

IN THE COURT OF II ADDL. JUDICIAL MAGISTRATE OF I CLASS, ADONI.

**PRESENT: Smt.A.V.S.Srivalli,
II Additional Judicial Magistrate of I Class, Adoni.**

Wednesday, the 03rd Day of December, 2025

C.C.No.868/2022

Between :

State: The Sub-Inspector of Police,
Kosigi Police Station.

... Complainant

and

1. Gaddam Karraiah, age 45 years,
S/o Chinna Thimmaiah.
2. Katigani Veresh, age 38 years, S/o Eranna.
Both are R/o D.Belagal village, Kosigi mandal.

... Accused

This case coming before me for final hearing on 02.12.2025 in the presence of A.P.P. for State and of Sri. T.Prabhakar, Sri P.Ramudu and Sri C.Nagesh, Advocates for the accused, and upon hearing both sides and the matter having stood upon for consideration to this day, this court delivered the following:

:: JUDGMENT ::

01. The Sub-Inspector of Police, Kosigi Police Station, filed charge sheet against the accused A1 and A2 in Crime No.263/2021 for the offence punishable U/Sec.34(a) of A.P. Excise Act.

02. In brief, the case of the prosecution as unfolded in the charge sheet is stated as follows:

On 14.01.2021 at about 7.35 PM on credible information Kosigi police Lw.3/A.Dhanunjaya, S.I. of Police along with his staff Lws.1, 2 and 4 reached Anjineya Swamy statue in D.Belagal village, Kosigi mandal, there Lw.3/S.I. of Police arrested the accused A1 and A2 and also seized **880-90ml original choice deluxe**

whiskey Karnataka liquor tetra packets and also seized one motorcycle bearing No.AP 39 CE 2486 under cover of police proceedings. On 28.08.2021 Lw.3/S.I. of Police sent the accused for judicial remand.

Basing on the special report, LW.3-A.Dhanunjaya, S.I. of Police registered a case in Cr.No.263/2021 U/Sec.34(a) of A.P. Excise Act and investigated and received destruction orders from the Superintendent of Police, Kurnool and destroyed the property under cover of panchanama in the presence of panchayathdars. After completion of investigation, LW.3-S.I. of Police filed charge sheet against the accused A1 and A2 in this case. Hence, the charge.

03. This case was taken on file against the accused A1 and A2 for the offence punishable under Section 34(a) of A.P. Excise Act.

04. After appearance of the accused A1 and A2 case copies and relevant documents were furnished to them as contemplated under section 207 of Criminal Procedure Code, 1973.

05. The accused A1 and A2 were examined under Sec.239 of Cr.P.C. and a charge under Section 34(a) of A.P. Excise Act was framed against the accused and the contents of the charge were read over and explained to them in Telugu language, for which they pleaded not guilty and claimed to be tried.

06. To substantiate its case, the prosecution examined P.W.1 and got marked Exs.P1 to P4 on its behalf. Assistant Public Prosecutor has given up the evidence of L.W.1, 2 and 4.

07. After closure of prosecution evidence, accused A1 and A2 were examined under Sec.313 of Cr.P.C., and the incriminating evidence from the testimony of

P.W.1 was read over and explained to them, for which, they denied the same and reported no defence evidence.

08. Heard the learned APP for State and the learned counsel for accused.

09. Now the point for determination is:

Whether accused A1 and A2 possessed or sold any intoxicant in contravention of provisions of Excise Act without any valid license or permit and thereby committed offence punishable under section 34(a) of A.P. Excise Act, 1968?

Point:

10. The accused A1 and A2 in this case are charged for the offence u/sec.34(a) of AP Excise Act. In order to sustain the charge for the offence u/sec.34(a) of AP Excise Act, the prosecution must prove that the accused A1 and A2 were imported, exported, transported, manufactured, collected or possessed or sold any intoxicant and they were in possession of the intoxicant more than the permissible quantity. In this instant case the accused were in possession of total **880-90 ml original choice deluxe whiskey tetra packets** of Karnataka State. As seen from the allegations in the Charge Sheet, the accused were in possession of more than the permissible quantity. Now, it has to be seen whether the prosecution proved its case beyond reasonable doubt that the accused were in possession of liquor, more than the permitted quantity or not.

Prosecution contentions:-

11. The specific version of PW1 is that on 27.08.2021 at about 7.35 pm himself along with LW.1 and 2 were went to Anjaneyaswamy statue in D.Belagal village,

there they found the accused No.1 and 2 were coming on motorcycle by keeping one plastic bag, on seeing the police, they tried to escape, but the police caught hold them. On enquiry, they confessed that the offence, on opening the bag the police found **880-90 ml** Original Choice Deluxe Whisky tetra packets and also seized remaining contraband and motorcycle and sent them for judicial remand. They had taken 1 90ml tetra packets and have sent the same for chemical analysis. They had seized the remaining contraband and affixed the signature of accused A1 and A2 on the samples. They had signed the same. Pw.1 had registered a case in Cr.No.263/2021 U/Sec.34(a) of AP Excise Act. He had sent the samples for the purpose of chemical analysis and had received the chemical analysis report. On receiving the chemical analysis report, Lw.4/M.Raja Reddy, S.I. of Police destroyed the remaining contraband. After due investigation he filed the charge sheet.

Defence contentions:-

12. P.W.1 has been subjected cross examination. The learned defense counsel contended that the Police has foisted false case against the accused for statistical purpose. Further contended that they never went to the scene of offence. Further contended that entire proceedings were cooked up in the police station. Further contended that they had not seized the property. He contended that except the evidence of PW.1, prosecution failed to examine the other witnesses in this case. It shows that the prosecution failed to prove its case against the accused.

Appreciation of the contentions of the learned councils-

13. In so far as securing independent mediators is concerned, admittedly there are no independent mediators present at the time of alleged seizure of liquor from the possession of accused. Hence, P.W.1 seized the liquor tetra packets from the possession of the accused. The evidence of P.W.1 is clearly showing the said fact. Hence, the non securing independent mediators is itself not fatal to the case of the prosecution.

14. It is settled that any confession/Police Proceedings recorded by the police officials has no sanctity in the eye of the law as it is hit by Sec.25 of the Indian Evidence Act, 1872. Therefore, in the instant case, the Special Report Ex.P1 containing the alleged confession of the accused shall not be taken into consideration.

In order to better appreciate the rival contentions it is useful to reproduce section 100 (4) Cr.P.C.

Section 100 (4) and (5) of Cr.P.C. is as follows:

100. Persons in charge of closed place to allow search.-

(4) Before making a search under this Chapter, the officer or other person about to make it 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 attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless especially summoned by it.

Further the Hon'ble High Court of A.P in 'Yeduru Sreenivasul Reddy Vs State of A.P which was reported in 2002(1) ALD(Crl.)347(A.P)' laid down :-

“When the search and seizure taken place in a busy locality and none have come forward to act as a punch witness, the police should have resort to section.100(4) of Cr.P.C and should pass a written order. Therefore, in the absence of any such written order, the evidence of police officials that no one came forward to act as mediators, cannot be believed and relied upon. Therefore, the entire search conducted by the prosecution is vitiated. Held, the search and seizure as well as conviction cannot be sustained.”

In view of the above legal position the Investigating Officer has to secure the presence of two independent mediators at the time of seizing contraband from the possession of accused. If he fails to do so, he has to state the reasons for not securing the presence of mediators.

Thereby basing upon above provision of law, it is clear that whenever any officer intends to search any premises, it is incumbent on his part to secure the presence of two independent mediators. If, for any reason, he is unable to secure two independent mediators, he shall record reasons as to why he could not do so.

No doubt, non-observance of the procedure mandated under the Criminal Procedure Code may not be fatal in each and every case, if the concerned authority who made the search and seizure has given cogent and convincing explanation as to how and why he could not comply with the provisions of Section 100 Cr.P.C. In the instant case, no such explanation is forthcoming from P.W.1 for not following the procedure contemplated under Section 100 Cr.P.C. It is also pertinent to note that no M.O's are marked which itself creates doubt on the seizure.

Therefore, though P.W.1 has followed the procedure to some extent while taking samples, but failed to give any plausible reasons for not securing the presence of mediators at the time of his search, which, in this Court's considered view, caused great prejudice to the accused A1 and A2. Therefore, this Court opines that, prosecution failed to establish the guilt of the accused beyond reasonable doubt and the accused are entitled for **Acquittal**.

15. In the result, Accused A1 and A2 are found not guilty for the offence punishable U/Sec.34(a) A.P. Excise Act, and accordingly, they are acquitted under Sec.248 (1) of Cr.P.C. The bail bonds of the accused A1 and A2 are ordered to be in force for a period of six months along with surety bonds as per Section 437-A of Cr.P.C. Un-marked case property if any shall be destroyed after lapse of appeal time.

Typed to my dictation to the Stenographer Grade-II corrected and pronounced by me in the open Court on this the 03rd day of December, 2025.

**II Addl. Judl.Magistrate of I Class,
Adoni.**

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Complainant

Pw1: A.Dhanunjaya, S.I. of Police

For Defence

None

DOCUMENTS MARKED

For Complainant

Ex.P.1: Police proceedings.

Ex.P.2: F.I.R.

Ex.P.3: Chemical analysis report.

Ex.P.4: Destruction proceedings.

For Defence:

Nil

MATERIAL OBJECTS

NIL

**II Addl. Judicial Magistrate of I Class,
Adoni**