

**IN THE COURT OF JUDICIAL MAGISTRATE OF I CLASS ::
GAJAPATHINAGARAM**

PRESENT: Kum B. Kanaka Lakshmi,
Judicial Magistrate of I Class, Gajapathinagaram

Tuesday, this the 17th day of October, 2023.

CALENDAR CASE No. 461 OF 2022

Between:

State represented by the Sub-Inspector of Police,
Burjavalasa Police Station. ... **Complainant.**

And:

Chukka Srinu, S/o late Krishna, 22 Years,
Vijayaramapuram Village, Dattirajeru Mandal,
Vizianagaram District ... **Accused.**

This case is coming on **03.10.2023** before me for final hearing in the presence of **Assistant Public Prosecutor**, for the Complainant and of **Sri K Ramu Naidu**, Defence counsel for Accused and having stood over for consideration till this day, the court delivered the following:

// J U D G M E N T //

1. The Sub Inspector of Police, Burjavalasa police station, filed charge sheet against the Accused in Cr. No. 59/2020 for the offence U/Sec. 7 (A) r/w 8(e) of A.P Prohibition Act ,1995 alleging in brief as follows:

On 10.06.2020 at about 5.00 PM, the P.W1 received credible information with regard to possession of country made Liquor/Natusara on that P.W1 along with L.W1 M.Eswara Rao and L.W2.M.Vijay Kumar went to the place of scene of offence situated at Vijayaramapuram village,Dattirajeru Mandal and at that time the accused came to the place of scene of offence with one plastic cans and on seeing the police the accused try to escape from that place, on that P.W1 caught hold the accused with the assistance of his staff and the accused disclosed his identity particular and confessed that he

is in possession of country made Liquor and verified and found 10 liters I.D liquor/natusara and P.W1 questioned that accused and the accused confessed that he purchased I.D liquor from unknown persons and bringing to the same to his village to sell the same for higher rates. Then P.W1 took sample to send the same to chemical examiner under cover of occurrence report and brought the accused to the police station.

Basing on the report P.W1 registered the case in Cr. No.59 of 2020 U/Sec. 7(A) r/w 8(e) of A.P Prohibition Act 1995 and served section 41-A Cr.P.C notice to the accused and directed him to appear before the court. During the course of investigation, he received the analysis report stating that the sample is positive. After completion of investigation L.W6.G.Rajesh filed charge sheet against accused.

2. This court took cognizance against the accused for offence punishable Under Section 7(A) r/w 8(e) of A.P Prohibition Act 1995.

3. After appearance of the accused, copies of documents was furnished to him as required U/Sec.207 Cr.P.C.

4. On 20.01.2023 accused was examined under Section 239 Criminal Procedure Code, for which he denied the same. After hearing both sides and on perusal of the entire record, a charge Under Section 7(A) r/w 8(e) of A.P Prohibition Act were framed against the accused. The same was read over and explained to him in Telugu, for which he denied and pleaded not guilty and claimed to be tried. Thus the case was posted for trial.

5. During the course of trial, the prosecution has examined PW.1 and Exs.P1 to P3 and M.O.1 got marked. The learned APP given up the evidence of other witnesses.

6. After closure of the prosecution side evidence, on 01.08.2023, the accused was examined Under Section 313 Criminal Procedure Code by

explaining the incriminating evidence of prosecution in Telugu, for which he denied the same and reported no defence evidence

7. Heard arguments of the learned Asst. Public Prosecutor and the learned defence counsel on behalf of the accused. During the course of argument the learned APP submitted that all the witness supported the prosecution case and the prosecution proved the guilt of accused beyond reasonable doubt, on the other hand the learned counsel for the accused submitted that the police falsely filed case against the accused and there is no independent witness to prove that the accused is in possession of the arrack. He further submitted that the the P.W1 did not follow the search procedure mentioned under section 100(4) of Cr.pc and the prosecution failed to proved the guilt of the accused beyond reasonable doubt.

8. Now the point for determination is:

Whether the prosecution proved the guilt of the Accused for the offence punishable under section 7(A) r/w 8(e) of A.P Prohibition Act 1995 beyond all reasonable doubt?

9. In order to prove the guilt of the accused for the offence under section 7(A) r/w 8(e) of A.P Prohibition Act 1995 and the prosecution has to establish that the accused was in possession of 10.00 liters of I.D liquor/Natusara which is in contravention of Andhra Pradesh Prohibition Act, 1995.

10. In order to prove the same the prosecution has examined the P.W.1. P.W.1 who is a Assistant sub-Inspector of Police and in his evidence he deposed that on 10.06.2020 at about 05.00 Pm, he received credible information on that he along with L.W1 and L.W2 went to the place of scene of offence situated at Vijayarampuram village road junction of Dattirajeru Mandal and at that the accused came to the place of scene of offence with two plastic cans and on seeing them the accused tried to escape from that place, on that they caught hold the person and the accused disclosed his

identity particulars as an accused and confessed that she purchased said I.D liquor from unknown persons and bringing the same to his village for selling the same for higher rates and he found 10.00 liters I.D arrack/natusara. He further deposed that he seized arrack under cover of occurrence report which was marked as Ex.P.1 and registered the case and took the sample and send the same chemical examiner and received analysis report and MO.1.

11. During cross examination he deposed that he did not secured any independent witnesses for the proceedings Ex.P1 even though he went to the place of scene of offence on credible information and he has crossed six villages to reach the place of scene of offence and he has not issue any notice to secure the presence of witnesses. He further denied the suggestion of the accused counsel that the accused is no way relevant to the present case and never in possession of country made liquor.

12. As seen from the above evidence admittedly P.W1 did not secure any independent witnesses in this case even though he went to the place of scene of offence on credible information. On perusal of the evidence of P.W1 the alleged incident occurred at day time and he has crossed six villages to reach the place of scene offence but P.W1 did not made any efforts to secure the presence of mediators or inhabitants for the proceedings of Ex.P1 and also did not give any explanation. It is a settled principal that whenever the officer conducted the search they shall follow the procedure mentioned in the section 100 (4) Cr.P.C., where in the present case the on hand the P.W.1 conducted the search but as seen from the evidence, the P.W.1 did not follow the procedure mentioned under section 100 of Cr.P.C., As per section 100 (4) Cr.P.C., "the person making search shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attended and witness

the search and may issue an order in writing to them or any of them so to do". In the present case on hand, P.W.1 failed to follow the procedure contemplated under section 100(4) of Cr.P.C. Further, P.W1 also did not examine any villagers in the village to show whether the accused is selling any country made liquor in the village or not. Hence, the evidence of P.W1 did not inspire much confidence of the court to accept the version of prosecution that the accused is in possession of alleged I.D liquor/ arrack.

13. Though, on perusal of the evidence of P.W1 and Ex.P1 it disclose that the accused was confessed that he was in possession of I.D liquor or arrack but as per section 25 of Indian Evidence Act "no confession made to a police officer shall be proved as against the person accused of any offence. Hence, the confession made to police officer is not relevant. In the present case, except the evidence P.W1 who is the police officials no independent witnesses were present at the time of preparing of Ex.P1 and the P.W1 is complainant and investigation officer in this case hence, it is not safe to rely upon the testimony of P.W1.

14. It is a settled proposition of law that prosecution has to travel the entire distance to establish the guilt of the accused beyond reasonable doubt. The benefit of doubt, if any, has to be extended to accused. In view above said discussion, this court holds that the evidence of P.W.1 is not sufficient to prove that the accused is in possession of the I.D liquor and MO.1 is seized from the possession of the accused. Moreover, the P.W1 not followed the search procedure mentioned under section 100(4) Cr.P.C. Thus, this court holds that the prosecution miserably failed to establish the guilt of the accused for the offence under section 7(A) r/w 8(e) of A.P Prohibition Act, 1995 beyond all reasonable doubt and thus the accused is entitled for an acquittal.

15. In the result, the accused is ***found not guilty*** for the offence U/Sec. **7(A) r/w 8(e) of A.P Prohibition Act 1995** and he is ***acquitted*** of the same U/Sec. **248 (1) of Cr.P.C.,** The accused is required to execute personal bond, which shall be in force for a period of six (6) months as contemplated U/sec.437 (A) Cr.P.C., The **MO.1** is the sample bottle of I.D Liquor shall be destroyed after expiry of appeal time.

Typed to my dictation to Personal Assistant on my personal Laptop, corrected and pronounced by me in open Court, this the 17th day of October, 2023.

Sd/- Kum. B Kanaka Lakshmi
JUDICIAL MAGISTRATE OF I CLASS,
Gajapathinagaram.

APPENDIX OF EVIDENCE

Witnesses examined

For Prosecution:

For Defence: NIL

PW1 - Matha Murthy

DOCUMENTS MARKED

For prosecution:

For Defence: Nil

Ex.P1 - Occurrence Report

Ex.P2 - First Information Report in Crime No. 59/2020

Ex.P3 - Analysis Report

MATERIAL OBJECTS MARKED

For prosecution:

For Defence: Nil

M.O.1 - Sample bottle of ID Liquor

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