

CALENDAR AND JUDGMENT
IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS: DHONE
Present:- Smt. P. Haneesha,
Judicial Magistrate of 1st Class, Dhone
Calendar Case.No.2635 of 2022

Date of offence	13-05-2022
Date of Complaint	13-05-2022
Date of apprehension	---
Date of release	---
Date of commencement of trial	30-06-2023
Date of close of trial	04-07-2023
Date of Judgment	09.08.2023
Complainant	Sub-Inspector of Police, Dhone Town UPS
Name of the Accused	1.Kuruva Chandra, aged 48 years, S/O Late Bajari, Peddanelatur Village, Gonegandla Mandal, 2.Papigari Parasu Ramudu, aged 20 years, S/O P.Venkata Ramudu, Pullagummipeta, Ramallakota Village, Veldurthy Mandal. 3.Kuruva Nallamala Rama Sunkanna, Aged 72 years S/O Hanumanna, Veerampalli Village, Gonegandla Mandal, Kurnool District.
Offence	Under Section 34-A of A.P.Excise Act.
Findings	Found not guilty.
Sentence	In the result, accused No.1 to 3 are found not guilty for the offences under section 34-A of A.P.Excise Act and she is acquitted under section 248 (1) Cr.P.C. Bail bonds of accused shall be in force for six months under section 437-A of Cr.P.C.

Judl. Magistrate of First Class,
Dhone.

Copy to Chief Judicial Magistrate-cum-Prl.Asst.Sessions Judge,
Kurnool.

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS
DHONE

Present:- Smt. P. Haneesha,
Judicial Magistrate of Ist Class, Dhone
8th August 2023

Calendar Case. No. 581 of 2022

Between:

The State, rep. by Station House Officer, Dhone Town PS.

...Complainant

AND

1.Hajjiboina Harendra, aged 32 years, S/O Ranganna,
Resident of Srinivasa Nagar, Dhone Town.

2.Vadde Eswar Naik, aged 33 years, S/O Vadde Hattya Naik,
Resident of H.No.6-57, Y.G.Thanda, Tuggali Village and Mandal,
Kurnool District.

...Accused.

This case is coming up before me on 08-08-2023 for final hearing in the presence of Assistant Public Prosecutor on behalf of State and Sri P.Sivarama Krishna and Office, Advocates for Accused, and upon perusal of the material papers available on record, and having stood over for consideration till this day, the Court delivered the following:

J U D G M E N T

The Sub-Inspector, Dhone Town UPS. filed Report as per Section 173 of Criminal Procedure Code in Cr. No.148/2022 against the Accused for the offences punishable under Sections 34-A of A.P.Excise Act.

2. Brief Averments of the Report are as follows:-

On 13-05-2022 at about 11-00 hours, PW2 along with PW1 and other staff members Ganeswar Goud Indian Petrol Bunk, Veldurthy, Ramallakota Road, Outskirts of Veldurthy Village where they found the accused No.1 and 2 were going on their motor cycle and Police stopped them and purchased 192 tetra packets of Original choice, Karnataka Liquor which was purchased from Accused No.3 by them and the Police collected a sample and sealed it by affixing identity slips. PW2 seized the contraband and after coming to P.S, registered FIR in Cr.No. 148/2022 under Section 34-A of A.P.Excise Act. Later, Pw2 sent the sample to the Director, Excise Laboratory and after receiving the chemical analysis report, PW2 submitted Report under Section 173 of The Code of Criminal Procedure.

3.) Report was taken on file against the Accused for the offences punishable under Sections 7(a) r/w 8(e) of Andhra Pradesh Prohibition Act, 1995.

4.) On appearance of Accused, copies of documents are furnished to them under Section 207 of The Code of Criminal Procedure and Charge under Section 240 of The Code of Criminal Procedure for the offences under Section 7(a) r/w. 8(e) of APP Act was framed, for which she pleaded not guilty and claimed to be tried.

5.) To prove the charges, the Prosecution examined Pw1 and 2 and marked Ex. P1 to Ex.P5. The learned A.P.P has given up the evidence of LW.1 and 3 to avoid repetition of evidence. On closure of the evidence on the side of the prosecution, the Accused was examined under Section 313 of The Code of Criminal Procedure and he denied the incriminating material available against her in the evidence of prosecution witnesses. For the defence, no witness is examined and no document is marked.

6.) Arguments of both sides are heard.

7.) *Now, the point for determination is "Whether the Prosecution has established the guilt of the Accused of the charges under Sections 34-A of A.P.Excise Act, beyond reasonable doubt?"*

POINT:-

8.) It is the case of the prosecution that the Accused No.1 and 2 were in illegal possession of Indian Liquor which is meant to sale in Karnataka. Charge for the offence punishable under Section 34-A of A.P.Excise Act is framed against the Accused. The defence of the Accused is that he did not commit the offence and he is innocent. To prove the case against the Accused, prosecution relied on the evidence of PW1 and 2.

9.) Regarding the commission of offence, Pw.1 and 2 in their evidence deposed that on 13-05-2022 at about 11-00 hours, PW2 along with PW1 and other staff members Ganeswar Goud Indian Petrol Bunk, Veldurthy, Ramallakota Road, Outskirts of Veldurthy Village where they found the accused No.1 and 2 were going on their motor cycle and Police stopped them and purchased 192 tetra packets of Original choice, Karnataka Liquor which was purchased from Accused No.3 by them

and the Police collected a sample and sealed it by affixing identity slips. PW2 seized the contraband and after coming to P.S, registered FIR in Cr.No. 148/2022 under Section 34-A of A.P.Excise Act. Later, Pw2 sent the sample to the Director, Excise Laboratory and after receiving the chemical analysis report, PW2 submitted Report under Section 173 of The Code of Criminal Procedure.

10.) Section 100(4) of The Code of Criminal Procedure contemplates *“before making a search under this Chapter, the Officer 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 situated or of any other locality if no such 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”*. The evidence of Pw.1 and Pw.2 reveals that they have not made any fruitful attempt to secure respectable inhabitants of the locality where the Accused was caught. Hence, Pw.1 and Pw.2 violated the mandatory provisions of Section 100(4) of The Code of Criminal Procedure. Coming to the confession made by the Accused, the confession made before a Police Officer is inadmissible as per Section 25 of Indian Evidence Act and this is not the case where the property was seized in pursuance of confession so that the confession made by the Accused may be considered as per Section 27 of Indian Evidence Act.

11.) Coming to the seizure and sending the sample for chemical analysis, it is the evidence of PW1 and 2 that the sample was seized by them on 13-05-2022 whereas it was received by the Government Chemical Examiner of Prohibition & Excise Regional Prohibition & Excise Laboratory, Kurnool on 12-07-2020 and there is a delay of 60 days in forwarding the sample to the Chemical Examiner and that this delay in sending sample is fatal to the case of the Prosecution. No doubt, as per Rule 24 of A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969, the samples shall be sent to the Court with a requisition to send one of the samples expeditiously to the chemical examiner. Hence, the delay is fatal to the case of the prosecution.

12.) In these circumstances, it is quite unsafe to place reliance on the testimony of PW1 and 2. For the aforementioned reasons, this Court holds that the Prosecution failed to establish the guilt of the Accused of the charges under Section 7(A) r/w 8(e) of Andhra Pradesh Prohibition Act, 1995 beyond reasonable doubt. Thus, the Accused is found not guilty of the charges under Sections 34-A of A.P.Excise Act.

13.) Result:-

In the result, accused No.1 to 3 are found not guilty for the offences under section 34-A of A.P.Excise Act and she is acquitted under section 248 (1) Cr.P.C. Bail bonds of accused shall be in force for six months under section 437-A of Cr.P.C.

Typed on dictation by Personal Assistant on dual computer, corrected and pronounced by me in the Open Court on this the 9th August, 2023.

Judl. Magistrate of Ist Class, Dhone

APPENDIX OF EVIDENCE
WITNESSES EXAMINED FOR

Prosecution side

Pw1: U.Lingamaiah,
Pw2: N.Rama Mohan Reddy

Defence side

...Nil...

EXHIBITS MARKED FOR

Prosecution side

Ex.P1:Police Proceedings.
Ex.P2:First Information Report.
Ex.P3:Chemical analysis report.
Ex.P4:Attested copy of destruction Proceedings
Ex.P5: Attested copy of Destruction panchanama.

Defence side

...Nil...

Judl. Magistrate of Ist Class, Dhone

Copy submitted to :

- 1) The First Additional District & Sessions Judge Kurnool.
- 2) Chief Judicial Magistrate cum Prl.Asst.Sessions Judge, Kurnool.
- 3) The Superintendent Of Police Kurnool. 4) The Assistant Public Prosecutor.