

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 2nd day of March, 2023.

C.C.No.512/2022

Between

Inspector,
Special Enforcement Bureau Station,
Ramachandrapuram.

... Complainant.

And

Neela Jayaraj, S/o.Pandiyya,
35 Years, C/Settibalija, Velampalem (V),
Ramachandrapuram Mandal.

... Accused.

This case is coming on 20.02.2023 before me for final hearing in the presence of Learned Assistant Public Prosecutor, Advocate for Complainant and of Sri S.Gangavaram, Advocate 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 Proh. & Excise Inspector, Special Enforcement Bureau Station, Ramachandrapuram 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.252/2021 of Ramachandrapuram Special Enforcement Bureau Station.

2) The brief facts of the prosecution case is that on 24.10.2021 at about 5 PM., as per the instructions of the Addl. Superintendent of Police, Special Enforcement Bureau, Kakinada during the raid conducted by LW1/Ch.Rama Krishna, Sub Inspector, SEB Station, Ramachandrapuram along with staff for Prohibition and Excise offences in Vellampalem Village near Road margin, Ramalayam in Ganapathinagar found the accused with a myca bag in his right hand. On seeing the raid party he became confused and tried to escape from the scene of offence. On suspicion LW1 detained him with the help of staff and asked about his escape and about the contents of myca bag. Then the accused stated that there is I.D liquor in the bag. LW1 deputed LW2 to procure mediators, but in vain. Then LW1 examined the bag in the presence of staff and

found one myca cover it contains 50 liters of I.D liquor. On enquiry he furnished his name and address particulars and also revealed that he purchased the above I.D liquor from an unknown person at low price and brought to selling at high price to get profit. Then LW1 explained the grounds that possession of I.D liquor is offence under A.P. Prohibition Act, arrested the accused and seized the contraband from his possession undercover of special report, drafted at the scene of offence as no mediators were available.

Basing on the special report, LW1/Ch.V.Rama Krishna, Sub Inspector, SEB Station, Ramachandrapuram returned to the Police Station and registered a case in Cr.No.252/2021, U/Sec.7(B) r/w 8(B) of A.P. Prohibition Act, 1995 as amended in 2020 on 24.10.2021. he took up investigation and sent the sample bottle to the Chemical examiner for analysis along with letter of advice through the Asst., Superintendent, SEB, Amalapuram. The Chemical Examiner, Kakinada was analyzed the contents of the samples and opined that the sample at S.L.No.45174 is Illicitly distilled liquor unfit for Human Consumption and injurious to health vide his analysis report C.E.No.2830/2021, dt.29.11.2021. After receipt of the destruction proceedings from the Superintendent of Police, Kakinada the balance case property is being destroyed in the presence of the mediators. After completion of investigation LW4 filed charge sheet against the accused. 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 to the accused as required U/Sec. 207 Cr.P.C. Accused is examined U/sec.239 Cr.P.C and he denied the offence, Charge U/sec.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 one witness as PW1 and got marked Ex.P1 to Ex.P4 and M.O.1.

5) After completion of prosecution evidence, accused is 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 defence evidence and no documents were marked on his 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 U/sec.7(b) r/w 8(b) of AP. Prohibition Act, 1995 as amended in 2020 beyond all reasonable doubt ?

8) The learned Assistant Public Prosecutor argued that the evidence of PW1 and documents exhibited i.e., Ex.P1 to Ex.P4, M.O.1 is 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 ID arrack seized from the possession of accused and the Police officials failed to secure any independent mediators at the time of search and seizure and PW1 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.

POINT :

10) Prosecution examined PW1 and got marked Ex.P1 and Ex.P2. Ex P1 is the Special Report, Ex.P2 is the F.I.R, Ex.P3 is the Letter of advice, Ex.P4 is the Laboratory analysis report and MO1 is Sample bottle.

11) In order to prove the case of prosecution, PW1/Sub-Inspector of Police, SEB Station, Ramachandrapuram deposed on 24.10.2021 at about 6 PM., as per the instructions of the Additional Superintendent of Police, SEB., Kakinada, he conducted raid about selling and possession of liquor bottles, he along with LW2/K.V.V.D.V.Prasada Rao, Head Constable, SEB Station, Ramachandrapuram

rushed to near Ramalayam in Ganapathi Nagar of velampalem Village. There they found one male person sat near myca bag kept near his feet. On seeing them, the said person became confused and he try to skulk away. He caught hold of him with the assistance of his staff. He is having 1 polythene cover it contains 50 liters of I.D liquor in his possession. He enquired said person about his name and particulars and he revealed his name as that of accused and voluntarily confessed that he purchased 50 liters of I.D liquor at low price from an unknown person for selling the same at higher rate and further confessed that he had no license and permission to sell the said contraband. He seized the property 50 liters of ID arrack from the possession of accused. PW1 sent LW2 to bring mediators, but in vain. PW1 separated 300 ml. from said contraband as sample for sending the same to Chemical Examiner for Analysis under the cover of Ex.P1/Special report.

In his cross examination, PW1 admitted though Village Revenue Officer, Village Revenue Assistant and some other elders are there in Ganaparthinagar but he had not secured independent mediators. 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.

12) 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, LW2 are the official witnesses and they are police officials. Hence, their evidences are no way helpful to the case of prosecution to establish whether the I.D Arrack were seized from the possession of accused or not. PW1 and LW2 participated in the raid who arrested the accused while he was possessing I.D. Arrack. PW1 deposed he had not made any efforts to secure mediators. PW1 did not put any best or sincere efforts to secure independent mediators. PW1 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. PW1 did not prepare any Rough sketch and 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 PW1 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 PW1, who is an Police officer. Confession to excise officer is inadmissible in evidence as it is hit by **Section 25 of Indian Evidence Act, 1872**. When the independent witnesses are 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.*

13) Basing on the testimonies of PW1 who is none other than the police officer 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.**

14) 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 MO1 shall be destroyed after the appeal time is over.

Typed to my dictation by the Stenographer Gr.III, corrected and pronounced by me in the open court, this the 2nd 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: Ch.V.Ramakrishna, dt.17.02.2023

For Accused:- NONE

DOCUMENTS MARKED

For Complainant:-

Ex.P.1 : Special Report, dt.24.10.2021

Ex.P.2 : FIR in Cr.No.252/2021 of Prohibition & Excise Station,
Ramachandrapuram, dt.24.10.2021

Ex.P.3: Letter of advice, dt.24.10.2021

Ex.P.4: Laboratory Analysis report, dt.29.11.2021

For Accused:- NIL.

Material Objects:-

M.O.1 : 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.512/2022

Date of Offence	:	24.10.2021
Date of Complaint or report	:	24.10.2021
Date of Taken on File	:	22.10.2022
Apprehension of the accused	:	03.11.2022
Released on bail	:	10.11.2021
Commencement of trial	:	17.02.2023
Closure of Trial	:	17.02.2023
Sentence or Order	:	02.03.2023
Explanation for delay	:	Due to non production of witnesses by the prosecution.

Name of the complainant:

Inspector,
Special Enforcement Bureau Station,
Ramachandrapuram.

Name of accused:

Neela Jayaraj, S/o.Pandiyya,
35 Years, C/Settibalija, Velampalem (V),
Ramachandrapuram 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 MO1 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.

// True Copy //

A.J.F.C.M., Ramachandrapuram.