W.4/A. Venkateswara Rao, S.I. of Police, Anakapalli Rural P.S., along with his staff members i.e., L.W.1/T. Satyanarayana Naidu, Police Constable and L.W.2/U. Rakumar, Home Guard 475 of Anakapalli Rural P.S., went to outskirts of Kunchangi village in connection with the control of COVID-19 and found some villagers gathered there and drinking alcohol and not maintaining social distance and on seeing the police, they all escaped from there and they chased and caught hold one person and on questioning he

disclosed his name as Lekkala Satyaraao, S/o late Pydithalli, age 60 years, doing cultivation, Venkupalem village, Anakapalli Mandal and further confessed that he purchased ID arrack from some unknown persons of Butchayyapeta and surrounding villages and brought to Kunchangi and Venkupalem villages and selling the same at higher rates for his own profit. Likewise, he purchased ID arrack from some unknown persons of Butchayyapeta and surrounding villages and came to Kunchangi village and while selling the same to the public, he was caught by the police. Then, the police searched and found 03 liters of ID arrack in a plastic can and asked him whether he has any licence for selling and buying the ID arrack, for which, he replied that he has no licence. Then, L.W.4 S.I. of Police explained him about Covic-19 pandemic situation and moving without wearing mask and sanitizer and violated the lock-down rules and arrested him and seized the plastic can and drafted the occurrence report and returned to the police station.

(ii) Basing on occurrence report, he registered the same as a case in Cr.No.535/20 under Sec. 188 of IPC, Section 3 of Epidemic Disease Act and Section 51 (b) of Disaster Management Act, 2005 and 7 (a) and 8 (e) of A.P. Prohibition Act, 1995 and issued FIR and investigated the matter. During course of investigation, he examined L.W.1/T. Satyanarayana Naidu and L.W.2/U. Rajkumar and recorded their statements and served 41-A Cr.P.C. notice and released the accused on bail and sent the samples to Government Chemical Examiner for analysis and received analysis report. After completion of investigation, L.W.5/D. Eswara Rao, S.I. of Police, Anakapalli Rural P.S., filed charge sheet.

3) The above case was taken cognizance U/sec. 7(a) r/w 8(e) of A.P. Prohibition Act, 1995 & Amendment Act 18 of 2020, against accused by my Ld. predecessor in office.

4) On appearance of accused, copies of documents were supplied to him as required U/sec. 207 Cr.P.C. Accused is examined U/sec. 239 Cr.P.C and Charges under Sections 51 (b) of Disaster Management Act, 2005 and Section 3 of Epidemic Disease Act and Section 7(a) r/w 8(e) of A.P. Prohibition Act, 1995 were framed, read over and explained to him in Telugu, having understood the same, the accused denied the contents of the charges framed, pleaded not guilty and claims to be tried. Hence, matter posted for trial.

5) To bring home the guilt of accused, the prosecution examined three witnesses as PW1 to PW3 and got marked Ex. P1 to P3 and M.O.1. The learned APP has given up the evidence of LW2/U. Rajkumar, Home Guard 475 of Anakapalli Rural P.S. and L.W.3/G. Srinivasu, Government Chemical Examiner, Regional Prohibition and Excise Laboratory, Visakhapatnam.

6) After closure of prosecution evidence, the accused person was examined U/s 313 of Cr. P.C and the incriminating material available in the evidence of prosecution witnesses is put forth to him, for which, he stated that the prosecution evidence is false and reported no defence evidence.

7) Heard the learned APP and Ld. Counsel for accused person. Perused the material available on record.

8) **Now the point that arises for determination is:**

Whether the prosecution is able to establish the guilt of accused for the alleged offence punishable under Sections 51 (b) of Disaster Management Act, 2005 and Section 3 of Epidemic Disease Act and Section 7(a) r/w 8(e) of A.P. Prohibition Act, 1995 beyond all reasonable doubt?

9) The contention of the learned APP is that the evidence of P.W.1 to PW3 and documents exhibited i.e., Ex. P.1 to P.3 and M.O.1 sample bottle are cogent, consistent, corroborative and could prove the guilt of accused and

therefore prays the court to convict the accused as per law in the interests of justice.

10) The learned counsel for accused argued that accused is innocent and he did not commit any offence and nothing was seized as alleged by the prosecution and the investigating officer failed to secure any independent mediators and this case is foisted for statistical purpose and the complainant and investigating officer are police officials who are working in one station and it is fatal to the case of prosecution and therefore, prays to acquit the accused in the interests of justice.

11) The case of prosecution in brief, is that, the accused is in possession of 3 liters of ID Arrack in plastic cane unauthorizedly and not maintaining social distance in Covid-19 pandemic situation and moving without wearing mask and violated the lock-down rules thereby punishable under Sections 51 (b) of Disaster Management Act, 2005 and Section 3 of Epidemic Disease Act and Section 7(a) r/w 8(e) of A.P. Prohibition Act, 1995.

Point:

12) In order to substantiate the case of prosecution, the prosecution examined P.W.1 to PW3 and got marked Ex.P.1 to P.3 and M.O.1. Through PW1 Ex.P-1 is the occurrence report, through P.W.2 Ex.P2 is the chemical analysis report and through P.W.3 Ex.P.3 is the FIR and M.O.1 is the sample bottle are marked.

13) P.W.1/T.S. Naidu, the Police Constable, Anakapalle Rural Police Station deposed in is evidence that on 12.06.2020 at about 5 a.m., he along with U. Raj Kumar accompanied their S.I. of Police L.W.4/A. Venkateswara Rao and when they reached to village outskirts to control spread of Covid-19, meantime some of the villagers gathered there and drinking alcohol without following social distance and then they caught hold one person namely Lekkala Satyaraao who is selling ID liquor and when they questioned him, for which the said person stated that he purchased ID liquor from some unknown person at

Butchayyapeta and brought to his village and selling the same at higher price. Then, the S.I. of Police searched and bag and found three three liters of ID arrack in a plastic can and asked the accused about his licence, for which the accused replied in negative. Then, the S.I of Police explained him about the Provisions of A.P. Prohibition Act and Covid-19 guidelines and arrested the accused and seized three liters of ID arrack and collected the sample and prepared Ex.P.1 occurrence report.

14) P.W.2/D. Eswara Rao the then S.I. of Police, Anakapalli Rural P.S. deposed that he took up further investigation in this case and received analysis report Ex.P.2 and after completion of investigation, he filed charge sheet.

15) P.W.3/A. Venkateswara Rao, the then S.I. of Police, Anakapalli P.S. deposed on the same lines as stated by P.W.1/T.S. Naidu, Constable of Anakapalli Rural P.S., P.W.3 further deposed that basing on Ex.P.1 occurrence report, he registered the same as a case in Cr.No.535/2020 for the offence under Sections 51 (b) of Disaster Management Act, 2005 ad Section 3 of Epidemic Diseases Act and Section 7 (a) r/w 8 (e) of APP Act and issued Ex.P.3 FIR and examined his staff members and recorded their statements and served Sec. 41-A Cr.P.C. notice to the accused and sent samples to the chemical analysis.

16) During cross-examination of P.W.1 and 3, they both admitted that the scene of offense is a busy locality and they did not mention the details of the person to whom they tried to secure as mediators in this case and did not try to get the signatures of any revenue officials to show that no person come forward to act as mediator and did not arrest the remaining persons surrounding the accused person and P.Ws.1 and 3 denied the suggestions that the accused did not commit any offence and foisted this case against the accused for their statistical purpose and they prepared all the documents by sitting at the police station itself by conducting table investigation and that the accused did not violate Covid-19 guidelines and no liquor was seized from the

possession of the accused and the same was planted for the purpose of this case.

17) Section 51 of Disaster Management Act, 2005 deals with Punishment for obstruction, etc.,: Whoever, without reasonable cause

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years. notes on clauses Clauses 51 to 58 (Secs. 51 to 58) seeks to lay down what will constitute an offence in terms of obstruction of the functions under the Act, false claim for relief, misappropriation of relief material or funds, issuance of false warning, failure of an officer to perform the duty imposed on him under the Act without due permission or lawful excuse, or his connivance at contravention of the provisions of the Act. The clauses also provide for penalties for these offences.

Section 3 of the Epidemic Diseases Act, 1897. Penalty: Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860).

In order to attract S.51 (b) of the Act, the prosecution has to prove that the accused person had refused to comply the direction given by the central or state government or District Authority under the act. To attract Section 3 of E.D.Act, 1897, the prosecution has to prove that the accused person had disobeyed the order passed under the act and the offence is punishable under section 188 of IPC and therefore, it has to be proved that the accused person had violated the promulgated order issued by the competent authority. However, the prosecution failed to produce any document before this court to prove that as on date of alleged offence, any direction was issued by central or state government or by District Authority or promulgation orders issued by the competent authority. In the absence of exhibiting any such orders by the prosecution, this court has to hold that the prosecution had failed to prove that the accused had refused to comply any direction or disobeyed the orders passed by the competent authority and therefore, the prosecution failed to

prove the alleged offence Under section 51(b) of Disaster of Management Act, 2005 and S.3 of Epidemic Diseases Act, 1897.

18) It is the case of prosecution that accused person was found to have been in possession of 3 liters of I.D.liquor without any license or permit and thereby committed the offence punishable under section 7(a) r/w. 8(e) of A.P.P.Act, 1995. After careful scrutiny of the evidence of P.W.1 to PW3 and material on record, it reveals that there are no independent mediators to prove the seizure of I.D. liquor from the possession of the accused. It is admitted by P.W.1 and PW3 that the scene of offence is a busy locality and public are moving at the scene of offence. However, P.W.1 and P.W.2 did not try to secure any mediators at the time of seizure of the property. P.W.1 & 3 did not try to get the signatures of any revenue officials to show that no person come forward to act as mediator in this case, which clearly shows that no sincere or best efforts were made by P.W.1 & 3 to secure any independent mediators at the time of seizure of property. No explanation was stated by P.W.1 and P.W.3 for not securing any independent mediators. When there are no independent mediators to the seizure of property, though scene of offence is a busy locality, the prosecution theory of seizing the property from the possession of the accused has to be looked with suspicion and failure to seize the contraband in presence of independent mediators is certainly fatal to case of prosecution. The said proposition of law was laid down by our Hon'ble High Court of A.P in **Yeduru Srinivasa Reddy Vs. State of A.P.**, reported in **2002 (1) ALD (CrI) 347**, wherein it was held that, "**when no mediators were examined, though search conducted in a busy locality, the search and seizure as well as conviction cannot be sustained**". In the absence of independent mediator, the seizure of contraband from the possession of the accused becomes doubtful and it is not safe to come to a conclusion that the contraband was in possession of the accused.

19) Further, it is the testimony of P.W.1 and 3 that accused person confessed that he purchased the I.D. Liquor from un-known persons and selling the same at higher rates and they caught him on the date of alleged offence. P.W.1 and 3 are police officers. Confession to police officer is inadmissible in evidence and it is hit by section **25 of Indian Evidence Act, 1872**. As such, the alleged confession cannot be considered. When the alleged confession is kept aside, there is no other material on record to say that the accused is involved in selling I.D.Liquor for higher rates.

20) P.W.1 to P.W.3 are police officials working in the same police station. PW2 is SI of Police and he was not present at the time of alleged seizure of property from the accused person and his evidence is with regard to the further investigation done by him and upon receipt of analysis report from REL, Visakhapatnam, he filed charge sheet. The testimonies of P.W.1 and PW3, who are police officials will not gain any advantage to the case of prosecution to prove the guilt of accused person. Except the testimonies of P.W.1 to P.W.3, there is no other evidence to corroborate the case of prosecution. It is unsafe to rely on the testimonies of P.W.1 to P.W.3, who are no other than Police Officers and who are naturally interested in getting conviction to the accused persons. From the above discussion, I am of the opinion that the prosecution has failed to establish the guilt of accused person for the alleged offence punishable U/s. 7 (a) r/w. 8(e) of A.P. Prohibition Act, 1995.

21) In the light of above discussion, this court is of considered view that the prosecution had failed to prove the guilt of accused person beyond all reasonable doubt for the alleged offence punishable under section 51 (b) of Disaster Management Act, 2005 and S.3 of Epidemic Diseases Act, 1897 and S.7 (a) r/w. 8 (e) of A.P.Prohibition Act, 2005 and therefore,the accused person is entitled for acquittal. Accordingly, the point is answered in favour of accused and against the prosecution.

22) In the result, the accused is found not guilty for the offence punishable under Sections 51 (b) of Disaster Management Act, 2005 and Section 3 of Epidemic Disease Act and Section 7(a) r/w 8(e) of A.P. Prohibition Act, 1995 and accordingly, he is **acquitted** U/s. 248(1) Cr.P.C. The bail bonds of accused shall stand cancelled after expiry of appeal time as contemplated U/s. 437-A Cr.P.C. The M.O.1 i.e., sample bottle shall be destroyed after expiry of appeal time.

Typed to my dictation by the Superintendent (discharging duties as Stenographer), corrected and pronounced by me in the open Court, this the 30th day of November, 2023.

III Addl. Junior Civil Judge,
Anakapalle.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR PROSECUTION

P.W. 1	T.S. Naidu
P.W. 2	D. Eswara Rao
P.W. 3	A. Venkateswara Rao

FOR DEFENCE: NONE

EXHIBITS MARKED

FOR PROSECUTION

Ex. P1)	Occurrence report
Ex. P2)	Chemical Analysis report
Ex. P3)	FIR

FOR DEFENCE: NIL

MATERIAL OBJECTS MARKED

FOR PROSECUTION:

M.O.1	Sample bottle.
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III AJCJ/AKP.

CALENDAR & JUDGMENT

CALENDAR CASE TRIED BY THE COURT OF III ADDITIONAL JUNIOR CIVIL
JUDGE-CUM-XIII ADDITIONAL METROPOLITAN MAGISTRATE :: ANAKAPALLE ::
VISAKHAPANTAM

Date of Offence	:	12.06.2020
Date of Report or Complaint	:	17.11.2022
Date of apprehension of Accused	:	10.07.2023
Date of accused released on bail	:	Sec. 41-A Cr.P.C. notice
Date of Commencement of Trial	:	11.10.2023
Date of Closure of trial	:	23.11.2023
Date of sentence or order of Court	:	30.11.2023
Explanation for Delay & Remarks	:	Delay due to non-production of witnesses by the prosecution, and no witness is detained beyond 3 days
Calendar Case No.	:	C.C. No. 2143/22
Name & Address of complainant	:	State represented by Sub-Inspector of Police, Anakapalle Rural Police Station.
Name and address of accused	:	Lekkala Satya Rao, S/o late Pydithalli, 60 years, Cultivation, Venkupalem village, Anakapalli Mandal
Section of law	:	Under Sections 51 (b) of Disaster Management Act, 2005 and Section 3 of Epidemic Disease Act and Section 7(a) r/w 8(e) of A.P. Prohibition Act, 1995
Finding of Court	:	Accused found not guilty.
Sentence or Order of the Court	:	In the result, the accused is found not guilty for the offence punishable under Sections 51 (b) of Disaster Management Act, 2005 and Section 3 of Epidemic Disease Act and Section 7(a) r/w 8(e) of A.P. Prohibition Act, 1995 and accordingly, he is acquitted U/s. 248(1) Cr.P.C. The bail bonds of accused shall stands cancelled after expiry of appeal time as contemplated U/s. 437-A Cr.P.C. The M.O.1 i.e., sample bottle shall be destroyed after expiry of appeal time.

III ADDL. JUNIOR CIVIL JUDGE-CUM-XIII
ADDITIONAL-CUM-
XIII ADDL. METROPOLITAN MAGISTRATE,
ANAKAPALLE.