

KAMS510029082019



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC
NANJANAGUDU**

PRESENT

Sri. Sathisha K.G., B.A.,LL.B.
Principal Civil Judge & JMFC., Nanjanagudu

Dated: 02nd day of May, 2026

CRIMINAL CALENDAR CASE NO.1388/2019

COMPLAINANT :: State of Karnataka,
Represented by
Nanjanagudu Rural Police Station.

(Learned A.P.P.)

- V/s -

ACCUSED :: Sri. Veerabhadra alias Shivaraju,
S/o Shivappa,
Aged about 50 years,
R/at Ambale Village,
Nanjanagudu Taluk, Mysuru District.

(By Sri. K.S. Kariyappa. Advocate)

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|----------------------------------|---|------------|
| 1. Date of Commission of Offence | : | 17.03.2019 |
| 2. Date of report of Occurrence | : | 17.03.2019 |
| 3. Date of Arrest of Accused | : | 17.03.2019 |
| 4. Date of Release of Accused | : | 21.03.2019 |
| 5. No. of day's in custody | : | 04 Day |

6. Name of the complainant : Sri. B.M. Punith
7. Date of Commencement of Evidence : 13.11.2024
8. Date of closing of Evidence : 09.09.2025
9. Offences Complained Off : Sections-32 and 34 of Karnataka Excise Act, 1965.
10. Opinion of the judge : Accused are not found guilty for the offences punishable U/s.32 and 34 of Karnataka Excise Act, 1965.

(SATHISHA. K.G.,)
Principal Civil Judge & JMFC,
Nanjanagudu.

J U D G M E N T

The present case pertains to prosecution of accused Sri.Veerabhadrappe alias Shivaraju (hereinafter referred to as the accused), pursuant to charge sheet filed qua him under Sections 32 and 34 of Karnataka Excise Act, 1965 subsequent to the investigation carried out at P.S: Nanjanagudu Rural P.S, in FIR bearing No.53/2019.

2. The factual matrix of the prosecution case in brief is that, on 17.03.2019 at 3.45 P.M., CW-1-Sri.B.N. Punith received credible information that the accused was selling liquor in a public place in front of his house at Ambale Village without any licence. Receiving the said information, immediately, he

secured his staff and two panchas and proceeded towards the spot at 04.30 P.M, where they noticed that accused kept a liquor packets in a White Plastic Bag and selling the same. Immediately they apprehended the accused along with articles. After verified and found that, accused had possessed 50 Windsor Deluxe Whiskey Tetra packets containing 90 Ml each in a White Plastic Bag. Since the accused has no documents or permit for possession or sell the same to public and the same were seized by drawing a mahazar and drawing sample and seized them separately. The criminal law was set into motion by registration of FIR against the accused and investigation into the case began. After completion of the investigation, the present chargesheet was filed for conducting trial of the accused for the alleged offences punishable under sections 32 and 34 of Karnataka Excise Act 1965.

3. The accused was produced before this Court and they remanded to judicial custody. Thereafter, the accused obtained bail by moving bail application. After taking cognizance of the offences, accused appeared through his counsel and the copies of chargesheet supplied to him as provided under section 207 of Cr.P.C. After hearing both sides

and after going through the material on record, Charge was framed for the offences punishable U/s.32 and 34 of Karnataka Excise Act, read over and explained to the accused to which he pleaded not guilty and claimed to be tried and opted to contest the case.

4. The prosecution has examined P.W.1 and 2 and got exhibited the documents at Ex. P.1 and 2 and got marked seized article as M.O-1 to 50.

5. The statement of the accused as required under section 313 of Cr.P.C. was recorded. The accused denied all the incriminating circumstances appearing against him in the evidence to be false. Accused not opted to lead defence evidence.

6. Heard the arguments and perused the evidence and documents on record.

7. Now the points that arise for my consideration are as under:-

- 1. Whether the prosecution proves beyond reasonable doubt that on 17.03.2019 at 04.30 PM within the jurisdiction of Nanjanagudu Rural Police Station at Ambale**

Village accused was found in possession of 50 Windsor Deluxe Whiskey Tetra Packets containing 90 ML each in contravention of law and knowingly with an intention to sell the same to general public and thereby accused has committed an offence punishable U/s.32 of Karnataka Excise Act?

2. Whether the prosecution proves beyond all reasonable doubt that, on the above said date, place & time the accused was found in possession of intoxicants as stated above without lawful authority knowing the same to have been lawfully collected or knowing the prescribed duty not to have been paid thereon and thereby accused has committed an offence punishable U/Sec.34 of Karnataka Excise Act?

3. What Order or sentence?

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

Point No.1 : In the **Negative**

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

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

REASONS

9. **Point No.1 & 2:-** For the sake of convenience in appreciation of evidence, these two points for determination are taken up together for discussion. As per the prosecution on the fateful day accused was found in possession of illicit liquor

without any permit or license with an intention to sell the same to public. In order to bring home the charge against the accused, the prosecution was required to prove beyond reasonable doubt, the recovery of illicit liquor from the possession of the accused.

10. It is a settled proposition of criminal law that, prosecution is supposed to prove its case beyond reasonable doubt by leading reliable, cogent and convincing evidence. Further, it is a settled proposition of criminal law that, in order to prove its case, prosecution is supposed to stand on its own legs and it cannot derive any benefit whatsoever from the weaknesses, if any, of the defence of the accused. Further, it is a settled proposition of criminal law that, burden of proof of the version of the prosecution in a criminal trial throughout the trial is on the prosecution and it never shifts on to the accused. Also it is a settled proposition of criminal law that, accused is entitled to the benefit of every reasonable doubt in the prosecution story and such reasonable doubt entitles the accused to acquittal.

11. In the case on hand in order to prove the guilt against the accused for the offences punishable U/Secs.32 and

34 of Karnataka Excise Act 1965, the prosecution has examined P.Ws.1 and 2. In support of its case, prosecution has produced Ex.P-1 and Ex.P2 and M.O.1 to 50.

12. Ex.P-1 is the Seizure panchanama and Ex.P2 is the Complainant and M.O.1 to 50 are liquor tetra packets.

13. In this case the prosecution has examined two witnesses out of Eleven witnesses it proposed to examine. In fact raiding Staff i.e. Police Head Constable Sri. Mallu. S. has been examined as Pw.2 and the Complainant Sri. Punith B.N., has been examined as PW.1. The presence of Panch witnesses ie CW-2 and CW.3 could not be secured before this Court inspite of issuance of repeated process. Hence, evidence of these witnesses dropped by this Court. Thereafter prosecution has not made any effort to examine them despite liberty granted. On account of admission of accused u/s 294 Cr.P.C CW-4 was dropped from the list of prosecution witnesses and the formal proof of the documents sought to be proved by him was dispensed with. CW.5, 7 to 10 have been given up as redundant. Before recording testimony, the Investigation Officer-CW.11- Sri.Jayaram S.P. reported as dead.

14. PW.1 being the complainant has deposed in consonance with prosecution case. He deposed that on 17.03.2019 at 03.45 P.M., when he was in station duty received credible information that the accused was selling liquor in a public place in front of his house situated at Ambale Village. Receiving the said information, immediately, he secured his staff and two panchas and proceeded towards the spot at 4.30 P.M, where he noticed that accused was standing with a White Plastic Bag and selling the Tetra packets to the public. Immediately he apprehended the accused in the presence of pancha witnesses, verified and found that, accused has possessed 50 Windsor Deluxe Whiskey Tetra packets containing 90 MI each in a White Plastic Bag. Thereafter seized liquor tetra packets by drawing a mahazar as per Ex.P.1 and drawing sample and it seized them separately. Thereafter complaint was registered as per Ex.P.2. He identified Seized liquor tetra packets. Thereafter handed over the case file to CW.11.

During his cross-examination by learned defence counsel, he denied the suggestion that nothing was recovered from the possession of the accused or that the recovered case property

was planted upon the accused. He further denied the suggestion that accused has been falsely implicated in the present case and that he had deposed falsely.

15. PW-2-Sri.Mullu.S, is also the witness of initial recovery. He has also deposed on the similar lines as that of PW-1. Therefore, his testimony is not repeated herein for the sake of brevity and to avoid verbosity/repetition. During cross examination he denied the suggestion that the accused has been falsely implicated in the present case and he has deposed falsely being an interested witness.

16. Learned Assistant Public Prosecutor for the State while summing up prosecution case, submitted that the accused as well as the case property has been correctly identified by the witnesses. He stated that link evidence is also available. The learned APP drawing the attention of this Court to Section 40 of the Act has contended that there is a presumption until the contrary is proved and presumption has to be drawn in favour of the prosecution. He urged that the case has been proved beyond doubt against the accused and prayed for conviction of the accused.

17. On the other hand, learned counsel for the accused argued that the accused has been falsely implicated by the police and nothing was recovered from his possession. He submitted that accused has not arrested from the crime scene and the absence of public witnesses to the alleged recovery is fatal to the case of the prosecution. He further pointed out contradictions in the testimony of prosecution witnesses and argued that the prosecution has failed to prove its case beyond reasonable shadow of doubts. Hence he prayed for acquittal of the accused.

18. I have bestowed my thoughtful consideration to the rival submissions made by both the parties. accused has been indicted for the offences u/s 32 and 34 of Karnataka Excise Act.

19. The words "for the possession of which he is unable to account satisfactorily" used in Section 40 of Karnataka Excise Act stipulates that as a pre-requisite for the presumption under the aforesaid provision being raised against the accused, it is imperative for the prosecution to successfully establish the recovery of the said alleged articles from the possession of the accused. It is only after the prosecution has

proved the possession of the alleged articles by the accused, that the accused can be called upon to account for the same. However, for the reasons mentioned hereinafter the prosecution has failed to establish beyond reasonable doubt that the accused person was found in possession of the alleged illicit liquors. When the prosecution has failed to establish its case against the accused beyond all reasonable doubt, then question of presumption under Section 40 of the Act cannot be pressed into service.

20. Admittedly, in the present case on hand, as per the case of the prosecution, when they conduct the raid, apprehended the accused and thereafter they were seized 50 Windsor Deluxe Whiskey Tetra packets containing 90 MI each. The present case rests entirely on the alleged recovery of case property, i.e., illicit liquor from the possession of the accused at the relevant time by Pw-1 and Pw.2 who were police station at the relevant time and place, as per the prosecution story. Police officials are under a statutory duty to mark their departure and arrival in the register kept in the police station for the purpose as per the Karnataka Police Manual.

21. In the present case, the above said provisions appears to have not been complied with by the prosecution. As per the prosecution version, at the time of the apprehension of the accused with illicit liquor from their possession, Pw-1 and PW.2 were left the police station for patrolling duty, but the said DD entry vide which they have left the office for picket duty has not been brought on record. In my opinion, the prosecution was under an obligation to bring on record and prove the above said DD entry vide which the above said official had left the police station, so as to prove the possibility of availability of said police official at the place of apprehension of the accused. In the facts and circumstances of the case, the prosecution ought to have brought on record & prove the DD entry by which the above said police official had left the Police station, so as to inspire the confidence regarding their availability/presence at the place of apprehension of the accused, since the said police official was under bounden duty to enter their departure & arrival from/at the police station by making a D.D. entry in that respect as per the Karnataka Police Manual.

22. At this juncture, it would be relevant to refer to a case law reported as **"Rattan Lal Vs. State" 1987 (2) Crimes**

29, wherein the Hon'ble Delhi High Court has observed that if the investigating agency deliberately ignores to comply with the provisions of the Act, the courts will have to approach their action with reservations & thus the matter has to be viewed by the court with suspicion, if the necessary provisions of law are not strictly complied with and then it can at least be said that it was so done with an oblique motive. This failure of the prosecution to bring on record & prove the relevant DD entry as discussed above creates a reasonable doubt in the prosecution version and attributes oblique motive on to the actions of the members of the raiding party". The above said decision is aptly applicable to the present case on hand.

23. As per Police manual the hour of arrival and departure on duty at or from a police station of all enrolled police officers of whatever rank, whether posted at the police station or elsewhere, with a statement of the nature of their duty. This entry shall be made immediately on arrival or prior to the departure of the officer concerned and shall be attested by the latter personality by signature or seal. In the present case the spot at the time of arrest of the accused and alleged recovery of liquor makes the prosecution version highly doubtful

and that the alleged recovery was planted upon the accused at the office. Admittedly it cannot be ascertain from the oral and documentary evidence placed on record whether the case property belongs to the present case or not, thereby reflecting bad investigation.

24. Further, as per the version of the prosecution witnesses, after sealing the case property and the samples of illicit liquor with the seal of "**M**", the seal was in the possession of PW.1. However, no handing over memo regarding the same was prepared. Further, the seal in the present case was not handed over to any independent witness nor was it deposited in the designated place to assail the possibility of its misuse. Therefore, the conclusion which can be arrived at is that the seal remained with the raiding Officer or with the other member of the raiding party therefore the possibility of interference or tempering of the seal and the contents of the parcel cannot be ruled out.

25. In this regard, judgment in case titled as Ramji Singh Vs. State of Haryana 2007 (3) RCR (CRIMINAL) 452, may be adverted to, wherein it was observed in paragraph 7

that:

"....The very purpose of giving seal to an independent person is to avoid tampering of the case property. It is well settled that till the case property is not dispatched to the forensic science laboratory, the seal should not be available to the prosecuting agency and in the absence of such a safeguard the possibility of seal, contraband and the samples being tampered with cannot be ruled out. In the present case, the seal of Investigating Officer-Hoshiar Singh bearing impression HS was available with Maha Singh, a junior police official and that of Deputy Superintendent of Police remained with Deputy Superintendent of Police himself. Therefore, the possibility of tampering with seals as well as seized contraband and samples cannot be ruled out."

26. Thus, in light of the aforesaid discussion, the possibility of misuse of seal and tampering of case property cannot be ruled out.

27. Further as per prosecution M.O.1 to 50-liquor tetra packets have been seized on 17.03.2019. The said MO has been sent to Chemical Examiner, Mysore on 29.03.2019. There is 12 days delay in sending the samples seized for chemical examination. The said aspect creates doubt about the case of the prosecution with respect to the seizure of M.O and due to which the possibility of the case property having been planted upon the accused cannot be ruled out.

28. Further, as per section 54 of the Act, any Inspector before searching a place, must obtain a warrant from the jurisdictional Magistrate. Section 54 of the Act is also a special provision which provides that if there is some contingencies and it is not possible for the Officer concerned to get a warrant from the Magistrate, under such circumstances, the officer who is making search has to make an endorsement to the effect that because of the contingency he was unable to obtain the warrant and thereafter he has made a search. But for the reasons best known to the prosecution, no such evidence has been produced. This proposition of law has also been upheld by The Hon'ble Apex court in the case of K.L.Subbayya V/s. State of Karnataka, reported in LAWS (SC) 1979-14 at paragraphs 2 to 4 it has been observed as under:

"2. Thus this section relates to a contingency where the Statute enjoins that any inspector before searching a place must obtain a warrant from the magistrate. Section 54 is a special provision which arises in urgent cases where it may not be possible for the officer concerned to get a warrant from the Magistrate. Section 54 runs thus: "Whenever the Excise Commissioner or a Deputy Commissioner or any police officer not below the rank of an officer in-charge of a police station or any Excise Officer not

below such rank as may be prescribed has reason to believe that an offence under section 32, section 33, section 34, section 36, or section 37 has been, is being, or is likely to be committed, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may after recording the grounds of his belief-

(a) at any time by day or by night enter and search any place and seize anything found therein which he has reason to believe to be liable to confiscation under this Act, and ;

(b) detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid.

3. In the instant case, it is admitted that the inspector who searched the car of the appellant had not made any record of any ground on the basis of which he had a reasonable belief that an offence under the Act, was being committed before proceeding to search the car and thus the provisions of Section 54 were not at all complied with.

4. This, therefore, renders the entire search without jurisdiction and as a logical corollary, vitiates the conviction. We feel that both sections 53 and 54 contain valuable safeguards for the liberty of the citizen in order to protect them from ill-founded or

frivolous prosecution or harassment. The point was taken before the High Court which appears to have brushed aside this legal lacuna without making any real attempt to analyse the effect of the provisions of section 53 and 54. The High Court observed that these two sections were wholly irrelevant. With due respect, we are unable to approve of such a cryptic approach to a legal question which is of far reaching consequences. It was, however, suggested that the word "place" would not include the car, but the definition of the word "place" under the Act clearly includes vehicle which would include a car. Thus the ground on which the argument of the petitioner has been rejected by the High Court cannot be sustained by us. We are satisfied that there has been a direct non-compliance of the provisions of section 54 which renders the search completely without jurisdiction. In this view of the matter, the appeal is allowed, the conviction and sentence passed on the appellant is set aside and he is acquitted of the charges framed against him."

29. In the present case on hand PW.1 and PW.2 testified that on 17.03.2019 while they were in duty in police station received credible information and came to the spot and apprehended the accused and on verification accused possessed liquor pouches without any pass or permit to sell the

general public. Therefore, there was enough time for Pw-1 and Pw-2 to obtain the warrant as required under Section-53 of the Karnataka Excise Act, 1965, even otherwise they had enough time, at least to reduce into writing, explaining the contingency of non obtaining the search and seizure warrant from the Magistrate. In the absence of the strict compliance of this and all above said provisions amounts to vitiates the trial.

30. On close reading of the above said decision of the Hon'ble Apex Court and in the absence of any material placed, under what circumstances PW-1 went to the place without there being any warrant and made a search, the said search also can be held that it is in violation of Section 54 of the Act and it can be held that it is illegal and it is not having any effect in this behalf. Looking from any angle, the prosecution has utterly failed to establish its case as contemplated under the law.

31. In this case Chemical Examiner Report is marked with consent as per Ex.P.3. On perusal of the Ex.P.3, i.e., the chemical analysis report says that the sample is alcoholic liquor but the same has no relevancy as the fact of seizure was not proved by the prosecution, in the first place.

32. It is burden on the prosecution to show that they have seized the alleged excisable goods from the possession of the accused in the presence of pancha witnesses under seizure mahazar. To prove the facts the evidence of the complainant and also the panchas witnesses are very essential.

33. In this case prosecution has not examined independent witnesses despite opportunity, when prosecution case is not supported by the evidence of independent witnesses, the sole evidence of PW.1 and PW-2 cannot be believed to hold the accused has committed the offences. When the prosecution has not proved the seizure mahazar with independent evidence, the evidence of other officials is formal in nature because they are supposed to support the evidence of P.W.1 who is the superior officer. Further, daily diary entry regarding departure of PW-1 and PW-2 has not been proved, possibility of misuse of seal cannot be ruled out and contradictions in the testimony of prosecution witnesses, when kept in juxtaposition to each other, cast a cloud of suspicion over the prosecution version. In view of the aforesaid, the possibility of false implication of the accused in the present case cannot be ruled out.

34. Only on the basis of the official witnesses, that too

in the absence of clear evidence this Court cannot come to the conclusion that, the accused has committed the offences as alleged by the prosecution. Further, the documents, which are marked in this case are not sufficient to prove the guilt against the accused beyond reasonable doubt. There is no gainsaying that, if two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede to the existence of a reasonable doubt. The aforementioned lacunae in the story of the prosecution render the version of the prosecution doubtful, leading to the irresistible conclusion that the burden of proving the guilt of the accused beyond reasonable doubt have not been discharged by the prosecution. Thus, this Court is of the opinion that the prosecution has failed to bring on record any cogent evidence in order to prove the commission of and guilt of the accused for the offences U/s.32 and 34 of Karnataka Excise Act beyond reasonable doubt, thus, entitling the accused to benefit of doubt and acquittal. Accordingly, Point No.1 and 2 are answered in the **Negative**.

35. POINT NO.3:- Thus, in view of the foregoing analysis, this court is of the considered opinion that the benefit of doubt ought to be granted to the accused, who are entitled to

be exonerated of the charges against them in the present case,
hence this court proceed to pass the following:-

ORDER

Acting U/s.248(1) of Cr.P.C. accused are
acquitted for the offences punishable under
sections 32 and 34 of Karnataka Excise Act
1965 and they are set at liberty forthwith.

The bail and surety bonds of accused
shall stand canceled after six months from
today in view of Section 437-A of Cr.P.C.

After the completion of appeal period,
M.O.1 to 50-Tetra packets ordered to be
returned to the concerned Excise department
for disposal in accordance with law.

File be consigned to record room after
appeal period is over.

(Dictated to the Stenographer directly on computer, typed by him, the same
is corrected, revised, signed and then pronounced by me in the open Court, on this
the **02nd day of May, 2026**)

(SATHISHA K.G.)
Principal Civil Judge & JMFC,
Nanjanagudu.

ANNEXURE

LIST OF WITNESSES EXAMINED ON BEHALF OF PROSECUTION:-

PW.1 : Sri. B.M. Punith.

PW.2 : Sri. Mallu. S.

LIST OF DOCUMENTS MARKED ON BEHALF OF PROSECUTION:-

Ex.P1 : Seizure Mahazar

Ex.P1(a) : Signature of PW.1

Ex.P2 : Complaint

Ex.P2(a) : Signature of PW.1

Ex.P3 : F.S.L. Report (Marked with consent).

LIST OF WITNESSES EXAMINED ON BEHALF OF ACCUSED PERSON:-

- N I L -

LIST OF DOCUMENTS MARKED ON BEHALF OF ACCUSED PERSON:-

- N I L -

LIST OF MATERIAL OBJECTS MARKED ON BEHALF OF PROSECUTION:-

M.O.1 to 50 : Tetra packets

(SATHISHA K.G.)

Principal Civil Judge & JMFC,
Nanjanagudu.