

**IN THE COURT OF THE II ADDITIONAL CIVIL JUDGE
(JR. DIVISION), SATTENAPALLI.**

Present:- **MOHAMMAD GOUSE,**
II Addl. Civil Judge (Jr. Division), Sattenapalli.

Wednesday, this the 06th day of March, 2024.

C.C. No. 638 of 2022

Between:

State represented by the S.E.B. Inspector,
Sattenapalli.

...Complainant.

And

Namburi Chalamaiah, S/o. Venkateswarlu, 42 Years,
R/o. Yarraguntlapadu village, Phirangipuram Mandal.

...Accused.

This case is coming on 05.03.2024 before me for final hearing in the presence of Learned **Assistant Public Prosecutor** for the Prosecution and Sri **B. Narasimha Rao** and Sri **Ch. Mani Babu** Learned Counsel for the accused and having stood over for consideration till this day, this court delivered the following:-

J U D G M E N T

The S.E.B. Inspector, Sattenapalli, filed charge sheet in Cr.No.99/2021 of S.E.B. Sattenapalli, against the accused for an offence punishable U/s. 34(a)(1)(i) of the A.P. Excise Act.

02. The gist of the charge sheet is as under:

On 17.10.2021 at about 06.15 P.M., L.W.1/T. Tulasi/Sub-Inspector of Police along with her staff while detecting Prohibition and Excise Offences near Burial ground towards Garlapadu to Yarraguntlapadu road, Garlapadu village, Sattenapalli Mandal, there they noticed the accused with possession of white polythene bag and on seeing the police in uniform, the accused got perturbed and tried to escape, then on suspicion L.W.1 detained him with the help of her staff and on questioning the accused admitted that the said bag contains liquor bottles. Then L.W.1 instructed L.W.2 to secure mediators but

none come forward to act as mediators. Then she decided to proceed with the special report and opened the bag and found total 8 liquor bottles with torned eals of duty paid liquor. On questioning the accused replied that he has no permit or licence to sell the said bottles. Then L.W.1 seized the bottles from the possession of the accused and drawn a sample for analysis by following the Excise Rules and arrested the accused and took him along with seized contraband to the police station and registered the special report as F.I.R. in Cr.No. 99/2021 for an offence U/s. 34(a)(1)(i) of A.P. Excise Act and sent the original F.I.R. to the court and copies to all concerned and sent the accused for remand. Further, L.W.1 sent the sample bottle to the Government Chemical Examiner for analysis and the Analyst opined that the sample contains Indian liquor and after receipt of the analysis report, and after completion of investigation L.W.3/Inspector filed charge sheet.

03. This court took cognizance for the offence punishable U/s. 34(a) of the A.P. Excise Act.

04. Copies of case record were furnished to the accused as required U/s. 207 of Cr.P.C.

05. The accused was examined U/s. 239 Cr.P.C. and a charge for the offence punishable U/s. 34(a) of the A.P. Excise Act was framed and read over to him for which he pleaded not guilty and claims for trial.

06. In order to prove the case, L.W.2/Constable and L.W.1/Sub-Inspector were examined as P.Ws. 1 and 2 respectively. The remaining witnesses were given up by the prosecution. Exs.P1 to P4 and M.O.1 are marked.

07. After completion of the prosecution evidence, the accused was examined U/s. 313 Cr.P.C. by setting forth with the incriminating circumstances appearing in the evidence of prosecution, for which he denied the same and further reported that no defence evidence on his behalf.

08. Heard the Learned Assistant Public Prosecutor and Learned Counsel for the accused.

09. Now the point for determination is

"Whether the prosecution could able to bring home the guilt of the accused for the offence U/s. 34(a) of the A.P. Excise Act, beyond all reasonable doubt?"

10. Point:

The gist of the prosecution case is that on 17.10.2021 P.W.2 along with her staff went near Burial ground situated by the side of the road leading from Garlapadu to Yerraguntlapadu in Garlapadu village and found the accused selling liquor bottles. Then P.W.2 seized 8 liquor bottles from the possession of accused under the cover of Ex.P1/special report and basing on it P.W.2 registered the case.

11. According to P.W.1/Constable on 17.10.2021 at about 06.15 P.M., she along with her staff went near Burial ground situated by the side of the road leading from Garlapadu to Yerraguntlapadu in Garlapadu village, there they found accused with a white polythene bag and with their assistance, L.W.1/Sub-Inspector of police caught hold of accused then the accused confessed that he purchased the contraband from different GROs of Sattenapalli in order to sell them at higher rates. Then she seized 8 liquor bottles from the possession of accused under the cover of special report.

12. In addition to that the P.W.2/Sub-Inspector of police deposed that on 17.10.2021 at about 06.15 P.M., she along with her staff went near Burial ground situated by the side of the road leading from Garlapadu to Yerraguntlapadu in Garlapadu village, there they found accused with a white polythene bag and with their assistance, she caught hold of accused then the accused confessed that he purchased the contraband from different GROs of Sattenapalli in order to sell them at higher rates. Then she seized 8 liquor bottles from the possession of accused under the cover of special report. Thereafter, she registered the special report as F.I.R. in Cr.No. 99/2021 and sent the accused to judicial remand. Later she sent sample for analysis and after completion of investigation L.W.3/Inspector filed charge sheet.

13. During cross examination P.W.1 and P.W.2 admitted that they did not issue any written summons to mediators. Furthermore, P.W.1 and P.W.2 admitted that the scene of offence was a busy locality. But, P.Ws.1 and 2 did not request any of the local inhabitants or revenue officials to act as mediators. It is also seen from the evidence of P.W.2 that she did not collect any evidence to show that from which shops the accused person purchased the alleged liquor bottles for selling the same at higher price. Even the prosecution failed to examine any independent witnesses. From the evidence of P.W.1 and P.W.2, it is clear that the scene of offence is not an isolated place and there is every opportunity to P.W.1 and P.W.2 to secure the revenue officials or local inhabitants to act as mediators, for arrest of the accused and for seizure of 8 liquor bottles.

14. Generally in villages, there will be all village level officers and the officials of all Departments of the Government. So, the police

officials may approach any official of any Department of Government or local body other than V.R.O. or Sarpanch, to act as mediator. In the present case, the police officials did not try to secure any of those officials as mediators. Except the evidence of P.W.1 and P.W.2, there is no other evidence to prove the guilt of the accused.

15. At this juncture it is relevant to note a judgment held in between ***Botcha Raju Vs. State Rep. by the Inspector of Police, Vizianagaram Rural Circle***, reported in ***1994(2) ALT CrI.P. 69 (A.P.)***, where in it was held that the conviction cannot be given basing on the sole evidence of the police officer without corroboration by disinterested witnesses. In the present case on hand, except the evidence of P.W.1 and P.W.2 i.e., police officials, there is no evidence on behalf of prosecution to prove the guilt of the accused, which is not believable.

16. For the foregoing reasons, as there is no convincing and satisfactory evidence to prove that accused was found in possession of liquor bottles as alleged, Ex.P3 could not be relied upon. Though Ex.P3 discloses that the contents of sample liquor bottles contains the Indian alcohol, as there is no convincing evidence to prove that the contents of sample liquor bottle drawn from seized liquor bottles said to be found from the possession of accused, Ex.P3 could not be relied upon.

17. Therefore, in view of the evidence let in by the prosecution, this court opines that the prosecution failed to prove the guilt of the accused for the offence punishable U/s. 34(a) of A.P. Excise Act beyond all reasonable doubt.

18. IN THE RESULT, accused is not found guilty for the offence punishable U/s. 34(a) of A.P. Excise Act and accordingly, he is

acquitted U/s. 248(1) of Cr.P.C. Bail bonds of the accused, if any, shall be in force for six months U/s. 437-A of Cr.P.C. M.O.1 covered under C.P.R.No. 165/2022 seized sample bottle shall be destroyed after expiry of appeal time.

Directly typed to my dictation by the Stenographer Gr-III, corrected and pronounced by me in open court, this the 06th of March, 2024.

Sd/- Mohammad Gouse.
**II ADDL. CIVIL JUDGE (JR. DIVISION),
SATTENAPALLI.**

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PROSECUTION:

FOR DEFENCE: None

P.W.1: Y. Thirupathamma.

P.W.2: T. Tulasi.

EXHIBITS MARKED

FOR PROSECUTION:

FOR DEFENCE: --NIL--

Ex.P1: Special Report.

Ex.P2: FIR.

Ex.P3: Chemical Analysis Report.

Ex.P4: Confiscation Proceedings.

MATERIAL OBJECTS

M.O. 1: One Sample Bottle.

Sd/- Mohammad Gouse.
**II ADDL. CIVIL JUDGE (JR. DIVISION),
SATTENAPALLI.**

CALENDAR & JUDGMENTIN THE COURT OF II ADDL. CIVIL JUDGE (JR. DIVISION),
SATTENAPALLI.**C.C. No. 638/2022**

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|--|---------------------------------------|
| 1. Date of Offence | : 17-10-2021 |
| 2. Filing | : 27-10-2022 |
| 3. Date of apprehension of the accused | : 17-10-2021 |
| 4. Date of release on bail | : 22-10-2021 |
| 5. Date of commencement of trial | : 22-01-2024 |
| 6. Date of close of trial | : 29-02-2024 |
| 7. Date of Sentence or Order | : 06-03-2024 |
| 8. Explanation of delay if any | : Due to non-production of Witnesses. |

COMPLAINANT:

State represented by the S.E.B. Inspector,
Sattenapalli.

ACCUSED:

Namburi Chalamaiah, S/o. Venkateswarlu, 42 Years,
R/o. Yarraguntlapadu village, Phirangipuram Mandal.

Section of Law : U/s. 34(a) of A.P. Excise Act.

Finding of Court : Accused is not found guilty.

Sentence/Order : In the result, accused is not found guilty for the offence punishable U/sec. 34(a) of A.P. Excise Act and accordingly, he is acquitted U/s. 248(1) of Cr.P.C. Bail bonds of the accused, if any, shall be in force for six months U/sec. 437-A of Cr.P.C. M.O.1 covered under C.P.R.No. 165/2022 seized sample bottle shall be destroyed after expiry of appeal time.

Sd/- Mohammad Gouse.
II ADDL. CIVIL JUDGE (JR. DIVISION),
SATTENAPALLI.

Copy submitted to the Chief Judicial Magistrate, Guntur District.