

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS-I
(COG. TAKING), JHARSUGUDA

Present:-

Shreemayee Nanda, B.A.LL.B (Hons.).

JMFC-I (Cog. Taking), Jharsuguda.

JO Code- OD00827

2(a) cc No. 24/2021

Complainant:-	State of OdishaProsecution
Represented by:-	Ms. Reeta Minz Learned APP
Accused Person	Trilochan Panda, aged about 61 years, S/O- Late Dandapani Panda, Vill- Gumadera, P.S.- Belpahar, Dist-Jharsuguda. Accused Person.
Represented by:-	Advocate A.K Bhagat and Associates, Jharsuguda.

Date of Offence	25.11.2020.
Date of FIR	---
Date of Charge sheet	Final PR submitted on 08.01.2021.
Date of Framing of Charge	15.03.2021.
Date of commencement of evidence	03.11.2022.
Date on which judgment is reserved	---
Date of Judgment	10.11.2023.
Date of the Sentencing Order, if any	---

Accused Details:-							
Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of section 428. Cr.P.C.
1.	Trilochan Panda	---	15.03.2021.	52(a) of Odisha Excise Act	Acquitted	---	---

Offence U/s. 52(a) of Odisha Excise Act

JUDGMENT

1. Accused person named above stands prosecuted for the offence punishable U/s. **52(a) of Odisha Excise Act.**
2. The case of the prosecution shorn of unnecessary details is that :-

On 25.11.2020 at about 04.20 PM while SI of Excise along with his staff was performing patrolling duty at Gumadera area, where they saw one person walking on the

village road holding a plastic bag. On suspicion, they detained him, searched him observing all legal formalities and they recovered a plastic bag containing 10 no.s of Premium Kingfisher Super strong beer. From his departmental experience, the OIC of Excise confirmed the recovered liquid substance to be IMFL. On measurement, the total was found to be 6.5 liters. The accused person disclosed his name as **Trilochan Panda** and could not produce any legal documents as to possession and transportation of such liquor. He then prepared the seizure list and spot map at the spot in presence of witnesses, served a copy of the seizure list on the accused person and arrested and forwarded the accused person to Court u/s – **52 (a) of Odisha Excise Act**. The accused person did not plead guilty. Hence, this case.

3. False implication was the plea of the accused person.
4. The points that arise for consideration are:-
 - (i) Whether on dtd 25.11.2020 at about 04.20 PM at Gumadera area, the accused person namely **Trilochan Panda** was in possession a plastic bag containing 6.5 liters of IMFL and he was having it without having any license?
5. In order to bring home the charge leveled against the accused person, the Prosecution has examined three witnesses out of whom P.W.1 is

the SI of Excise, P.W2 is the Excise Constable and P.W.3 is the Seizure witness. Exhibits P1/PW1, P1¹/PW1, P1²/PW2, P1³/PW3, P2/PW1, P2¹/PW1 and P2²/PW2 have been marked on behalf of the Prosecution without any objection. On the other hand, defence has examined none in its favour. No document has been exhibited by the defence.

6. Now, it is pertinent to discuss the testimony of the witnesses to see if the ingredients required to be proven for commission of an offence u/s **52(a) of Odisha Excise Act** is established beyond reasonable doubt.
7. P.W. 3, being the Seizure witness has stated in his evidence that he does not know the informant but he knows the accused person, and that nothing has been seized in his presence and in his cross-examination he has stated that he put his signatures without knowing any contents at the instance of the Police. The Prosecution has also examined the Excise Constable and SI of Excise, out of whom the Excise Constable has stated in his cross-examination that the seized article has not been produced in Court, he has stated that the seized articles were not sent for chemical examination. He has not stated any reason as to why any local members like the Ward member or Sarpanch were not called to the spot to ascertain the identity of the accused

person and he has deposed that no identity card was verified of the accused person to ascertain his identity.

8. The SI of Excise has also stated in his cross-examination that the seized articles had not been produced in Court, the seized articles had not been sent for chemical examination and that no local people were called to the spot to verify the accused person.
9. It can be seen from the cross-examination of the official witnesses, that it is admitted to have not produced the seized articles in Court during trial of the case.
10. In this case, admittedly, the seized article was never produced before the Court for proper appreciation. At this juncture, the evidence of the seizure witness becomes crucial. The independent seizure witness also did not support the fact of seizure and expressed their ignorance about the alleged seizure. Hence, the seizure of liquor from the possession of the accused person remains unproved.
11. The witness has not deposed whether the seized sample liquor has been sent for its chemical examination. So, without the chemical examination and non-production of the seized liquor it is not sufficient to hold the conclusion that the seized liquor was nothing but IMFL.

In view of the above discussion, it is

concluded that the Prosecution has failed to prove the **factum** of seizure from the exclusive and conscious possession of the accused person beyond reasonable doubt.

12.Hence, considering the above facts and circumstances, I hold that the Prosecution has failed to prove its case U/S – 52(a) of Odisha Excise Act.

13.In the result, I found the accused person namely **Trilochan Panda** not guilty of the offence U/S – 52 (a) Odisha Excise Act and he is acquitted there from U/S–248(1) Cr.P.C. He be discharged from his bail bond.

Enter the case as Mistake of fact.

The seized articles, if any be destroyed after expiry of four months of appeal period, if no appeal is preferred, but if any appeal be preferred the same shall be disposed off as per the order of the Hon’ble Appellate court.

Sd/-

**J.M.F.C-I (Cog. Taking),
Jharsuguda.**

This judgment is typed out and corrected by me in my official computer and pronounced in the open court today on this 10th day of November, 2023 under my hand and seal of this Court.

Sd/-

**J.M.F.C-I (Cog. Taking),
Jharsuguda.**

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES		
A. Prosecution Witnesses		
Rank	Name	Nature of evidence
P.W.1	Bhairaba Sahu	Official witness.
P.W2	Benudhar Pandey	Official witness.
P.W.3	Pradeep Sahu	Seizure witness.
B. Defence Witnesses, if any		
Rank	Name	Nature of evidence
-	-	-
C. Court Witnesses, if any		
Rank	Name	Nature of evidence
-	-	-

List of Prosecution/Defence/Court Exhibits		
A. Prosecution Exhibits		
Sl. No	Exhibit no.	Description
1.	P1/PW1	Seizure list.
2.	P1 ¹ /PW1	Signature of PW1 on P1.
3.	P1 ² /PW2	Signature of PW2 on P1.
4.	P1 ³ /PW2	Signature of PW3 on P1.
5.	P2/PW1	Spot map
6.	P2 ¹ /PW1	Signature of PW1 on P3.
7.	P2 ² /PW2	Signature of PW2 on P3.
B. Defence Exhibits, if any.		
Nil		
C. Court Exhibits, if any.		
Nil		
D. Material Objects.		
Nil		

Sd/-

**J.M.F.C-I (Cog. Taking),
Jharsuguda**