

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS CUM
JUNIOR CIVIL JUDGE: MYDUKUR

Present:- S.Khaja Moinuddin
Judicial Magistrate of I Class cum
Junior Civil Judge, Mydukur.

Friday, this the 03rd day of February, 2023

CC No.765 of 2022

State: Enforcement Sub Inspector, Special Enforcement Bureau, Mydukur
....Complainant

Vs.

Yanuboyana Siva, S/o Y.Ramana, aged about 37
years, caste by Gajula Baliya, Resident of
D.No.11/268-14, Kothakotal, Mydukur town,
Y.S.R. Kadapa District.

....Accused

This case coming on 30.01.2023 for final hearing before me in the presence of learned Asst. Public Prosecutor for complainant and of Sri K.Sreenivasulu, Advocate for the accused and the matter having been stood over for consideration till this day, this court delivered the following:-

J U D G M E N T

The Enforcement Sub Inspector, Special Enforcement Bureau, Mydukur filed charge sheet against the sole accused in Cr.No.94/2021 for the offence punishable U/sec.34(a) of A.P. Excise Act.

2. The brief facts of the prosecution case are as follows:

On 25.04.2021 at about 03.30 pm during the raids conducted by the D.Srinivasa Reddy, SEB sub Inspector, Mydukur (LW.2) along with other staff reached at K.C. Canal situated on Mydukur to Nandyala bus road of Mydukur municipality, there they found the accused who was stand on the spot in possession of one white color plastic bag on the petrol tank of a two wheeler, on seeing the officials and staff the accused tried to escape. On suspicion they surrounded Accused and detained Accused and on interrogation the Accused

revealed his identity particulars and also confessed that he was in possession of liquor bottles. Then SEB sub Inspector (LW.2) verified the plastic bag and found 08 nips of Daarur House XO brandy, 04 nips of Good Friends Deluxe whiskey liquor bottles, 03 nips of Andhra Gold whiskey bottles and 2 nips of Old Timer Deluxe whiskey bottles total 17 liquor bottles. The seals are found torn. But the accused did not reveal about the source of liquor bottles without any valid license or permit. The Accused failed to produce valid license or permission with regard to possession of liquor bottles. As such, LW.2 arrested the accused and seized the above property along with two wheeler from his possession under the cover of special report by drawing one bottle from each brand for sample. Thereafter, LW.2 returned to the station along with the accused and seized property and two wheeler and registered a case in Cr.No.94/2021 for the offence punishable u/Sec.34 (a) of A.P. Excise Act, sent the accused to judicial custody and after receiving confiscation orders and after completion of investigation, LW.5/ S.Varuna Kumar, SEB Sub Inspector laid charge sheet in this case.

3. After perusal of charge sheet and other connected documents, this case was taken on file against accused for the offence punishable u/Sec.34 (A) of A.P. Excise Act.

4. On appearance of the accused, copies of all the documents on which the prosecution relied were supplied to the accused as contemplated under Section 207 of Criminal Procedure code.

5. Accused is examined U/sec.239 Cr.P.C. charges are framed for the offences punishable u/Sec.34 (A) of A.P. Excise Act against the accused and its contents were explained to him in Telugu language for which he has denied, pleaded not guilty and claimed to be tried.

6. During the course of trial, the prosecution examined PW.1 and PW.2 and got marked Exs.P1 to P5. M.O.1 to M.O.4 are also marked. The learned Asst. Public Prosecutor, has given up the evidence of LW.3/ C.Rajeswaramma, Government chemical Examiner, LW.4/ S.Srinivas, Superintendent, SEB & LW.5/ S.Varuna Kumar, SEB Sub Inspector, respectively.

7. On closure of prosecution evidence and on perusing the evidence of Pws.1 and 2, the accused is examined U/sec.313 Cr.P.C, for which the accused denied the incriminating material and reported no defence evidence.

8. Heard the arguments of both sides perused the material on record. Considered the evidence of PWs.1 and 2 coupled with Exs.P1 to P.5 and MO.1 and other material on record.

9. Now the point that arise for determination is:

“Whether the prosecution could able to prove the guilt of the accused for the offences punishable u/Sec.34 (A) of A.P. Excise Act beyond all reasonable doubt”?

10. The learned Asst. Public Prosecutor argued before this court that the evidence of PW.1 and PW.2, Ex.P1 to Ex.P5 and MO.1, well establish the offence against accused as such the prosecution is able to prove the guilt of the accused and he is not even entitled for benefit of doubt and pray to convict the accused.

11. Per contra, the learned counsel for the accused has contended that though there is possibility of securing the independent panchayatdars, as the locality is a busy one, no such attempts were made and in a mechanical manner, the Special report were prepare and search was conducted and the accused was shown arrested. Further, his submission is that Ex.P.1 was prepared at SEB station and the liquor bottles similar to the material objects are easily available in the market and for statistical purpose, many cases are

registered by the police/ excise officials and this is one such false case foisted for statistical purpose. He has sought for the acquittal of the accused.

12. To prove the case out of 05 list of witnesses the prosecution examined PW.1 and PW.2, PW.1/ S.Fayaz Basha, who is SEB head Constable deposed that on 25.04.2021 at about 03.30 pm he along with other staff accompanied PW.2/ D.Srinivasa Reddy and went to conduct general raids at about 10.40 am they reached at K.C. Canal situated on Mydukur to Nandyala bus road of Mydukur municipality, there they noticed the accused who was coming on two wheeler bearing No.AP043536 by keeping one white color plastic bag on petrol tank and on seeing them, the accused tried to escape from the place, on suspicion they detained, then PW.2/ D.Sreenivasula Reddy enquired him about his identity particulars and possession of contraband, accused confessed that he was in possession of liquor bottles illegally, after that PW.1 & PW.2 verified the bag and found 08 nips of Daarur House XO brandy, 04 nips of Good Friends Deluxe whiskey liquor bottles, 03 nips of Andhra Gold whiskey bottles and 2 nips of Old Timer Deluxe whiskey bottles total 17 liquor bottles and also found seals are torn, the accused did not produce any valid license or permission with regard to possession of contraband they tried for mediators but no one came forward to act as mediator, then PW.2 drawn one sample brand from each brand for sending chemical analysis purpose and seized the remaining contraband along with two wheeler and arrested the accused under cover of special report which was drafted on the spot. After completion of investigation LW.5/ S.Varuna Kumar, SEB sub Inspector filed charge sheet.

13. It was elicited in the cross examination of PW.1 by the defence counsel that he was assisted to PW.2 and in cross examination by the defence counsel that it was elicited that the scene of offence is busy locality with the

movement of many vehicles, in Ex.P.1 they did not mention how many persons were went to the scene of offence and where was conducting raids before they reached at the scene of offence. Further it was elicited they did not disclose the name and bearing number of their vehicle during conducting raids in Ex.P.1/ special report. Further it was elicited that they did not disclose in Ex.P.1 on whose direction and the name of the person who drafted the special report in Ex.P.1 and they did not mention in Ex.P.1 on which side the accused tried to skulk away and who caught hold the accused. Further it was elicited that he did not obtained any written summons from PW.2 to brought the mediators at Mydukur town and in Ex.P.1 to whom he requested the person to act as mediator in Mydukur. Further it was elicited they did not follow the procedure under section 160 of Cr.P.C. to issue written summons to mediators to act as panch witnesses and section 100 of Cr.P.C. for search. Further it was elicited there was one government wine shop situated in Mydukur which it was with in a distance of 100 mtrs to the scene of offence and further it was elicited that on the date of alleged offence there was government officials are available in their offices but he did not request them to act as mediators and it was elicited the white colored plastic bags are easily available in the market and the seized liquor bottles are duty paid liquor. Further, he denied other suggestions posed by the defence counsel.

14. PW.2/ D.Srinivasa Reddy, SEB sub Inspector who was the investigating officer deposed his part of role as investigating officer as done by him in this case. In cross examination of PW.2 by the defence counsel, it was elicited that the scene of offence is busy locality with the movement of many vehicles, in Ex.P.1 they did not mention how many persons were went to the scene of offence and where was conducting raids before they reached at the

scene of offence. Further it was elicited they did not disclose the name and bearing number of their vehicle during conducting raids in Ex.P.1/ special report. Further it was elicited that they did not disclose in Ex.P.1 on whose direction and the name of the person who drafted the special report in Ex.P.1 and they did not mention in Ex.P.1 on which side the accused tried to skulk away and who caught hold the accused. Further it was elicited that he did not issued any written summons to PW.1 to secure the mediators from Mydukur town and in Ex.P.1 to whom PW.1 requested the person to act as mediator in Mydukur town. Further it was elicited they did not follow the procedure under section 160 of Cr.P.C. to issue written summons to mediators to act as panch witnesses and section 100 of Cr.P.C. for search. Further it was elicited there was one government wine shop situated Mydukur which it was with in a distance of 100 mtrs to the scene of offence and further it was elicited on the date of alleged offence there was government offices and village secretariats situated at Mydukur and also government officials are available in their officer but PW.1 did not request them to act as mediators at Mydukur and the white colored plastic bags are easily available in the market and the seized liquour bottles are duty paid liquour. Further PW.2 denied other suggestions posed by the defence counsel.

15. To prove the offence against accused the only evidence on record is PW.1 and PW.2. The search, seizure and arrest was conducted by PW.2 alone. PW.1 accompanied PW.2 during the course of search and seizure. On a careful perusal of the evidence of PWs.1 and 2, it is quite evident that PW.2 failed to follow the prescribed procedure as contemplated U/sec.100(4) Cr.P.C during the search and seizure. And moreover PW.2 failed secure any mediators from the surrounding places though there is sufficient availability to secure mediators

from that area. And admittedly, no summons were served on any one calling them as mediators. As PW.2 failed to follow the procedure prescribed U/sec.100 (4) Cr.P.C. It is expedient to have a glance on section.100 (4) of Cr.P.C. for better appreciation of the evidence in this case.

“Sec.100 (4) reads as follows:: 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 situate or 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...” As per the Sec 100 (4) of Cr.P.C. when the independent Mediators in that locality are not available, the Excise officials has to record the same and issue an order in writing as prescribed above.

16. It is clear from the record that no such procedure was adopted by the Investigating officer though scene of offence is located at busy area as admitted by PW.2. It is settled law that in absence of independent mediators the entire procedure vitiates the case. This court feel it is just and proper to go through the relevant case law in this regard. The Hon'ble High court of A.P in the case of **'Yeduru sreenivasul reddy Vs State of A.P' reported in '2002(1) A.L.D (Cri) 347 (A.P)'** held that:

“When the search and seizure taken place in a busy locality and none have come forward to act as a panch 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 can not be believed and relied upon. Therefore, the entire search conducted by the prosecution is vitiated. Held, the search and seizure as well as conviction can not be sustained.”

As held in the above authority, PW.2 failed to follow the prescribed procedure as contemplated and non-securing of independent mediators by the excise officials are creating doubt on the entire prosecution case.

17. As seen from the record, though there are chances to get mediators from the locality of Mydukur town as admitted by the PW.2, but no efforts made by the investigating agency, which is a serious lacunae on the part of the

prosecution. For all these reasons, it is not safe to rely upon the testimony of PW.1 and PW.2. Hence, the search and seizure of liquor bottles from the possession of the accused is not proved. PW.1 who accompanied PW.2 at the time of the alleged search and seizure, Except the evidence of PW.1 who is subordinate to PW.2, there is no other material evidence is available on record to prove the search and seizure in this case. From the above discussion, this court holds that the prosecution failed to prove the guilt of accused beyond all reasonable doubts and the benefit of doubt should go in favour of the Accused. As such, the accused is entitled for acquittal.

18. In the result, the accused is found not guilty for the offence punishable u/Sec.34 (a) of A.P. Excise Act and accordingly, he is acquitted of the same u/Sec.248 (1) of Cr.P.C. The bail bonds of the accused shall be remained in force for a period of six months as required u/Sec.437-A Cr.P.C. M.O.1 to M.O.4 are C.P.R.No.82/2021 on the file of this court shall be destroyed after the expiry of appeal time.

Directly typed to my dictation by the Stenographer Gr.III, corrected and pronounced by me in the open court on this, the 03rd day of February, 2023.

**Sd/- S. Khaja Moinuddin,
JUDICIAL MAGISTRATE OF I CLASS CUM
JUNIOR CIVIL JUDGE,
MYDUKUR.**

APPENDIX OF EVIDENCE

Witnesses examined:-

For Prosecution:-

PW.1: S.Fayaz Basha , SEB constable.

PW.2: D.Srinivasula Reddy, SEB Sub Inspector.

For Defence:- - Nil -

Exhibits marked:-

For Prosecution:-

Ex.P.1: Special report, dt.25.04.2021

Ex.P.2: FIR.

Ex.P.3: Letter of Advise.

Ex.P.4: Analysis Report.

Ex.P.5: Confiscation proceedings, dated 28.06.2022.

For Defence:- - NIL -

Material Objects Marked:-

M.O.1 is one sample bottle of Daar House XO brandy 180 ml.

M.O.2 is one sample bottle of Good Friends Deluxe whiskey 180 ml.

M.O.3 is one sample bottle of Andhra Gold whiskey 180 ml.

M.O.4 is one sample bottle of Old Timer Deluxe whiskey 180 ml.

**Id/- S.K.M.,
JFCM CUM JCJ
MYDUKUR**

CALENDER AND JUDGMENT

Calendar and Judgment tried by the Judicial Magistrate of First Class cum Junior civil Judge, Mydukur.

DATE OF						
Offence	Report	Apprehension of accused	Release on bail	Commencement of trial	Close of trial	Judgment
25.04.2021	25.04.2021	26.04.2021	30.04.2021	13.01.2023	20.01.2023	03.02.2023

Calendar and Judgment in C.C.No.765/2022 on the file of Judicial Magistrate of First Class cum Junior Civil Judge, Mydukur.

COMPLAINANT: The Enforcement Sub-Inspector, Special Enforcement Bureau, Mydukur.

Name of the accused with father's Name.	Age	Religion	Residence
1	2	3	4
Yanuboyana Siva, S/o Y.Ramana,	37 years	Hindu	Resident of D.No.11/268-14, Kothakotal, Mydukur town, Y.S.R. Kadapa District.

Offence : u/Sec.34 (A) of A.P. Excise Act

Finding : Accused is found not guilty for the offence punishable u/Sec.34 (A) of A.P. Excise Act

Sentence: In the result, the accused is found not guilty for the offence punishable u/Sec.34 (a) of A.P. Excise Act and accordingly, he is acquitted of the same u/Sec.248 (1) of Cr.P.C. The bail bonds of the accused shall be remained in force for a period of six months as required u/Sec.437-A Cr.P.C. M.O.1 to M.O.4 are C.P.R.No.82/2021 on the file of this court shall be destroyed after the expiry of appeal time.

**Sd/- S. Khaja Moinuddin,
Judicial Magistrate of I Class cum
Junior civil Judge,
Mydukur.**