

KAVN500021142024



**IN THE COURT OF SENOR CIVIL JUDGE AND JMFC.,  
HARAPANAHALLI**

Dated this the 7<sup>th</sup> day of March 2026

**: PRESENT:**

Smt. **Usha Rani. R. B.A.L. LL.M.,**  
Senior Civil Judge & JMFC.,  
Harapanahalli

**Criminal Case No: 412/2024**

**Complainant** : State by Haluvagilu Police  
(By the learned A.P.P. Harapanahalli )

Vs.

**Accused** : Sri.Kambali Venkatesh S/o Dodda  
Bharamappa, aged about 47 years,  
R/o G.Dadapura village,  
Harapanahalli taluk.

(Accused by Sri.A.B.G.,*Advocate.*)

Date of Commission of offence : 07.09.2023  
Date of report of offence: : 07.09.2023  
Name of the Complainant : Smt.Nagarathna R  
Date of Recording of Evidence : 29.01.2025  
Date of Closing of Evidence : 28.01.2026  
Offences Complained of : Punishable U/Sec 32 and 34  
of Karnataka Excise Act 1965  
Opinion of the Judge/Result : Accused found not guilty  
/acquitted

## **J U D G M E N T**

The instant case has been launched by the Police Sub Inspector, Haluvagilu police station, Harapanahalli against the accused alleging the offences P/u/s 32 and 34 of Karnataka Excise Act 1965.

### **2. The brief facts of the prosecution case :**

That on 07.09.2023 at about 2.00 pm the complainant received credible information that a person was illegally selling liquor on the public road in front of the beedi shop of the accused at G.Dadapura village without any license. On the basis of information the complaint secured panchas CW2 and 3 and along with the staff CW 4 to 6 raided the spot at about 3.10 pm. Accused was found to be the possession of a plastic cover which contained 12 tetra packs of Haywards cheers whiskey of 90 ml each worth Rs.421.56/-, 8 empty tetra packs of Haywards cheers whiskey of 90 ml each. Accused also had possession of cash of Rs. 120/- by the sale of liquor. The accused did not possess any license. Hence accused is alleged have committed offences punishable Under Section 32 and 34 of Karnataka Excise Act 1965.

3. After investigation the Investigating Officer has filed charge sheet against accused alleging the aforesaid offences. On perusal of the charge sheet cognizance was taken for the said offences, presence of the accused was

secured and enlarged on bail. The prosecution papers was supplied to accused in compliance of section 207 of CrPC. As there were materials to frame charge, Charges were framed, read over and explained to accused in language best known to him. Accused pleaded not guilty and claimed trial.

4. The prosecution in order to prove guilt of the accused had cited 9 witnesses in the charge sheet and out of them examined P.W.1 to 6 and got marked Ex.P.1 to P4 and M.O.1 to 3 through these witnesses. The prosecution has given up the examination of CW.4, 7 and 8. Statement of the accused as per Sec.313 of Code of Criminal Procedure has been recorded. The accused denied the entire incriminating evidence as appears against him and chose not to lead any defense evidence. His defence is mere denial of the prosecution case.

5. Heard the arguments canvassed on both sides and perused documents on record.

6. The points that arises for consideration of the court is:

1) Whether the prosecution proves beyond all reasonable doubts 07.09.2023 at about 2.00 pm the accused on the public road in front of his beedi shop at G.Dadapura village illegal possessed 12 tetra packs of

Haywards cheers whiskey of 90 ml each worth Rs.421.56, 8 empty tetra packs of Haywards cheers whiskey of 90 ml each and cash of Rs.120/- by the sale of the liquor and thereby accused committed the offence punishable under section 34 of K.E.Act?

2) Whether the prosecution further proves beyond all reasonable doubts that on the above stated date, time and place, the accused illegally possessed liquor worth of Rs.421.56 with an intention to sell the same and cash of Rs.421.56/- thereby committed the offence punishable under section 32 of Karnataka Excise Act 1965 ?

3) What order or sentence?

7. My findings on the above point are as under:

Point No.1: In the negative,

Point No.2: In the negative,

Point No.3: As per the final order for the

following:-

### **REASONS**

8. **Point no.1 and 2** : As these points are inter-linked with each other, to avoid repetition of facts and to evidence, they are taken together for common discussion. As the prosecution has alleged that the accused have committed offences under sections 32 and 34 of

Karnataka Excise Act 1965 the ingredients of each of these offences has to be proved.

9. For an offence punishable U/s.32 of the Karnataka Excise Act, prosecution has to prove that, accused in contravention of the Act, imported, exported, transported, manufactured, collected or process any intoxicant.

10. To prove an offence U/s.34 prosecution has to prove that, accused had in his possession any quantity of intoxicant without lawful authority knowingly that the same has been unlawfully imported, transported, manufactured, cultivated or collected or knowing that prescribed duty has not been paid.

11. In the background of these ingredients the factual aspect of this case has to be assessed. The complainant CW1 Smt.Nagarathna D/o Basavaraja Meti is examined as PW1. She deposed that on 07.09.2023 at about 2.00 pm when she was in the police station she received credible information that a person was illegally selling liquor at in front of his beedi shop of Kambali Venkatesh. On the basis of information she secured staff CW4 to 6 and two panchas and went in the department jeep near the shop of Venkatesh near Beeralingeshwara temple at Dadapura village. They went to the stated spot and watched from a distance. A person was selling liquor. They raided and the person was caught. It was learnt that

the said person was Kambali Venkatesh. On searching him they found Rs.120/- cash and in the spot they found that there were 8 empty tetra pack and searching the plastic bag they found that 12 tetra pack of of Haywards cheers whiskey of 90 ml each. They seized all these materials under the panchanama in the presence of panchas and sealed them in a bag and drew panchanama at the spot. Panchanama is marked as Ex.P.1. Subsequently she returned to the police station and lodged complaint for taking further action. Complaint is marked as Ex.P.2. She identified material objects marked as MO 1 to 3.

12. In the cross examination PW1 denied that they have not mentioned about the batch number of the liquor in the panchanama. It is admitted that they are provided with a camera but they have not taken any photographs at the time of panchanama. They have not mentioned the date of manufacturing of the material objects. He denied that a false case filed only for statistical purpose.

13. In this case the independent pancha witnesses CW2 Sri.G.Imam Husain S/o Abdul Gafar and CW3 Sri. M.Shamiulla S/o Mohammad Sab are examined as PW2 and PW3. Both these pancha witnesses only admitted the signature on the panchanama marked as Ex.P.1 and denied that they had participated in the raid and that the

material objects were seized in their presence. Both these witness are treated as hostile and subjected to cross examination wherein nothing useful has been elicited. The cross examination has been a futile exercise.

14. CW5/PW.4 Sri. Honnappa S/o Basappa is another raiding person who also deposed that on 07.09.2023 at 2.00 pm complainant received credible information that a person was illegally selling liquor at in Kambali Venkatesh's beedi shop. On the basis of information the complainant informed them and secured two panchas and took them for raid and went in the department jeep to the stated spot ie Beeralingeshwara temple at Dadapura village and watched from a distance. A person was selling liquor and they caught the accused and the person was Kambali Venkatesh. On searching him they found Rs.120/- cash and in the spot they found that there were 8 empty tetra pack and searching on the plastic bag they found that 12 tetra pack of Haywards cheers whiskey of 90 ml each. They seized all these materials under the panchanama in the presence of panchas and sealed them and drew panchanama at the spot. They returned to the police station and complainant lodged complaint for taking further action. He identified material objects marked as MO 1 to 3.

15. In the cross examination PW4 was admitted that they are provided with a camera and they took photographs at the time of panchanama.

16. CW6/PW.5 Sri.Chandrakanth S/o Shivanna is another raiding person who also deposed that on 07.09.2023 at 2.00 pm complainant received credible information that a person was illegally selling liquor at in Kambali Venkatesh's beedi shop. On the basis of information the complainant informed them and secured two panchas and took them for raid and went in the department jeep to the stated spot ie Beeralingeshwara temple at Dadapura village and watched from a distance. A person was selling liquor and they caught the person who told that his name was Kambali Venkatesh. On searching him they found Rs.120/- cash and in the spot they found that there were 8 empty tetra pack and searching on the plastic bag they found that 12 tetra pack of Haywards cheers whiskey of 90 ml each. They seized all these materials under the panchanama in the presence of panchas and sealed them and drew panchanama at the spot. They returned to the police station and complainant lodged complaint for taking further action. He identified material objects marked as MO 1 to 3.

17. In the cross examination PW4 admitted that they are provided with a camera and they took photographs at the time of raid.

18. The investigation officer Sri Malathesha S/o Sanna Ningappa is examined ad PW6 He deposed that when he was the station house officer on 07.09.2023. The complainant came and lodged a complaint and he registered a case in Cr. No. 70/2023 and submitted FIR to the court as per Ex.P.3. He incorporated the material object in PF No. 74/2023. He issued notice to the accused under Section 41A. On 10.09.2023 he recorded the restatement of CW 4 to 6 and 7. He received FSL report and incorporated into the file. FSL report is marked as Ex.P.4. He completed the investigation and filed charge sheet.

19. In the cross examination PW.6 he denied that he registered the false case for statistical purpose.

20. From the aforestated evidence on record it is apparent that the complainant PW1 and other witness who accompanied him PW4 and 5 have supported the prosecution case. The independent pancha witnesses PW2 and 3 outrightly tuned hostile and the investigation officer PW 6 has supported the case regarding the investigation aspects. Ex.P.4 shows that the seized liquor were sent for FSL report and samples conformed to ISI standards.

21. Thus in this case it is apparent that 6 witnesses were examined by the prosecution and among them the

complaint PW1 and the raiding party PW4 and 5 have supported the prosecution case. The investigation officer PW 6 has also supported the prosecution case and stated about the receipt of complaint, panchanama, material objects, recording of statement of witnesses, receipt of FSL report, arresting the accused and filing of charge sheet. PW 6 has deposed about the investigating aspects.

22. No doubt PW 1, 4 and 5 are the complainant and the raiding person and they have fully supported prosecution case. None of the local persons are shown as panchas. Ex. P 4 FSL report shows that MOs were tested and there was alcohol detected and the samples confirmed to the standards of ISI.

23. The star witnesses who are the independent pancha witnesses PW2 and 3 unfortunately turned hostile to the prosecution case and they denied about the participating in the panchanama drawn as Ex.P.1 and seizure of MO 1 to 3 from the possession of the accused. Therefore the prosecution has not able to prove the seizure of MO 1 to 3 from the possession of the accused by independent pancha witnesses.

24. Further, as per section 100 of Cr.P.C it is required that, any search and seizure has to be made usually in the presence of respectable person of the

locality. The said requirement is not mandatory, but a measure to see that, the search of the accused is made in the presence of a person in whom he or she has faith. This requirement is followed in this case but unfortunately panchas turned hostile.

25. It has come in evidence that the spot of raid was a public road. Thus being the case why public persons were not asked to co operate as panchas is not explained by the IO.

26. On perusal of entire evidence on record, it is apparent that the independent pancha witnesses turned hostile. The official witnesses who participated in the raid no doubt supported the case of prosecution. However, all these witnesses are official witnesses who spoke in official capacity.

27. The Hon'ble High Court of Karnataka as well as Hon'ble Apex Court has in a plethora of cases observed that in an excise case, independent panchas need not be examined and the sole evidence of investigating officer is itself sufficient to warrant conviction to the accused if it inspires confidence of the court. Thus there is no bar to convict the accused person relaying on the sole evidence of the complainant and official witnesses. There is no legal presumption that the official witnesses speak falsehood.

There is no such legal presumption. However, having regard to the sec.40 of the Karnataka Excise Act, there is a presumption of guilt of accused.

28. Presumption can be drawn only when possession is proved. But in this case the very recovery of the MO 1 to 3 from the accused is not proved by independent evidence. Thus there is scope to draw benefit of doubt. In view of the above discussion, the court of the view that prosecution has failed to prove that the accused had possession of MO 1 to 3.

29. In view of the above discussion, the court of the view that prosecution has failed to prove that the accused had possession of MO.1 to 3. Due to hostility of independent pancha witnesses, definitely there is scope for benefit of doubt, which naturally goes in favour of the accused. Thus this is fit case to accord benefit of doubt of the accused. Hence, accused is entitled for acquittal for extending benefit of doubt. Therefore, I answer point Nos.1 and 2 in the **negative**.

30. **Point No.3:** In view of my finding on point No.1 and 2, the accused is entitled for acquittal. Hence, I proceed to pass the following:

**ORDER**

Acting under the powers vested under Section 248(1) of Code of Criminal Procedure, the accused is hereby acquitted from the offence punishable under sections 32 and 34 of Karnataka Excise Act 1965

Bail bond of accused and surety bond taken at the time of granting bail is hereby extended for the purposes of section 437A of Cr.P.C for a period of six months.

Material object No. 1 cash of Rs.120/- is ordered to be confiscated to the Government after appeal period is over.

Material object No.2 and 3 being worthless is ordered to be destroyed after appeal period.

*(Directly dictated to the stenographer and computerized by her, revised, corrected and pronounced by me in the Open Court on this the 7<sup>th</sup> day of March 2026)*

(Smt. Usha Rani R.)  
Senior Civil Judge & JMFC.,  
Harapanahalli

**A N N E X U R E**

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

PW.1 : Smt.Nagarathna  
 PW2 : Sri. Imam Hussain  
 PW3 : Sri. Shafiulla  
 PW4 : Sri. Honnappa  
 PW5 : Sri. Chandrakantha  
 PW6 : Sri. Malathesh

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

Ex.P. 1 : Panchanama  
 Ex.P1(a) to(c): Signature  
 Ex.P2 : Complainant  
 Ex.P2(a)(b): Signatures  
 Ex.P3 : FIR  
 Ex.P3(a) : Signature.  
 Ex.P 4 : FSL report  
 Ex.P4(a) : Signatures.

3. **Material Objects on behalf of the Prosecution:**

M.O.1 - Cash of Rs. 120/-  
 M.O.2 - 12 tetra pack of Haywards Cheers  
 Whiskey of 90 ml and 8 empty tetra  
 packs of Hywards cheers whiskey  
 M.O.3 - Plastic bag

4. **Witnesses examined / Documents exhibited on behalf of the Accused:**

.....NIL.....

(Smt. Usha Rani R.)  
 Senior Civil Judge & JMFC.,  
 Harapanahalli.