KAMS610052252021

IN THE COURT OF I ADDITIONAL CIVIL JUDGE AND J.M.F.C AT PERIYAPATNA.

PRESENT

Smt.Vidya, A.S.
I Additional Civil Judge & J.M.F.C.,
Periyapatna

Dated: This the 25th day of July, 2026

C.C.No.3380/2021

Complainant:	**State** Rep.by Periyapatna Police Station
	Rep.by Asst.Public Prosecutor
	V/S
Accused:	**1. Rajaiah,** S/o.Late Sannaiah, Aged about 48 years, R/o:Asvalu Village, Periyapatna Taluk. Mysuru District. **2. Manjunatha.A.B.,** S/o.Bhommarayi, Aged about 30 years, R/at:Asvalu Village, Periyapatna Taluk.

	Mysuru District.
	(Rep.by Sri.KRV.,-Advocate)
Date of commission of offence	08.08.2021
Date of Report of offence	08.08.2021
Name of the Complainant	Jagadisha.P.
Date of recording of evidence	08.04.2025
Date of closing of evidence	23.04.2026
Offenses complained of	U/s.32 and 34 of Karnataka Excise Act
Opinion of the judge	Accused found not guilty of the above said offence

(Smt.Vidya A.S)
I Additional Civil Judge & J.M.F.C.,
Periyapatna.

J U D G M E N T

The Head Constable of Periyapatna Police Station has filed a charge sheet against the accused alleging commission of offences punishable U/s.32 and 34 of Karnatak Excise Act.

2. Brief facts of the prosecution case:

On 08.08.2021, at about 10.30 a.m., in front of the complex of Sri Chandregowda, near Mellahalli Gate, accused Nos.1 and 2 were allegedly found in possession of 44 pouches, each containing 90 ml of "Original Choice Deluxe Whisky", kept in a cloth bag on a Hero Honda Splendor Pro Motorcycle bearing Registration No. KA-09-K-5065. It is the case of the prosecution that the accused were illegally selling the said liquor to the public without holding any valid licence or permit. Upon completion of the investigation, the Investigating Officer filed the charge sheet against accused Nos.1 and 2 for the offences punishable under Sections 32 and 34 of the Karnataka Excise Act.

3. After submission of the charge sheet, the Court took cognizance of the offences, registered the case and issued summons to the accused. The accused appeared before the Court and were released on bail. Copies of the charge sheet were furnished to them under Section 207 of the Code of Criminal Procedure. When the charge was framed, read over and explained to the accused, they pleaded not guilty and claimed to be tried.

4. Out of the total 8 witnesses cited in the charge sheet, the prosecution examined PW-1 to PW-5 and got marked Ex.P-1 to Ex.P-7 documents.

5. Under Section 313 of the Code of Criminal Procedure, the incriminating evidence appearing against the accused in the prosecution evidence was read over and explained to them. The accused denied the prosecution evidence and stated that they would not lead any defence evidence.

6. The arguments of the learned Assistant Public Prosecutor and the learned counsel for the accused were heard.

7. On the basis of the material on record, the following points arise for consideration:

Point No.1: Whether the prosecution proves beyond reasonable doubt that, on

08.08.2021 at about 10.30 a.m., in front of the complex of Sri Chandregowda, near Mellahalli Gate, accused Nos.1 and 2 were found in possession of 44 pouches, each containing 90 ml of "Original Choice Deluxe Whisky", kept in a cloth bag on a Hero Honda Splendor Pro Motorcycle bearing Registration No. KA-09-K-5065, and were selling the same to the public without holding any valid licence or permit, thereby committing the offences punishable under Sections 32 and 34 of the Karnataka Excise Act ?

Point No.2 : What order or sentence ?

8. On considering the materials on record, this court findings to the above points are as follows:

Points No.1: In the Negative

Point No.2: As per the final order,

for the following reason

REASONS

9. <u>Points Nos.1</u>: The burden lies entirely upon the prosecution to establish the guilt of the accused beyond reasonable doubt. The prosecution is required to prove not only that the liquor was seized from the possession of the accused but also that the accused was in conscious and unlawful possession thereof and was selling the same without holding any valid licence or permit. Unless every essential ingredient of the offences punishable under Sections 32 and 34 of the Karnataka Excise Act is established by cogent, reliable, and convincing evidence, the accused is entitled to the benefit of doubt. In support of its case, the prosecution examined PW.1 to PW.5, marked Ex.P.1 to Ex.P.7, and produced Material Objects which are marked as M.O.1 and 2.

10. PW.1 is the complainant as well as the detecting police officer. He has deposed that, while on patrol duty, he received credible information regarding the illegal sale of liquor. Acting upon the said information, he proceeded to the spot along with police staff and panch witnesses, where he allegedly found the accused selling liquor pouches from a motorcycle. According to him, 44 pouches of "Original Choice Deluxe Whisky" were seized under Ex.P.2, and thereafter he submitted Ex.P.1 for registration of the case. He identified his signatures on Ex.P.1 and Ex.P.2 and also identified M.O.1 and M.O.2 before the Court. However, during cross-examination, PW.1 made several admissions which materially affect the prosecution case. He admitted that the alleged place of occurrence was a busy locality having shops and considerable public movement. He further admitted that nearly 20 to 25 persons were present at the spot; nevertheless, no independent local resident was secured either as a panch witness or as a witness to the seizure. He also admitted that the panch witnesses were not local residents but belonged to nearby rural areas. These admissions assume significance since the alleged seizure was effected in a crowded public place where independent witnesses were readily available, yet no explanation has been offered for their non-association. PW.1 further admitted that the secret informant accompanied the police party and identified the accused from a distance of about 200 metres. However, the identity of the informant has not been disclosed, nor has any explanation been furnished for withholding such a material witness. Although the non-examination of an informant is not invariably fatal to the prosecution, in the facts and circumstances of the present case, particularly when the independent panch witnesses have not supported the prosecution, such omission assumes considerable significance. PW.1 also admitted that he did not ascertain the ownership of the motorcycle at the time of seizure and had neither noted nor verified its engine number or chassis number. These omissions cast a serious doubt regarding the proper identification of the vehicle allegedly used in the commission of the offence.

He further admitted that no special identification marks were affixed on M.O.1 and that he did not enquire as to the source from which the liquor pouches had been procured. These omissions further diminish the evidentiary value of the alleged seizure. PW.1 also admitted that Ex.P.1 report was prepared at the police station and that Ex.P.2 mahazar was scribed by a police staff member. Although he denied the defence suggestion that the mahazar was fabricated at the police station and that a false case had been created to improve departmental statistics, such denial by itself does not dispel the doubts arising from the admissions elicited during his cross-examination. Though PW.1 has identified M.O.1 and M.O.2 before the Court, mere production and identification of the material objects do not, by themselves, establish that they were lawfully seized from the conscious possession of the accused. It is incumbent upon the prosecution to prove, by satisfactory and credible evidence, that the alleged seizure was lawful and genuine. Th evidence adduced in the present case is insufficient to discharge that burden.

11. PW.2, one of the attesting panch witnesses to Ex.P.2, has completely disowned the prosecution case. He categorically deposed that the police neither conducted any mahazar nor arrested any person in his presence, nor seized any article before him. According to him, the police merely obtained his signature on a document at the police station, the contents of which were not disclosed to him. Though he admitted his signature on Ex.P.2, marked as Ex.P.2(b), he denied having any knowledge of its contents. Consequently, he was treated as hostile. It is well settled that the evidence of a hostile witness is not to be rejected in toto and that the Court may rely upon such portion of his testimony as inspires confidence. However, in the present case, nothing useful has been elicited during his cross-examination by the prosecution to support the alleged seizure. On the contrary, his evidence substantially undermines the prosecution case regarding the preparation and execution of Ex.P.2.

12. PW.3, another police official, has substantially reiterated the version of PW.1 regarding the receipt of credible information, proceeding to the spot, and the alleged seizure. However, his testimony merely corroborates that of another official witness and does not constitute independent corroboration. Where the independent panch witnesses have failed to support the prosecution case, the evidence of official witnesses requires careful scrutiny and must inspire complete confidence before it can form the sole basis for conviction.

13. PW.4, another attesting panch witness to Ex.P.2, has also turned hostile. He deposed that no seizure or arrest took place in his presence and that his signature was obtained at the police station without his knowledge of the contents of the document. Though he admitted his signature on Ex.P.2, marked as Ex.P.2(d), he denied having witnessed the alleged seizure mahazar. Thus, both the independent panch witnesses have failed to support the prosecution case. Ex.P.2, forms the very foundation of the prosecution case. However, both the attesting panch witnesses have denied witnessing its preparation or execution. The doubtful nature of the seizure mahazar substantially weakens the prosecution case with regard to the alleged recovery from the possession of the accused. The evidence on record does not inspire confidence to hold that the prosecution has proved beyond reasonable doubt that the accused were in conscious possession of 44 pouches, each containing 90 ml of "Original Choice Deluxe Whisky", and were selling the same without holding a valid licence or permit. Consequently, the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. Accordingly, Point No.1 is answered in the Negative.

14. Point No.2: For the aforesaid discussion on points No.1, this court proceeds to pass the following;

ORDER

Acting U/s.248(1) of Criminal Procedure Code, 1973, accused are hereby acquitted for the offences punishable Sections 32 and 34 of the Karnataka Excise Act.

The bail bond executed by the Accused and their surety will be in a force for a period of six months as per Section 437A of Cr.P.C.

The material object seized in this case, is ordered to be destroyed after expiry of the appeal period, in accordance with law.

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this **25th day of July, 2026**)

(Smt.Vidya A.S)
I Additional Civil Judge & J.M.F.C.,
Periyapatna.

ANNEXURE

1. **Witnesses examined on behalf of the prosecution:**

Sl.No.	Name of the witness	Role of the witness
1.	Jagadisha.P.	Complainant
2.	Pradeep	Mahazar Witness
3.	Veerendra Kumar	Eye witness
4.	Krishna	Mahazar Witness
5.	T. Govinda	I.O

2. **Documents exhibited on behalf of the prosecution:**

Exhibit No.	Description of exhibits	Witness who proved or attested the document.
1.	Complaint dt:08-08-2021	
2.	Spot Mahazar dt:8-08-2021	
3.	Statement of P.W.2	
4.	Statement of P.W.4	
5.	FIR	

6.	Property seizure list	
7.	FSL report dt:31-08-2021	

3. <u>Witnesses examined & documents exhibited on behalf of the accused</u>

--Nil--

4. Material Objects Marked:

M.O.1 - Tetra Pack

M.O.2 - Cloth bag

(Smt.Vidya A.S)
I Additional Civil Judge & J.M.F.C.,
Periyapatna.

Digitally signed by Vidya A S
Location: I Addl.Civil Judge and JMFC., Periyapatna