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C.C.No.338 of 2022

IN THE COURT OF THE JUDICIAL MAGISTRATE OF I CLASS, PONDURU
Present: Smt. B. Jyotsna, Judicial Magistrate of I Class, Ponduru

Tuesday this the 1st day of August' 2023

C.C.No.338 of 2022

Between:

State Represented by
Sub-Inspector of Police, Special Enforcement Bureau Ponduru P.S.

... Complainant

A n d:

Kommu Rama Rao, S/o Suryanarayana, aged 32 years, C/o Kapu, R/o Dallavalasa village, Ponduru Mandal, Srikakulam District.

... Accused

This case came up on 28.07.2023 for final hearing before me in the presence of learned incharge Asst. PP for complainant-State and Sri Y.V.Brammaji, Advocate for the accused. Upon hearing both sides and basing on the material on record, this court delivered the following:

J U D G M E N T

01. The Sub-Inspector of Police, Special Enforcement Bureau Ponduru P.S., filed charge sheet in crime number 11/2021 against the sole accused for the offence punishable under section 34(a) of Andhra Pradesh Excise Amendment Act, 2020.

02. Brief facts of the case of prosecution is that 24.01.2021 at about 20.30 hours LW.4/T.Hema Mandira, S.I. of Police SEB, Ponduru along with her staff went to conducted raids at Dallavalasa village, Ponduru Mandal. They found the accused with a polythene bag containing 09 liquor bottles of Hyderabad Blue Superior Whiskey each 180 ml. On enquiry the accused revealed his name and details and he stated that the liquor bottles are brought from Government wine shop, ponduru town to sell for his livelihood and not having bills or licenses. On that L.W.4 drafted occurrence report. Under the Occurrence report 09 bottles were seized and took one bottle as sample. L.W.4 produced the accused for judicial remand. Basing on the Occurrence report, L.W.4 registered a case as crime number 11/2021 under section 34(a) of Andhra Pradesh Excise Amendment Act, 2020 . L.W.4 on her letter of advice sent the samples for chemical analysis. In this case L.W.5/K.Murali, Sub

Inspector of SEB, Ponduru received chemical analysis report with an opinion that the samples are “Indian made Liquor”. After completion of investigation L.W.5/K.Murali, Sub Inspector of SEB, Ponduru filed charge sheet. Hence, the case.

03. This court took cognizance for the offence punishable under section 34(a) of Andhra Pradesh Excise Act, 1968 against the accused. After appearance of the accused before this court, copies of case documents are furnished to him as per section 207 Criminal Procedure Code.

04. Accused was examined under section 239 Criminal Procedure Code and framed charge under section 34(a) of Andhra Pradesh Excise Act’ 1968. The contents of charge was read over and explained to him in Telugu language for which he pleaded not guilty and claimed to be tried.

05. To prove the case, P.W.1 and P.W.2 are examined. Ex.P1 to P6 and M.O.1 are marked. The evidence of L.W.1/S.Gowrinaidu, SEB, Constable Ponduru, L.W.2/G.Anusha, SEB, constable, Ponduru and L.W.5/K.Murali, Sub Inspector of SEB, Ponduru are given up by learned incharge A.PP.

06. After closure of the prosecution evidence, the accused was examined under section 313 Criminal Procedure Code. The incriminating material on record was read over and explained to him in Telugu language. After understood the same, he denied and did not choose to let either oral or documentary evidence on his behalf.

07. **Now the point for determination is:**

Whether the prosecution proved the guilt of the accused for the offence punishable under section 34(a) of Andhra Pradesh Excise Act, 1968 beyond all reasonable doubt?

08. As seen from the record, the case of prosecution is that 24.01.2021 at about 20.30 hours, LW.4/T.Hemamandira, Sub Inspector SEB, Ponduru along with her staff while conducting raids at Dallavalasa village, Ponduru Mandal, found the accused in possession of 09 bottles of Hyderabad Blue Superior Whiskey each 180 ml. On enquiry the accused revealed his name and details and he stated that the liquor bottles are brought to sale for his livelihood. On that L.W.4 drafted occurrence report. Under the Occurrence report 09 bottles were seized and took one bottle as sample. Accused sent to judicial remand on his arrest by L.W.4. Basing on the Occurrence report, L.W.4 registered a case as crime number 11/2021

under section 34(a) of Andhra Pradesh Excise Amendment Act 2020. L.W.4 on her letter of advice sent the samples for chemical analysis. L.W.5/K.Murali, Sub Inspector of SEB, Ponduru received chemical analysis report with an opinion that the samples are “Indian made Liquor”. After completion of investigation L.W.5/K.Murali, Sub-Inspector of SEB, Ponduru, filed charge sheet. Hence, the charge.

09. In this case prosecution cited five witnesses. L.W.3/Y.Geetha, SEB, Constable Ponduru was examined as P.W.1. The investigation officer LW.4/T.Hemamandira, Sub Inspector of SEB, Ponduru was examined as P.W.2. Other witnesses L.W.1/S.Gowrinaidu, SEB, Constable, Ponduru, L.W.2/G.Anusha, SEB Constable, Ponduru and L.W.5/K.Murali Sub Inspector of SEB, Ponduru are given by learned incharge A.PP. Ex.P1: Signature of P.W.1 on occurrence report, dated 24.01.2021, Ex.P2: Occurrence report, dated 24.01.2021, Ex.P3: First Information Report, dated 24.01.2021, Ex.P4: Letter of Advise, dated 23.01.2021, Ex.P5: Chemical analysis report, dated 30.03.2021 and Ex.P6: Attested copy of Confiscation orders, dated 01.09.2022. M.O.1: Sample bottle of Hyderabad Blue Superior Whiskey.

10. The evidence on record shows that P.W.1 and P.W.2 visited the place of offence, from the evidence of P.W.1 and P.W.2 it is clear that the accused was found in possession of total 09 bottles of liquor bottles. P.W.1 deposed about his presence along with P.W.2. It is the combine evidence that accused revealed his name and details and also confessed that he is selling the liquor bottles. On that P.W.1 drafted the occurrence report and registered a case crime number 11/2021 under section 34(a) of Andhra Pradesh Excise Act, 1968, basing on the occurrence report. The accused was arrested and sent for judicial remand. During investigation, P.W.2 sent the samples for analysis on her letter of advice. On completion of investigation L.W.5 filed charge sheet.

11. Considering the above evidence on record, the findings in cross examination of the witnesses P.W.1 and P.W.2 are that on the date of offence, there is lock down and COVID-19 pandemic and there is no chance of commission of the offence and presence of the accused. Other part of cross examination are denials for suggestions put to the witnesses by learned counsel for accused.

12. Heard the arguments of learned incharge A.P.P. and learned defense counsel. The learned Assistant Public Prosecutor argued that the section 34(a) of A.P Excise Act is clearly proved by the prosecution witnesses and so the accused shall be punished for the same. On the other hand, the learned defence counsel argued that Ex.P1 & Ex.P2 have material contradictions proves no case in favour of the prosecution. He argued that no confession statement filed by the prosecution as alleged by them moreover this case is based on occurrence report prepared by the I.O who is also the complainant in this case. Thus, owing to several material contractions and omissions, the case of the prosecution stands not proved. So, accused cannot be convicted in this case. Thus he argued to let off the accused by extending benefit of doubt.

13. Thus, from the entire evidence, it revealed that P.W.2 registered this case against the accused on basis of occurrence report. The recitals of Ex.P1 to Ex.P6 only show the investigation and cause of filing the case. The recitals of Ex.P1 to Ex.P4 are inconsistent with oral evidence of P.W.1 and P.W.2 in cross examination. Further, the prosecution did not cite the Chemical examiner in this case to corroborate with the documentary evidence Ex.P5 along with M.O.1. Furthermore, the point of selling liquor bottles by the accused was not shown by the prosecution at any point of time. Thus, it is not safe to rely only on official witnesses P.W.1 and P.W.2, as there are some inherent lapses in the case of prosecution. Hence, this court holds that the prosecution had failed to establish its case against the accused for the offence punishable under section 34(a) of Andhra Pradesh Excise Act, 1968 beyond all reasonable doubt. Therefore, this court intend to extent benefit of doubt to the accused.

14. In the result, the accused is found not guilty for the offence punishable under section 34(a) of Andhra Pradesh Excise Act, 1968. Accordingly he is acquitted under section 248 (1) Criminal Procedure Code for the above said offence. The bail bonds of the accused shall stand canceled after lapse of six months as per section 437-A Criminal Procedure Code. The case property i.e. M.O.1:Sample bottle of Hyderabad Blue Superior Whiskey brandy shall be destroyed after lapse of appeal time.

Partly typed on my dictation by Typist and partly typed on my laptop by me, corrected and pronounced by me in the open court on this the 1st day of August' 2023.

Sd/-Smt. B.Jyotsna,
Judicial Magistrate of I Class,
Ponduru.

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APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution:	**For Defence**
P.W.1:Y.Geetha, Constable, SEB	- NONE-
P.W.2: T.Hemamandira, S.I. of Police, SEB	

Documents marked

For Prosecution:

Ex.P1: Signature of P.W.1 on occurrence report, dated 24.01.2021

Ex.P2: Occurrence report, dated 24.01.2021

Ex.P3: First Information Report, dated 24.01.2021

Ex.P4: Letter of Advise, dated 23.01.2021

Ex.P5: Chemical analysis report, dated 30.03.2021

Ex.P6: Attested copy of Confiscation orders, dated 01.09.2022.

For Defence: **-Nil-**

Material object:

For Prosecution:

M.O.1: Sample bottle of Hydera bad Blue Superior Whiskey.

For Defence: **-Nil-**

Sd/-Smt. B.Jyotsna,
Judicial Magistrate of I Class,
Ponduru.

//True Copy//

Judicial Magistrate of I Class,
Ponduru.