

KAKB820013932024



Presented on : 17-12-2024
Registered on : 17-12-2024
Decided on : 16-04-2026
Duration : 01 years 03 months 30 days

THE COURT OF CIVIL JUDGE & J.M.F.C., SHAHABAD

Present : Sri. Chatni Prashant Sharanbasaveshwar
B.A.,, LL.B.(HONS),,LLM
Civil Judge & J.M.F.C., Shahabad.

C.C.No.942/2024

Dated this 16th day of April - 2026

BETWEEN :

The State of Karnataka,
By Excise Police Station,

..... Complainant
(By Learned APP)

AND :

Jemibai W/o Subash Rathod,
Age: 54 years, Occ: Coolie,
R/o: Devanateganoor village,
Tq:Chittapur, Dist: Kalaburagi.

...Accused

(Sri.C.S.Pujari,Adv.,)

Date of commission of offence	28-03-2023
Date of report offence	28-03-2023
Name of the complainant	Excise Inspector
Date of commencement evidence	22-12-2025
Date of closing evidence	27-02-2026
Offences complained	Sec.32, 38(A) of K.E.Act and Sec.273 of IPC
Opinion of Judge	Accused not found guilty



: J U D G M E N T :

This is a charge sheet filed by Excise Inspector of Chittapur Sub-Divn against, against the accused for the offence punishable U/Secs. 32, 38(A), of Karnataka Excise Act and Sec.273 of IPC.

2. It is the case of prosecution that on 23-08-2023 about 7:00 p.m at Devanateganoor village in the provisional shop of accused, The Accused was found with illegal possession of 96 Tetra packets of Original choice whiskey each containing 90 m.l stored in order to sell the same without possessing valid license or permit to the general public with an intention to have wrongful gain which is not fit for human consumption and thereby committed an offence Under Section 32, 38(A) of Karnataka Excise Act and U/Sec.273 of IPC.

3. On the information given by CW-1 crime was registered in Crime No.18/2023-24 and after completion of investigation the present charge sheet was filed.



4. After filing of the charge sheet cognizance was taken against the accused for the offence committed. The charge sheet copies supplied to the accused as required U/Sec. 207 of the Cr.P.C.

5. Thereafter, charges are framed against the accused for the offence committed U.Sec.32, 38(A) of the Karnataka Excise Act and Sec.273 of IPC. The same was read over and explained to the accused in the language known to him. The accused did not plead guilty and claims to be tried.

6. In order to establish it's case prosecution got examined in all 5 witnesses as PW-1 to PW-5 and got marked 9 documents as Ex.P.1 to Ex.P.9 and M.O.1.

7. Thereafter the statement of accused was recorded U/Sec.313 of Cr.P.C. explaining the incriminating evidence forthcoming against him. The accused has not lead any defense evidence.

8. Heard the arguments from both sides, and perused the materials available on the record.



9. The following points arised for my consideration are:

1) W1) *Whether the prosecution proves beyond reasonable doubt that, on 23-08-2023 about 7:00 p.m at Devanateganoor village in the provisional shop of accused, the Accused was found with illegal possession of 96 Tetra packets of Original choice whiskey each containing 90 m.l stored in order to sell the same without possessing valid licence or permit to the general public with an intention to have wrongful gain which is not fit for human consumption and thereby committed an offence punishable under Section 38(A) of Karnataka Excise Act?*

2) *Whether the prosecution proves beyond reasonable doubt that, the above place, date and time, the accused was found with illegal possession of above mentioned liquor with an intention to sell it without holding any valid license or permit to possess the same and thereby committed an offence punishable under Section 32 of Karnataka Excise Act?*

3) *Whether the prosecution proves beyond reasonable doubt that, the above place, date and time, accused was found selling*



noxious drinks, knowingly that it is injuries to health and thereby committed an offence punishable under section 273 of Indian Penal Code?

4) What order?

10. My findings to the above points are

1. *In Negative*
2. *In Negative*
3. *In Negative*
4. *As per the final order*

REASONS

11. **POINT NO.1 TO 3** :-These points are taken together for the common discussion in order to avoid the repetition of the facts and appreciation of evidence.

12. The gist of the prosecution that on 23-08-2023 about 7:00 p.m at Devanateganoor village in the provisional shop of accused, The Accused was found with illegal possession of 96 Tetra packets of Original choice whiskey each containing 90 m.l stored in order to sell the same without possessing valid license or permit to the general public with an intention to have wrongful gain which is not fit for human consumption



and thereby committed an offence Under Section 32, 38(A) of Karnataka Excise Act and U/Sec.273 of IPC.

13. The prosecution has got marked Ex.P.1 is the Panchanama, the signatures on the said documents are marked as Ex.P1.(a) to (c), Ex.P.2 is the Search warrant and the signature is marked as Ex.P.2(a), Ex.P.3 is the Model seal and the signature is marked as Ex.P.3(a), Ex.P.4 is the complaint and signature is marked as Ex.P.4(a), Ex.P.5 is the F.I.R and signature is marked as Ex.P.5(a), Ex.P.6 is the Letter sent to the PDO of Martur to ascertain the ownership of the provisional shop situated at Devanateganoor village, and signature is marked as Ex.P.6(a), Ex.P.7 is the Letter sent to the FSL of Raichur and the signature are marked as Ex.P.7(a). Ex.P.8 is the report furnished by the Regional Assistant Chemical Examiner of Raichur in respect of samples sent for the chemical analysis, the signature of the Regional Assistant Chemical Examiner is marked as Ex.P.8(a), Ex.P.9 is the Tax receipt of the year 2023-2024 and got marked as M.O.1 30 Tetra packets of the original choice whiskey.

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14. PW-1 Jagannath S/o Chandrashekar Biradar the panchas witness in whose presence panchanama was drawn and liquor found was seized, the panchanama is marked as Ex.P.1 and signature of the witness as Ex.P.1(a) deposes in his examination-in-chief that no panchanama was conducted in his presence. The Learned APP treated him as hostile witness and with permission of the Court, she fully cross-examined him but nothing worth was elicited that is beneficial for the case of prosecution.

15. P.W.2 Gopale S/o Meghappa Pandit complainant who has lodged the complaint against the accused which is marked as Ex.P.4 and the signature of the witness as Ex.P.4(a), deposes in his examination-in-chief that on 23-08-2023 at about 7:00 p.m at provisional store situated at Devanateganoor the accused was found with illegal possession of 96 Original Choice whiskey Tetra packets measuring 90 m.l. The said liquors were kept in the possession of the accused without any valid permit, thereafter he

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secured the panchas C.W.3 and 4 and panchanama was conducted in the presence of C.W.3 and 4 wherein 30 Tetra packets of original choice whiskey were collected for the chemical analysis, the panchanama drawn in the presence of C.W.3 and 4 are marked as Ex.P.1 and signature of the witness as Ex.P.1(b). Further the collected samples were sent for the Forensic Lab of the Raichur. The search warrant was prepared U/Sec.54 of the K.E Act prior to the inspection to be made in the provisional store of the accused. Thereafter the further investigation of the matter was handed over to C.W.6. On going through the cross-examination of the said witness it is admitted that nothing is mentioned about the provisional store in Ex.P.1 which is contradicting with the contents of Ex.P.1, further the witness has not specifically identified the M.O.'s seized in his presence. The material contradictions in the oral evidence of the pivotal witness creates suspicion on the story of prosecution.

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16. P.W.2 Shivasharanappa S/o Malkanna the Excise constable who was part of the raid deposes in his examination-in-chief that based on the credible information of selling the liquor without the valid permit he went to the spot along with the C.W.1 and other staff accompanied by the panchas, C.W.3 and 4 and the search warrant was prepared U/Sec.54 of the K.E Act and the provisional store pertaining to the accused was inspecting wherein the 90 m.l original choice whiskey 96 tetra packets was found in the possession of the accused and out of it the 30 tetra packets were taken for the chemical analysis sealed in the white stain cloth bag tied with the thread and affixed with the departmental seal, the said bag also consist of the chits signed by the panchas. Further, the seized liquor along with the panchanama was submitted to the custody of C.W.1 for the further action to be taken against the accused. Per contra the counsel for the defence fully cross-examined the witness denying his participation in the raid, the said witness has not specifically identified the M.O's seized

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in his presence which effects the credibility of the prosecution case.

17. P.W.4 Sachin S/o Sandappa Guddagi the pancha witness in whose presence the panchanama was drawn as per Ex.P.2 and seizure was made. The signature of the witness on the Ex.P.2 is marked as Ex.P.2(c) deposes in his examination-in-chief that no panchanama was drawn in his presence and pleads ignorance about the contents of Ex.P.2. The Learned APP treated him as a hostile witness and with the permission of the Court she fully cross-examined him but nothing worth was elicited that is beneficial for the case of the prosecution.

18. P.W.5 Rachamma W/o Rajkumar the Investigating Officer who has conducted the further investigation after collecting the file from C.W.1 deposes in her examination-in-chief that she forwarded the letter to PDO of Martur to ascertain the ownership of the provisional store, later she collected the report from the PDO in response to the letter sent for ascertaining ownership of the shop, thereafter on

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30-10-2023 the C.W.4 was sent to the Forensic Laboratory of the Raichur and the report from the Forensic Laboratory of Raichur was obtained by her. After completing the investigation the charge sheet was filed against the accused, the counsel for the accused fully cross-examined the witness denying the further investigation conducted by her.

19. It is important to note that the document furnished by the said witness, the Ex.P.6 which is letter sent to the PDO of Martur to ascertain the ownership of the provisional store situated at Devanateganoor village, in response to the said letter sent to the PDO of the Martur they have furnished the tax receipt which do not reflects that the provisional shop belongs to the accused where alcohol was seized. The same is marked as Ex.P.10. This aspect is fatal to the story of the prosecution for the offence charged U/Sec.38(A) of K.E Act, it is important to show that the possession in which the alcohol are prepared or sold belongs to the accused, in failure to prove the same will effect the case of prosecution.



20. The prosecution has given up the evidence of C.W.5. The panchas of this case have turned hostile and not supported the case of the prosecution therefore the recovery of the seized article are not proved beyond reasonable doubt. Secondly, the remaining witness of this case are official witness and they are bound to depose as per their case but there are several material contradictions and discrepancies in the evidence of the witness which are contradictory and inconsistent as deposited in that of examination in chief.

21. Based on the oral and documentary evidence on the record it shows that, prosecution has not proved the seizure from the possession of the accused, it is important to the show by the prosecution that seized articles are taken from the possession of the accused, the seizure pancha's in said case have turned hostile and not supported the case of prosecution.

22. Further the charge framed for the offence punishable U/Sec.273 of IPC which speaks about sale of noxious food or drink which read as follows:



Whoever sells or offers or exposes for sale as food, or drink any article which has been rendered or become noxious or is in a state unfit for food or drink knowing for having reasons to believe that the same is noxious as food or drink shall be punishable with imprisonment either description for a term which may extend to six months or Rs.2000/- or both.

23. On going through the prosecution case the section envisaged under U.Sec. 273 of IPC it is the duty of the prosecution to show that the food or drink sold by the accused is noxious and the accused should have knowledge of the same firstly there are no evidence on the record that the material object is an alcohol as such independent recovery panchas have turned hostile and not supported the case of the prosecution. Therefore, the FSL report furnished in this case do not sustain its consideration for the same for analyzing it. It is the duty of the prosecution to show beyond all the scope that the food or a drink which was seized is not fit for human consumption as in the case there are no points which depicts that the seized M.O.'s is unfit for the

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human consumption. Therefore the Court is of the opinion that the accused is not involved in selling the noxious substance which is harmful for the human health. The prosecution has not placed material on the record which shows that the M.O.1 seized were found in the shop belonging to the accused. In the view of the discussion made and conclusion drawn to the point No.1 to 3 the same are answered in Negative.

24. **POINT NO.4:-** In the view of foregoing observation made the Court proceed to pass the following;

: ORDER :

By Acting U/Sec.248(1) of Cr.P.C the Accused is acquitted for the offence punishable U/Secs.32, 38(A) of Karnataka Excise Act and Sec.273 of IPC.

The Bail Bond and Surety Bond of the Accused stands cancelled and she is set at liberty forthwith.

M.O-1 30 Tetra packets of Original Choice Whiskey is ordered to be destroyed as worthless after the appeal period.



The Bail Bond of the Accused and Surety executed under section 437-A of Cr.P.C stands cancelled after 6 months of this judgment.

(Dictated to the Stenographer directly on the computer, then script corrected, signed and pronounced by me in the open court on this 16th day of April -2026)

(Chatni Prashant Sharanbasaveshwar)
Civil Judge & JMFC.,
Shahabad

:ANNEXURE:

List of witnesses examined on behalf of Prosecution:

- P.W-1. Jagannath S/o Chandashekar Biradar
- P.W-2. Gopale S/o Meghappa Pandit
- P.W-3. Shivasharanappa S/o Malkanna
- P.W-4. Sachin S/o Sandappa Guddagi
- P.W-5. Rachamma W/o Rajkumar

List of documents marked on behalf of prosecution:-

- Ex.P.1 Panchanama
- Ex.P.1(a) to (c) Signatures
- Ex.P.2 Search warrant
- Ex.P.2(a) Signature
- Ex.P.3 Model Seal
- Ex.P.3(a) Signature
- Ex.P.4 Complaint
- Ex.P.4(a). Signature
- Ex.P-5 F.I.R
- Ex.P-5(a) Signature
- Ex.P-6 Letter sent to the PDO of Martur
- Ex.P-6(a) Signature
- Ex.P-7 Letter written to Forensic Laboratory

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Ex.P-7(a)	Signature
Ex.P-8	FSL report
Ex.P.8(a)	Signature
Ex.P.9	Tax receipt of the year 2023-2024
Ex.P.9(a)	Signature

List of M.O.s marked for prosecution:-

M.O-1 : 30 Tetra packets of Original Choice whiskey

List of witnesses examined for accused:-

- NIL -

List of documents marked for accused:

-NIL-

Civil Judge & JMFC.
Shahabad