

KAMS210016772017



**IN THE COURT OF THE I ADDL. CIVIL JUDGE AND
JMFC, AT H.D.KOTE,**

Present : Sri. SANTHOSHA KOTARI, B.A.L, LL.B
Prl. Civil Judge & J.M.F.C., H.D.Kote.
C/c I Addl. Civil Judge & J.M.F.C., H.D.Kote.

Dated This the 24th day of April, 2026

C.C.No.768/2017

Complainant : State by Beechanahalli Police Station
H.D.Kote.

**(Represented by the Assistant Public
Prosecutor)**

-V/s-

Accused : Sri.Somanna
S/o.Late.Hanumaiah
Aged about 54 years
R/at N.Beguru Village,
H.D.Kote Taluk,
Mysuru District.

**(Represented by Sri.K.Chandrashekar,
Advocate)**

* * * * *

1. Date of occurrence of offence : 04.03.2017
2. Date of report of offence : 04.03.2017
3. Presence of the accused : Arrested and produced
before court on 04.03.2017
and released on bail on
09.03.2017

4. Name of the complainant : Sri.C.H.Kumar, ASI,
Beechanahalli P.S.
5. Date of commencement of
recording of evidence : 31.03.2023
6. Date of closure of evidence : 04.12.2025
7. Offence alleged : U/Sec.34 of Karnataka
Excise Act.
8. Opinion of Judge : The accused is found
not guilty.

**C/c I Addl. Civil Judge & J.M.F.C.,
H.D.Kote.**

* * * * *

J U D G M E N T

The Police Sub-Inspector, Beechanahalli Police Station has filed the present final report against the accused for the offence punishable under Section 34 of Karnataka Excise Act.

2. The brief version of the case of the prosecution during trial is recapitulated as under:-

It is alleged by the prosecution that, on 04.03.2017 at 3 P.M., in N.Beguru Village, within the jurisdiction of Beechanahalli Police Station, the accused in front of his house without having any license was illegally possessed liquor with an intention to sell the same to the general public. Upon verifying, the accused had possessed one plastic cover and it contained 90 M.L, 30 Windsor Deluxe

Whiskey tetra packets and 90 M.L, 22 Original Choice Deluxe Wiskey liquor tetra packets. As the accused was possessed the liquor with an intention to sell the same to the general public without having any valid license or permit, they have seized the liquor and registered a case under Section 34 of Karnataka Excise Act.

3. After completion of investigation I.O. has submitted final report against the accused for the offence punishable under section 34 of Karnataka Excise Act. This Court took cognizance for the said offence under Section 190 of the Cr.P.C. and the process was issued for appearance of accused under Section 61 of the Cr.P.C. In response to summons, the accused appeared before the Court through his counsel. Further during crime stage only accused was produced before Court and he got released on bail. The copy of prosecution paper were furnished to the accused under Section 207 of Cr.P.C.

4. Thereafter, arguments were heard before framing of charge for the offence punishable under Section 34 of Karnataka Act. Since, there are sufficient materials to frame charge for the aforesaid offence, charge was framed for the said offence punishable U/sec.34 of Karnataka Excise Act against the accused and same is read over and explained in Kannada language to him. The accused pleaded not guilty and claimed to be tried.

5. The prosecution in order to prove the case against the accused, have totally examined 8 witnesses as PW-1 to 8 and got marked 7 documents as Ex.P-1 to 7 and also M.O No.1 to 29 were got identified.

6. The statement of the accused under section 313(1) (b) of Cr.P.C. has recorded. He has denied the incriminating circumstances appear against him in the evidence of the prosecution witnesses, however, he did not adduce any defence evidence.

7. Heard the arguments of both sides and perused the materials available on record. The points that arise for my consideration are:-

1. Whether the prosecution proves beyond all reasonable doubt that on 04.03.2017 at 3 P.M., in N.Beguru Village, within the jurisdiction of Beechanahalli Police Station, the accused in front of his house without having any license was illegally possessed 90 M.L, 30 Windsor Deluxe Whiskey tetra packets and 90 M.L, 22 Original Choice Deluxe Whiskey liquor tetra packets with an intention to sell the same to the general public and thereby the accused has committed an offence punishable under Section 34 of Karnataka Excise Act?

2. What order?

8. My findings on the above points are as under:-

Point No.1	:	In the Negative.
Point No.2	:	As per final order, for the following:

REASONS

9. **Point No.1:-** It is alleged against the accused that on 04.03.2017 at 3 P.M., in N.Beguru Village, within the jurisdiction of Beechanahalli Police Station, the accused in front of his house without having any license was illegally possessed 90 M.L, 30 Windsor Deluxe Whiskey tetra packets and 90 M.L, 22 Original Choice Deluxe Whiskey liquor tetra packets with an intention to sell the same to the general public.

10. In order to prove the guilt of accused, prosecution has examined PW-1/Prakash and PW-2/Thimmanayaka, who are independent spot and seizure mahazar witnesses, PW-3/Nataraju.R and PW-4/Arun H.N., then Head Constables of Beechanahalli Police Station and PW-7/Dinesh, then Police Constable/Driver of the departmental vehicle who are raiding party members, PW-5/Suresh, then PSI of Beechanahalli P.S., who is the investigating officer, PW-6/Rajendra, then Head Constable of Beechanahalli P.S., who partly investigated the matter and PW-8/Kumar, then ASI of Beechanahalli Police station, who is complainant, who leads the raiding party and who registered the case. In support of oral evidence, the prosecution has got marked 7 documents as Ex.P1 to P7. Ex.P1 is spot Mahazar, Ex.P2 and 3 are the statements of PW-1 and 2, Ex.P4 is Chemical Examination Report, Ex.P5 is the letter written by PSI, Beechanahalli PS to hand over the seized liquor

tetra packets to the Excise Inspector, H.D.Kote, Ex.P6 is the F.I.R and Ex.P7 is the self-report given by the CW-1. M.O.No.1 to 28/seized 28 liquor tetra packets and M.O.No.29/white color plastic cover were got identified.

11. I have perused the evidence placed on record by the prosecution. So as to bring home the charge against accused, prosecution has to initially prove that, the seized liquid is liquor. In order to prove that, seized liquid is liquor, the prosecution is relying on evidence of PW-3, 4, 7 and 8 and Ex.P4/Report issued by Chemical Examiner. I have perused the evidence of PW-3, 4, 7 and 8, wherein they deposed that, on 04.03.2017 CW-1 got information from informant that, the accused was allegedly possessed liquor illegally with an intention to sell the same to the public without permit. Hence, they raided the spot and seized 90 M.L, 30 Windsor Deluxe Whiskey tetra packets and 90 M.L, 22 Original Choice Deluxe Whiskey liquor tetra packets from the possession of the accused in front of his house in N.Beguru Village and out of the said seized tetra packets, 90 M.L, 16 Windsor Deluxe Whiskey tetra packets and 90 M.L, 12 Original Choice Deluxe Whiskey liquor tetra packets, in total 28 liquor tetra packets were drawn as sample for chemical analysis. CW-7 examined the same and issued certificate as per Ex.P4. There is no dispute with respect to certificate issued by Chemical Examiner. On perusal of certificate, it is clear that, the liquid sent for chemical

examination in this case does contain ethanol/ethyl alcohol. Under Section 59(A) of Karnataka Excise Act, said certificate can be looked into even though Chemical Examiner is not examined. On cumulative reading of Ex.P4/Chemical Examination certificate and evidence of PW-3, 4, 7 and 8 it is clear that, liquid seized in M.O.No.1 to 28 in this case does contain ethanol/ethyl alcohol.

12. The next aspect which prosecution has to prove that, seized liquid/liquor is more than prescribed limits as prescribed under the Karnataka Excise Act & Rules. As per Rule 21 of Karnataka Excise [Possession, Transport, etc.,] Rules 1967, a person can possess and transport liquor upto 2.3 liters of Whiskey and 18.2 liters of country beer without any permits. Here in this case, the police have seized 90 M.L, 30 Windsor Deluxe Whiskey tetra packets and 90 M.L, 22 Original Choice Deluxe Whiskey liquor tetra packets, as such, prosecution is able to prove that, quantity of liquid alleged to be in possession of the accused person is more than the prescribed limit under the provisions of Karnataka Excise Act.

13. Since it is germane to state that, so as to connect the accused with aforesaid liquor, the prosecution has to prove the Seizure Mahazar. So as to prove seizure mahazar, prosecution relied on evidence of PW-1 and 2,

who are the independent seizure mahazar witnesses. They have turned hostile and deposed that, no Mahazar was drawn and no material objects were seized in their presence. Albeit, PW-1 and 2 have been cross-examined at length, nothing has been elicited to disbelieve their evidence, as such, evidence of PW-1 and 2 are not helpful to case of prosecution. Further the prosecution has relied on the evidence of PW-3, 4, 7 and 8 who are the police officials and official mahazar witnesses. It is pertinent to state that, the evidence of police officials and independent witnesses are contrary to each other. Admittedly there are inconsistencies in the evidence of PW-3, 4, 7 and 8, even if they are brushed aside as minor inconsistencies and the crux of their evidence is considered, it appears that, there is no impediment in believing their version but, when the police witnesses state that accused possessed the illegal liquor in order to sell the same and they caught and seized it in the presence of two independent witnesses under Ex.P1 mahazar, under such circumstances, it is expected that the said two independent witnesses to Ex.P1 must speak in consonance with the prosecution version. In the absence of support of prosecution version by the above witnesses, the version of the other witnesses to the final report is neither wholly believable nor wholly unbelievable. These circumstances call for corroboration from independent witnesses and there is none in the

instant case. Hence, it creates a serious doubt regarding seizure of liquor from the possession/custody of accused.

14. It is vehemently argued by learned A.P.P. that, there is presumption in favour of prosecution that, in any of prosecution under Section 34 of Excise Act, it may be presumed until contrary is proved that, accused has committed the offences punishable under that section in respect of,

- (a) Any intoxicant; or
- (b) xxxxxxxx
- (c) xxxxxxxx.

15. For the possession of which, they are unable to account satisfactorily. It is further argued that, accused must prove his innocence. I have closely perused the Section 40, on plain perusal it is manifest that, to raise the presumption under Section 40 the possession of the liquor by the accused should be proved beyond all reasonable doubt. Thus, the presumption available under Section 40 of Karnataka Excise Act can be drawn only when prosecution proves that accused was in possession of seized tetra packets. So it is incumbent upon the prosecution to prove the seizure of the liquor tetra packets from the custody of accused.

16. It is pertinent to state that, in order to prove the seizure of liquor tetra packets, prosecution has relied on the evidence of PW-1 and 2, who are the independent mahazar witnesses of Ex.P-1/Seizure Mahazar. They

have turned hostile to the case of the prosecution. Further, the prosecution has relied on the evidence of PW-3, 4, 7 and 8, who are the witnesses of Ex.P-1/Seizure Mahazar, they have supported the case of the prosecution. PW-3, 4, 7 and 8 are the police officials. Except that the prosecution has not examined any independent mahazar witnesses. Hence, the prosecution has failed to prove Ex.P1 and just because PW-3, 4, 7 and 8 have stated that, they have seized liquor tetra packets from the custody of accused, one cannot presume in the absence of corroboration the things spoken by PW-3, 4, 7 and 8 are true. As the independent witnesses of Ex.P1/Seizure Mahazar witnesses were turned hostile, this Court cannot come to a conclusion that, the liquor tetra packets are seized from the custody of accused. Hence, this Court cannot come to conclusion that, accused without any license was illegally possessed liquor tetra packets with an intention to sell the same to general public. Further, it is pertinent to state that, the evidence of police officials and independent witnesses are contrary to each other. Hence, it creates a serious doubt regarding seizure of liquor tetra packets from the custody of accused.

17. Further it is pertinent to mention that, even if the case of prosecution is admitted on face of it, it is specific case of prosecution that, 90 M.L, 30 Windsor Deluxe Whiskey tetra packets and 90 M.L, 22 Original

Choice Deluxe Whiskey liquor tetra packets, totally 52 liquor tetra packets were seized from the custody of accused and out of those liquor tetra packets 90 M.L, 16 Windsor Deluxe Whiskey tetra packets and 90 M.L, 12 Original Choice Deluxe Whiskey liquor tetra packets, in total 28 liquor tetra packets were sent for chemical examination and report of the same is marked as Ex.P-4. Further, it has also come in the evidence of PW-3, 4, 7 and 8 that, only 28 liquor tetra packets out of 52 seized liquor tetra packets were sent to the chemical analyst. But there is no evidence to show that, each of the tetra packets seized in this case contained alcohol as alleged. Further, the prosecution has not explained the reasons as to why remaining tetra packets were not sent for chemical analysis. It is pertinent to note that, prosecution has sent only 28 liquor tetra packets to chemical examination. It is unclear to understand as to how the prosecution can prove the seizure of large quantity by sending only 28 liquor tetra packets to the chemical examination, out of the total quantity of the liquor that was seized. It is necessary for the prosecution to establish that, the entire quantity of that was seized was in fact liquor and not any other substance. Therefore, merely on the production of M.O No.1 to 28, it cannot be said that, the prosecution has proved its case beyond reasonable doubt.

18. At this stage, it would be relevant to refer to the decision of Hon'ble High Court of Karnataka in the matter of **Shrinivas V/s. State of Karnataka, through Gundlupet Police, Chamarajanagar reported in ILR 2014 KARNATAKA 5949** wherein the Hon'ble High Court has held as under:-

“KARNATAKA EXCISE ACT, 1965- SECTION 32- Offences under-Conviction and Sentence-Appealed against-Dismissal of Appeal-Revision against- Failure on the part of the prosecution to establish that the seized substance was in fact liquor and the quantity of liquor that was carrying was beyond permissible limit- Non-production of certificate specified under Section 59- A of the Excise Act.

HELD:-

It is evident that the large quantity of Whisky that the petitioner was carrying, was beyond the permissible limit. This is the primary allegation that would be required to be established by the prosecution. It is therefore not clear as to how the quantity for liquor that was carried by the petitioner has been said to have been established by the production of five bottles of whisky out of the total quantity of liquor that was seized. No doubt, there is a Forensic Science Laboratory report to indicate that the material objects that were produced, namely 5 bottles of whisky, did contain liquor. However, it was necessary for the prosecution to have established that the

entire quantity of liquor that was seized was in fact liquor and not any other substance.”

19. Further, in the matter of **M.R.Manjunath V/s. The Authorized Officer and Deputy Commissioner of Excise, Chickmagalur, District, Chickmagalur and Another**, reported in 2012 (6) Kar.L.J-375, it has been held in para No.10 as under:-

“Granting that all the 33 sachets were recovered from the possession of the petitioner at the time and place alleged by the prosecution but there is no legal evidence to show that, each of the sachets contained arrack as alleged. It is not disputed that, one sachet was sent to the analyst for analysis and it is not known as to why the remaining 32 sachets were not sent to him. Merely because the remaining 32 sachets were found along with one sachet, which was sent to the chemical examiner, it is difficult to come to a conclusion that the remaining 32 sachets also contained arrack or other intoxicating substances. I am of the view that, the Confiscating Officer as well as the learned Appellate Judge were clearly in error in holding that the, petitioner has committed an offence punishable under Section 34 of the Act. Apparently, from the evidence of PWs, 3 and 4, it becomes clear that, the only substance, which was subjected to analysis was the substance is one sachet, which was sent”.

20. The law laid down by the Hon'ble High Court of Karnataka in aforementioned decisions are aptly applicable to the case on hand. Therefore, in absence of strict proof that, each of the tetra packets seized in this case contained alcohol and merely on the ground that, remaining tetra packets were found along with 28 liquor tetra packets sent for chemical analysis, it cannot be said that all tetra packets were containing liquor. Therefore, in view of discussion made above, I am of the opinion that, prosecution has failed to bring home the charge against accused. Accordingly, I answer **Point No.1 in the Negative.**

21. **Point No.2:-** In view of discussion and conclusion arrived at Point No.1, accused is entitled for acquittal. Accordingly, I proceed to pass the following:-

ORDER

The accused is not found guilty for the offence punishable under Section 34 of Karnataka Excise Act. Hence, acting under Section 248(1) of the Code of Criminal Procedure, the accused is **acquitted** for the offence punishable under Section 34 of Karnataka Excise Act.

As per Section 437(A) of Cr.P.C., the bail bond and surety bond

executed by the accused and his surety will be in force for a period of 06 months from this date.

M.O.No.1 to 29 are being worthless shall be destroyed after appeal period is over.

(Directly generated through the computer by the Stenographer to my dictation with my verification and then signed and pronounced by me in the Open Court dated this the 24th day of April, 2026.)

(SANTHOSHA KOTARI)
C/c I Addl. Civil Judge and J.M.F.C.,
H.D.Kote.

ANNEXURE

List of witnesses examined on behalf of Prosecution:-

PW-1	:	Sri.Prakash
PW-2	:	Sri.Thimmanayaka
PW-3	:	Sri.Nataraju R
PW-4	:	Sri.Arun H.N.
PW-5	:	Sri.Suresh
PW-6	:	Sri.Rajendra
PW-7	:	Sri.Dinesh
PW-8	:	Sri.Kumar

List of documents exhibited for Prosecution:-

Ex.P-1	:	Spot Mahazar
Ex.P-1(a) to (c)	:	Signatures
Ex.P-2 and 3	:	Statement of PW-1 and 2
Ex.P-4	:	FSL Report
Ex.P-4(a)	:	Signature
Ex.P-5	:	Letter issued to Excise Inspector, H.D.Kote

Ex.P-5(a) : Signature
Ex.P-6 : FIR
Ex.P-6(a) : Signature
Ex.P-7 : Self Report of CW-1
Ex.P-7(a) : Signature

List of witnesses and documents for defence:-

-Nil-

List of material objects got marked:-

M.O-1 to 28 : Sample liquor tetra packets
M.O-29 : Plastic bag

**C/c I Addl. Civil Judge and J.M.F.C.,
H.D.Kote.**