IN THE COURT OF ADDITIONAL JUDICIAL MAGISTRATE OF I CLASS – CUM - CIVIL JUDGE (JUNIOR DIVISION) : MANGALAGIRI

PRESENT: Ms.V. Sri Prathyusha,

Additional Judicial Magistrate of I Class

-cum- Civil Judge (Junior Division), Mangalagiri.

Wednesday, the 24th Day of January, 2024

C.C.No. 1013 of 2022

Between :

The State : Enforcement Inspector, Mangalagiri.

.....Complainant.

And

Karumanchi Mery Jyothi, W/o. Bhagya Rao, 40 years,
C/ SC Mala, R/o. Kamathamvaripalem, Atthota village,
Kollipara Mandal. Presently at Tadepalli Mandal.

.....Accused.

This case came before this court for final hearing on 18-01-2024 in the presence of the Assistant Public Prosecutor for the Complainant and Sri P. Vijendra Raju, Advocate for the accused and upon hearing both the sides and the matter having stood upon for consideration till this day, this Court delivered the following :

J U D G M E N T

01. The Enforcement Inspector, Mangalagiri, filed charge sheet against the accused in Crime No. 12 of 2022 for the offence punishable under Section 34 (a) (1) of A.P Excise Act, 1968.

02. The brief averments of the charge sheet are as follows:

On 08-02-2022, while conducting patrolling for SEB Offences, LW3/G. Mallikarjuna Rao, Excise Sub-Inspector along with other staff i.e., LW1 and LW2 (A. Srinivasa Rao and P. Padmaja) in the government hired vehicle bearing registration No. AP 39 UB 1145, reached the place of offence i.e, opposite to the Mandal Parishath Primary School, Near Ambedkar Centre, Gundimeda Village of Tadepalli Mandal at 1.10 pm., and they noticed the accused standing there by holding a white colour polythene bag in her right hand and on seeing them in uniform, the accused tried to skulk away. Having observed the same, LW3 on suspicion got detained the accused with the help of his staff and on enquiry about his trying to escape and about the contents of the bag, the accused got perturbed and admitted that the bag contains liquor bottles. In order to verify the bag found in possession of accused, LW3 himself requested the surrounding people and passersby to come as mediators, none obliged and none came froward as mediators. Then, LW3 sent LW2 to secure mediators to Gundimeda Village. After some time, LW2 returned and reported that VRO., and VRA., were not available and in the village none of the villagers came forward to act as mediators. On that, LW3 decided to proceed under special report and LW3 questioned the said person about her name and address. Then the accused disclosed her descriptive particulars. On verification of the said bag in possession of the accused, found it contains 15 Liquor bottles of Hyderabad Blue Superior Whisky each 180 ml., verified liquor bottles and found their HEAL labels on the caps were torn and labels with inscriptions B. No. 176, dt.08-12-2021, MRP. 180/- and for sale in Andhra Pradesh only and that they were decided to be as duty paid liquor bottles. LW3 asked her whether she is having any bills or permit for having possession of the liquor bottles and for which the said person replied that she had nothing with her. When LW3 asked about source of liquor bottles, she stated that she purchased liquor bottles from Tadepalli and Mangalagiri Town Government Retail Outlets Wine shops and selling them at higher rates in her village for lively hood. LW3 has taken one bottle as a sample for chemical analysis, kept the remaining 14 bottles in the same bag, tied the same, sealed and affixed identity slips duly singed by LW3 and the accused. LW3 arrested the accused, after explaining the reasons for her arrest and got incorporated all the observation that took place at the place of offence, as in special report, scribed by LW1 and was attested by LW1 to LW3 and copy of special report was served on the accused under her acknowledgment. After returned to the station at about 9.30 p.m., LW3 registered the special report as a case in Crime No. 17 of 2022 under Section 34(a)(1) of A.P Excise Act, 1968 of Special Enforcement Bureau Station, Mangalagiri and submitted original FIR to the Hon’ble Court and copies to all the officers concerned and produced the accused before the Hon’ble Court and sent her for remand. Later, she was enlarged on bail. During the course of further investigation, LW4/ E. Maraiah Babu, Excise Inspector forwarded the sample liquor bottle through the Hon’ble Court to the regional Prohibition and excise Laboratory, Guntur for analysis and received the analysis report, where the expert who analyzed the liquor bottle issued analysis report vide RC.No.743/2022, Dt.20-04-2022 and opined that the sample at SL.No. 3949 is Indian Liquor. A letter was addressed to the Deputy Commissioner, Special Enforcement Bureau, Nellore for issuing confiscation orders with regard to the remaining case property. After completion of investigation, LW4 filed charge sheet against the accused. Hence, the charge.

03. On satisfying the material placed before this court and also taking into consideration of the special report and the contents of the charge sheet, this Court took cognizance against the accused for the offence punishable under Section 34 (a) (1) of A.P Excise Act, 1968. On appearance of the accused, this Court furnished copies of case documents to him as contemplated under Section 207 Cr.P.C.

04. This court examined the accused under Section 239 Cr.P.C., and a charge under Section 34 (a) (1) of A.P Excise Act, 1968 was framed, read over and explained to him in Telugu language, for which he pleaded not guilty and claimed to be tried.

05. To substantiate the case of the prosecution, the prosecution examined PW1 and PW2, exhibited Ex.P1 to Ex.P3 and MO1. No defence witnesses were examined and no documents were marked on behalf of the defence. The Learned APP has given up the evidence of LW2 (P. Ramesh).

06. After completion of the prosecution side evidence, this Court examined the accused under Section 313 Cr.P.C for the incriminating material appearing against him in the testimonies of the prosecution witnesses, for which, he denied the same and reported no defence evidence.

07. Heard both the sides arguments.

08. Now, the point for determination is:

"***Whether the prosecution has proved the guilt of the accused for the offence punishable under Section 34(a)(1) of A.P Excise Act, 1968 beyond reasonable doubt"?***

09. ***<u>POINT:</u>***

i) The Learned Assistant Public Prosecutor has contended that the accused was in illegal possession of 15 – 180 ml liquor bottles and PW1 along with his staff, noticed the accused when he was at the scene of offence by holding bag and on seeing them, she tried to skulk away and on observing the same, PW1 detained the accused with his staff assistance and when made enquiry, the accused admitted the possession of the liquor bottles in the bag. She has further contended that PW1 proceeded under special report and verified the bag and found it contains 15 – 180 ml. liquor bottles of Hyderabad Blue Superior Whisky and then PW1 took one sample bottle, seized the remaining bottles, kept in the same bag, tied the same, and affixed the identity slips and arrested the accused and completed the entire proceedings and went to the police station and registered the case in Crime No. 12 of 2022 under Sec.34 (a) (1) of AP Excise Act and produced the accused before the court for remand and after completion of investigation, LW3 filed charge sheet. She has further contended that as per the evidence of PW1, the prosecution side has proved the guilt of the accused for the offence punishable under Section 34 (a) (1) AP Excise Act beyond reasonable doubt. Hence the prosecution prayed this court to convict the accused for the offence punishable under Section 34 (a) (1) of A.P Excise Act.

ii) The learned counsel for the accused has contended that the accused is falsely implicated in this case and he is an innocent person and he never committed any type of offence. He has further contended that the prosecution failed to prove its case beyond reasonable doubt and no contraband was seized from the possession of the accused. The prosecution failed to examine any persons in the locality as mediators to prove that the accused was in possession of the liquor bottles as alleged in the special report. He has further contended that the special report was prepared at the police station but not at the scene of offence for the statistical purpose. Hence the accused never committed any offence as alleged by the prosecution and as such the accused is not found guilt for the offence under Sec.34 (a) (1) of AP Excise Act. Hence the defence counsel prayed this court to acquit the accused.

iii) To prove the offence punishable under Section 34 (a) (1) of A.P Excise Act, 1968, against the accused, the prosecution in all examined:-

a) LW1 who participated in the raid as PW1.

b) LW3 who conducted raid and investigated this case as PW2

iv) To prove the case of the prosecution, the prosecution examined LW1 namely A. Srinivasa Rao, Excise Constable as PW1 and PW1 exhibited Ex.P1. During the chief examination of PW1, PW1 deposed that on 08-02-2022 at 1.10 a.m., he along with LW2 and LW3 reached the place of offence while conducting patrolling and noticed the accused standing there holding white colour plastic bag in her right hand and on seeing them, she tried to escape from there, but LW3 on suspicion detained the accused, checked the bag and found liquor bottles. He further deposed that on enquiry, the accused admitted possession of liquor bottles in the bag and then LW3 sent LW2 to secure mediators and after sometime, she returned and reported that no revenue officials were available and none of the elders came forward to act as mediators. He further deposed that LW3 decided to proceed under special report and on verification of the bag, they found 15 bottles of Hyderabad Blue Superior whiskey 180 ml. He further deposed that LW3 took one bottle as sample for analysis and kept the remaining bottles in the same bag and tied the same and sealed, affixed identity slips to the sample bottles in the bag and seized the same and arrested the accused and prepared

Special report and the same was scribed by him at the place of offence on the dictation of LW3 and the said report was attested by LWs.1 to 3. He further deposed that after completion of the entire proceedings, they went to the police station and LW3 registered the Special report as a case in Crime No.12/2022 under Section 34(a)(i) of AP Excise Act and produced the accused before the Court for remand. He further deposed that LW3 sent the sample bottles for analysis report and received analysis report. He further deposed that after completion of investigation, LW4 filed charge sheet.

v) To prove the case of the prosecution, the prosecution examined LW3 namely G. Mallikarjuna Rao, Excise Sub-Inspector as PW2 and PW2 exhibited Ex.P2, Ex.P3 and MO1. During the chief examination of PW2, PW2 deposed that on 08-02-2022 at 1.10 a.m., he along with PW1 and LW2 reached the place of offence while conducting patrolling and noticed the accused standing there holding white colour plastic bag in her right hand and on seeing them, she tried to escape from there, but PW1 on suspicion detained the accused, checked the bag and found liquor bottles. He further deposed that on enquiry, the accused admitted possession of liquor bottles in the bag and then he sent LW2 to secure mediators and after sometime, she returned and reported that no revenue officials were available and none of the elders came forward to act as mediators. He further deposed that he decided to proceed under special report and on verification of the bag, they found 15 bottles of Hyderabad Blue Superior whiskey 180 ml. He further deposed that he took one bottle as sample for analysis and kept the remaining bottles in the same bag and tied the same and sealed, affixed identity slips to the sample bottles in the bag and seized the same and arrested the accused and prepared Special report and the same was scribed by PW1 at the place of offence on his dictation. He further deposed that after completion of the entire proceedings, they went to the police station and he registered the Special report as a case in Crime No.12/2022 under Section 34(a)(i) of AP Excise Act and produced the accused before the Court for remand. He further deposed that he sent the sample bottles for analysis report and received analysis report. He further deposed that after completion of investigation, LW4 filed charge sheet.

vi) On perusal of entire evidences adduced on behalf of the prosecution and coming to the evidencea of PW1 and PW2, it is evident that though the testimony of PW1 is corroborated with the evidence of PW2 as to the detection of offence, seizure of contraband but their evidence cannot be discarded or considered simply merely because they happened to be police official witnesses bestowed with the duty of maintaining law and order but their evidence shall be scrutinized very carefully. First of all, it is to be proved that whether the testimonies of PW1 and PW2 are sufficient to prove the nexus between the accused and contraband and the same was seized from the possession of the accused. It is seen from the evidence placed by the prosecution before the court that the case against the accused was registered basing on the special report prepared by PW2. On perusal of MO1, it is seen that there is a signature of the accused and inspecting officer endorsed on the identity slips and there is a seal on the same and the same was tied with the thread. As per AP excise rules, the investigating officer must see that the sample bottles is corked tightly and is wrapped with thick paper whose ends are affixed by means of gum and other adhesive and the paper cover shall be further secured by a twine or thread for tying the sample in horizontal and vertical position which is duly sealed with the seal of the officer who actually conducted the proceedings and there must be at least four distinct and clear impressions of the seal of the sender. Further care must be taken that the seal must be imprinted on the letter of advise forwarded to the chemical analysis which seal must be checked and found to correlate with the seal imprinted on the twine on the sample bottle to ensure that the sample is not tampered. All such procedures followed by the investigating officer must be reduced into writing and must reflect in the proceedings conducted by him. On perusal of Ex.P1, it clearly shows that there is such averment in the report which was followed by an investigating officer.

vii) The main contention of the accused is that the property/contraband was not seized from his possession and he never committed any such type of offence and he was falsely implicated by the police for statistical purpose. Pertaining to the said contention, as it could be seen from the evidences placed before the court that the special report was prepared by the police officials and none of the local inhabitants acted as mediators to prove that the contraband was seized from the possession of accused. The prosecution examined PW1 and PW2. Coming to the evidences of PW1 and PW2, it is elicited from the cross-examination of PW1 and PW2 that they have not mentioned about the conveyance details in which they went to the scene of offence in Ex.P1. On perusal of Ex.P1, it is seen that PW2 failed to mention about the conveyance details in which they went to the scene of offence. If really PW2 went along with PW1 and LW2 to the scene of offence, then PW2 would have mentioned the conveyance details in the contents of Ex.P1 but there is no mention about the same. What prevented PW2 to mention about the conveyance details if really PW2 conducted raid at the scene of offence. Hence non-mentioning about the conveyance details in Ex.P1 creates doubt in the mind of the court with regard to seizure of the contraband from the possession of the accused.

viii) PW1 admitted that the scene of offence area is busy locality. It is further elicited from PW1 that he has not secured local inhabitants as well as VRO., and VRA., as mediators in this case and he has not issued notice to the persons who refused to act as mediators. It is also elicited from PW1 that he has not mentioned the names of persons who refused to act as mediators in Ex.P1 and they have not issued notices to persons who refused to act as mediators. Though the scene of offence is a busy locality, then what prevented PW2 to secure local inhabitants as mediators. PW2 failed to mention his reasons for not securing the local inhabitants at the scene of offence if really PW2 went to the scene of offence. Moreover on perusal of Ex.P1, it is seen that there is no mention about the names of the persons who refused to act as mediators at the scene of offence to believe that PW1 and PW2 tried to secure the mediators at the scene of offence. On perusal of the record, it shows that the concerned investigating officer has not at all taken any steps for securing mediators at the scene of offence. Mere mentioning that none came forward does not hold any water unless the prosecution proves that PW1 and PW2 tried to secure mediators at the scene of offence by way of any ocular or documentary evidence. The prosecution failed to prove the same. PW2 failed to issue notice to the persons who actually refused to act as mediators and PW2 admitted about the same during cross examination. Hence it is relevant to note the decision in ***Botcha Raju Vs. State Rep, by the Inspector of Police, Vizianagaram Rural Circle, 1994 (2) ALT (Crl) P.69 (A.P), the Hon'ble High Court of AP held that the conviction cannot be given basing on the sole evidence of the police officers without corroboration by the disinterested witnesses***. In this case on hand, PW2 has not secured mediators at the time of seizure of the liquor bottles and the prosecution has not given sufficient reasons for not securing the mediators i.e,. local inhabitants who reside at the place of offence at the time of seizure and PW2 failed to prove that the contraband was seized from the possession of the accused by way of any disinterested witness or through any documentary proof. PW2 failed to secure the presence of VRO or VRA as mediators in this case. Hence the same makes the case of the prosecution doubtful and dis believable.

ix) It is further elicited from PW1 and PW2 that they have not mentioned the time when LW2 went to secure mediators from the scene of offence in Ex.P1. On perusal of Ex.P1, it is seen that PW2 failed to mention about the time when LW2 went to secure mediators from the scene of offence and when he returned to the scene of offence. If really PW2 went along with PW1 to the scene of offence, then PW2 would have mentioned the said details in the contents of Ex.P1 but there is no mention about the same. Hence the same creates doubt in the mind of the court with regard to seizure of the contraband from the possession of the accused.

x) It is further elicited from PW1 and PW2 that they have not mentioned the batch numbers of the liquor bottles and manufacturing details in Ex.P1. If really PW2 went to the scene of offence and seized the entire contraband from the possession of the accused, then PW2 would have enquired in the wine shop from where the accused has purchased the bottles but in this case on hand, PW2 failed to mention the batch numbers of the liquor bottles and failed make enquiry about the source of the contraband to prove the case of the prosecution. Hence the same casts serious shadow on the genuineness of the seizure of contraband from the accused at the scene of offence.

xi) It is further elicited from PW1 and PW2 that no money was seized from the possession of accused and they have not enquired about the source of liquor bottles. If really the accused was selling liquor bottles at the scene of offence, then PW2 would have seized money from the possession of the accused but the evidence of PW2 shows that no money was seized from the possession of the accused. Hence the same makes the case of the prosecution dis believable with regard to allegation that the accused purchased the liquor bottles for low price and he was standing at the scene of offence for selling liquor bottles.

xii) It is further elicited from the cross-examination of PW2 that he has not sent the sample for analysis on same day. If really PW2 seized the liqour bottles from the possession of the accused, then what prevented PW2 to send the sample liqour bottles on the same day for analysis. Hence the same makes the case of the prosecution dis believable.

xiii) It is further elicited from PW2 that he has not taken photos or videos at the time of seizure of contra band from the possession of accused. If really PW2 seized liquor bottles at the scene of offence, then PW2 would have taken photos or videos at the time of seizure but PW2 failed to take photos or videos at the scene of offence at the time of raid. Hence the same makes the case of the prosecution dis believable.

xiv) On further perusal of Ex.P1, it is seen that PW2 has mentioned that the accused has confessed before them that he has purchased the liquor bottles at Mangalagiri Town wine shops outlets and he was standing at the scene of offence for selling the said bottles to the public at higher rate. The said confessional statement of the accused which was recorded by PW2/investigating officer when he was in police custody was hit by Sec.25 of Indian Evidence Act. The law in this regard is very clear that the confession before the police officer by the accused when he is police custody cannot be called an Extra-Judicial confession. If a confession is made by the accuse before the police officer and a portion of confession leads to recovery of any incriminating material, such portion alone would be admissible under Sec.27 of Indian Evidence Act and not the entire confessional statement. In the instant case, confession of the accused would not lead the investigating officer to seize any incriminating material. Hence the said confessional statement of the accused recorded in Ex.P1 is inadmissible.

xv) It is further seen that no cogent evidence was placed by the prosecution to believe that the contraband was in the possession of the accused. None of the villagers/local inhabitants evidence was placed before this court to believe the said fact. Mere relying on the evidence of the police officials, it cannot be believed that the contraband was seized from the possession of the accused. Ex.P3 is the chemical examiner report undoubtedly establishes that the sample correspond to Indian Liquor which fact is not disputed. But it is the specific contention of the accused that no contraband was seized from the possession of him. This being so, it is imperative upon the prosecution to substantiate the guilt of the accused in light of the cogent and reliable evidence. PW2 failed to secure the local inhabitants as mediators in this case to prove the seizure of the contraband from the possession of the accused and as such their testimonies cannot be relied upon as they are police officials and none of the local inhabitants acted as mediators. Moreover PW2 failed to secure VRO or VRA of that locality as mediators to prove the case of the prosecution. PW2 failed to enquire about the source of liquor bottles to prove the case of the prosecution. Hence in view of the above discussions, it is seen that seizure of contraband from the possession of the accused remained not cogently proved.

xvi) Hence in view of the above discussion, this court comes to an indomitable conclusion that the prosecution failed to prove its case and it is highly unsafe to rely upon the testimony of PW1, while sustaining conviction and failed to prove guilt of the accused for the offence punishable under Section 34 (a) (1) of A.P Excise Act, 1968 beyond reasonable doubt by adducing sufficient, cogent and clear evidence and hence a benefit of doubt is accorded in favor of accused for the same. Hence the accused is entitled for acquittal. Accordingly, this point is answered.

10. In the result, the accused is not found guilty of the offence under Section 34 (a) (1) of A.P Excise Act, 1968 and thereby for the same, the accused is acquitted under Section 248(1) of Cr.P.C.. The bail bond on record shall stand cancelled after lapse of 6 months along with surety bonds as per Section 437-A Cr.P.C. The marked case property i.e., MO1 and unmarked case property if any (samples if any) shall be destroyed after lapse of appeal time.

Typed to my dictation by stenographer grade - III, corrected and pronounced by me in the open Court, this the 24th Day of January, 2024.

Sd/-Ms.V.Sri Prathyusha,
ADDL.JUDL. MAGISTRATE OF I CLASS
-CUM-CIVIL JUDGE (JUNIOR DIVISION),
MANGALAGIRI.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution :
PW1: A. Srinivasa Rao
PW2: G. Mallikarjuna Rao
For Defence: None

DOCUMENTS MARKED

For Prosecution :
Ex.P1 is the Special Report.
Ex.P2 is the First Information Report.
Ex.P3 is the Analysis report.
For Defence: NIL.
Material Objects:
MO1 is the one sample bottle of Hyderabad Blue Superior whiskey 180 ml.,

Sd/-Ms.V.Sri Prathyusha,
ADDL.JUDL. MAGISTRATE OF I CLASS
-CUM-CIVIL JUDGE (JUNIOR DIVISION),
MANGALAGIRI.

//True Copy//

ADDL.JUDL. MAGISTRATE OF I CLASS
-CUM-CIVIL JUDGE (JUNIOR DIVISION),
MANGALAGIRI.

CALENDAR AND JUDGMENT
IN THE COURT OF ADDITIONAL JUDICIAL MAGISTRATE OF I CLASS – CUM - CIVIL JUDGE (JUNIOR DIVISION) : MANGALAGIRI
C.C.No.1013 of 2022

Date of Offence	: 08-02-2022
Date of arrest of Accused	: 08-02-2022
Date of Release of accused on bail	: 09-02-2022
Date of commencement of Trial	: 12-04-2023
Date of close of Trial	: 25-04-2023
Date of sentence or order	: 24-01-2024
Crime No. and Name of P.S.	: Cr.No.12/2022 of SEB, Mangalagiri
Name of the Complainant	: Enforcement Inspector, Mangalagiri
Description of the accused.	:

Karumanchi Mery Jyothi, W/o. Bhagya Rao, 40 years, C/ SC Mala, R/o. Kamathamvaripalem, Atthota village, Kollipara Mandal. Presently at Gundimeda Village and Tadepalli Mandal.

Explanation for delay : This case was taken on file against the accused on 18-10-2022. On 22-12-2022, copies furnished to the accused. On 15-02-2023, the accused was examined under Section 239 Cr.P.C. On 12-04-2023, PW1 was examined. On 25-04-2023, PW2 was examined and prosecution side evidence closed. On 10-07-2023, the accused was examined under Section 313 Cr.P.C. examination and he reported no defence. On 18-01-2024, heard arguments on both sides. On 24-01-2024, judgment is pronounced. Hence, the delay.

Section of Law	: under Section 34 (a) (1) of A.P Excise Act
Finding of Court	: Found not guilty

Sentence or Order : In the result, the accused is not found guilty of the offence under Section 34 (a) (1) of A.P Excise Act, 1968 and thereby for the same, the accused is acquitted under Section 248(1) of Cr.P.C.. The bail bond on record shall stand cancelled after lapse of 6 months along with surety bonds as per Section 437-A Cr.P.C. The marked case property i.e., MO1 and unmarked case property if any (samples if any) shall be destroyed after lapse of appeal time.

Sd/-Ms.V.Sri Prathyusha,
ADDL.JUDL. MAGISTRATE OF I CLASS -CUM-CIVIL JUDGE (JUNIOR DIVISION), MANGALAGIRI.

Copy submitted to:
The Hon’ble Chief Judicial Magistrate, Guntur.

//True Copy//

ADDL.JUDL. MAGISTRATE OF I CLASS
-CUM-CIVIL JUDGE (JUNIOR DIVISION),
MANGALAGIRI.