



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & J.M.F.C.,
AT MAGADI**

-:Present:-

Sri. Shrinivasa.K.R., B.A.L.,LL.M.,
Prl. Civil Judge & JMFC.,
Magadi.

Dated this the 27th day of March -2026

C.C.No.6672/2021

COMPLAINANT : The State through Excise P.S.,
Magadi.

(By Asst. Public Prosecutor,)

//Versus//

ACCUSED : Janadhan Rao,
S/o Late Babu Rao,
Aged about 33 years,
Residing at Agalakote H.P.,
Kasaba Hobli, Magadi Taluk,
Ramanagara District.

(By Sri. R.S., Advocate)

1. Date of commencement of offence : 26.12.2020
2. Date of report of offence : 26.12.2020
3. Name of the complainant : Raghavendra Bhovi
4. Date of commencement of recording evidence : 23.08.2024



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|----|--------------------------|--------------------------------|
| 5. | Date of closing evidence | : 27.02.2026 |
| 6. | Offences complained of | : 32(1), 38(A) and of K.E.Act. |
| 7. | Date of Judgment | : 27.03.2026 |
| 8. | Opinion of the Judge | : Accused not found guilty. |

**Prl. Civil Judge & JMFC,
Magadi.**

J U D G E M E N T

Present case is registered by Excise Police, Magadi, for the offences alleged to have been committed U/Sec.32 and 38(A) of K.E. Act, against the accused and after completing the investigation, the I.O. submitted the charge sheet before this court accordingly.

2. Brief facts of the prosecution case is that;

On 26.12.2020 at about 01:00 p.m. at Agalakote H.P., Kasaba Hobli, Magadi Taluk, accused knowingly was in illegal possession of 180 ml of 17 Bagpiper Whiskey tetra packs, 180 ml of 21 Old Tavarin Whiskey tetra packs and 90 ml of



17 Original Choice Whiskey tetra packs of liquor at Shivaji Military hotel without having valid permit or license for the purpose of selling and thereby committed the alleged offences.

3. After taking cognizance the accused appeared and enlarged on bail and the copy of the charge sheet supplied to the accused as per compliance of Section 207 of Cr.P.C. Heard before charge, no grounds to discharge the accused at that stage. The Charge has framed against the accused for the offence punishable under section 32(1) and 38(A) of K.E, Act and read over to the accused, accused not pleaded guilty and claims to be tried.

4. In order to prove the case of the prosecution, prosecution has examined 7 witnesses as P.W.1 to 7 out of 8 witnesses and got marked 15 documents as Ex.P-1 to 15 and M.O.1 to 3. CW-7 given up as per submission of L/APP.

5. After closure of evidence, the statement of accused



is recorded U/S 313 of Cr.P.C. Accused denied the incriminating circumstance appeared in evidence against him and accused has not chosen to lead defence evidence.

6. Heard the arguments by learned APP and counsel for accused.

7. The following points arise for my consideration.

1. Whether prosecution proves its case beyond all reasonable doubt that, on 26.12.2020 at about 01:00 p.m. at Agalakote H.P., Kasaba Hobli, Magadi Taluk, accused knowingly was in illegal possession of 108 ml of 17 Bagpiper Whiskey tetra packs, 180 ml of 21 Old Tavarin Whiskey tetra packs and 90 ml of 17 Original Choice Whiskey tetra packs of liquor at Shivaji Military hotel without having valid permit or license for the purpose of selling and thereby the accused No.1 and 2 committed an offence punishable **U/S 32(1) of K.E. Act?**



2. Whether prosecution proves its case beyond all reasonable doubt that on above said date, time and place, the accused being the owner of the hotel knowingly permitted it to be used for the purpose of commission of above said offences without valid permit or license thereby committed an offence punishable **U/S 38(A) of K.E.Act ?**

3. What order?

8. My answers to the above points are as follows;

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 and 2:** These points are taken together for common discussion to avoid the repetition of facts.

10. On 26.12.2020 at about 01:00 p.m. at Agalakote H.P., Kasaba Hobli, Magadi Taluk, accused knowingly was in illegal possession of 180 ml of 17 Bagpiper Whiskey tetra



packs, 180 ml of 21 Old Tavarin Whiskey tetra packs and 90 ml of 17 Original Choice Whiskey tetra packs of liquor at Shivaji Military hotel without having valid permit or license for the purpose of selling and thereby committed the alleged offences.

11. The prosecution examined CW-1 as PW-1, the PW-1 in his chief-examination deposed that, on 26.12.2020 when he, CW-4 to 6 were patrolling duty at Agalakote with respect to grama panchayathi election in an vehicle bearing No.KA-01-G-5794, he received information that, at Shivaji Military Hotel, Agalakote hand post there was illegal possession of liquors for the purpose of selling and he issued notice to CW-2 and 3 to be as panchas at the time of conducting raid and they agreed to become pancha witness and on searching they found 108 ml of 17 Bagpiper Whiskey tetra packs, 180 ml of 21 Old Tavarin Whiskey tetra packs and 90 ml of 17 Original Choice Whiskey tetra packs of liquors and they have seized



the liquors and taken samples for forensic lab and conducted panchanama in the presence of panchas and staff between 1:00 to 2:30 pm. p.m.

12. Then prosecution moved on adduce the evidence of CW-2 as PW-2 and CW-3 as PW-3, who are the mahazar witnesses, PW-2 and 3 in their chief examination deposed that, they don't know anything about present case and as per request of police they affixed signature.

13. Then prosecution moved on adduce the evidence of CW-6 as PW-4, the PW-4 in his chief examination deposed that, on 26.12.2020 when he, CW-1, CW-4 and CW-5 were patrolling duty at Agalakote with respect to grama panchayathi election in an vehicle bearing No.KA-01-G-5794, CW-1 received information that, at Shivaji Military Hotel, Agalakote hand post there was illegal possession of liquors for the purpose of selling and CW-1 issued notice to CW-2 and 3 to be as panchas at the time of conducting raid and they



agreed to become panchas witness and on searching the hotel, they found 108 ml of 17 Bagpiper Whiskey tetra packs, 180 ml of 21 Old Tavarin Whiskey tetra packs and 90 ml of 17 Original Choice Whiskey tetra packs of liquors total 8.340 lts and they have seized the liquors and taken samples for forensic lab and conducted panchanama in the presence of panchas and staff between 1:00 to 2:30 pm. p.m.

14. Then after prosecution moved on to adduce the evidence of CW-4 as PW-5, the PW-5 deposed in his chief examination that, on 26.12.2020 when he, CW-1, CW-5 and CW-6 were patrolling duty at Agalakote with respect to grama panchayathi election in an vehicle bearing No.KA-01-G-5794, CW-1 received information that, at Shivaji Military Hotel, Agalakote hand post there was illegal possession of liquors for the purpose of selling and CW-1 issued notice to CW-2 and 3 to be as panchas at the time of conducting raid and they agreed to become pancha witness and on searching the hotel,



they found 108 ml of 17 Bagpiper Whiskey tetra packs, 180 ml of 21 Old Tavarin Whiskey tetra packs and 90 ml of 17 Original Choice Whiskey tetra packs of liquors and they have seized the liquors and taken samples for forensic lab and conducted panchanama in the presence of panchas and staff between 1:00 to 2:30 pm. p.m.

15. Then after prosecution moved on to adduce the evidence of CW-5 as PW-6, the PW-6 deposed in his chief examination deposed that, on 26.12.2020 when he, CW-1, CW-4 and CW-5 were patrolling duty at Agalakote with respect to grama panchayathi election in an vehicle bearing No.KA-01-G-5794, CW-1 received information that, at Shivaji Military Hotel, Agalakote hand post there was illegal possession of liquors for the purpose of selling and CW-1 issued notice to CW-2 and 3 to be as panchas at the time of conducting raid and they agreed to became pancha witness and on searching the hotel, they found 108 ml of 17 Bagpiper



Whiskey tetra packs, 180 ml of 21 Old Tavarin Whiskey tetra packs and 90 ml of 17 Original Choice Whiskey tetra packs of liquors and they have seized the liquors and taken samples for forensic lab and conducted panchanama in the presence of panchas and staff between 1:00 to 2:30 pm. p.m.

16. Then after prosecution moved on to adduce the evidence of CW-8 as PW-7, the PW-7 in his chief examination deposed about further investigation and obtaining information about ownership of hotel of accused from PDO, Sathunuru gram panchayath and issuance of notice to the owner of building and receiving of FSL report.

17. At this juncture, it is necessary to reiterate the Sec.54 of Karnataka Excise Act.

***Sec.54:- Power to search without warrant:-
Whenever the excise commissioner or a deputy commissioner or any police officer not below the rank of an officer incharge of a police station or any excise officer not***



below such rank as may be prescribed, as reason to believe that, an offence U/Sec.32, 33, 34, 36 or 37 has been, is being, or is likely to be committed and that a search warrant cannot be obtained without offering 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.

As per Sec.54 of Karnataka Excise Act, it is very clear that, whenever a police officer or excise officer has received information about illegal possession and selling of liquor he has to obtain search warrant and he has to place record of



the ground of search. If searching a place without making any record of the ground such search is completely without jurisdiction. In the present case also the CW-1 who is the complainant without obtaining search warrant has conducted raid in the hotel of accused.

18. At this juncture it is necessary to rely the decision of Hon'ble High Court of Karnataka which is passed in criminal appeal No.2536/2012. Wherein the Hon'ble High Court of Karnataka at para-16 held that,

Para-16:- 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 Sec.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.



19. At this juncture it is necessary to rely the decision of Hon'ble High Court of Karnataka which passed in Criminal Appeal No.2619/2012. Wherein the Hon'ble High Court of Karnataka at para-24 held that,

Para-24:- In the present case, it is not the contention of the prosecution that, the credible information was received regarding the contraband that, is being transported in a vehicle but on the other hand, PW-5 who is a responsible officer received credible information while he was in the office and after receiving the credible information he secured the presence of pancha witnesses and proceeded to the spot along with his staff. But unfortunately he has not thought it fit either to obtain the warrant or at least to record the reasons for not obtaining the warrant, as required under law. Thereby legal requirements U/Sec.53 and 54 of the Act were not at all complied with and there is no explanation for such non-compliance of the requirement.



In the present case also the CW-1 not received information that, someone transporting the liquor in a vehicle but, he received information about illegal possession of liquor in the Shivaji Military Hotel and selling the liquor and after receiving credible information about illegal possession and selling of liquor at Shivaji Military Hotel, the CW-1 secured the pancha witness at spot and CW-1 conducted raid along with his staff and pancha witness.

20. On perusal of statement of CW-1/PW-1 the contention of the PW-1/complainant is not acceptable without valid grounds, because when he received information about illegal possession and selling of liquor he must record his sufficient reason for non-obtaining of search warrant but, in the present case on perusal of records there is no any such valid reasons recorded by the complainant/PW-1. Moreover the accused not possessed the liquor in the vehicle and he has not transferring the same through vehicle. It is pertinent



to note that, the prosecution not proved that the M.O.1 to 3 have been seized from the custody of the accused by leading evidence. Hence, in the absence of evidence of seizure panchas I am declining to accept the evidence of PW-1 and 4 to 6. Therefore, the prosecution has failed to prove the case beyond all reasonable doubts and moreover the I.O. has sent only 10 Backpaper whiskey tetra packs out of 17, 10 Old Taveren Whiskey tetra packs out of 21 and 10 Original Choice tetra packs out of 17 tetra packs in the seized liquors for forensic lab but, he had not sent all the seized articles for forensic lab to obtain report/certificate as per section 59(A) of KE Act.

At this juncture it is necessary to rely the decision of Hon'ble High Court of Karnataka reported in ILR 2014 KAR 5949. Wherein the Hon'ble High Court at para -3 held that:

Para-3: It is therefore not clear as to how the quantity of liquor that was carried by the petitioner has been said to have been



established by the production of 5 bottles of whisky out of the 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. This was possible if the prosecution had produced a certificate as specified U/s.59 of the Excise Act. Therefore it was possible for the prosecution to establish the case against the accused by merely producing a certificate issued U/s.59(A) of the Excise Act. Therefore, merely on the production of the material objects 1 to 5, the case could not have been established against the accused.

As already stated above in the present case also the investigating officer not sent all the seized liquors to obtain certificate as per section 59(A). It is necessary to be established by the prosecution that, the accused was in



illegal possession of the liquor without having valid license. Therefore, the prosecution has failed to prove the case beyond all reasonable doubts. Hence, the benefit doubts goes to accused. Accordingly I answered point No.1 and 2 in the **Negative.**

21. **POINT NO.3:** In view of the findings given on point No.1 and 2 this Court pass the following:

ORDER

Acting under Section 248(1) of Cr.P.C. accused is acquitted for the offences punishable U/Sec.32(1) and 38(A) of K.E. Act.

Bail bond and surety bond of accused is hereby canceled except compliance as per Section 437(A) of Cr.P.C.

M.O.1 to 3 are worthless and same will be destroy after appeal period is over.

(Dictated to the Stenographer, typed by her, corrected and then pronounced by me in the open court on this the **27th day of March - 2025**).

(Shrinivasa.K.R)
Prl. Civil Judge & J.M.F.C,
Magadi.



ANNEXURE

Witnesses examined on behalf of the prosecution side:

- P.W.1 : Sri.Raghavendra Bhovi S/o Hanumappa
Bhovi.
- P.W.2 : Sri.Ravirao S/o Rajarao.
- P.W.3 : Sri.Sukesh Rao S/o Parashuram Rao.
- P.W.4 : Sri.Chenath.S S/o Shivaswamy
- P.W.5 : Sri.Ravikiran.N. S/o P.Nagaraju.
- P.W.6 : Sri.Ramappa.P S/o Parameshwarappa.
- P.W.7 : Sri.Nagaraju S/o Hanumaiah.

Documents marked on behalf of the prosecution :

- Ex.P-1 : Spot Mahazar
- Ex.P-1(a) : Signature of PW-1
- Ex.P-1(b) : Signature of PW-2
- Ex.P-1(c) : Signature of PW-3
- Ex.P-1(d) : Signature of PW-4
- Ex.P-1(e) : Signature of PW-5
- Ex.P-1(f) : Signature of PW-6
- Ex.P-2 : Notice
- Ex.P-2(a) : Signature of PW-1
- Ex.P-3 : Notice
- Ex.P-3(a) : Signature of PW-1
- Ex.P-4 : Search Warrant
- Ex.P-4(a) : Signature of PW-1
- Ex.P-5 : List of Article



- Ex.P-5(a) : Signature of PW-1
- Ex.P-6 : Seal
- Ex.P-6(a) : Signature of PW-1
- Ex.P-7 : List of Article
- Ex.P-7(a) : Signature of PW-5
- Ex.P.8 : Letter to FSL
- Ex.P.8(a) : Signature of PW-4
- Ex.P-9 : FSL report
- Ex.P-9(a) : Signature of PW-7
- Ex.P.10 : Letter to Grama Panchayathi.
- Ex.P.10(a) : Signature of PW-7
- Ex.P.11 : Reply from Grama Panchayathi
- Ex.P-11(a): Signature of PW-7
- Ex.P.12 : Demand registrar
- Ex.P-12(a): Signature of PW-7
- Ex.P.13 : Notice
- Ex.P-13(a): Signature of PW-7
- Ex.P.14 : Death Certificate
- Ex.P-14(a): Signature of PW-7
- Ex.P.15 : Certificate
- Ex.P-15(a): Signature of PW-7

Witnesses examined on behalf of the accused:

-NIL-

List of documents marked on behalf of the accused:

-NIL-



List of Material Objects:

- M.O.1 - 9 180 ml of 17 Bagpiper Whiskey tetra packs
- M.O.2 - 180 ml of 21 Old Tavarin Whiskey tetra packs
- M.O.3 - 90 ml of 17 Original Choice Whiskey tetra packs

**Prl. Civil Judge & J.M.F.C,
Magadi.**