

**IN THE COURT OF ASSISTANT SESSIONS JUDGE,
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,
Assistant Sessions Judge,
Madurantakam.**

**Monday, this 01st day of June, 2026
Sessions Case No. 158/2022
(CNR.No.TNCG13000480-2022)**

State of Tamil Nadu,
Rep. by its Inspector of Police,
Prohibition Enforcement Wing,
Choonambedu Police Station.
(Crime No. 247/2021)

...Complainant

..Vs..

Prakash @ Kakka Prakash, (Age 40/2021),
S/o. Gopal,
Arunachalapuram Street,
Choonambedu Colony,
Cheyyur Taluk

...Accused

**Case Summary appended as per the Circular of Hon'ble High Court,
Madras in ROC.No.814/2020/RG/F1 dated 07.04.2021, Rule 106 Cr.R.P.**

SL No.	The period of remand of the accused	Name of the accused	Date of Remand	Date of Surrender	Released on
(i)	A1	Prakash @ Kakka Prakash, (Age 40/2021), S/o. Gopal	25.06.2021	--	06.12.2021

(ii)	Date of filing of the complaint/Final report in the court	Filing of Complaint	Filing of Final Report
		25.06.2021	31.03.2022
(iii)	Date of committal of the cases to the Court of Sessions:	DOC : 25.07.2022 PRC.No.3/2022 On the file of District Munsiff cum Judicial Magistrate, Madurantakam.	
(iv)	Date of questioning of the accused u/s 228, 240, 246 & 251 of the Cr.PC 1973 as the case may be	12.11.2024	

(v)	Filing of all miscellaneous petitions and their results including the results on challenge before superior Courts; except routine	Crl.M.P. No.	Date of Filing	Result
	petitions like petitions under Section 317 of the Code;	1. Crl.M.P.No. 1/2023 filed on 21.11.2023 under section 70(2) Cr.P.C by Accused and this petition is allowed on 21.11.2023. 1. Crl.M.P No. 1/2024 filed on 06.02.2024 under section 317 Cr.P.C by Accused and this petition is allowed on 06.02.2024. 2.Crl.M.P No. 2/2024 filed on 27.08.2024 under section 317 Cr.P.C by Accused and this petition is allowed on 27.08.2024. 3. Crl.M.P No. 3/2024 filed on 20.12.2024 under section 355 of BNSS by Accused and this petition is allowed on 20.12.2024. 4. M.P No. 4/2025 filed on 26.08.2025 under section 355 of BNSS by Accused and this petition is allowed on 26.08.2025. 5. M.P No. 5/2025 filed on 24.09.2025 under section 355 of BNSS by Accused and this petition is allowed on 24.09.2025. 6. M.P No. 6/2025 filed on 12.11.2025 under section 355 of BNSS by Accused and this petition is allowed on 12.11.2025. 7. M.P No. 7/2026 filed on 27.01.2026 under section 355 of BNSS by Accused and this petition is allowed on 27.01.2026. 8. M.P No. 8/2026 filed on 02.03.2026 under section 355 of BNSS by Accused and this petition is allowed on 02.03.2026. 9. M.P No. 9/2026 filed on 09.03.2026 under section 355 of BNSS by Accused and this petition is allowed on 09.03.2026. 10. M.P No. 10/2026 filed on 17.03.2026 under section 355 of BNSS by Accused and this petition is allowed on 17.03.2026. 11. M.P No. 11/2026 filed on 27.04.2026 under section 355 of BNSS by Accused and this petition is allowed on 27.04.2026.		
(vi)	Date examination of in- chief and cross-examination of a witness;	Name of the Witness 1. Gopinathan 2. G. Mathiyarasan	Date of Chief 24.04.2025 12.11.2025	Date of Cross 24.04.2025 12.11.2025

	Witnesses from the side of Accused	Nil	NIL	NIL
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(vii)	Date of examination of the accused under section 313 of the Code;	19.11.2025
(viii)	Details of abscondence of an accused and his appearance /production, as the case may be; and	--

(ix)	Grant of stay by superior courts and the results thereof	High Court No. and Date of Stay	Result
		NIL	
(x)	Details of victim compensation ordered	NIL	
Offences Complained of / reported		1. Section 4(1) (aaa) of Tamilnadu Prohibition Act read as against the accused: For the act of possessing illicit liquor of more than one hundred liters. 2. Section 4(1-A) of Tamilnadu Prohibition Act as against the accused: For the act of possessing liquor, which contains ingredient which is likely to cause death or grievous hurt to the consumer.	
Plea of the Accused persons		Accused pleaded not guilty	
Findings of the Court		Accused is found not guilty	

The Final Order	In fine, the guilt against the accused under sections 4(1) (aaa) and 4(1-A) of Tamilnadu Prohibition Act read with 6 & 11 of RS rules 2000 are not proved beyond reasonable doubt and he is acquitted U/s. 235(1) of Cr.p.c.
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This case coming on 27.04.2026 for final hearing in the presence of the Mr.G.S.Suresh Babu, Additional Public Prosecutor, appearing for the State and of Mr.B.Punitharajan,counsel for the accused and upon hearing the arguments of both sides and upon perusing the documents and evidences put forth in this case and having stood over till this day for consideration this Court delivered the following.

JUDGMENT

Prohibition Enforcement Wing, Choonambedu Police station's Inspector laid charge sheet against this accused in following indictment.

On 25.06.2021 at about 16.00 hours, at Puthupattu Junction, the accused was found carrying 105 litres of poisonous arrack for sale in three plastic cans, each containing 35 litres, on a two-wheeler bearing Registration Number PY-01-F-6653, and thereby the accused is alleged to have committed offences punishable under Sections 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act, read with Rules 6 and 11 of the RS Rules, 2000.

3. Learned District Munsiff cum Judicial Magistrate, Cheyyur on receipt of final report, took cognizance of offence in PRC No. 3/2022 under sections of 4(1)(aaa), 4(1-A) of Tamilnadu Prohibition Act read with 6 and 11 of RS Rules 2000 as against the accused. Upon the appearance of accused on service of summon, he was served with free case copies U/s 207 Crpc. The learned Magistrate, on considering the materials on record, has concluded that this case had to be tried by the court of sessions. Accordingly, it was committed U/s 209 of Crpc to the Hon'ble Principal

Sessions Court, Chengalpet where it was taken on file in S.C. No.158/2022 and made over to this court for trial.

4. The learned Additional Public Prosecutor opened his case under Section.226 of the Code of Criminal Procedure by describing the charge brought against accused and stated by what evidence he proposes to prove the guilt of the accused on charge. Upon consideration of the records of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the court considered that there is no ground to discharge the accused under Section.227 of the Code of Criminal Procedure. After such consideration and hearing as aforesaid, the court is of the opinion that there is ground for presuming that accused has committed the alleged offences. Therefore, the charges against the accused U/s. 4(1) (aaa) and 4(1-A) of Tamilnadu Prohibition Act read with 6 & 11 of RS rules 2000 were framed and read over to him. He however, pleaded not guilty and claimed to be tried.

5. At the trial, the prosecution called Pw1 and Pw2 with Exhibits P1 to P6 and M.O.1. Lw2 reported dead. Other prosecution witnesses were dispensed from examining by the prosecution.

6. Prosecution case in essence as spoken by the witnesses is as follows:-

Pw1, the then Head Constable attached to the complainant police station, deposed that on 25.08.2021, he , Pw2 and Head Constable Venkatachalam were conducting vehicle inspection at Puthupattu Junction; that at about 10.00 a.m., when they stopped a Pulsar two-wheeler bearing Registration Number PY-01-F-6653, the rider attempted to turn the vehicle and escape; that they restrained and secured him and found that he is accused herein; that they found three white-coloured cans containing arrack in the said vehicle; that at about 10.15 a.m., since no members of the public came forward, the Inspector of Police prepared a seizure mahazar in their presence and seized the same; that thereafter samples were taken in three bottles each containing 500 ml, and the remaining contents were destroyed by the Inspector

in their presence under a destruction mahazar; that thereafter the accused voluntarily came forward and gave a confession statement before the Inspector in their presence; that subsequently, at about 12.30 p.m., the Inspector brought the accused to the police station and registered a case against him; and that the Inspector examined him during the course of investigation; that the Seizure Mahazar and Destruction Mahazar are marked as Ex.P1 and Ex.P2;

Prosecution witness namely Lw2 reported dead. Other witnesses are officials and hence the learned counsel for prosecution discarded them from examining.

Pw2, the Investigation Officer deposed that on 25.06.2021, he along with Head Constables Venkatachalam and Gopinath was conducting vehicle inspection at Puthupattu Junction; that at that time, a person who came on a two-wheeler bearing Registration Number PY-01-F-6653, on seeing them, attempted to turn the vehicle and escape; that they intercepted and secured him; that on enquiry it was revealed that he is the accused in this case; that on searching the vehicle, they found liquid contained in three white-coloured cans each having a capacity of about 35 litres; that on smelling the contents, he experienced eye irritation and poisonous fumes, and found that it was arrack mixed with poisonous substance; that since no members of the public were present at the spot, he seized the total quantity of about 150 litres of arrack at about 10.15 hours under a seizure mahazar in the presence of the above police officials; that thereafter, from the seized property, samples of about 500 ml each were taken from every plastic can and filled in two PET bottles from each can, totally six PET bottles, and sealed for chemical analysis; that thereafter, at about 10.45 hours, the remaining liquid was safely destroyed at the place of occurrence in the presence of the above police officials; that thereafter, the accused voluntarily gave a confession statement, which was recorded in the presence of the above officials between 11.00 hours and 12.00 hours; that in the said confession statement, the accused identified his two-wheeler and the arrack cans, that thereafter, in the presence of the witnesses, he inspected the place of occurrence and prepared an

observation mahazar and rough sketch; that thereafter, he returned to the police station along with the accused and case properties and registered a case in Crime No.247/2021 at about 12.30 hours under Sections 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act read with Rules 6 and 11 of the R.S. Rules, that thereafter, he produced the accused before Court through proper remand and sent him for judicial custody; that thereafter, after obtaining orders of the Court, the seized samples were sent to for chemical analysis; that thereafter, he examined the Chemical Analyst Mr. Panchatcharam and obtained the chemical analysis report; that thereafter, on obtaining medical opinion from the Scientific Officer Dr. Parasakthi, it was opined that the liquid contained a poisonous substance namely Atropine and that consumption of the same would cause danger to life and health; that thereafter, after completing the investigation, he filed the final report against the accused under Sections 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act read with Rules 6 and 11 of the R.S. Rules; that the admissible portion of the Confession Statement, observation mahazar, rough sketch, First Information Report are marked as Ex.P3 to Ex.P6; and that the Three White cans with capacity of each 35 liters is marked as M.O.1.

7. Thereafter, the accused was examined under Section.313 of the Code of Criminal Procedure. He denied all incriminating circumstances raised against him and pleaded innocence.

8. Heard the accused and the prosecution for the purpose of Section.232 of the Code of Criminal Procedure. But there were no sufficient reasons to acquit the accused. He was called upon to enter his defence under Section.233 of the Code of Criminal Procedure, where he stated that there is no defence evidence.

9. Heard both sides.

10. The following points were raised for consideration:-

- 1. Whether the accused was found in possession of the contraband namely the poisonous arrack in contravention of the provisions of the Tamilnadu Prohibition act?*
- 2. Whether the accused is found guilty for the offences punishable U/s. 4(1)(aaa) and 4(1-A) of Tamilnadu Prohibition Act read with 6 & 11 of RS rules 2000?*
- 3. If the accused is found guilty, what shall be the order as to sentence ?*

11. Point 1:

The prosecution case is that on 25.06.2021 the accused possessed poisonous arrack of 105 litres in three cans, which will endanger the life of human being and hence he was charged by the Pw2. The accused pleaded innocent and faced the trial.

12. The learned counsel for prosecution argued that the prosecution has proved the case by examining witnesses and that their evidences are cogent and acceptable. Hence, he prays this court to convict the accused with major punishment.

13. On the other hand the counsel for the accused argued in length that there are lot of contradictions between the prosecution witnesses themselves and also with the case of prosecution, that there is no independent witnesses cited by the investigation officer and that mere keeping the evidence of interested witness namely the police officials, the accused cannot be held liable for the offence. He further argued that all the records were prepared by the investigation officer in the police station itself to register a case against the accused for statistical purpose and the manner of alleged seizure was not as per law. Hence, he seeks to acquit the accused on the rule of benefit of doubt.

14. It is the case of the prosecution that the accused possess poisonous arrack of 105 litres in a three white colour can. Hence this court has framed charges under

sections 4(1)(aaa) and 4(1-A) of the Tamilnadu Prohibition Act read with Rules 6 and 11 of the RS Rules, 2000 as against the accused.

As per prosecution case, the accused on 25.06.2021 possessed illicit and poisonous arrack to sell the same to the public illegally. As rightly pointed out by the learned counsel for the accused, there is no single independent persons cited as witnesses, muchless examined by the prosecution. There is no reason set out by the prosecution for non-examination of independent witnesses.

Next it has to be seen whether the official witnesses help the prosecution to fix the liability upon the accused. As already discussed there are no independent witnesses examined by the prosecution, where all the eye witnesses are police officials. Pw1, the only person examined as eye witness, where the other witness reported dead. Now it has to be seen whether the evidence of Pw1 corroborate with Pw2 and prosecution to withstand the case against the accused.

Pw1 deposed that they directly found that the accused carried illicit arrack in three cans. Pw2 the investigation officer deposed that he on smelling the same alone found that the accused carried arrack. Further Pw1 deposed that the Pw2 collected samples in three bottles. But as per case of prosecution and Pw2, samples were collected in six bottles. Further Pw1 didn't depose that the Pw2 prepared observation mahazar and rough sketch. Apart from that as per prosecution case, the accused was arrested in the spot itself and that he gave confession which was recorded by Pw2. But Pw1 didn't depose anything about the arrest of the accused and confession statement alleged to be given by the accused. These all would create a suspicious over the presence of the accused in the place of occurrence.

Next it is pertinent to note that the seizure mahazar, confession statement and other records were printed in computer that too with crime number of the case. There is no explanation by the prosecution that how the said documents which are alleged to be prepared in the scene of occurrence were taken print in the spot itself. Further it

is awful to state that how the crime number of the case find place in the said documents. This would create a strong suspicious over the prosecution case.

Next as per case of prosecution the samples were collected on 25.06.2021. But while remand the said property was not produced before the learned magistrate, which is evidenced in Form 91. But later the samples were submitted to the court on 28.06.2021 only. The above said delay of 3 **days** was not explained by the prosecution. Again it is pertinent to note that the samples were sent for chemical analysis to forensic department only on 29.06.2021 which is after a delay of 4 **days** and the samples were subject to chemical analysis only on 30.06.2021, which is after a delay of 7 **days** from the date of seizure. Thus, there is delay in sending the samples for chemical analysis, delay in subjecting the samples for chemical analysis due to which the sample will lose its character. No satisfactory explanation is given by the Pw2 , the investigation officers or prosecution for the said delay. Apart from that as per case of prosecution three white cans were seized by the Pw2 with arrack. But there is no explanation that how much from each can was taken for chemical analysis. There is no evidence adduced or produced by the prosecution that how the investigation officer came to the conclusion that the seized arrack from the accused is poisonous one. Hence, it creates a doubt that the seizure of the arrack from the accused on 25.06.2021 is poisonous one.

Next the accused has specifically alleged that the entire prosecution is vitiated due to non-compliance with the mandatory provisions of Section 32 of the Tamil Nadu Prohibition Act, 1937. According to the accused, though a huge quantity of alleged illicit arrack, namely 105 liters, was said to have been seized, the prosecution has failed to establish that samples were drawn in the presence of a Prohibition Officer or a Police Officer not below the rank of Inspector, that a proper certificate detailing the quantity seized, sampled, and destroyed was prepared, and that such certificate was forwarded to the jurisdictional Magistrate, as mandated under law.

The importance of strict compliance with Section 32 of the Tamil Nadu Prohibition Act has been consistently emphasized by the our Hon'ble High Court in ***Selvi v. State rep. by Inspector of Police, Rasipuram Police Station [2011 (2) MWN (Cr) 623]***, where the Hon'ble High Court categorically held that drawing of samples and destruction of contraband must strictly adhere to the procedure prescribed under Section 32(c) of the Act, and that non-compliance with the mandatory safeguards would vitiate the prosecution. The Court therein observed that the presence of another responsible officer and the issuance of a proper certificate are mandatory requirements intended to prevent manipulation and abuse.

Similarly, the Division Bench judgment of our Hon'ble High Court in ***Jegannathan v. State of Tamil Nadu [Manu/TN/8992/2006]*** has clearly held that preparation of a destruction mahazar alone would not amount to compliance with Section 32 of the Act and that absence of a proper certificate as contemplated under the statute would render the proceedings legally infirm. The Division Bench further held that such non-compliance reflects non-application of mind and affects the very foundation of the case. Recently our Hon'ble High Court of Madras in ***Velu Chettiyar v. State rep. by Inspector of Police, PEW, Thiruchengode Police Station, Namakkal District in Crl.O.P. No.18761 of 2021 and Logesh and Velu Chettiyar v. State rep. by Inspector of Police, PEW, Thiruchengode Police Station, Namakkal District in Crl.O.P. No.18838 of 2021***, wherein the Hon'ble High Court reiterated that failure to comply with the mandatory provisions relating to seizure, sampling, and destruction of contraband under the Tamil Nadu Prohibition Act would entitle the accused to appropriate relief, as the continuation of such proceedings would amount to abuse of process of law.

In the present case, the counsel for the accused has also raised a serious allegation about the registration of FIR, investigation conducted, and the final report was filed by the very same officer who registered case and also violation of section

32 of the act, thereby rendering the investigation prejudicial and biased. Coupled with the alleged failure to produce the seized contraband before the Court or to establish lawful destruction in accordance with Section 32, these infirmities strike at the root of the prosecution case. There is no explanation offered by the prosecution for the said procedural lapse.

In view of the settled legal position as laid down in the decisions stated supra and having regard to the uncontroverted allegations of mandatory procedural non-compliance, this Court is of the considered opinion that the case of prosecution fails.

Next the learned counsel for the accused argued that the Pw2 who registered the case cannot be investigation officer. In support of the same he relied upon a decision namely ***Rengasamy Vs State***, reported in **1995 – 1 – MWN-47**, where it is held that,

"naturally there was no chance for verification of the correctness of the allegations made in the FIR by an independent investigation officer and the officer who lodged the complaint would have been naturally interested in securing the evidence to support his version and it cannot be stated that his approach was unbiased. Therefore, the procedure followed in these cases is illegal."

Here our Hon'ble High Court has held that the complainant cannot be investigation officer and that the procedure followed is illegal. He also relied upon a decision of our Hon'ble Apex Court in ***Mohanlal Vs State of Punjab***, reported in **(2018) 17 Supreme Court Cases 627**, where it is held that, para 30 and 31

"30. In view of the conflicting opinions expressed by different two-judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the

police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.

31. Resultantly, the appeal succeeds and is allowed. The prosecution is held to be vitiated because of the infraction of the constitutional guarantee of a fair investigation. The appellant is directed to be set at liberty forthwith unless wanted in any other case. "

As per the above decision of our Hon'ble High Court and Apex Court, there is no doubt that the investigation done by the Pw2 is illegal and that the charge against the accused cannot be sustained.

Further it is pertinent to note that in order to prove the fact that the accused was engaged in the sale of contraband, no independent witness was examined. Though M.O.1 was placed in evidence, they have not taken any effort to find out from where the accused got the contraband of poisonous arrack. An overall analysis of the evidences of Pw1 and Pw2 only goes to show that they have conducted the seizure as well as investigation in a most shabby manner. As mentioned above, even though chemical analysis report shows that the sample was of poisonous liquor, is not at all safe to vest the liability upon accused.

In summation there is suspicious over the case of prosecution, contra evidences of Pw1 and Pw2, in respect of quantity of arrack collected for samples, preparation of mahazars, non examination of independent witnesses, delay in sending the samples for chemical analysis, delay in sending the chemical report etc,. This being the

situation, the accused is entitled to get the benefit of doubt. Hence, the point is found against the prosecution.

15. Point No.2:-

In view of finding in point No.1, accused is not found guilty for the offences punishable under Sections 4(1)(aaa) and 4(1-A) of Tamilnadu Prohibition Act read with 6 & 11 of RS rules 2000 and this point is answered accordingly.

16. Point No.3:-

In view of finding in point No.2, this point does not require consideration.

17. For all these reasons, the court holds on the point that the accused is not guilty under sections 4(1)(aaa) and 4(1-A) of Tamilnadu Prohibition Act read with 6 & 11 of RS rules 2000.

18. In fine, the guilt against the accused under sections 4(1)(aaa) and 4(1-A) of Tamilnadu Prohibition Act read with 6 & 11 of RS rules 2000 are not proved beyond reasonable doubt and he is acquitted U/s. 235(1) of Cr.p.c.

19. Material object No.1 the three cans shall be confiscated to state, after the appeal time is over. In respect of Six bottles of samples, the contents shall be destroyed and the empty bottles shall be confiscated to state. Pulsar Bike bearing Registration Number PY-01-F-6653 shall be return to the owner, by producing necessary documents, after the appeal time is over.

20. The bail bond of the accused on record treated as the bail bond secured U/s. 437(A) of Cr.P.C to secure the appearance of accused before the higher court in case of any appeal or petition against the judgment of this court and the same shall be in force for six months from 01.06.2026, thereafter the same shall stands cancelled.

Directly typed in my personal lap top, corrected and pronounced by me in open court, on this 01st day of June, 2026.

Assistant Sessions Judge,
Madurantakam.

LIST OF WITNESSES :***Prosecution side:***

Name of the Witness No.	Name of the Witness.	Description
PW1	Gopinathan	Confession and Seizure Mahazar Witness.
PW2	G. Mathiyarasan	Investigating Officer.

Defence side: Nil.***LIST OF EXHIBITS:******Prosecution side:***

Sl.No.	Date	Description of documents	Proved by/ Attested by
Ex.P1	-	Seizure Mahazar.	PW1
Ex.P2	-	Destruction Mahazar.	PW1
Ex.P3	-	Admissible portion of Confession Statement.	PW3
Ex.P4	-	Observation Mahazar.	PW3
Ex.P5	-	Rough Sketch.	PW3
Ex.P6	-	First Information Report.	PW3

Defence side: Nil.***MATERIAL OBJECTS:******Prosecution side:***

Sl.No.	Date	Description of documents	Proved by/ Attested by
M.O.1		Three White cans with capacity of each 35 liters.	PW - 3

Defence side: Nil

Assistant Session Judge,
Madurantakam.

TNCG130004802022



Fair / Draft Judgment

SC No. 158/2022

D.D: 01.06.2026.

Sub Court, MKM