

FORM-A

**IN THE COURT OF THE SUB-DIVISIONAL
JUDICIAL MAGISTRATE, JEYPORE,
DISTRICT-KORAPUT.**

**Present : Sri Santosh Kumar Barik, O.J.S.,
Sub-Divisional Judicial Magistrate,
Jeypore, District-Koraput.
J.O. Code : OD00674.**

Dated this 04th day of July, 2024.

**2(a)CC. No. 311 / 2022.
T.R. No. 381 / 2024.**

(Arising out of Jeypore Excise Station P.R. No.168/2022-23)

e-COURT No. 2(a)CC. 311 / 2022.

(Details of FIR/PR/Crime and Police/Excise Station)

COMPLAINANT	State of Odisha
REPRESENTED BY	Sri Gupteswar Bisoi, Sri Biswamber Swain, Ld. A.P.P. Jeypore.
ACCUSED	Dutee Gouda, aged about 50 years, W/o-Bhima Gouda, At-village Dirbiguda, P.S.-Jeypore Sadar, Dist-Koraput
REPRESENTED BY	Shri. Harihar Mallick and his Associate Advocates, Jeypore.

FORM -B

Date of Offence	28.11.2022
Date of FIR/PR	28.11.2022
Date of Charge sheet/Sanctioned PR	28.11.2022
Date of Framing of charges	15.03.2024
Date of commencement of evidence	07.05.2024
Date on which judgment is reserved	----
Date of Judgment	04.07.2024
Date of 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.	Dutee Gouda	28.11.2022	02.12.2022	U/s.52(a)(i) of Odisha Excise Act, 2008	Acquitted	--	---

Status of Accused:

Absent

J U D G M E N T

1. The above named accused stands charged for commission of offence U/s.52(a)(i) of Odisha Excise Act, 2008 for illegally possession of 15 liters of ID liquor.

2. The prosecution case in brief as reveals from the prosecution report is that on dated. 28.11.2022 at about 09:30 AM Sanjay Kumar Kandi the Complainant-cum-IO of this case who was working as the OIC of Jeypore Excise Station was performing patrolling duty along with his staff at Dirbiguda area under Jeypore Sadar Police Station. Meanwhile they saw a woman who was going on the village road by carrying a motor tube in her hand in a suspicious manner. On suspicion, they detained her and verified the motor tube and found the same to be containing some liquor like liquid substance emitting strong smell of ID liquor. To ascertain the nature of the liquid substance the the OIC conducted blue litmus paper test which turned to red in colour. He also conducted hydrometer test. Finally from blue litmus paper test, hydrometer test, smell, colour, taste and from his departmental service experience he confirmed the liquid substance in that motor tube to be nothing

but ID liquor. On being asked the accused disclosed his name as Dutee Gouda of Dirbiguda under Jeypore Town Police Station but on demand he failed to produce any authoritative license or permit towards the possession and transportation of the ID liquor. So he seized the motor tube containing 15 liters of ID liquor under a seizure and took the signatures of the accused and the witnesses therein. One copy of seizure list was handed over to the accused. On completion of the investigation, the OIC submitted the PR against the accused U/s.52(a)(i) of Odisha Excise Act, 2008 to face trial in the Court of law. Accordingly, cognizance was taken and charge was framed and the contents of the charge were read over and explained to the accused to which she pleaded not guilty and claimed for trial. Hence, this case.

3. The plea of accused is one of complete innocence and her false implication in this case.

4. The sole point for determination in this case is that:

(i) Whether on dated. 28.11.2022 at about 09:30 AM at Dirbiguda area under Jeypore Sadar Police Station the Excise official recovered a motor

tube containing 15 liters of I.D. liquor in it from the exclusive and conscious possession of the accused?

(ii) Whether recovered liquors are nothing but I.D. liquor?

5. In order to substantiate the charge, the prosecution has examined as many as three witnesses. Out of them P.W.3 is the complainant-cum-IO of this case. P.W.1 and P.W.2 are official seizure witnesses. The prosecution has marked its evidences from Ext.P-1/P.W.1 to Ext.P-3³/P.W.3. On contrary the defence has examined none in his behalf.

6. In order to prove the allegations U/s.52(a) (i) of Odisha Excise Act, the prosecution has to prove that ID liquor has been seized from the exclusive and conscious possession of the accused. During the course of trial, the Complainant-cum-IO, P.W.2 has deposed that he came to know the accused on the date of the incident. He further deposed that on dated. 28.11.2022 he was working as the OIC of Jeypore Excise Station and on the relevant day at about 09:30 AM he along with his staff conducted an Excise patrolling duty at Dirbiguda area under Jeypore Sadar Police Station and that during patrolling he detected a woman who was going on the village road by carrying a motor tube in a

suspicious manner and that out of suspicion he detained her giving his identity as an Excise Official and on search of the motor tube he recovered 15 liters of ID liquor. He further deposed that in order to ascertain the nature of the liquid substance he conducted blue litmus paper test upon the recovered liquid substance and that during test the blue litmus paper turned into red. He also conducted hydrometer test which indicated temperature of 72° F, indication of 84.0° and strength of 56.8° UP. Finally, from the aforesaid tests, smell, colour and from his departmental service experience and training experience he confirmed the recovered liquid substance to be nothing but ID liquor. He further deposed that the accused on demand disclosed her identity as Duti Gouda of Dirbiguda under Jeypore Sadar Police Station but failed to produce any authoritative license or permit towards the possession of the ID liquor. Then he drew up samples of 500 ml of ID liquor in two plastic bottles for chemical examination. As the accused could not produce any license, he seized the motor tube containing 15 liters of ID liquor from her exclusive and conscious possession and prepared a seizure list and the rest of the liquor was destroyed at the spot. Subsequently, he prepared the spot map of the alleged place of seizure and then

arrested the accused and released her on bail U/s.41-A of Cr.P.C. He further deposed that on dated. 14.11.2023 after completion of the investigation he submitted Final P.R. vide P.R. No.168/2022-23 against the accused U/s.52(a)(i) of Odisha Excise Act. He proved the seizure list as Ext.P-1²/P.W.3, the tested blue litmus paper as Ext.P-1³/P.W.3, his signature on the tested blue litmus paper as Ext.P-1⁴/P.W.3 and his signature on the seizure list as Ext.P-1⁵/P.W.3. He proved the hydrometer test chart as Ext.P-2²/P.W.3 and his signature thereon as Ext.P-2³/P.W.3. He further proved the spot map as Ext.P-3²/P.W.3 and his signature thereon as Ext.P-3³/P.W.3.

He during cross-examination disclosed that he had no prior acquaintance with the accused; no command certificate was issued to the accompanying staff; he has not submitted the extract of the tour diary entry of the date of the said patrolling; the alleged place of seizure was a busy road; he has not submitted the time of visiting to the spot in his P.R.; he has not mentioned the detail description of the seized motor tube; he has not verified the Aadhar card of the accused to ascertain his identity; he has not submitted any certificate of Government regarding the correctness of the measuring apparatus; he has not sent

the sample so collected by him for chemical examination; he has not undergone any distillery training and that he has not submitted the inventory list. He further could not say why a blue litmus paper turns into red in colour when it comes in contact with any acidic substance. The seized articles and samples were not produced in the Court on the date of his deposition for identification.

P.W.1 and P.W.2 the official seizure witnesses have deposed same like that of P.W.3 as they had accompanied P.W.3 the complainant-cum-investigating officer. They during their cross-examination stated that they had no prior acquaintance with the accused and that no command certificate was issued as the OIC had accompanied them and that they have not undergone distillery training to identify the Excise articles and that the OIC has not verified the ID proof of the accused and that the alleged place of seizure was a busy public road. They further could not say the detail description of the motor tube, what chemical a blue litmus paper contains, whether a blue litmus paper turns into red when it comes in contact with any acidic substance and that in which hand the accused was carrying the motor tube. The seized articles were not produced in the Court on the date of

their deposition for identification.

7. To prove the first point for determination, the prosecution has to prove that the seized liquors were I.D. liquor. P.W.3 who is the Complainant-cum-IO of this case deposed that after conducting some tests, they came to know that these liquid were nothing but I.D. liquor. It is revealed from the record that no requisition for chemical test is attached in this record. The evidence of an experience and specially trained officer can however be accepted only as an expert evidence as contemplated U/s.45 of Evidence Act.

That section requires inter-alia says that the opinion of only person especially skilled in the relevant science or art is acceptable as expert evidence. Hence, unless an Excise Officer shows that he was special skilled which may be resultant upon special training in the line, he would not be acceptable as an expert. The necessary conclusion must be that a mere statement that he has served in the Excise department for number of years either as Sub Inspector or else, would not be acceptable as an expert. It is further shown that unless he has been specially trained for the purpose or has acquired special skilled in the matter, he could not be rightfully termed as expert. In the instant case P.W.3 had not filed his departmental service

experience or training experience to prove himself to be an expert in the line of identification of liquor. Thus, P.W.3 cannot be said to be an expert or skillful person in identifying the liquor.

8. Next come to the question on the types of tests conducted, it is well known that Blue litmus paper turns into red when it comes in contact with any acidic substance. Because of its acidic nature, it turns blue litmus paper into red, when dipped into it. The blue litmus paper test only shows that liquid to be acidic and no more. As held by the ***Hon'ble Court in Simanchal Choudhary Vrs. State reported in (2005) 32 OCR 173*** that Blue litmus paper turning red on being introduced to be liquid only goes to show that the nature of liquid is acidic and no more.

So far as the hydrometer test is concerned, it is a test to measure the density of liquid and possibility of any other liquid (solution) having the same density cannot be ruled out. The law on this point is well settled that the blue litmus paper test and the hydrometer test are not accurate test. Where one test shows the acidic nature of the liquid other shows the density of the liquid in which that instrument is put.

I find in the present case that the seized

liquor was not sent for chemical test, in order to come to a conclusion that the seized liquor was I.D. liquor and nothing else and these are the aspects discussed above go against the case of prosecution.

It was held in **Minaketan Muduli vrs State of Orissa 2002 (II) OLR 647** that prosecution should make all endeavour to get the seized materials tested by chemical analysis. That may be regarded as the surest test to establish that the seized material was nothing but any kind of liquor.

9. Considering the above facts and circumstances as well as the decision made above, I am of the opinion that the prosecution failed to prove the charge against the accused U/s-52(a)(i) of Odisha Excise Act, 2008 and she is found not guilty for committing the said offence and she is acquitted there from, as per provision of U/s.248(1) of Cr.P.C.

10. The accused be set at liberty forthwith and her bail bond shall remain in force for a period of six months u/s-437(A) of Cr.P.C..

11. The seized article if any be disposed after expiry of four months of the appeal period in case of

no appeal. In case of appeal be dealt as per the order of the Appellate Court.

Enter this case as “mistake of fact”.

Sub-Divisional Judicial Magistrate,
Jeypore.

This Judgment is typed to my dictation and corrected by me. The Judgment is pronounced in the open Court today, on this the 04th day of July, 2024 under my signature and seal of this Court.

Sub-Divisional Judicial Magistrate,
Jeypore.

FORM-C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES		
A .Prosecution Witnesses		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
P.W.1	Sukhmani Oram	Official seizure witness
P.W.2	Biswajit Ojha	Official seizure witness
P.W.3	Sanjaya Kumar Kandi	Investigating Officer

B. Defence Witness, if any :		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
N I L		
C. Court Witness, if any		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
N I L		
LIST OF PROSECUTION/DEFENCE/COURT/COURT EXHIBITS		
A. Prosecution Exhibits		
Sl. No.	Exhibit Number	Description
1	Ext.P-1/P.W.1	Signature of P.W.1 on Ext.P-1 ² /P.W.3
2	Ext.P-1 ¹ /P.W.2	Signature of P.W.2 on Ext.P-1 ² /P.W.3
3	Ext.P-1 ² /P.W.3	Seizure list
4	Ext.P-1 ³ /P.W.3	Tested blue litmus paper
5	Ext.P-1 ⁴ /P.W.3	Signature of P.W.3 on Ext.P-1 ³ /P.W.3
6	Ext.P-1 ⁵ /P.W.3	Signature of P.W.3 on 1 ² /P.W.3

7	Ext.P-2/P.W.1	Signature of P.W.1 on Ext.P-2 ² /P.W.3
8	Ext.P-2 ¹ /P.W.2	Signature of P.W.2 on Ext.P-2 ² /P.W.3
9	Ext.P-2 ² /P.W.3	Hydrometer Test Chart
10	Ext.P-2 ³ /P.W.3	Signature of P.W.3 on Ext.P-2 ² /P.W.3
11	Ext.P-3/P.W.1	Signature of P.W.1 on Ext.P-3 ² /P.W.3
12	Ext.P-3 ¹ /P.W.2	Signature of P.W.2 on Ext.P-3 ² /P.W.3
13	Ext.P-3 ² /P.W.3	Spot Map
14	Ext.P-3 ³ /P.W.3	Signature of P.W.3 on Ext.P-3 ² /P.W.3
B. Defence Exhibits, if any		
Sl. No.	Exhibit Number	Description
N I L		
C. Court Exhibits, if any		
Sl. No.	Exhibit Number	Description
N I L		
D. Material Objects :		
Sl. No.	Exhibit Number	Description
N I L		

Sub-Divisional Judicial Magistrate,
Jeypore.