



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
MUDIGERE

PRESENT: Sri. Sachin. D. B.A.,LL.B.,
Prl. Civil Judge & JMFC.,
Mudigere.

DATED THIS THE 04th DAY OF SEPTEMBER 2023

CRIMINAL CASE NO:979/2022

BETWEEN :

The State, represented by
Balur Police Station,
Mudigere Taluk.

...Complainant

(By Learned APP)

AND :

Murthy S/o Christharaj Sari,
Aged about: 44 years,
R/o: Koove Village,
Balur Hobli, Mudigere Taluk.

... Accused

(By Sri. Siddaiah.D, Adv.,)

1	Date of offence	16.05.2022
2	Date of reporting of offence	16.05.2022
3	Date of submitting charge sheet	01.10.2022
4	Name of complainant	Sri.Pawan Kumara.C.C
5	Date of commencement of evidence	21.03.2023



6	Date of closure of evidence	29.08.2023
7	Alleged Offences	Under Sections 32 and 34 of Karnataka Excise Act.
8	Opinion of the Judge	Accused found not guilty

(Sri. Sachin. D)
Prl. Civil Judge & JMFC.,
Mudigere.

JUDGMENT

The PSI of Banakal Police Station, has leveled charge sheet against the accused for the offences punishable under sections 32 and 34 of Karnataka Excise Act.

2. The brief facts of the prosecution case is that on 16.05.2022, at 6.50 p.m., the accused was found possession and selling the illicit liquor of 90 ML., 49 Captain Martins Special Whisky tetra packets, to public at large, in the hotel, which attached to the Parameshwar's Grocery Shop, at Koove, Gabgal village, Mudigere Taluk, without holding any license or permit. In this connection, a case came to be registered against the accused in Cr.No.27/2022 of Balur Police Station for the offences punishable under sections 32 and 34 of Karnataka Excise Act.



3. After recieval of credible information, the PSI of Balur has conducted raid on the hotel of the accused along with his staffs and panchas and seized the illicit liquor found in the possession of the accused by doing mahazar and also taken photographs. Thereafter, the investigating officer reported the PF, recorded the statements of witnesses, sent the samples for chemical examination, collected the FSL report and relevant documents to the prosecution case. After completion of the investigation formalities, had laid the charge sheet against the accused for the offences punishable under sections 32 and 34 of K.E Act.

4. After filing the charge sheet, this court took cognizance for the offences mentioned supra on 10.10.2022 and case was registered against the accused. On receipt of the summons, accused appeared through his counsel and enlarged on bail. Thereafter, the copy of the charge sheet was supplied to him. After hearing the prosecution and accused counsel, the court found sufficient materials as against the accused. Hence, charge were framed for the offences punishable under sections 32 and 34 of Karnataka Excise Act and explained the same in the vernacular language known to him. He



pleaded not guilty and claimed to be tried. Hence case went for trial.

5. The prosecution in order to prove its case, got examined 7 witnesses as PW1 to 7 and got marked the documents as well as material objects at Ex.P1 to 14 and MO1 and 2 respectively. Further, the prosecution has given up the evidence of CW5 to 12 and closed its evidence. After closure of the prosecution evidence, the accused has been examined under section 313 of Cr.P.C by explaining the incriminating circumstances appeared against him in the evidence. He denied the incriminating circumstances found against him and submitted no defence evidence. In compliance under section 437A of Cr.P.C., the accused has also furnished the surety.

6. Now, the following points are arise for determination:

- 1.** *Whether the prosecution proves beyond all reasonable doubts that on 16.05.2022 at 6.50 p.m. the accused was found possession of illicit liquor of 90 ML., 49 Captain Martins Special Whisky tetra packets, in the hotel, which attached to the Parameshwar's*



Grocery Shop, at Koove, Gabgal village, without holding any license or permit and thereby committed an offence punishable under section 32 of Karnataka Excise Act?

2. *Whether the prosecution proves beyond all reasonable doubts that on the above said date, time and place, accused found selling the illicit liquor of 90 ML., 49 Captain Martins Special Whisky tetra packets, to the public at large, by keeping in his possession, without holding any license or permit and thereby committed an offence punishable under section 34 of Karnataka Excise Act?*

3. *What order?*

7. Having heard learned APP and counsel for defence, the court scrutinized the oral and documentary evidence made available on record. Now, findings of the court on above points are as follows:

Point No.1: *In the Negative*



*Point No.2: **In the Negative***

*Point No.3: As per the final order
for the following.*

REASONS

8. Point No.1 and 2 : As these two points are inter-connected each other and requires common discussion, they have taken together for consideration.

Prosecution in order to establish its case must prove that on 16.05.2022, at 6.50 p.m., the accused found possessing and selling the illicit liquor of 90 ML., 49 Captain Martins Special Whisky tetra packets, in the hotel, which attached to the Parameshwar's Grocery Shop, at Koove, Gabgal village, of Mudigere Taluk, without holding any license or permit and thereby committed the offences which he has been charge sheeted. Prosecution in order to establish its case, in all examined 7 witnesses as PW1 to 7 and got marked documents as well as material objects at Ex.P1 to 14 and MO1 and 2 respectively. Whether the prosecution has placed cogent evidence to prove the guilt against the accused has to be scrutinized by looking into the evidence adduced by the prosecution.

9. The prosecution in order to prove its case mainly relied upon Ex.P3-spot and seizure mahazar which drawn



at spot and under which MO1 and 2 have been seized from the possession of the accused. PW2 and 3 are the independent pancha witnesses to Ex.P3-spot and seizure mahazar. They have deposed that they affixed their signatures at Ex.P3 as per Ex.P3(b) and (c) upon the request of police and pleaded their ignorance about the contents of the same. Further they identified their signature at MO1 and 2 as per MO1 and 2(b) and (c) and photo at Ex.P4 and deposed that they don't know, why the photo has been taken by the police and also deposed that the police have not seized any illicit liquor in their presence and they have not made any statement before the police authorities. In other words, PW2 and 3 have been turned hostile and not supported to the prosecution case. The learned APP cross-examined them and suggested about the contents of the spot and seizure mahazar and Ex.P11 and 12, which are the seizure mahazar and statements of the witnesses. Whereas, the witnesses have denied all suggestions of the learned APP. Further it has been suggested that they have deposed the false evidence to help the accused. But, the said suggestion also denied by the witnesses. Therefore, it is clear to the court that even in the cross-examination also, the learned APP has failed to elicit any amount of the incriminating evidence from the mouth of independent pancha witnesses. As



such, in order to say that the prosecution has proved Ex.P3-spot and seizure mahazar and recovery thereunder as alleged, the independent pancha witnesses not supported in any angle.

10. PW1 is the complainant, PW7 is the police constable, who participated in the raid along with PW1. They have deposed that on 16.05.2022, at 6.00 p.m., when they have doing patrolling duty towards Gabgal village, received credible information that accused was selling the illicit liquor at Gagbal village. Thereafter, they appointed the CW2 and 3 as pancha witnesses and went to near the shop of the accused. After observing the sense of offence, it is confirmed that the accused was selling the liquor packets and as such, raid has been conducted and caught hold the accused. Accused revealed his name and address and upon examination, found 90 ML., 49 Captain Martins Special Whisky tetra packets in a plastic bag. Further, accused revealed that he doesn't have any license or permit to sale the same. Hence, complaint has been prepared by CW1 at spot and sent the same to the station. Thereafter, got information about the registration of FIR against the accused. They have further deposed that then conducted mahazar and seized the illicit liquor found in the possession of the accused and notice has been issued



to the accused at spot to co-operate with the investigation. PW1 further deposed that after came to station, he reported the PF to the court regarding seizure and recorded the statements of CW2 to 7 and sent the samples for chemical examination. He has further deposed that on 04.06.2022, sent the requisition to the CW8 and CW9. Thereafter, received the documents from them and handed over the file for further investigation to CW15. Witnesses identified the documents at Ex.P1 to 10 and their signatures. Further, identified the MO1 and 2 and the accused. In the cross-examination of the defence counsel, nothing worth has been elicited.

11. PW5 is Head Constable, who registered the FIR. He has deposed that on 16.05.2022, at 8.30 p.m., when he was doing SHO duty, he received complaint as per Ex.P2 through CW7 which sent by the CW1. Thereafter, he registered the FIR as per Ex.P13 and sent the same to the court. Witness identified his signature at Ex.P2 and 13 as per Ex.P2(b) and 13(a). In the cross-examination of the defence counsel, nothing worth has been elicited. PW4 is the constable who transmitted the samples to the chemical examination center. He has deposed that on 03.06.2022, as per the order of the investigating officer, he transmitted the samples to the office of CW10 and reported the same



to the investigating officer. In the cross-examination of the defence counsel, nothing worth has been elicited.

12. PW6 is also the partial investigating officer. She has deposed that after receiving the file for further investigation, she received the FSL report. Thereafter, she found that the investigation was completed and filed the charge sheet against the accused. Witness identified the documents at Ex.P14 and her signatures thereon. In the cross-examination of the witnesses, nothing worth has been elicited by the defence counsel.

13. Firstly, the allegation against the accused is that he was selling the illicit liquor in the hotel, situated at Koove, Gabgal Village without holding any license or permit and from his possession MO1 and 2 have been seized. Therefore, the prosecution has to establish that the accused has been possessed the MO1 and 2 and same have been seized from the possession accused under Ex.P3-spot and seizure mahazar. Whereas, herein this case PW2 and 3 who are the independent pancha witnesses to the said Ex.P3 have been turned hostile and not supported to the prosecution case even in the cross-examination of learned APP also. Hence, in the absence of evidence of the independent pancha witnesses, the



evidence of PW1 and 7 who are the complainant and police constable can't be believable to say that the MO1 and 2 have been seized from the possession of accused under Ex.P3-spot and seizure mahazar.

14. The investigating officer has received the documents from CW8, which marked at Ex.P7. Said document goes to show that the assessment No.228 at Koove village is standing in the name of one Parashuram S/o M.Muniswamy. Further, it is stated that he has not obtained any license to run a hotel. Thus it is clear to the court that in order to show that the accused is running hotel, the said document is not come in the way to help the prosecution. Muchless, in order to prove that accused was selling the illicit liquor, no independent witness of Koove, Gabgal village, cited and examined by the prosecution. Therefore, it is not probable to believe that the accused was selling the illicit liquor to the public at large as alleged by the prosecution.

15. As per Ex.P14, the Assistant Chemical Examiner, the Government of Karnataka, Chikkamagaluru, has given report that illicit liquors which were sent for chemical examination were contained the alcohol. As already observed above, the prosecution has failed to prove that



the accused was possessed the illicit liquor and MO1 and 2 were seized from the possession of the accused. When such being the case, the Ex.P14 is not come in the way to help the prosecution case. As per the prosecution case, the MO1 and 2 are the liquor tetra packets. Thus, the accused has to brought the same from the licensed shop. But in order to find out, from whom to which licensed shop, the alleged liquor packets have been supplied, no evidence brought on record by the prosecution and no investigation was conducted to that effect. Hence, said aspect leads that the prosecution case may be made up against the accused.

16. On perusal of the evidence lead by the prosecution, it can be seen that PW1, 4 to 7 are the police officials. In order to corroborates the evidence of police officials, though the prosecution examined PW2 and 3 who are the independent witnesses, but they have turned hostile and not supported to the prosecution case. Hence, the evidence of police officials i.e., PW1, 4 to 7 stands no grounds and no weightage can be attached. Their evidence does not hold any grounds for proving the prosecution case. Hence, the prosecution has utterly failed to prove its case and it has not brought home the guilt of the accused for the alleged offences. Therefore, this court inclined to hold the point No.1 and 2 are **in the Negative**.



18. Point No.3: In view of the above discussion on point No.1 and 2, this court proceed to pass following:

ORDER

Accused is hereby acquitted of the offences punishable under sections 32 and 34 of Karnataka Excise Act.

Bail bond executed by the accused in compliance under section 437A of Cr.P.C., shall be in force for the period of 6 months from the date of this judgment.

The bail bond of the accused and his surety bond shall stands cancelled forth with.

MO1 and 2 being worthless, office is hereby directed to destroy the same, after appeal period.

(Directly dictated to the Stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the 04th Day of SEPTEMBER 2023 at Mudigere.)

(Sri. Sachin. D)
Prl. Civil Judge & JMFC.,
Mudigere.

**ANNEXURE****LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION:-**

- PW.1 : Pawan Kumar.C.C S/o Channaiah
PW.2 : Narayan S/o Erappa
PW.3 : Ananda S/o K.Sundara
PW.4 : Praveen Kumar.P S/o Parama Shivappa.P.N
PW.5 : Rajendra S/o Anantha Rajaiah
PW.6 : Gayathri W/o E.S.Nagaraj
PW.7 : Abhishek.B.S S/o Subbegowda.B.K

LIST OF DOCUMENTS MARKED ON BEHALF OF THE PROSECUTION:-

- Ex.P1 : Notice
Ex.P1(a) : Signature of PW1
Ex.P2 : Compliant
Ex.P2(a) : Signature of PW1
Ex.P2(b) : Signature of PW5
Ex.P3 : Spot & Seizure Mahazar
Ex.P3(a) : Signature of PW1
Ex.P3(b) : Signature of PW2
Ex.P3(c) : Signature of PW3
Ex.P3(d) : Signature of PW7
Ex.P4, 5 : Photos
Ex.P6 : Requisition dated 04.06.2022
Ex.P7 : Letter dated 09.06.2022
Ex.P8 : Requisition dated 04.06.2022



Ex.P9 : Information dated 14.06.2022

Ex.P10 : Requisition dated 03.06.2022

Ex.P11 : Statement of PW2

Ex.P12 : Statement of PW3

Ex.P13 : FIR

Ex.P13(a) : Signature of PW5

Ex.P14 : FSL Report

Ex.P14(a) : Signature of PW6

LIST OF MATERIAL OBJECTS MARKED ON BEHALF OF THE PROSECUTION:-

MO1 and 2 : Plastic Bag & Tetra Packets

MO1(a) : Signature of PW1

MO1(b) : Signature of PW2

MO1(c) : Signature of PW3

LIST OF WITNESSES EXAMINED ON BEHALF OF THE ACCUSED :-

-----Nil-----

LIST OF DOCUMENTS MARKED ON BEHALF OF THE ACCUSED :-

-----Nil-----

(Sri.Sachin.D)
Prl. Civil Judge & JMFC.,
Mudigere.

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