IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS AT UDAYAGIRI

PRESENT: Sri J.Anjaiah,
JCJ-cum-JMFC, Udayagiri.

Tuesday, this the 28th day of May, 2024.

C.C No.616/2022
[Cr. No.40 of 2021 of SEB Udayagiri P.S.]

Between :

The State: Through
The Enforcement Inspector (I/c),
Special Enforcement Bureau,
Udayagiri P.S. ... Complainant.

And

Nandimandalam Venkata Subbaiah,
S/o Ramasubbaiah,
Age : 40 years,
R/o Krishnamrajupalli Village,
V.K.Padu Mandal,
SPSR Nellore District. ... Accused.

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This case came before me for disposal in the presence of learned APP for the State and Sri.Sk.Altaff Learned counsel for the accused and after perusing the case records available on, upon hearing the arguments on both side and having stood over for consideration till this date, this Court has delivered the following :

J U D G M E N T

[1.] The Incharge Enforcement Inspector, Special Enforcement Bureau of Udaygiri has been filed charge sheet against accused in Cr.No.40/2021 with a prayer to punish the accused by alleging that he committed an offence under Section 34 (a) (1) (i) of Andhra Pradesh Excise Act.

[2.] Briefly stated, the case of prosecution is like this:- On 18.03.2021 at about 05.00 pm LW3 S.Srinivasulu Enforcement Inspector

SEB station, Udayagiri proceeded to conduct raids along with LW1 P.Subbaiah and LW2 V.N.Prasad who are SEB Constables and reached to water tank, Krishnamrajupalli Village, V.K.Padu Mandal Where they noticed accused coming carrying a white plastic bag in his right hand. On seeing the staff in the uniform, he was afraid on suspicious manner and tried to skulk away. LW3 S.Srinivasulu Enforcement Inspector caught hold him with the assistance of his staff and enquired him. For which the accused voluntarily confessed before them that the said bag contains liquor bottles. In order to verify the said bag LW3 S.Srinivasulu Enforcement Inspector, Udayagiri tried to secure mediators, but no government officers are not available and nobody came forward to act as a mediators.

[3.] LW3 S.Srinivasulu Enforcement Inspector decided to draft a special report and verified the said bag and found 7 bottles of Andhra Gold whisky each 180 ml found the heals are removed and the label is contains for sale in AP state only. They identified the said liquor are duty paid liquor then LW3 S.Srinivasulu Enforcement Inspector ascertain the address particulars of the accused and the accused confessed before them, he purchased the said bottles from unknown persons with an intention to sale the same in a higher price as his livelihood. On questioning the accused failed to produce any permit or license having possession of the said liquor bottles. LW3 S.Srinivasulu Enforcement Inspector drawn sample for chemical analysis purpose and the remaining bottles kept in the same bag for safe custody. On dictation of LW3 S.Srinivasulu Enforcement Inspector scribed special report. LW1 P.Subbaiah and LW2 VN.Prasad and LW3 S.Srinivasulu Enforcement Inspector were attested the special report. LW3 S.Srinivasulu Enforcement Inspector registered a case in Cr.No.40/2021 under section 34 (a) (1) (I) of A.P Excise Act. LW3 S.Srinivasulu Enforcement Inspector sent

LW1 P.Subbaiah to secure mediators for preparation of confession report. But there are no mediators available then LW1 P.Subbaiah return to LW3 S.Srinivasulu Enforcement Inspector and informed the same. Then LW3 S.Srinivasulu Enforcement Inspector enquired the accused for which the accused confessed about the commission of offence. Then LW3 S.Srinivasulu Enforcement Inspector arrested the accused and prepared Panchanama and served 41 A Cr.P.C notice to the accused. Later LW3 S.Srinivasulu Enforcement Inspector sent the sample for chemical analysis purpose and received the same. LW3 S.Srinivasulu Enforcement Inspector handed over his entire investigation to LW4 Mogala Babu Inspector I/C. Later LW4 Mogala Babu Inspector I/C Udayagiri filed charge sheet against the accused.

[4.] Considering the charge sheet and material on record this court took the case on file for the offence punishable U/sec. 34(a) (1) (i) of A.P Excise Act against accused and issued process. In response to the process accused entered his appearance and he was provided with the copies of documents, U/sec.207 of Cr.P.C upon which the prosecution relied to prove the proposed guilt.

[5.] During the examination Under Section 239 of Cr.P.C, a charge U/sec.34 (a) (1) (i) of A.P Excise Act against accused was framed, and the same was read over and explained to accused, and having understood the same accused pleaded not guilty and claimed to be tried. Upon invitation for trial, the prosecution examined ONE witness as P.W.1 and exhibited as many as THREE documents as Exs.P.1 to P.3 and Material Object 1 is sample bottles. The evidence of remaining witnesses LW1 P.Subbaiah, LW2 VN.Prasad and LW4 Mogala Babu Enforcement Inspector I/c were given up by learned APP as PW.1 deposed all facts and sufficient to support the case of prosecution, if they are examined no purpose would be served.

[6.] After completion of prosecution side evidence, accused was examined Under Section 313 of Cr.P.C where-under the available incriminating material against him was explained, for which the accused reported everything as false. The defence not chosen to adduce any evidence on its behalf.

[7.] Heard arguments of both side.

[8.] **<u>Contentions of both parties:</u>**

The Learned counsel for the accused submitted that the accused is no way connected with this case and it was foisted only for the statistical purpose. The main contention of the defence is that, while making search the local mediators ought to have been taken and except the evidence of P.W.1 who is an interested witnesses, there is no other evidence to connect the accused with the crime. Prayed this court to acquit the accused. On the other hand the Learned A.P.P contends that the evidence of P.W.1 coupled with Exs.P.1 to P.3 and Material Object 1 would support the case of the prosecution. Prayed this court to convict the accused.

[9.] Now, the point that arises for determination is that:-

<u>"Whether the prosecution proved the guilty of the accused beyond all reasonable doubt for the offence punishable Under Section 34(a) (1) (i) of Andhra Pradesh Excise Act</u> ?"

[10.] **<u>DISCUSSION, DECISION AND REASONS THEREOF:</u>** In a criminal trial, one has to start with the presumption of innocence in favour of the accused which is also regarded as human right because no one can be convicted and punished merely on the ground of suspicion, however strong it may be. Every person has a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. The prosecution is required to prove offence beyond reasonable doubt. Here in this case, the claim of defence of accused is that one of total denial. In the first examination conducted Under Section 239 of Cr.P.C and even in the second examination which was conducted after completion of evidence of prosecution Under Section 313 of Cr.P.C by explaining the available incriminating material against him, the accused stood strongly on the claim that he is innocent of the alleged accusation.

[11.] As already stated the defence adduced no evidence on its behalf. Before proceeding with the point that whether the prosecution proved the guilt of accused beyond doubt, it is appropriate to see the nature of evidence produced and the gist of testimonies of witnesses of prosecution. The prosecution examined P.W.1 and exhibited Exs.P.1 to P.3 documents M.O 1 is sample bottle. P.W.1 is who detected the offence and investigating officer. With regard to exhibits, Ex.P.1 is Special report, Ex.P2 is First Information Report, Ex.P.3 is Chemical Analysis Report. Material Object 1 is Sample bottle.

EVIDENCE AVAILABLE ON RECORD:-

[12.] PW1 deposed that On 18.03.2021 at about 05.30 pm himself, LW1 & LW2 were conducting raids and reached to water tank

Krishnamrajupalli of V.K.padu mandal. There they noticed one person having possession of one white plastic bag in a suspicious nature then they stopped him and enquired him for which the said person revealed his name and address particulars and confessed about the commission of offence. He deputed LW1 in order to verify the said bag, but after sometime LW1 came to him and informed to him that the revenue people are not available and no one came forward to act as a mediators. Then he decided to draft special report and verified the said bag and found 7 bottles of Andhra Gold Whisky each 180 ml. Then he enquired the said person any permit or license having possession of the said bottles for which he failed to produce the same. Then he seized the said bottles and drawn sample bottles from the said bottles and on his dictation, LW2 scribed special report. Basing on Ex.P1 he registered a case in Cr.No.40/2021 U/s 34 a (1) (i) of AP Excise Act and sent the FIR to all concern and sent the sample bottles for chemical analysis report and received the same. He served 41 A Cr.P.C notice to the accused and released him on bail. He handed over his investigation to LW4 along with seized property. After completion of all legal formalities LW4 filed the charge sheet against the accused. M.O.1 is sample bottle.

[13.] **POINT:-**As seen from the evidence, P.W.1 who was worked as a Excise official during that period. Admittedly no local mediators were taken from that particular locality. Excise official did not serve any written notices to the people, Revenue and other respective members of locality and did not mentioned the same in the special report and charge sheet. In the absence of serving written notices either on the people gathered at the scene of offence or on the people who were residing in the locality by compelling them to assist the raid party and in the absence of furnishing names and other particulars of the people who were requested by the staff of P.W.1 to act as mediators, clouds the prosecution case with suspicion. For the reason of not making efforts to take independent respectable local mediators, the evidence of P.W.1 loses its credibility.

[14.] Ex.P.3 chemical analysis report would establish that the Material Object 1 contains Indian Made Liquor but here in my considerable view the prosecution at best established the nature of the liquor that was sent to the chemical analysis but they failed to establish that it was seized from the conscious possession of the accused. Before deciding this point it is pertinent to see the relevant citations of Hon'ble Supreme court and High court on this aspect.

[15.] The Hon'ble Supreme court of India in the case of **'State Vs Arun' reported in 'A.I.R 2003 S.C 801'** held that:

"Where there is no independent witness from the locality, the prosecution must offer reasonable explanation where it transfers that not only there were many residences in that locality but also large number of people assembled at the time of recovery"

[16.] The Hon'ble High court of A.P in the case of **'S.Babu saheb @babu Vs The State of A.P' reported in '2010(1) A.L.T(Crl.) 32 A.P'** held that:

"When they are conducting the search in a colony or at a place wherein there is possibility of securing the presence of independent mediators, the Excise officials or Prohibition officers are bound to take the local respectable independent inhabitants. They must make sincere efforts to secure local respectable mediators, that is the mandate of section 100(4) of Cr.P.C. As referred to in the above provisions, the Excise officials are also authorised to issue an order in writing asking them to act as mediators under sub section (4) of section 100 of Cr.P.C. The object of section 100 of Cr.P.C is to ensure confidence in the neighbours and in the public in general that a genuine search has been made and incriminating material has been really found and not planted"

[17.] The Hon'ble High court of A.P in the case of **<u>'Mudavath mothia Vs State of A.P' reported in '2005(1) A.L.D (NOC) 52 A.P'</u>** held that:

"Once the Excise officials are entrusted with the investigation of cognizable offence under A.P Excise Act, they become police officials, as such the confession recorded by them in the proceedings is inadmissible. When the independent witnesses are not examined by the prosecution, the prosecution theory of seizing the sachets from the custody of the accused has to be looked with suspicion. The non examination of independent mediators is fatal to the prosecution version. The seizure proceedings drafted also cannot be considered in view of the bar under sections 25 and 27 of Indian Evidence Act and section 161 of Criminal Procedure Code."

[18.] The Hon'ble High court of A.P in **<u>'Yeduru sreenivasulu reddy Vs State of A.P' reported in '2002(1) A.L.D (Crl) 347 (A.P)'</u>** held that:

"When the search and seizure taken place in a busy locality and none have come forward to act as a panch witness, the police should have resort to section. 100(4) of Cr.P.C and should pass a written order. Therefore, in the absence of any such written order, the evidence of police officials that no one came forward to act as mediators can not be believed and relied upon. Therefore, the entire search conducted by the prosecution is vitiated. Held, the search and seizure as well as conviction can not be sustained."

[19.] For the foregoing reasons, this court find that it is not safe to rely upon the testimony of official witness i.e., P.W.1 when it is not supported by any other independent witness. The material produced by the prosecution is not sufficient to prove the seizure of Indian Made Liquor from the possession of the accused. Therefore, in the present case on hand the prosecution failed to secure the independent mediators and failed to examine any independent witness rather than the interested witness to establish the guilt of the accused and failed to follow proper procedure prescribed under law. Hence, in any way there is no credibility to the prosecution witness to establish the guilt of the accused and their evidence cannot be believed. Therefore, there is no cogent and reliable evidence to implicate the complexity of the accused in commission of the offence. It is settled principle that penal statutes should be strictly construed and benefit of any lacuna in the case of prosecution is to be given to the accused. In view of the above infirmities, this court find that it is not safe to rely upon the evidence of prosecution when it is not complete to prove the guilt of the accused. The material produced by the prosecution is not sufficient to brought home the guilt of the accused beyond reasonable doubt. Thereby, point is decided in favour of the accused and against to the prosecution.

[20.] **IN THE RESULT**, Accused is found not guilty for the offence punishable Under Section 34(a) (1) (i) of A.P Excise Act, and accordingly he is acquitted Under Section 248(1) Cr.P.C. The bail bonds of the accused and his sureties shall stands cancelled after expiry of six months as per U/s.437-A Cr.P.C. The case property vide CPR No.64/2024 i.e, Material Object 1 is Sample bottle shall be destroyed after the expiry of appeal time.

Typed to my dictation by the stenographer, corrected and pronounced by me in open court, today, this the 28th day of May, 2024, under the hand and seal of this court.

Sd/- J.ANJAIAH
Judicial Magistrate of I Class
Udayagiri

Appendix of Evidence
Witnesses examined:

For prosecution:
P.W.1/LW3 : S.Srinivasulu Enforcement Inspector

For defence:
-Nil-

Documents marked:

For prosecution:
Ex.P.1 : Special Report dated 18.03.2024

Ex.P.2 : First Information Report, dt.18.03.2021

Ex.P.3 : Chemical Analysis Report.

For defence:
- NIL-

Material objects marked:

For prosecution:
Material Object 1 sample bottle

For defence:
-NIL-

Sd/- J.ANJAIAH
Judicial Magistrate of I Class,
Udayagiri.

CALENDAR AND JUDGMENT

IN THE COURT OF JUDICIAL MAGISTRATE OF I CLASS AT::UDAYAGIRI.

C.C.No.616 of 2022

Date of:

Offence on or before	Complaint	Apph. of accused	Released on Bail	Commencement of Trial	Closure of Trial	Result
18.03.2021	18.03.2021	18.03.2021	18.03.2021	16.05.2024	27.05.2024	28.05.2024

Between :

The State: Through
The Enforcement Inspector (I/c),
Special Enforcement Bureau,
Udayagiri P.S. ... Complainant.

And

Nandimandalam Venkata Subbaiah,
S/o Ramasubbaiah,
Age : 40 years,
R/o Krishnamrajupalli Village,
V.K.Padu Mandal,
SPSR Nellore District. ... Accused.

Offence: U/Sec: 34(a) (1) (i) of A.P Excise Act.

Plea of accused: Not guilty

Finding : Found not guilty.

Sentence of Order :

In the result, accused is found not guilty for the offence punishable U/Sec. 34(a) (1) (i) of A.P Excise Act, and accordingly he is acquitted U/Sec. 248(1) Cr.P.C. The bail bonds of the accused and his sureties shall stands cancelled after expiry of six months as per U/s.437-A Cr.P.C. The case property vide CPR No.64/2024 i.e, Material Object 1 is Sample bottle shall be destroyed after the expiry of appeal time.

Explanation for the delay: No delay.

Sd/- J.ANJAIAH
Judl. Magistrate of I Class,
Udayagiri