

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C.,
PONNAMPET**

-:Present:-

Sri. Shrinath A., B.A.L, L.L.B.,
Civil Judge and J.M.F.C.,
Ponnampet

Criminal Case No.993/2020

Dated this the 23rd day of June 2026

Complainant: - State by Kutta Police,
(By: The Asst. Public Prosecutor)

-V/s -

Accused:- Sri.Periyaswamy S,
S/o Selvam,
Aged: 24 years,
R/o: Faith Estate Line House,
Kutta village, Kodagu.

(By Sri.M.C.Prathap, Advocate)

- | | |
|------------------------------------|--------------------------------------|
| 1. Date of commission of offence : | 04.07.2020 |
| 2. Date of report of offence: | 04.07.2020 |
| 3. Date of recording evidence: | 08.01.2024 |
| 4. Date of closing evidence: | 23.01.2025 |
| 5. Offence complained of : | Sec 32 & 34 of Karnataka Excise Act. |
| 6. Opinion of the Judge : | Accused is acquitted, |



JUDGMENT

The Sub-Inspector of Police, Kutta police station have filed has filed charge sheet against the accused person for the offenses punishable under sec.32 and 34 of Karnataka Excise Act.

2. The brief case of the prosecution is that, on 04.07.2020 at 5.00p.m within the jurisdiction of Kutta Police station at K.Badaga village near Kembukolli junction, armadu village, the accused person without obtaining license from the concerned authority, in his passenger auto bearing no.KA-12-B-8154 was transporting 192 x 90ml Original Choice Delux VSOP Brandy tetra packets and 180ml x 48 Original Choice Delux VSOP Brandy tetra packets with the intention to sell to public, hence the case has been filed against the accused.

3. This Court perusing the materials took cognizance over said offences and thereafter issued



summons to the accused. The accused appeared through the learned advocate and has been enlarged on bail. The copies of the charge sheet in compliance of Sec.207 of Cr.P.C. was furnished. After hearing before the charge and finding of sufficient materials, charges were framed for the offences punishable under Section 32 and 34 of Karnataka Excise Act against the accused. The charges were read over and explained to the accused and he has pleaded not guilty and hence summons was issued to the prosecution witnesses.

4. The prosecution in support of their case has examined Pw1 to Pw5 and got marked documents vide Ex.P1 to Ex.P10 and M.O's 1 and 2. As there was incriminating evidence appearing in prosecution witnesses against the accused, the incriminating evidence was read over to the accused under Sec.313 of Cr.P.C. and the



accused has denied them as false. Thereafter the accused did not choose to lead any evidence.

5. Heard the learned APP and advocate for accused person. Upon hearing the arguments and on perusal of the material on record, the following points that would arise for this Court's consideration are as under;

- 1) Whether the prosecution proves beyond reasonable doubt that, on 04.07.2020 at 5.00p.m within the jurisdiction of Kutta Police station at K.Badaga village near Kembukolli junction, the accused person without obtaining license from the concerned authority, in his passenger auto bearing no.KA-12-B-8154 was possessed and transporting 192 x 90ml Original Choice Delux VSOP Brandy tetra packets and 180ml x 48 Original Choice Deluxe VSOP Brandy tetra packets and thereby the committed an offence under Section 32 of Karnataka Excise Act?
2. Whether the prosecution proves beyond reasonable doubt that, on the above said date, time and place, the accused has illegally possessed above said excisable articles with him in his



passenger auto with the intention to sell to public and thereby committed an offence punishable under section 34 of Karnataka Excise Act?

3. What order?

6. On hearing the arguments and on perusal of

the materials placed on record, my answers to: -

Points No.1& 2 :-	In the Negative
Point No.3:-	As per final order for the following:-

R E A S O N S

7. **Points No.1 & 2:** The Cw1 being the complaint witness and Investigation Officer got examined as Pw1, he has deposed with regard to the information he got that the accused is transporting the excisable articles in his passenger auto bearing no.KA-12-B-854 without obtaining license from the concern authority and of having conducting raid on said auto, having found 192 x 90ml Original Choice Deluxe Brandy, and 48 x 180ml Original Choice Deluxe Brandy tetra packets in a carton box. Later auto, excise articles and accused were brought to the police station and



has obtained the statements of Cw5, 6, 2, 3 and 4, and of writing letter to Excise Department, Virajpet for handing over the custody of the excise articles and of sending 30 tetra packets to FSL through one Manoranjan, and of obtaining the statement of said Manoranjan, and of obtainind the FSL report, and of filing the charge sheet. He has identified Ex.P1 self report, Ex.P2 mahazar and certificate under Sec.65B of Evidence Act, and identified FSL report, request letter to Excise Department, and has identified the photos at Ex.P6 to Ex.P8 and FIR and he has identified the M.O's.

8. The advocate for accused cross examined and elicited that he is the complainant and investigation officer of this case and admits going to the spot with the witnesses, and of admitted that of having bar at Kembukolli, on the day of incident he has inspected only the auto, and admitted that due to covid all the wine shops and bar were



closed at that time, common people were not getting alcohol at that time, and denies as false of no permission was given to sell the liquor at that time, and admits of out of three box two boxes were kept in the police station thinking that they were waste and admits they have seized total 6 liters of liquor, and not enquired from which shop the said liquor was brought, and admits of sending the sample to FSL in a box, and admits by inspecting the batch and serial numbers of said liquor they might have sent to FSL and denies as false of not having the serial number and batch number in the charge sheet, and admits of such type of boxes are available at all places, and denies of false of not seizing the excise articles from accused custody, and denies of false of mahazar witnesses have not come to the spot by threatening them they have obtained the signature in the police station, and denies as false of not showing the exact seizing spot, and admits of there were no other shops, and admits they



have not called the independent witnesses from nearby houses and estate, and denies as false for the sake of statistics they have filed false case against the accused and denies as false of accused not having relationship with this case and M.O's.

9. Cw2 being the part of the raid got examined as Pw2. He is an official witness and has deposed similar to that of Pw1 and he has identified his signature in Ex.P2 mahazar, and he has identified the photos Ex.P6 to Ex.P8, and he has identified the M.O's. The advocate for accused cross examined and elicited that of having bar in Kembukolli, and on the day of incident they have only inspected the auto belongs to accused, and at that time due to covid all the wine shops and bar were closed, and admits of liquor was not getting at that time but at Ponnampet on the prescribed time liquor was available, and denies as false no permission was given to sell the liquor, and admits of out



of three boxes two boxes were kept in the police station thinking that of waste, and admits of seizing of total 6 liters of liquor, and admits of not enquired from which shop the said liquor was brought and denies as false due to statistics said false case is registered against the accused and denies as false without going to the spot he has written the mahazar in the police station.

10. Cw5 being the independent panch witnesses got examined as Pw3, he has identified his signature in the mahazar Ex.P2 which got marked as Ex.P.2(c) and he has identified the photos Ex.P6 to Ex.P8, and admits of he has signed to mahazar in the police station. Hence this witness has turned hostile and was cross examined by learned APP. However, nothing was elicited of proving that accused had possessed the excise articles as alleged supra. The alleged statement which was said to be given before police got marked as Ex.P10



11. Cw6 being another mahazar witness got examined as Pw4, he has identified his signature in Ex.P2 which got marked as Ex.P2(d). This witness was cross examined by learned APP and elicited that police have requested him to be panch witness to the case, and admits of seizing the excise articles from the accused custody, and of seizing of auto, and of drawing mahazar from 5.00pm to 6.30p.m, and of he signing to the mahazar, and he has identified Ex.P6 to Ex.P8 photos, and he has identified the M.O's.

12. The advocate for accused cross examined and elicited that he do not know the contents of mahazar, and admits of he is seeing the accused for the first time, and admits of he has signed to the mahazar in the police station, and of he not knowing the number of seized auto, and do not know the number of M.O's and he do not know whether the photos are created documents.



13. Cw8 police official got examined as Pw5, and elicited that on the instruction of Investigation officer he has taken the photos during mahazar from his mobile, and taken print and CD of the same, and of submitting the same to Investigation Officer. He has identified Ex.P6 to Ex.P8 photos, he has identified Ex.P3 65(B) certificate and his signature got marked as Ex.P3(b).

14. Advocate for accused cross examined and elicited that M.O.2 is not visible properly in the photo, and admits of cannot identify what is there inside the box, and denies as false photos are created documents, and denies as false due to not conducting mahazar in the spot his signature is not found, and denies as false to help his higher official he is deposing false before the court, and for the sake of statistics he is deposing false, and denies as false due to covid there was restriction in Kodagu to sell the liquor.



15. From perusal of the above evidence, the independent panch witness Cw5 and Cw6 have turned hostile. Further, the Investigation Officer Pw1 and Pw2 have deposed to the effect that they have not conducted any investigation at all. Therefore the filing of charge sheet is itself have no basis. Evidences of Pw1 and Pw2 being the official witnesses that having deposed to have seized excise articles from possession of accused without any license, however the supporting witnesses who are the independent witness Pw3 and Pw4 having turned hostile along with Pw1 Investigation officer and other police official Pw2 have totally denied the case of the prosecution with regard to the seizure of the excise articles from the possession of the accused. The case of prosecution is not proved beyond reasonable doubt.

16. In *Cri.Petition.No.2327/2013* decided on 09.09.2022 between *Shekappa V/s State of Karnataka*, the



Hon'ble High Court of Karnataka has discussed with regard to the compliance of Section 53 and 54 of Karnataka Excise Act citing the decision of *K.L.Subbaiah V/s State of Karnataka reported in 1979(2) SCC 115*. In this case Pw1 and Pw2 have not stated anything on search warrant and therefore Section 54 of Karnataka Excise Act is not complied with and the search warrant is not executed in-accordance with law. However, the prosecution documents do not support the case of the prosecution that the accused being in possession of such excise articles as alleged.

17. The prosecution has to prove the possession of such excise articles in the custody of the accused. Since the charge sheet is itself faulty, the prosecution case is defective. Therefore, under such circumstance the benefit of doubt has to be given to the accused and accordingly this court answers Points No.1 and 2 in the Negative.



18. **Point No.3:** On the foregoing reasons, this court proceeds to pass the following:

O R D E R

Acting under Section 248(1) of Cr.P.C., 1973 the accused is hereby acquitted for the offences punishable under Section 32 and 34 of Karnataka Excise Act.

The properties reported in P.R.No.21/2023 (P.F.No.41/2020) item no.1 to 4 are worthless and shall be destroyed and the interim custody of the auto bearing no.KA-12-B-8154 i.e., item no.5 is made absolute after the appeal period is over.

The bail bond of the accused and the surety bond under Sec.437A of Cr.P.C shall be in force for a period of six months from the date of this Judgment.

(Dictated to the stenographer directly on my computer, after clerical additions by him, script revised, corrected and pronounced by me in the Open Court on this the 23rd day of June 2026)

- sd -

Shrinath A.
Civil Judge and J.M.F.C.
Ponnampet

ANNEXURES

1) List of Witnesses examined on behalf of prosecution:-

Pw1 : Sri.H.J.Chandrappa,
Pw2 : Sri.Sugunda B.A,



Pw3 : Sri.S.A.Vijaya,
Pw4 : Sri.Shivanna,
Pw5 : Sri.Ranjith M.S,

2) List of documents marked on behalf of prosecution:-

Ex.P1 : Self report,
Ex.P1(a) : Signature of Pw1,
Ex.P2 : Mahazar,
Ex.P2(a) : Signature of Pw1,
Ex.P2(b) : Signature of Pw2,
Ex.P2(c) : Signature of Pw3,
Ex.P2(d) : Signature of Pw4,
Ex.P3 : Certificate under 65(B) of Evidence Act,
Ex.P3(a) : Signature of Pw1,
Ex.P3(b) : Signature of Pw5,
Ex.P4 : FSL report,
Ex.P4(a) : Signature of Pw1,
Ex.P5 : Report of handing over Excise Articles
to Department,
Ex.P5(a) : Signature of Pw1,
Ex.P6 to 8: Photos,
Ex.P9 : FIR,
Ex.P9(a) : Signature of Pw1,
Ex.P10 : Denial statement of Pw3,

3)List of material objects on behalf of prosecution.

M.O.1 : 15 empty tetra packets,
M.O.2 : Carton box,

4) List of witness examined on behalf of Accused:-

-Nil-

5) List of documents marked on behalf of Accused:-

-Nil-

- sd -

Civil Judge and J.M.F.C.
Ponnampet.