

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS ::
MUMMIDIVARAM.**

PRESENT:- Sri S.Srinivas, B.Com., LL.M.,
Judicial Magistrate of First Class, Mummdivaram.
Tuesday, this the 21st day of March, 2023
C.C.No.453/2022

Between:

State: Sub -Inspector of Police,
I.Polavaram P.S

... Complainant.

and

Vittanala Thrimurthulu,
S/o.Adinarayana, age 63 years,
Settibalija, T.Kothapalli Village,
I.Polavaram Mandal.

... Accused

This case is coming on 20.03.2023 for arguments before me in the presence of learned A.P.P. for the State and of Sri K.Tatamraju, Advocate for the Accused and upon hearing the Arguments on both sides having stood over for consideration till this day, the court made the following :

J U D G M E N T

1. The Sub-Inspector of Police, I.Polavaram P.S filed charge sheet against accused in Cr.No.217/2020 for the offence U/sec.34(a) r/w 34(1), 11(2) of A.P.Excise Act.

2. The case of the prosecution in brief is that:-

On 06.08.2020 at about 09.00 AM, LW5/S. Ramu SI of Police, I.Polavaram along with SPOs of Yedurulanka Check Post conducted raid at Yedurulanka check post at Patha Injaram. There they found accused in suspicious circumstances. On the verification police party found accused is having possession of one liter old admiral deluxe whisky – 2 bottles. On enquiry accused revealed that he used to purchase liquor bottles from Government liquor shop with a view to sell the same at higher price. On that LW5/S. Ramu, S.I of police also questioned about any license or permission hold by accused. Accused failed to show any such license or permission. LW5/S.Ramu S.I of Police tried to secure mediators, but in vain. Finally an occurrence report drafted by S.I of police for

seizure of 02 bottles i.e., old admiral deluxe whisky. He also arrested accused and shifted property along with accused to I.Polavaram police station. Basing on occurrence report he registered a case in crime No.217/2020 U/sec.34(a) r/w 34(1), 11(2) of A.P.Excise Act. LW5/S.Sankar, SI of I.Polavarma P.S., sent the sample to chemical analysis for opinion and on receiving FSL report has Indian made liquor and on completion of investigation, he filed charge sheet.

3. This court took the cognizance under section 34 (a) r/w 34(1), 11(2) of A. P. Excise Amendment Act. On appearance of the accused copies of documents were furnished to him as contemplated under section 207 Cr.P.C.

4. Accused is examined under section 239 Cr.P.C., he denied the offence. Hence the charge U/sec.34 (a) r/w 34(1), 11(2) of A. P. Excise Amendment Act is framed, read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried. Hence the accused has been tried for the said charge.

5. To substantiate its case, the prosecution examined Pws.1 to 3. Exs.P.1 to P.5 and MO.1 is got marked as detailed in the appendix of evidence.

6. After closure of the prosecution evidence, the accused was examined under section 313 Cr.P.C, explaining the incriminating circumstances, appeared in the evidence of prosecution witnesses, for which, he denied them as false and reported no defence evidence.

7. Now the point for consideration is :-

Whether the prosecution establishes its case by proving seizure of the contra band under cover of Ex.P1 occurrence report to bring home the guilt of the accused for the charge under sec 34 (a) r/w 34(1), 11(2) of A. P. Excise Amendment Act beyond all reasonable doubt?

POINT:

8. The case of the prosecution is that the accused was found in possession of U/sec.34(a) r/w 34(1), 11(2) of A.P.Excise Act that the contra band was seized under cover of Ex.P1 occurrence report.

9. It has been admitted by PW.3 in his cross examination that the scene of offence is situated in a busy and residential locality. In such a case, it is improbable to believe that no one came forward to act as mediator for the search and seizure of the contra band and is devoid of appreciation, as the alleged scene of offence is situated in a busy and residential locality and any number of persons can be secured to act as mediators for the search and seizure of the contra band. Thus, it manifests from the testimony of PW.3 that the mandatory requirements Under Sec.100(4) Cr.P.C has not been complied with, in securing two or more respectable and independent persons of the locality to act as mediators for the search and seizure of the contra band. In these circumstances, it is highly unsafe to rely on the testimonies of Pws.1 to 3 in the absence of corroboration from an independent source.

10. For the aforesaid reasons, this Court inclined to hold that the prosecution has miserably failed in proving the guilt of the accused for the charge U/sec. 34 (a) r/w 34(1), 11(2) of A. P. Excise Amendment Act beyond all reasonable doubt and that the suggested plea of the accused that the case has been foisted against him for statistical purpose cannot be ruled out.

11. In the result, the accused is found not guilty for the charge U/sec. 34 (a) r/w 34(1), 11(2) of A. P. Excise Amendment Act and is acquitted U/s.248 (1) Cr.P.C. MO.1 shall be destroyed after lapse of appeal time. The bail bonds if any of the accused shall be in force for Six months.

Typed to my dictation by the Stenographer, corrected and pronounced by me in open court, this the 21st day of March, 2023.

Sd/- S.Srinivas
**Judicial Magistrate of First Class,
MUMMIDIVARAM.**

Appendix of evidence
Witnesses examined

For Prosecution:

PW1/19.12.2022 : Nallam Sai
PW2/19.12.2022 : Lanka Nagashankar
PW3/15.03.2023 : S.Ramu

For Defence: None

Documents Marked

For prosecution :

Ex.P.1/PW2: Occurrence report, dt.06.08.2020
Ex.P.2/PW2: Original First Information Report, dt.06.08.2020
Ex.P.3/PW2 : Rough sketch, dt.06.08.2020
Ex.P.4/PW2: Letter of advice, dt.09.10.2020
Ex.P.5/PW2: Chemical Analysis Report, dt.04.01.2021

For Defence: Nil

MOs. Marked

M.O.1 : One liter Old admiral deluxe whisky sample bottle

Sd/- S.Srinivas
Judicial Magistrate of First Class,
MUMMIDIVARAM.

CALENDAR AND JUDGMENT
:IN THE COURT OF THE JUDL.FIRST CLASS MAGISTRATE, MUMMIDIVARAM:
CALENDAR CASE NO.453/2022

Date of Offence	: 06.08.2020
Date of Report	: 06.08.2020
Date of arrest of accused	: 06.08.2020
Date of release of accused	: 10.08.2020
Date of commencement of Trial	: 19.12.2022
Date of close of Trial	: 20.03.2023
Date of sentence or order	: 21.03.2023
Name of the Complainant	: State : Sub-Inspector of Police, I.Polavaram P.S
Name of the accused	: Vittanala Thrimurthulu, S/o.Adinarayana, age 63 years, Settibalija, T.Kothapalli Village, I.Polavaram Mandal.
Offence	: U/sec. 34 (a) r/w 34(1), 11(2) of A. P. Excise Amendment Act
Plea of Accused	: Not guilty
Finding	: Not guilty
Sentence:	: In the result, the accused is found not guilty for the charge U/sec. 34 (a) r/w 34(1), 11(2) of A. P. Excise Amendment Act and is acquitted U/s.248 (1) Cr.P.C. MO.1 shall be destroyed after lapse of appeal time. The bail bonds if any of the accused shall be in force for Six months.

Sd/- S.Srinivas
Judicial Magistrate of First Class,
MUMMIDIVARAM.

Copy submitted to : The Hon'ble Chief Judl. Magistrate-Cum-Prl.Sr.Civil Judge, Rajamahendravararam.