

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

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

Wednesday, this the 15th day of November, 2023

C.C.No.709/2022

Between:

The Enforcement Sub-Inspector

Special Enforcement Bureau Station, Tenali

... **Complainant**

-And-

Dara Nagabhushana Rao S/o. Erraiah, age 45 years,
caste-Madiga, R/o. Valiveru Village, Tsundur Mandal.

... **Accused**

This case come before me on this day i.e. on 15-11-2023 for final hearing before me in the presence of learned Asst.P.P. for the State and Sri. B. Prabhakar, 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 Sec34(a) of A.P. Excise (Amendment) Act.

2. The case of the prosecution is as follows: On 17-12-2020 at about 2:00 P.M., while L.W.3/B. Kameswara Rao, S.E.B S.I., S.E.B Station, Tenali, along with L.Ws.1 and 2/G. Mariyadasu and D. Venkateswara Rao, Constables of S.E.B Station, Tenali, were conducting raids for enforcement offences, they reached Angalakuduru canal bridge on the way from Angalakuduru to Dundipalem road, Angalakuduru village, there, they noticed the accused in possession of white colour polythene bag in his right hand and on seeing them, he tried to ran away, upon which, L.W.3 detained him with the assistance of his staff, on enquiry, accused stated that he is in possession of liquor bottles in the said bag. On further enquiry as to having bills and permit, accused stated that he does not have any bills. On further enquiry about the source of the liquor, the accused did not give any reply.

Then, LW3 deputed LW2 to Angalakuduru village to secure mediators and after some time, he returned and reported that village officers were not available in the village and none of the village elders came forward to act as mediator. On that, LW3 decided to draft special report and on verification of the said bag, they found 7 liquor bottles of Champion Special Whiskey each of 180 ml. Then, LW3 has drawn sample bottle from contraband 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 Special Enforcement Bureau Station, Tenali and registered the special report as a case in Cr.No.221/2020 under Sec.34(a) of AP Excise (Amendment) 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 with an opinion that the sample vide Sl.No.63527 is Indian liquor and send the case property to the Special Enforcement Bureau, Nellore, for confiscation. Thereafter, L.W.4 assumed charge, and after completion of investigation, he laid charge sheet against the accused U/sec.34(a) of A.P. Excise (Amendment) Act.

3. This Court has taken cognizance of this case against the accused under Sec.34(a) of A.P. Excise (Amendment) 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 (Amendment) 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 Constable and the Sub-Inspector, SEB Station, Tenali were examined as P.Ws.1 and 2. According to them, on 17-12-2020 at about 2:00 p.m., P.W.2 accompanied by P.W.1 and L.W.1, while conducting raids, they reached Angalakuduru canal bridge on the way from Angalakuduru to Dundipalem road, Angalakuduru village, there, they noticed the accused by keeping white colour polythene bag, 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.2 deputed P.W.1 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.2 proceeded under special report and recorded the confession and recovery of the accused under Ex.P1. The sample was also drawn from the said Champion Special Whiskey liquor bottles and seized from the possession of the accused in order to send for chemical analysis vide M.O.1. Then, they returned to the S.E.B. Station, Tenali along with accused, seized contraband, sample bottle and affixed identity slips to the sample bottle and P.W.2 registered the said Special report as a case vide Cr.No.221/2020 under Sec.34(a) of A.P. Excise(Amendment) Act and issued Ex.P2 First Information Report, then sent the accused to judicial custody. Thereafter, sent M.O.1 to the Chemical analysis and received the report (Ex.P3) vide RC No.320/2021,dt.25-03-2021 in Sl.No.63527 that the sample is

Indian made Liquor. P.W.2 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 filed charge sheet.

8. The above evidence of P.Ws.1 and 2 clearly shows that the accused was apprehended at about 2:00 P.M., Angalakuduru canal bridge on the way from Angalakuduru to Dundipalem road, Angalakuduru village and securing independent mediators at the scene of offence is not a difficult task for the Investigating agency, as it is a four roads junction, surrounded by shops, establishments and the residential houses as per the evidence of P.Ws.1 and 2. 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 7 liquor bottles of Champion Special 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 P.Ws.1 and 2, the scene of offence is is a four roads junction, surrounded by shops, establishments and the residential houses. In the cross-examination they admitted that at a distance of 100 meters to the scene of offences, thee is a government wine shop, so also panchayath office, veterinary hospital and bank. When such is the case, as stated supra, it is not difficult for them to secure independent mediators from the scene for search and seizure of the contrabands. Even though P.Ws.1 and 2 stated that P.W.1 tried to secure mediators, 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 (Amendment) 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 (Amendment) Act and he was acquitted under Sec.248(1) Cr.P.C. The bail bonds of the accused shall stand cancelled and M.O.1 vide C.P.R.No.71/2021 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 15th day of November,2023.

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

Appendix of evidence
Witnesses examined

For Prosecution:
PW1: D. Venkateswara Rao
PW2: B. Kameswara Rao

For Defence: -None-

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.