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IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS

SAWANTWADI, AT: SAWANTWADI

(Presided over by Smt. R. G. Kumbhar)

(Date of Judgment 24/09/2024)

S.C.C. No. 455/2022

Exh. No.08

Details of FIR :- Cr. No. 162/2022 Dtd. 21/09/2022
Crime :- U/Sec. 65(e) of Maharashtra
Prohibition Act, 1949
Police Station :-Sawantwadi Police Station,
Dist. Sindhudurg.

Complainant	STATE OF MAHARASHTRA Through Inspector State Excise, Flying Squad, Sindhudurg, Dist. Sindhudurg.
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REPRESENTED BY	APP SMT. D. V. Govekar
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Accused	Jacky Selestin Desouza Age 65 Years, Occu.-Agriculture, R/o- Madhkhoh, Bazarpeth, Tal. Sawantwadi,Dist. Sindhudurg.
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REPRESENTED BY	Adv. Shri. D. K. Gaonkar
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Date of Offence	21/09/2022
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Date of FIR	21/09/2022
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Date of Chargesheet	06/10/2022
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Date of Framing of Charge	21/06/2023
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Date of commencement of evidence	22/04/2024
Date on which Judgment is reserved	--
Date of the Judgment	25/09/2024
Date of the Sentencing Order, if any	--

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428 CrPC
1.	Jacky Selestine Desouza	--	05/04/2023	Punishable u/s.65(e) of the Maharashtra Prohibition Act.	Acquitted	--	--

-:: J U D G M E N T ::-

(Delivered on this 24/09/2024)

1. Accused is charged and tried for offences punishable under Section 65(e) of Maharashtra Prohibition Act, 1949.
2. Following point arise for determination and I have recorded my findings with reasons thereon as follows :-

Sr.No.

Points

Findings

- 1] Whether the prosecution proves that on 21.09.2022 at about 13.20 p.m. at Mouje Madkhol, Bazarpeth, open place of behind house of accused, Tal.Sawantwadi accused was found in his possession in box containing 116 sealed bottles of 180 ml each of Mcdowell No.1 whiskey, 317 sealed bottles of 180 ml each of National Doctor Brandy, 60 sealed bottles of 180 ml each of National Commander XXX Rum and 40 sealed tin of 500 ml each of Kingfisher Strong beer of Goa made liquor without having any license, pass or permit thereof and thereby committed offences punishable u/s. 65(e) of Maharashtra Prohibition Act ?

No.

- 2] What order ?

As per final order.

-:: REASONS ::-

3. In order to establish the guilt of accused prosecution has examined in one following witnesses :-

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE
PW 1	Chandrakant Ramesh Palkar	Informant

B. Defence Witness, if any :-

RANK	NAME	NATURE OF EVIDENCE
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C. Court Witness, if any :-

RANK	NAME	NATURE OF EVIDENCE
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4. Apart from oral evidence prosecution also relied upon following documentary evidence :-

A. Prosecution

Sr. No.	Exhibit No.	Description
1.	12	Panchnama
2.	13	Complaint

B. Defence

Sr. No.	Exhibit No.	Description
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C. Court Exhibits

Sr. No.	Exhibit No.	Description
1.	10	C.A. report

D. Material Objects/ Muddemal :-

Sr. No.	Material Object Number	Description
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As to Point No.1 :-

5. In order to prove accusation the prosecution has examined one witness. P.W.1 Chandrakant Ramesh Palkar below Exh.08 who is informant. He has stated in his examination-in-chief that, on 21.09.2022, he had received the information as accused selling illegal Goa made liquor behind his house at Mouje Madkhol. Accordingly, he went at Madkhol, Bazarpeth with two panch and other staff and caught the accused. Thereafter, he has seized Goa made liquor namely Macdowell No.1, Kingfisher strong, National Doctor Brandy and National Commander XXX company

worth of Rs.66,900/-. He further 1 bottle of each liquor company for sample of seized liquid for the chemical analyzer. He has narrated all the incident as per complaint. However, in his cross-examination, he admitted that, house of accused is situated in Madkhol Bazapeth and no Grampanchyat number mentioned on spot of incident i.e. open shed. Further, he admitted that, the owner of open shed is not mentioned there. Therefore, there is possibility of recording of statements of independent witnesses, however, no such witness is testified by the prosecution.

6. The case paper nowhere discloses either reference of seized articles for Chemical Analyzer's or otherwise even the statement of carrier has not been recorded during course of investigation or trial. *Panch* witnesses are not examined to establish spot *panchanama*. Furthermore, seized property is not produced before the Court to prove the fact of seizure. Therefore, examination of other witnesses would also worthless. In the given set of facts, the carrier of sample has not examined, the accusation does not sustain in eyes of law. Therefore, in these circumstances, I am answering point No.1 in the negative.

As to Point No. 2:-

7. In view of above discussion as there is no sufficient evidence brought on record by the prosecution to prove the case beyond reasonable doubt. With these observations, I have pass following order –

-:: ORDER ::-

- 1) Accused Jacky Selestine Desouza R/o. Madhkhhol, Bazarpeth, Tal. Sawantwadi, Dist. Sindhudurg is hereby acquitted of the offence punishable under section 65(e) of the Maharashtra Prohibition Act as per section 255(1) of the Code of Criminal Procedure, 1973.
- 2) Bail bonds of the accused stands canceled and his surety stands discharged.
- 3) The accused is directed to execute his personal bond of Rs.15,000/- to appear before appellate Court after receipt of appeal notice as per the section 437-A of Code of Criminal Procedure.
- 4) After appeal period, seized muddemal property shown in the charge-sheet i.e. 180 ml each of 116 bottles of McDowell No.1 Original, 180 ml each of 317 bottles of National Doctor Brand, 180 ml each of 60 bottles of National Commander XXX Rum and 500 ml each of 40 tin of Kingfisher Strong Beer of Goa made liquor be sent to the District Prohibition Officer, Sindhudurg for disposal of property in accordance with law.

(Dictated and Pronounced in open court.)

Date : 24.09.2024

(Smt.R.G. Kumbhar)
Judicial Magistrate (F.C.),
Sawantwadi.

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer :- U. B. Hundekar (Grade-3)

Court :- Jt.C.J.J.D. & J.M.F.C. Sawantwadi

Date :- 24/09/2024

Judgment/Order signed by :- 25/09/2024

the Presiding Officer

Judgment/Order uploaded on :- 25/09/2024