

IN THE COURT OF THE ADDL. JUDICIAL FIRST CLASS MAGISTRATE:
RAMACHANDRAPURAM.

Present: Smt. R. Aseervadam Paul,
Addl. Judicial Magistrate of First Class, Ramachandrapuram.
Thursday, the 9th day of March 2023.

C.C.No.510/2022

Between :

State: Inspector of Police,
Special Enforcement Bureau Station,
Ramachandrapuram.

... Complainant.

And

Kadali Govindu, S/o Suryanarayana,
55 Years, C/Settibalija, Dangeru Village,
K.Gangavaram Mandal.

... Accused.

This case is coming on 27.02.2023 before me for final hearing in the presence of Assistant Public Prosecutor, Advocate for State and of Sri K.Suryanarayana and Sri P.Bharath Babu, Advocates for accused and upon hearing both sides and having stood over for consideration till today, this Court delivered the following:-

J U D G M E N T

1) This case is filed by the Inspector of Police, Special Enforcement Bureau Police Station, against the accused, for the offence punishable under section 7(B) r/w 8(B) of A.P. Prohibition Act 1995 as amended in 2020 in Cr.No.272/2021 of Ramachandrapuram Station.

2) The brief facts of the prosecution case is that on the 10.11.2021 at about 3.00 PM as per the instructions of the Addl. Superintendent of Police, Special Enforcement Bureau, Kakinada during the raid conducted by LW4/Ch.V.Ramakrishna, Inspector, Special Enforcement Bureau Station, Ramachandrapuram along with mediators/LW1 and LW2 (P.J.S.Kamakshi, Mahila Police, Dangeru I and G.V.Lakshmi, Mahila Police, Dangeru II respectively) staff/LW3/Ch.Swami Reddy, Sub Inspector, DTF, SEB., Amalapuram for Prohibition and Excise offences in Dangeru Village limits of K.Gangavaram Mandal and rain bund found the accused sat in the bushes and stirring something in the drums with a wooden stick in his hand. On seeing the raid party the accused became confused and ran away from the scene of offence. LW4 tried to detain him with the help of staff and mediators but he ran away. The mediators and staff identified him as accused and called with his name to come back but he ran away. LW4 reached the place where he is stirring in drums and examined the place and found there were three plastic drums with full of

fermented wash. Those are two drums each with 150 liters wash and one plastic drum with 200 liters wash. Total 3 drums with 500 liters wash. As the mediators and staff identified absconded accused. LW4 drawn one sample of 500 ml. wash into a separate bottle and destroyed remaining wash along with plastic drums in the scene of offence, sealed the sample bottle and affixed identity slip duly signed by them under cover of Mediators report drafted at the scene of offence for the above occurrence.

LW4 returned to the and registered a case in Cr.No.272/2021, U/Sec.7(b) r/w 8(b) of A.P Prohibition Act, 1995 as amended in 2020 and submitted F.I.R and relevant record to the Hon'ble Court. LW4 sent the sample to the Chemical Examiner for analysis along with Letter of Advice through the Assistant Superintend, Special Enforcement Bureau, Amalapuram. The Chemical Examiner, Kakinada analyzed the sample and issued analysis report vide C.E.No.3215/2021, dt.23.12.2021 and opined that the sample at Sl.No.51265 is fermented wash fit for distillation.

During the course of investigation on 14.02.2022 LW4 arrested the accused as he was absconded on 10.11.2021 by leaving 500 liters wash with 3 plastic drums in this case. The accused was produced before the Hon'ble Court for judicial remand for further proceedings in this case. Hence, the accused person liable for punishment under section 7(B) r/w 8(B) of A.P. Prohibition Act, 1995 as amended in 2020. Hence the charge.

3) The above case was taken on file U/sec. 7(b) r/w 8(b) of A.P. Prohibition Act, 1995 as amended in 2020, against the accused. On appearance of accused, copies of documents were supplied as required U/sec. 207 Cr.P.C. Accused was examined U/sec.239 Cr.P.C and he denied the offence, Charges U/section. 7(b) r/w 8(b) of A.P. Prohibition Act, 1995 as amended in 2020, were framed, read over and explained to the accused in Telugu, to which the accused denied the contents of charges framed, pleaded not guilty and claims to be tried.

4) To bring home the guilt of accused, prosecution examined 2 witnesses as P.Ws.1 to 3 and got marked Ex.P1 to P4 and M.O.1.

5) After completion of prosecution evidence, accused was examined U/Sec.313 Cr.P.C and the accused denied the incriminating circumstances that appeared against him in the prosecution evidence and his case is that of a total

denial of incident. Accused reported no defense evidence and no documents were marked on their behalf.

6) Heard arguments on both sides. Perused the material available on record.

7) Now the point that arise for determination is:

Whether prosecution is able to establish the guilt of accused for the offence punishable under section 7(B) r/w 8(B) of A.P. Prohibition Act (Amended act of 2020) beyond all reasonable doubt?

8) The learned APP argued that the evidence of P.W.1 to P.W.3 and documents exhibited i.e., Exs.P.1 to P.4, M.O.1 are consistent, corroborative, cogent and proved the guilt of accused and therefore prays the court to convict the accused.

9) The learned counsel for accused argued that accused is innocent and he did not commit any offence and the prosecution failed to prove that the liquor bottles are seized from the possession of accused and the Police officials failed to secure any independent mediators at the time of search and seizure and P.W.1 did not follow the mandatory provision as envisaged U/Sec.100(4) Cr.P.C and this case is filed only for statistical purpose. Hence, he prayed this court to acquit the accused in the interests of justice by giving benefit of doubt.

10) Point: Prosecution examined P.Ws.1 to 3 and got marked Ex. P.1 to P.4. Ex.P1 is Mediators Report, Ex.P.2 is F.I.R, Ex.P.3 is the letter of advice, Ex.P4 is Chemical analysis report and M.O.1 is Sample bottle.

11) In order to prove the case of prosecution examined PW1 is Grama Mahila Samrakshana Secretary/Mediator to seizure and arrest of accused. She deposed on 10.11.2021 at 3.00 PM., PW2 called her to Police station and requested her to act as mediator. Then she accompanied PW2/Sub Inspector of Police, Special Enforcement Bureau station, Amalapuram and his staff and proceeded to Kunimillupadu, outskirts of Dangeru Village. There they found onje person stirring something with a wooden stick. On seeing police the said person ran away. Later police identified him as accused in this case. LW3 seized 500 liters of FJ wash in three plastic drums and drawn 500 ml wash sample into a separate bottle to send the same to chemical analysis report and got prepared

Ex.P1/Mediator report duly attested by them. After drawing samples remaining FJ wash was destroyed in scene of offence. He along with LW2 signed on mediators report. They also affixed their signatures on seizure identity slips.

12) PW2/Sub Inspector of Police, Special Enforcement Bureau Station, Amlapuram deposed that on 10.11.2021 at about 3.00 PM., as per the instructions of Addl. Superintendent of Police, Special Enforcement Bureau Station, Kakinada, he along with LW2 were on duty to raid for prohibition and Excise offences. He secured PW1 as mediator and reached to outskirts of Dangeru Village. There they found one person stirring something with a wooden stick. On seeing Police the said person ran away. Later Police identified him as accused in this case. He seized 500 liters FJ wash in three plastic drums and drawn 500 ml. wash sample into a separate bottle to send the same to Chemical analysis report and got prepared Mediators report duly attested by mediators. After drawing samples remaining FJ wash was destroyed in scene of offence. He along with PW1, LW2 signed on mediators report. They also affixed their signatures on seizure identity slips.

13) PW3/Inspector of Police, Special Enforcement Bureau Station, Ramachandrapuram registered case, investigated, sent seized contraband for analysis along with letter of advise through Assistant Superintendent, Special Enforcement Bureau, Amalapuram, after receiving laboratory analysis report, filed charge sheet. In cross examination PW3 admitted he filed charge sheet in mechanical manner for statistical purpose.

In his cross examination, PW2 admitted he did not served written summons to PW1. P.W.3 admitted he filed charge sheet in mechanical manner for statistical purpose. PW1 admitted she worked under Sub Inspector of Police. The admission of PW1 clearly established she deposed evidence at the instance of Police Officers. Furthermore the cross examination of Investigating Officer clearly established he had done his investigation in casual manner. Nothing was elicited to prove accusation against accused from his evidence. Hence, his evidence is no way useful to the case of prosecution and unbelievable.

13) Perused the record. It is observed that the witnesses who were cited in the charge sheet are police officials and no independent witnesses were cited. PW1 to PW3 are official witnesses and they are police official. Hence, their evidence is no way helpful to the case of prosecution to establish whether the Liquor bottles were seized from the possession of accused or not. P.W.1 and PW2 participated in the raid who arrested the accused while he was possessing ID arrack. P.W.2 failed to comply the mandatory provision envisaged **under Section 100(4) Cr.P.C** to prove that he seized the property from the possession of accused. The contention of the learned counsel for accused that Ex. P1 is prepared in the Police station cannot be ruled out. Further it is the testimony of P.W.1 that accused had confessed that he is taking the I.D Arrack, but the said confession cannot be taken into consideration as it is made to PW.1 who is a Police officer. Confession to police officer is inadmissible in evidence as it is hit by **Section 25 of Indian Evidence Act, 1872**. When the independent witnesses were not examined by the prosecution, the prosecution version of seizing the property from the possession of the accused has to be looked with suspicion. The non-examination of independent mediators is fatal to the prosecution version. *Hence, this court is of considered view that confession made by accused as alleged is inadmissible and of no worth to the case of prosecution.*

14) Basing on the testimonies of P.W.1 and PW2 who are none other than the police officers and who is naturally interested in getting conviction to the accused, much credence cannot be given to his testimony in the absence of any independent corroboration. In the absence of independent mediator the seizure of the property from the possession of the accused becomes doubtful and it is not safe to come to a conclusion that the property was in the possession of the accused and the accused had committed the offence. Thus, this court is of the opinion that the prosecution has failed to establish the guilt of accused beyond all reasonable doubt for the alleged offence. **Accordingly, the point is held against the prosecution.**

15) In the result, accused is found not guilty for the offence punishable under Section 7(b) r/w 8(b) of A.P Prohibition Act, 1995 as amended in 2020 and

accordingly, accused is acquitted U/sec.248(1) Cr.P.C. The bail bonds of accused shall stand cancelled after expiry of appeal time as contemplated U/sec. 437-A Cr.P.C. The M.O.1 shall be destroyed after the appeal time is over.

Typed to my dictation by the Stenographer, corrected and pronounced by me in the open court, this the 9th day of March, 2023.

Sd/- R. Aseervadam Paul,
Addl. Judicial Magistrate of First Class,
Ramachandrapuram.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Complainant:-

P.W.1 : Ponnada Jaya Satya Kamakshi, dt.08.02.2023

P.W.2 : Ch.Swamy Reddy, dt.08.02.2023

P.W.3 : Ch.V.Ramakrishna, dt.17.02.2023

For Accused:- NONE

DOCUMENTS MARKED

For Complainant:-

Ex.P.1 : Mediators Report, dt.10.11.2021

Ex.P.2 : FIR in Cr.No.272/2021 of Special Enforcement Bureau Station,
Ramachandrapuram, dt.10.11.2021

Ex.P.3 : Letter of Advice, dt.10.11.2021

Ex.P.4 : Laboratory analysis report, dt.23.12.2021

For Accused:- NIL.

Material Objects:-

M.O.1 : One Sample bottle.

Sd/- R. Aseervadam Paul,
Addl. Judicial Magistrate of First Class,
Ramachandrapuram.

// True Copy //

Addl.J.F.C.Magistrate Court, Ramachandrapuram.

ABSTRACT: EAST GODAVARI**CALENDER AND JUDGMENT**

CALENDER CASES TRIED BY SMT. R. ASEERVADAM PAUL,
ADDL. JUDICIAL FIRST CLASS MAGISTRATE: RAMACHANDRAPURAM

C.C.No. 510/2022

Date of Offence	:	10.11.2021
Complaint	:	10.11.2021
Date of Taken on File	:	22.10.2022
Apprehension of the accused	:	07.11.2022
Released on bail	:	24.02.2022
Commencement of trial	:	08.02.2023
Closure of Trial	:	17.02.2023
Sentence or Order	:	09.03.2023
Explanation for delay	:	---

Name of the complainant:

State: Inspector of Police,
Special Enforcement Bureau Station,
Ramachandrapuram.

Name of accused:

Kadali Govindu, S/o Suryanarayana,
55 Years, C/Settibalija, Dangeru Village,
K.Gangavaram Mandal.

Nature of offence	:	U/Sec.7(b) r/w 8(b) of A.P Prohibition Act, 1995 as amended in 2020
Plea of accused	:	Not guilty
Finding	:	Found not guilty

ORDER:-

In the result, accused is found not guilty for the offence punishable under Section 7(b) r/w 8(b) of A.P Prohibition Act, 1995 as amended in 2020 and accordingly, accused is acquitted U/sec.248(1) Cr.P.C. The bail bonds of accused shall stands cancelled after expiry of appeal time as contemplated U/sec. 437-A Cr.P.C. The M.O.1 shall be destroyed after the appeal time is over.

Sd/- R. Aseervadam Paul,
Addl. Judicial Magistrate of First Class,
Ramachandrapuram.

Copy submitted to the Hon'ble Chief Judicial Magistrate-cum-Principal Assistant Sessions Judge, East Godavari, Rajamahendravaram.

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Addl.J.F.C.Magistrate Court,
Ramachandrapuram.