IN THE COURT OF II ADDL. JUNIOR CIVIL JUDGE, TENALI

Present : **Smt J.Sri Seetha,**
II Addl. Junior Civil Judge.

Monday, this the 19th day of June, 2023

C.C.No.704/2022

Between:
The Enforcement Sub-Inspector,
Special Enforcement Bureau Station, Tenali. **... Complainant**

-And-

Chikkam Narayana S/o. Lingaiah, age 56 years,
Caste-Kapu, r/o. Kolakaluru Village, Tenali Mandal.
... Accused

This case come before me on this day i.e. on 19-06-2023 for final hearing before me in the presence of learned Asst.P.P. for the State and Sri. N.V.D.Suresh Kumar, Advocate for accused and upon perusing the material on record and the matter having 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 Station, Tenali filed charge sheet against the accused under Sec.34(a) of A.P. Excise (Amendment) Act.

2. The case of the prosecution is as follows: On 17-11-2020 at about 2:30 P.M., as per the instructions of the Superintendent of Prohibition and Excise (SEB) Tenali, while L.W.3/B. Kameswara Rao, S.I of Police, SEB Station, Tenali along with L.Ws.1 and 2/K. Srinivasa Rao and Y. Srinivasa Rao, Head Constable and Constable respectively of SEB Station, Tenali, while conducting raids for SEB offences, reached near the Sivalayam Temple west side Bazaar, Kolakaluru village, there, they found the accused standing with black colour bag in his right hand and on seeing them, tried to escape, L.W.3 detained him with the assistance of his staff, on enquiry, accused stated that he is in possession of liquor bottles in bag. On further enquiry as to having bills and permit, accused stated that he does not have any bills. Then, LW3 deputed LW2 to Kolakaluru village to secure mediators and after some time, he returned and reported that the Village officers were not available in the village and none of the villagers accepted to act as mediators. On that, LW3 decided to draft special report and on verification of the said bag, they found 8 liquor bottles of Golden Reserve Prestige whiskey each of 180 ml. On further enquiry accused not given proper reply. Then, LW3 has drawn sample bottle for chemical analysis and kept remaining bottles in the same bag by affixing seal and identity slips and arrested the accused, seized the case property, drawn sample under cover of special report, returned to SEB Station, Tenali, and registered the special report as a case in Cr.No.207/2020 under Sec.34(a) of AP Excise Act, submitted copies of F.I.R to all concerned, took up investigation, send the accused to Judicial custody, sent sample bottle to the Regional Proh. & Excise Laboratory, Guntur for chemical analysis and received report vide RC No.320/2021, dt.25-3-2021 that the sample vide Sl.No.63516 is an Indian liquor and the send the case property to the Superintendent of Police, Guntur Rural, for confiscation. Thereafter, he filed section alter memo before the court altering the section of law from Sec.34(a) of A.P. Excise Act to Sec.34(a) of A.P. Excise (Amendment) Act and after completion of investigation, L.W.4 laid charge sheet.

3. This Court has taken cognizance of this case against the accused under Sec.34(a) of A.P. Excise Act and issued summons to the accused and after appearance of accused, he was furnished with copies under Sec.207 Cr.P.C and examined under Sec.239 Cr.P.C, charge was framed under Sec.240 Cr.P.C for the offence under Sec.34(a) of A.P. Excise Act and the allegations made by the prosecution has been read over and explained to the accused in Telugu language and he denied the same and claimed to try the offence.

4. During the course of trial, the prosecution has examined PWs.1 and 2 and got marked Ex.P1 to P3 and M.O.1. After closure of prosecution evidence, accused was examined under Sec.313 Cr.P.C and the incriminating evidence of the prosecution against the accused were read over and explained to him in Telugu language and he denied the same and reported no defence evidence.

5. Arguments heard.

6. **Now the point for consideration is:**

> "Whether the accused was carrying liquor bottles without any license or permit or bill and Whether the prosecution has proved the guilt of the accused beyond all reasonable doubt?"

POINT:

7. In support of the case of the prosecution, the then Sub-Inspector and Head Constable of SEB Station, Tenali were examined as Pws.1 and 2. According to them, on 17-11-2020 at about 2:30 p.m., P.W.1 accompanied by P.W.2 and L.W.2, while conducting raids for enforcement offences, they reached near Sivalayam Temple, West side Bazaar, Kolakaluru village, there, they noticed the accused with a black colour bag in his possession and on seeing them he tried to escape from there, then they detained him, on enquiry the accused revealed that he was carrying liquor bottles, ascertained his name and address particulars as detailed in the special report vide Ex.P1. Then P.W.1 deputed LW2 for mediators and after some time, he returned back and reported that nobody come forward to act as mediators and in the said circumstances, P.W.1 proceeded under special report and recorded the confession and recovery of the accused under Ex.P1. The sample was also drawn from the contrabands i.e. 8 liquor bottles of Golden Reserve Prestige Whiskey each of 180 ml. and seized from the possession of the accused in order to send for chemical analysis vide M.O.1. Then, they returned to the P&E Station, Tenali along with accused, seized contraband, sample bottles and affixed identity slips to the sample bottles and registered the said Special report as a case vide Cr.No.207/2020

under Sec.34(a) of A.P. Excise Act and issued Ex.P2 First Information Report, then sent the accused to judicial custody. Thereafter, sent the M.O.1 to the Chemical analysis and received the report (Ex.P3) vide RC No.320/2021,dt.25-3-2021 in Sl.No.63516 that the sample is an Indian made Liquor. P.W.1 further deposed that he addressed a letter to the Deputy Commissioner, Guntur for destruction and confiscation of the case property and after completion of investigation, L.W.4 laid charge sheet.

8. The above evidence of P.Ws.1 and 2 clearly shows that the accused was apprehended at about 2:30 P.M. and securing independent mediators at the scene of offence is not a difficult task for the Investigating agency, as the place of offence is busy locality surrounded by shops, as admitted by P.Ws.1 and 2 in their cross-examination. P.W.1 in his cross-examination deposed admitted that the names of the person and the concerned V.R.A., and V.R.O., whom L.W.2 requested to act as mediators were not mentioned in the Ex.P1, so also the descriptive particulars of the accused. The proceedings under special report does not amount to any irregularity, but at the same time, the Investigating agency has to show that there are less chances to secure independent mediators to record the confession and recovery of the accused.

9. According to the prosecution, the accused was found in possession of 8 liquor bottles of Golden Reserve Prestige Whiskey each of 180 ml. Out of them, M.O.1 sample bottle was drawn from the contrabands in order to send for chemical analysis. In this case, P.Ws.1 and 2 are the excise officials. According to them, the scene of offence is a busy locality. When such is the case, as stated supra, it is not difficult for them to secure independent mediators for search and seizure of the contrabands. Even though P.Ws.1 and 2 stated that L.W.2 tried to secure mediators on the instruction of P.W.2, but none were come forward to act as mediators, but no proof like issuance of notice etc., were filed. In the said circumstances and in the absence of the evidence of any independent witnesses, basing on Ex.P1 and the testimony of PWs.1 and 2 who are interested witnesses, the case of prosecution cannot be believed.

10. The remaining investigation is very formal and when the crucial document vide Ex.P1 which is confession and recovery of the accused is not believable.

11. Taking into consideration the overall circumstances of the case, this court is of considered opinion that the prosecution has miserably failed to bring home the guilt of the accused and therefore, the accused is entitled for an acquittal for the offence under Sec.34(a)of A.P. Excise Act. Accordingly, this point is answered.

12. **In the result**, Accused is found not guilty for the offence under Sec.34(a) of A.P. Excise Act and he was acquitted under Sec.248(1) Cr.P.C. The bail bonds of the accused shall stand cancelled and M.Os.1 and 2 shall be destroyed after the expiry of appeal time.

Typed to my dictation by the Stenographer Gr-III, corrected and pronounced by me in open court on this the 19th day of June,2023.

Sd/-J. Sri Seetha,
II ADDL. JUNIOR CIVIL JUDGE,
TENALI

Appendix of evidence
Witnesses examined

For Prosecution: **For Defence**: -None-

PW1: B.Kameswara Rao
PW2: K. Srinivasa Rao

Exhibits marked

For Prosecution:

Ex.P1	Special Report
Ex.P2	First Information Report
Ex.P3	Chemical Analysis Report

For Defence: -Nil-

Material Objects marked

M.O.1 - Sample liquor bottle.

Sd/-J. Sri Seetha,
II A.J.C.J.,Tenali.