

IN THE COURT OF JUDICIAL MAGISTRATE OF 1 CLASS :: NANDALUR.

Present: K.Latha,
JUDICIAL MAGISTRATE OF I CLASS, NANDALUR

Thursday, 3rd day of August, 2023

CALENDER CASE NO.509 OF 2022

Between:

State represented by Enforcement Inspector
Special Enforcement Bureau Station Rajampet

...Complainant

Vs.

- 1 Pallepaka Subba Narasaiah @ chinnaiah S/o Yanadaiah, aged 58 years, S.C by caste, R/o 7/26, Kondampalli villasge, PVG palli panchayat, Pullampet Mandal, Annamayya District.
- 2 Mallu Sidda Reddy S/o M.Subba Reddy, aged 45 years, Caste Kapu, R/o Dalavaipalli village, Pullampet Mandal Kadapa District.

...Accused 1 and 2

This case coming on this day for final hearing before me in the presence of Sri P.Suresh Kumar, Advocate for accused and Assistant Public Prosecutor for the prosecution and having stood over for consideration till this day this court delivered the following:

J U D G M E N T

The Enforcement Inspector Special Enforcement Bureau Station Rajampet laid charge sheet against the accused in Cr.No.52 of 2021 for the offence punishable under Section 34(a) AP Excise (Amendment) Act-2020.

2. The brief facts of the prosecution is as follows:

On 17.3.2021 Enforcement Inspector, conducted vehicle checking along with their staff at KPVG Palli cross road on Ananthaiah garipalli to Chitvel bus road. At about 10-00 AM they found one male person coming from PVG palli on his motor cycle by keeping one white plastic bag on his motor bike. On seeing police the accused tried to skulk away from that place. He caught hold A1 and on enquiry the accused revealed his identity particulars and

voluntarily admitted the offence. He verified white colour plastic bag and found 50 Nips of silver cup VSOP Indian Brandy each 180 ml sale in Karnataka only. The accused further confessed and admitted the offence that A1 purchased said bottles from A2. He drawn the sample of 180 ml from said bottles for chemical analysis. He put his signature on sample bottle and the accused also put his signature on sample bottle. He arrested A1 and seized the property under cover of special report. On basis of special report he registered case in Cr.No. 52 of 2021 under section 34(a) of A.P.Excise (Amendment) Act. Hence the charge sheet.

3. The case was taken on file for the offence U/Sec. 34 (a) of A.P. Excise Act and the summons was issued to the Accused.

4. On appearance of Accused no1 & 2, copies of documents relied on by prosecution were furnished to the Accused no1 & 2 U/Sec.207 of Cr.P.C.

5. Accused was examined U/Sec.239 Cr.P.C and he denied the accusation levelled against him. Charge under Sec.34 (a) of A.P. Excise Act, has been framed against the accused and the contents of charge was read over and explained to him in Telugu for which he pleaded not guilty and claimed to be tried.

6. During the course of trial, the prosecution has examined PWs.1 to 4 got marked Exs.P1 to P7 and M.O.1. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. The incriminating evidence is read over and explained to him in Telugu language, for which he pleaded not guilty and he reported no defence evidence.

7. Heard the arguments of the learned Assistant Public Prosecutor as well as the defence.

8. **Now, the point for determination is :**

1. Whether on 17.3.2021 at about 10.00 AM., the accused found in possession of 50 Nips of silver cup VSOP Indian brandhy each 180 for selling them without licence or permission ?

2. whether the prosecution is able to establish the charge against the accused beyond all reasonable doubts?

9. **POINT:**

In order to prove the guilt of the Accused, prosecution has examined P.Ws.1 to P.W4 and got marked Exs.P.1 to P.6 and M.O.1. The learned Assistant Public Prosecutor given up the evidences of LW 4 to 6 respectively.

10. PW1/ R.Bujanga Rao V.R.O deposed that on 17.3.2021 while he was present in his office at about 10-00 am the SEB police telephoned him and informed that they caught hold one person along with liquor bottles and requested him to act as mediator. Immediately he rushed to PVG palli cross road at 10.30 am and he found A1 and SEB police and also found 50 liquor bottles and two wheeler. The Inspector seized the said bottles two wheeler and arrested the accused under cover of panchanama and he put his signature . P.W1 did not identify the accused and denied that he is not the said person. The prosecution declared hostile and P.W1 turned hostile

11. P.W2 V.Ramana who is mediator turned hostile and he did not support the case of prosecution and his signature is marked under Ex.P.2.

12. P.W3. G.Siva Sagar, SEB Inspector deposed that, On 17.03.2021 at about 8.30 AM, he along with LW4 to LW6 proceeded to conduct general raids. When they reached PVG palli cross situated on Ananthaiahgari palli to Chitvel bus road of Pullampet Mandal at about 10.00 AM, there they found one male person coming from PVG Palli on his motor bike by keeping one white colour plastic bag on his motor bike. On seeing them he try to skulk away from that place along with his motor bike. On his instructions immediately their staff caught hold him. On enquiry he said that he is having possession of liquor bottles. P.W3 further deposed that, then he sent LW4/G.Ravi Kumar for securing mediators at PVG palli village. After 30

minutes LW4 brought the mediators i.e., PW1 and PW2. Then he enquired the said person in the presence of mediators and he revealed his name as Pallepaka Subbanarasiah, R/o of PVG Palli i.e., A1. He searched the white colour plastic bag and we found 50 nips of Silver Cup VSOP Indian brandy each 180 ml sale in Karnataka only. The labels are torned on the said bottles. He verified his motor bike i.e., bearing no.AP04 BA 0772 red colour TVS XL Super. P.W3 further deposed that, On further enquiry the accused voluntarily confessed and admitted the offence that he purchased the said bottles from A2, with intent to sell them for higher rates for his illegal monetary benefit without having any license. Then he drawn the sample of 180 ml from the said bottles for chemical analysis purpose duly sealed and labeled in the presence of mediators under MO1. He along with accused and mediators put their signatures on MO1. As possession of liquor bottles without having and license and selling the same for higher rates is an offence and he informed the same to the accused. Then he arrested the accused and seized the the liquor bottles and TVS XL Super under cover of Panchanama under Ex.P1 and he put his signature on it. PW1, PW2 and LW4 to LW6 and accused also put their signatures on Ex.P1. On his dictation P.Krishnaiah i.e., LW5 scribed Ex.P1. Then they brought the arrested accused, seized liquor bottles and seized vehicle to the police station. PW3 further deposed that On basis of Panchanama, P.W1 registered a case in Cr.No.52/2021, U/Sec. 34(a) of AP Excise (Amendment) Act 2020 under Ex.P3. Then he forwarded the accused to the Court for judicial remand on the same day. During the course of investigation on the next day he was send the M.O1 to the Regional Prohibition and Excise Laboratory, Kurnool for chemical analysis purpose through Court under letter of advice under Ex.P4. PW3 further deposed that, later LW7 continued investigation.

During cross examination P.W3 stated that, on the way to scene of offence I did not found any offences. They reached scene of offence via towards

Vutukur, Venkata Rajampet. The scene of offence is situated at PVG Palli cross road. He do not know whether two cross roads at PVG Palli or not.

13. PW4.P.Sri Hari Reddy SEB Inspector deposed that, On 09.09.2021,he received Chemical analysis report under Ex.P5. from Government Regional Prohibition and Excise Laboratories, Kurnool. The analyst opined that, the sample is Indian made liquor. PW4 further deposed that, on 04.06.2022, he received orders/ proceedings under Ex.P6 vide RC No.394/2021/B1 dated 04-06-2022 from Deputy Commissioner, Special Enforcement Bureau, Ananthapuram and confiscated the seized property in this case. P.W4 further deposed that on basis of the proceedings of the Deputy Commissioner, Special Enforcement Bureau, Ananthapuram the property was destroyed under panchanama on 16.07.2022 at 11.00 AM in the presence of mediators attested by them under Ex.P7. He conducted public auction and confiscated the crime vehicle i.e., AP04 BA 0772 (TVS XL) in this case. After completion of investigation he filed charge sheet.

Discussion

14. During cross examination P.W1 admitted that he did not issue any summons to the mediators. LW4 returned to him at about 10.30 AM along with mediators. The scene of offence is a busy road. LW5 scribed Ex.P1 on his dictation. P.W1 did not mention the descriptive particular of white plastic bag and manufacturing of liquor bottles in Ex.P1. P.W1 did not examine any independent witnesses to know about the selling of liquor bottles by the A1.

15. It is the stand of the accused that, P.W1 never visited scene of offence and SEB police never seized liquor bottles at scene of offence and P.W1 never put his signature on Ex.P1 and he put his signature at police station. On the instructions of police P.W1 deposed false.

16. The further stand of accused that, the SEB police never conducted raids and they never caught hold the accused and they never seized the liquor bottles from possession of accused in the presence of mediators and

they falsely implicated him for statistical purpose. They prepared all documents at police station and he put my signatures at police station and also obtained the signatures of PW1 and PW2 at police station and P.W1 deposed false. The foremost contention of accused that they are noway concerned to the present case and seized property and he deposed false. P.W1 planted the liquor bottles for the purpose of this case.

17. It is the further stand of accused that P.W4 never destroyed the property under cover of panchanama attested by mediators and he made table investigation and prepared all documents at police station and the accused is noway concerned to the seized property and the present case and he filed false charge sheet for statistical purpose.

18. On the other hand, the learned defence counsel argued that no independent witness is examined by the prosecution and mediators did not support the case of prosecution. Hence, there is no sufficient ground to convict the accused by extending the benefit of doubt.

19. As rightly contended by the defence counsel as per Section 100 (4) of Cr.P.C., before making a search, the police officer shall call upon two or more mediators or respectable inhabitants of the locality people in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available to attend and witness the search and may issue an order in writing to them or any of them so to do. But in this case PW3 secured mediators after caught holding the accused. Hence, I am of view that the search made by PW3 and his staff is contrary to the mandatory provision laid down under section 100 (4) of Cr.P.C., On the other hand PW1 did not identify the accused.

20. It is proportionately mentioned to here that mere supporting the analysis report, doesn't establish the case against the accused, it only speaks about the fact of contraband that, the sample is Indian Made Liquor. But, it is for the prosecution to establish that such sample which was referred

to Chemical were seized from the possession of the accused. No supporting material has been placed on record to show that the seized contraband was in possession of accused at the time of his alleged arrest. It is need less to say that, securing the analysis report, and destruction panchanama doesn't by itself prove the case of the prosecution. Pw.3 failed to take independent and respectable inhabitants of the place of offence. Thus, Pw.3 has not complied with the mandatory provisions of section 100(4) Cr.P.C.,. Thus, Pw.3 did not follow the statutory and mandatory provisions. M.O.1 is not properly seized as per procedure laid under Cr.P.C. There is no corroboration to the testimony of Pw.3 & 4, as there is no independent witnesses. The material witnesses turned hostile and they did not support the case of prosecution. It is fatal to the case of prosecution. The evidence of PW1, PW3 and PW4 totally contradictory and there is no corroboration. The I.O did not collect any evidence either oral or documentary to connect the accused no.2 in this case except confessional statement of A1. The evidence of PW1 to PW4 creates cloud of the prosecution's case.

21. Therefore, in view of the above infirmities and discrepancies in the investigation and evidence of PW1 to PW4 , it is highly unsafe to place reliance upon the interested testimony of PW3 & PW4 to base conviction of the accused, particularly, more so, when the independent mediators did not support the case of prosecution. Hence, I hold that the prosecution has miserably failed to prove the guilt of the accused beyond all reasonable doubt and consequently, I find the accused no.1 and 2 not guilty of the offence with which he stood charged. The point is answered accordingly against the prosecution.

22. In the result, Accused No. 1 and 2 are found not guilty for the offence punishable under section 34(a) AP Excise(Amendment) Act-2020, and accordingly, they are acquitted under Sec.248 (1) Cr.P.C., The bail bonds of the accused No. 1 and 2 shall stand cancelled after lapse of six months as laid down under section 437-A of Cr.P.C., MO.1 shall be destroyed after expiry of appeal time.

Typed to my dictation by the Stenographer directly on laptop corrected and pronounced by me in the open court, on this the 03rd day of August, 2023.

Sd/- K.Latha
Judicial Magistrate of I Class,
Nandalur.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Prosecution:

PW.1: R.Bhujanga Rao.
PW.2: V.Ramana.
PW.3: G.Siva Sagar.
PW4: P.Sree Hari Reddy.

For Defence:

-None-

EXHIBITS MARKED

For Prosecution:

Ex.P1: Panchanama.
Ex.P2: Signature portion of PW2 in panchanama.
Ex.P3: FIR.
Ex.P4:Letter of advise.
Ex.P5: Analysis report.
Ex.P6: Proceedings of Commissioner of SEB.
Ex.P7: Destruction panchanama

For Defence

- NIL -

Material Objects Marked

MO.1: Sample bottle

Sd/- K.Latha
J.F.C.M./Nandalur.

// True Copy //

Judicial Magistrate of I Class,
Nandalur.

CALENDAR AND JUDGMENT

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS AT NANDALUR
C.C.No.509/2022

Date of Offence	:	17.03.2021	Explanation for delay & remarks
Date of Filing	:	17.3.2021	No delay is occurred
Date of Appearance	:	41-A notice	
Release on bail	:	Anticipatory Bail - 26-03-2021 (A1) 09-04-2021 (A2)	
Date of Commencement of trial	:	21-03-2023	
Closure of trial	:	26-07-2023	
Date of Judgment	:	03 -08-2023	

CC.No.509/2022 on the file of Judicial Magistrate of First Class, Nandalur.

COMPLAINANT:

State represented by Enforcement Inspector
Special Enforcement Bureau Station Rajampet

ACCUSED :

- 1 Pallepaka Subba Narasaiah @ chinnaiah S/o Yanadaiah, aged 58 years, S.C by caste, R/o 7/26, Kondampalli villasge, PVG palli panchayat, Pullampet Mandal, Annamayya District.
- 2 Mallu Sidda Reddy S/o M.Subba Reddy,aged 45 years, Caste Kapu, R/o Dalavaipalli village, Pullampet Mandal Kadapa District.

Offence	:	U/Sec. 34(a) AP Excise (Amendment) Act-2020
Finding	:	Accused no.1 and 2 are found not guilty.
Sentence	:	In the result, Accused No. 1 and 2 are found not guilty for the offence punishable under section 34(a) AP Excise(Amendment) Act-2020, and accordingly, they are acquitted under Sec.248 (1) Cr.P.C., The bail bonds of the accused No. 1 and 2 shall stand cancelled after lapse of six months as laid

	down under section 437-A of Cr.P.C., MO.1 shall be destroyed after expiry of appeal time.
--	---

Sd/- K.Latha
Judicial Magistrate of I Class,
Nandalur.

To : The Hon'ble I Additional District Judge, Kadapa
Calender Case No.509/2022
Date of Judgment:03-08-2023.

// True Copy //

Judicial Magistrate of I Class,
Nandalur.