



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE
AND J.M.F.C., KUNIGAL.**

PRESENT:

Smt.Gangavva Ayatti., B.A., LL.B.(Hon's)
Addl. Senior Civil Judge & J.M.F.C.,
Kunigal

DATE: 1ST DAY OF JULY 2026

C.C.No.1173/2024

Complainant : State of Karnataka
Through Excise PS ,
Kunigal Range.

(By Asst Public Prosecutor)

V/s

Accused : Rajanna.,
S/o Late Lakkanna,
Age: 55 years,
R/o : Kaggere Village, Yadiyuru Hobli,
Kunigal Taluk, Tumakuru District.

(Accused by Sri.G.S.N., Advocate)

1.Date of commission of offences:	28.06.2020.
2. Date of report of offences:	28.06.2020.
3. Name of the complainant :	Excise Inspector.
4.Date of recording of evidence:	28.12.2021.
5. Date of closure of evidence:	16.06.2026.



6. Offences alleged :	U/s. 32(1) of K.E. Act.
7. Opinion of Judge :	The accused not found guilty.

J U D G M E N T

This charge-sheet is filed by Excise PS against the accused for the offences punishable under Section 32(1) of K.E. Act.

2. The gist of the prosecution case is as follows:

That on 28.06.2020, at about 10.30 am in the morning, while CW1 along with CW3 and 4 were on patrolling duty, on Herur road, near bridge accused was found in transportation of 6.300 liter liquor i.e., 180 ML 8 bagpiper whiskey packets, 180 ML 3 MC brandy tetra packets, 180 ML 14 Old taverin whiskey packets and 90 ML 20 Raja whiskey packets in two wheeler bearing Reg.No.KA-02/JT-2886 without having permission from the competent authority thereby they conducted raid and seized the liquor and registered the case. Final report was filed against him. After filing of the charge-sheet, court has taken cognizance of the offences against the accused and has issued summons to the him.

3. After securing the presence of accused copy of the



charge sheet was furnished to accused. After hearing both sides charge was framed, read-over and explained to the accused. Accused denied the charge and claimed to be tried.

4. To substantiate the allegations made in the charge sheet and to prove the guilt of the accused, the prosecution has examined 5 witnesses as PW1 to PW5 and got marked Ex.P1 to Ex.P7 and got marked material objects MO1 to 12.

5. After completion of prosecution evidence statement of accused as required under Section 313 Cr.P.C is recorded wherein the accused has denied all the incriminating statements appearing in the evidence of prosecution witnesses. The accused did not choose to lead any defence evidence.

6. Heard the argument.

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

1) Has the prosecution proves beyond all reasonable doubt that, on 28.06.2020, at about 10.30 am in the morning, while CW1 along with CW3 and 4 were on patrolling duty, on Herur road, near bridge accused was found in transportation of 6.300 liter



liquor in two wheeler bearing Reg.No.KA-02/JT-2886 without having permission from the competent authority thereby committed offences punishable under Section 32(1) of K.E. Act?

2) What order or sentence?

8. My findings on the above points are:-

Point No.1 : In the Negative
Point No.2 : As per the final order
for the following:-

REASONS

9. Point No.1:- To substantiate the case of prosecution and allegations leveled against accused in charge sheet and to bring home the guilt of the accused, the prosecution has examined 5 witnesses as PW1 to PW5 and got marked Ex.P1 to Ex.P7 and MO.1 to 12.

10. PW1 Devaraj, PW3 Santoshkumar, PW4 and G.V.Tirumalegowda have deposed in their chief examination that, on 28.06.2020, at about 9.30 am in the morning, at about 10.30 am in the morning, while they were on patrolling duty, on Herur road, near bridge accused was found in transportation of liquor without having permission from the competent authority. They requested one person by name Kumar to assist them in



conducting panchanama and CW2 came and they prepared the search warrant U/sec 54 of the KE Act, have conducted the raid and seized the liquor to the extent of 6.300 liter liquor i.e., 180 ML 8 bagpiper whiskey packets, 180 ML 3 MC brandy tetra packets, 180 ML 14 Old taverin whiskey packets and 90 ML 20 Raja whiskey packets and two wheeler bearing Reg.No.KA-02/JT-2886. Therefore they by conducting mahazar have seized the MOs in the presence of panchas and registered the case.

11. PW2 Kumar has deposed in his examination in chief that, he signed on panchanama about 4 to 5 years back in Kaggere and nothing was seized in his presence. At that time no body was present and police have not recorded his statement.

12. PW5 Divyashree T.J has deposed in her examination in chief that, on 12.08.2020 she received case file and MOs and written letter to Rajajinagar Bangalore seeking information as to seized vehicle. On 13.08.2020, sent Mos to the FSL and on 14.08.2020 received B extract and FSL report. On 25.08.2020 she recorded the statement of owner of the vehicle and 05.09.2020 she recorded the statement of accused and recorded the statement CW1 to 4. On completion of investigation filed charge sheet against the accused.



13. On perusal of overall evidence on record, it appears that, PW2 being the pancha has completely turned hostile to the case of the prosecution and in his cross examination by Learned APP he denied the suggestions as to conducting of mahazar in his presence. PW1, 3 and 4 were cited as raid witnesses who are the official witnesses and they have supported the case but, in their cross examination contradictions were elicited with regard to place and timings of incident as such their evidence without any corroboration is of no avail to the prosecution. As per sec 40 of Karnataka Excise act there is presumption as to commission of offences in certain cases. In prosecutions under section 32 and section 34, it shall be presumed, until the contrary is proved, that the accused person has committed the offence punishable under that section in respect of,- (a) any intoxicant; or (b) any steal, utensil, implement or apparatus whatsoever in the manufacture of any intoxicant other than toddy; or (c) any material which have undergone any process towards the manufacture of an intoxicant or from which an intoxicant has been manufactured, for the possession of which he is unable to account satisfactorily.

14. For proving recovery of material objects evidence of panchas is necessary. In this case the PW2 who is the pancha has not supported the case as such believing the testimony PW1, 3 and 4 does not arise. Further as per the Sec 154 of



Cr.P.C. informant has not lodged the complaint before the investigating officer based on the panchanma case came to be registered against accused therefore there is procedural lapses and benefit of doubt should be given to accused. The Hon'ble High Court of Karnataka in the decision of **Dayanand @ R Babu Vs State of Karanataka CrI R.P 129/2021 dated 4 April 2024** it is held that, **On perusal of the entire documents, Ex.P1 is considered as seizure mahazar under which liquor bottles have been seized by stating that the accused were transporting it without having any valid license. It is the submission of learned counsel for petitioner that the search and seizure conducted without registration of FIR in respect of cognizable offence is bad in law is concerned.**

15. It is relevant to refer to the provision under Sections 154 and 157 of Cr.P.C.

"154. Information in cognizable cases.--(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to



be kept by such officer in such form as the State Government may prescribe in this behalf:

16. [Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or [section 509](#) of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that--

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, [1](#)[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;



(b) the recording of such information shall be video graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.] (2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of

- 10 - an officer in charge of the police station in relation to that offence.

157. Procedure for investigation.--(1) If, from information received or otherwise, an officer in charge of a 80 police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a



Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that--

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

- 11 - [Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.]

(2) In each of the cases mentioned in clauses



(a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

17. On careful perusal of the above said provisions, it appears that, there are two kinds of FIRs namely, the FIR can be registered by the informant which was duly signed by him. Secondly, the FIR can be registered by the police officer himself on any information received by him. In both the cases, the information should be reduced into writing and thereafter, the investigation must be carried out.

18. The Hon'ble High Court held that, Ex.P1 being a panchanama, it cannot be termed as a complaint. FIR cannot be registered on the basis of panchanama, however, in the present case, the respondent has registered the FIR on the basis of panchanama which is erroneous and not proper. The Trial Court ought not to have acted upon such FIR and cognizance should not have been taken on the strength of the said FIR. However, the Trial Court and the Appellate Court have committed error by considering the



said FIR as appropriate and proper and recorded the conviction. Such conviction would be rendered as ineffective and the same can be termed as non est in law.

19. Though as per the evidence of PW1, 3 and 4 it is proved by the prosecution that the accused was found in possession of liquor as stated in the panchanama but in view of the decision stated above there is no complaint filed by the concerned Excise Police therefore, the accused is entitle for the acquittal.

20. During the course of arguments the counsel for accused relied upon the order passed in Crl.RP No.1391/2016 dated 11.01.2024 of the Hon'ble High Court of Karnataka wherein the Hon'ble high held with regard to delay in sending seized MOs to FSL and also with regard to sending of all MOs to the FSL. In this case also there is delay in sending MOs to FSL and non explaining of delay is fatal to the case of the prosecution in view of the sec 43A of KE Act. The above decision is applicable to the case in hand.

21. On perusal of the entire material evidence on record, by looking into the oral evidence adduced by the prosecution a doubt is created over the prosecution case as prosecution case is not free from contradictions, omissions, and



discrepancies. At this stage, this court is of the opinion that the evidence of witnesses is a formal one. Further on perusal of entire evidence produced by the prosecution, when there is drastic stand taken by the accused that the alleged offences are false one, case of prosecution should be supported by independent witnesses. The only evidence made available by the prosecution is of officials who are part of raid team. Accordingly the prosecution has failed to prove the possession and recovery of material objects from the accused. Unless and until prosecution produces, corroborative, cogent independent oral and documentary evidence, circumstantial witnesses and local persons evidence, it is not safe to accept the alleged offences against accused. **Hence, I answer Point No.1 in the Negative.**

22. **Point No.2:-** As I have answered the above point No.1 in the negative in the result I pass the following.

O R D E R

Exercising power under section 248(1) Cr.P.C, the accused is acquitted of the offences punishable Sec. 11, 13, 14, 32, 34 of K.E. Act.

The bail bonds and surety bonds under sec 437-A of the shall remain in force for 6 months.



Return M.O.s to the Kunigal
Excise Police, to be dealt with in
accordance with law after expiry of
appeal period.

(Dictated to the Stenographer transcribed by her, then corrected and
pronounced by me in the open Court on this the **01st day of July 2026**).

sd/-
(Smt.Gangavva Ayatti)
ASCJ & JMFC,Kunigal

ANNEXURE

1. List of witnesses examined for the prosecution:

PW 1 - C.Devaraj.
PW 2 - Kumar.
PW 3 - Santhoshkumar.
PW 4 - Thirumalegowda.
PW 5 - Divyashree.T.J.

2. List of witnesses examined for the defense:

-Nil -

3. List of documents exhibited for the prosecution:

Ex.P 1 - Mahazar.
Ex.P 2 - Statement.
Ex.P 3 - Letter to FSL.
Ex.P 4 - FSL Report.
Ex.P5 - Letter to RTO.
Ex.P6 - B-Extract.



Ex.P7 - Notice.

4. **List of documents exhibited for the defense:**

-Nil-

5. **List of material objects:**

M.O.1 to 12 - Liquor.

sd/-

(Smt.Gangavva Ayatti)
Addl. Sr. Civil Judge &
JMFC, Kunigal