

**THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS :
NANDALUR**

Present:- Smt.K.Latha,
Judicial Magistrate of I Class, Nandalur

Friday, this the 16th day of February, 2024.

C.C.No.493/2022

State: Sub-Inspector of Police
Pullampet Police Station.

....Complainant.

Vs.

Kola Chengalrayudu S/o Subbaiah, aged 62 years, Baliya by
caste, R/o Eguvareddipalli h/o T.Kammapalli village, Pullampet
Mandal, Annamayya District.

... Accused.

This case coming on 09.02.2024 for final hearing before me on in the
presence of the Learned Assistant Public Prosecutor for the Complainant and
of **Sri G.Subbaramaiah**, Advocate for accused and having stood over for
consideration till this day, this court delivered the following:-

J U D G M E N T

The S.I of police, Pullampet police station filed charge sheet against
the accused in Cr.No.01 of 2022 for the offence punishable under section
7(B) r/w 8(e) of A.P.P. (Amendment) Act, 2020.

2. The case of prosecution in nutshell are that:-

On 3.1.2022 at 3-00 pm on credible information the S.I of police
Pullampet Police station along with his staff rushed to Bus stand, NTR statue
Reddipalli cheruvu katta, Pullampet at about 3.30 PM. There they found one
male person by keeping one white colour plastic can on his right hand. On
seeing them, the accused tried to skulk away from that place. Immediately
they caught him. on enquiry he stated that, he is having possession of ID

arrack. Then SI enquired the said person and the accused revealed his name as Kola Chengala Rayudu, Eguvareddipalli village, Pullampet Madnal i.e., accused. S.I enquired the accused and he voluntarily confessed and admitted the offence that, he is having illegal possession of ID arrack with intent to sell them in their village for his illegal monetary benefit by preparing the ID arrack. Then S.I verified the bottle and opened the cap and S.I found smell and identified as ID arrack and it is five liters capacity can and they found five liters ID arrack. Then SI drawn the sample of 180 ml for the purpose of chemical analysis duly sealed and labeled. Then SI seized the remaining ID arrack i.e., plastic can under cover of Police proceedings. Then they brought the arrested accused and seized property to the police station. On basis of police proceedings SI registered a case in Cr.No. 01 of 2022 U/Sec.7(B) r/w section 8(a) of A.P.P (Amendment) Act. After completion of investigation the SI filed a charge sheet.

3. The case was taken on file for the offence under section under section under section 7(B) r/w 8(e) of A.P.P. (Amendment Act), 2020 against the accused .

4. After the appearance of the Accused the copies of the documents were furnished to him as required under section .207 Cr.P.C.

5. The accused was examined under section 239 Cr.P.C. He denied the offence. Then charge under section 7(B) r/w 8(e) of A.P.P. (Amendment Act), 2020 is framed against accused and read over and explained to him in Telugu. He pleaded not guilty and claimed to be tried.

6. To prove the case of the prosecution, the prosecution has examined PW.1 and P.W2 and got marked Ex.P1 to Ex.P.6 and M.O.1.

7. After closure of prosecution evidence, the accused was examined under Section 313 of Cr.P.C and explaining the incriminating material found against him, for which he denied and reported no defence evidence.

8. I have heard the arguments on both sides.

9. **Now the point for consideration is:**

Whether the prosecution is able to prove the guilt of the accused for the offence U/Sec.7(B) r/w 8(e) of A.P.P. (Amendment Act), 2020 beyond all reasonable doubt ?

10. **P O I N T :**

To substantiate the case of the prosecution, the prosecution has examined PW.1 and P.W.2 and got marked Ex.P1 to Ex.P.6 and M.O.1.

The gist of evidence of Prosecution Witnesses :

11. P.W1/B.Amarnath, Head constable deposed that, on 03.01.2022 at about 3.00 PM, while he was present in the police station, LW5/SI received information about illegal selling of ID arrack. Then P.W1 along with LW5/SI and other staff proceeded in their vehicle to Bus stand, NTR statue Reddipalli cheruvu katta, Pullampet at about 3.30 PM. There they found one male person by keeping one white colour plastic can on his right hand. On seeing them, the accused tried to skulk away from that place. Immediately they caught him. P.W1 further deposed that, on enquiry he stated that, he is having possession of ID arrack. Then SI enquired the said person and he revealed his name as Kola Chengala Rayudu, Eguvareddipalli village, Pullampet Madnal i.e., accused. On further enquiry by S.I of Police the accused voluntarily confessed and admitted the offence that, he is having illegal possession of ID arrack with intent to sell them in their village for his illegal monetary benefit by preparing the ID arrack. P.W1 further deposed that, then S.I verified the bottle and opened the cap and S.I found smell and identified as ID arrack and it is five liters capacity can and they found five

liters ID arrack. Then SI drawn the sample of 180 ml for the purpose of chemical analysis duly sealed and labeled. Then SI seized the remaining ID arrack i.e., plastic can under cover of Police proceedings under Ex.P1. SI scribed/typed the Ex.P1 and they put signatures on it. Accused also put his signature on Ex.P1 under M.O.1. Then they brought the arrested accused and seized property to the police station.

During cross examination P.W1 stated that, they all 4 members proceeded to the scene of offence at 3.30 PM. The distance between from police station to scene of offence is 10 km. They stopped their jeep at bus stand. On seeing them the accused ran away towards Eguvareddipalli Village. P.W1 tried for securing for mediators but they are not available. S.I prepared Ex.P1 police proceedings. Their attender took empty sample bottle from Pullampet. Ex.P1 was completed with in 1 hour 10 minutes. P.W1 along with SI and other constables put their signatures in Ex.P1. Jeep driver did not put his signature in Ex.P1.

12. P.W2/P.Prathap Reddy, S.I of police deposed that, on 03.01.2022 at about 3.00 PM, while he was present in the police station, he received information about illegal selling of ID arrack. Then he along with PW1 and other staff proceeded in their vehicle to Bus stand, NTR statue Reddipalli cheruvu katta, Pullampet at about 3.30 PM. There they found one male person by keeping one white colour plastic can on his right hand. On seeing them the accused tried to skulk from that place. Immediately they caught him. P.W2 further deposed that, on enquiry by him the accused stated that, he is having illegal possession of ID arrack. P.W2 tried for securing mediators but non come forward. Then P.W2 enquired the said person and he revealed his name as Kola Chengala Rayudu, Eguvareddipalli village, Pullampet Madnal i.e., accused. P.W2 further deposed that he enquired the accused

and he voluntarily confessed and admitted the offense that, he is having illegal possession of ID arrack with intent to sell them in their village for his illegal monetary benefit by preparing the ID arrack. Further the accused confessed that, he destroyed all material objects which are used for preparing ID arrack due to fear of police. P.W2 further deposed that, then he verified the can and opened the cap and S.I found smell and identified as ID arrack and it is five liters capacity can and they found five liters ID arrack. Then P.W2 drawn the sample of 180ml for the purpose of chemical analysis duly sealed and labeled under MO1. Then P.W2 seized the remaining ID arrack i.e., plastic can under cover of Police proceedings under Ex.P1. P.W2 further deposed that, he scribed/typed the Ex.P1 and they put signatures on it. Accused also put his signature on Ex.P1. Then they brought the arrested accused and seized property to the police station. P.W2 identified the accused. P.W2 further deposed that, on basis of Ex.P1 Police proceedings, he registered a case in Cr.No.1/2022, U/Sec.7(b) r/w 8(a) of AP Prohibition (Amendment) Act 2020 under Ex.P2. On the same day he forwarded the accused to the court for judicial remand. P.W2 further deposed that, during the course of investigation, P.W2 send the M.O1 to the Regional Prohibition and Excise Laboratory, Kurnool for chemical analysis purpose through Court under letter of advice under Ex.P3. P.W2 further deposed that on 07.02.2022, he received chemical analysis report under Ex.P4 and the analyst opined that, the sample is Illicitly distilled liquor unfit for human consumption and injurious to health. On 25.08.2022 he received destruction proceedings from S.P, Annamaiah District, vide RC No.55/cofis & DES/DCRB/SEB-ANM/2022 dated 08.08.2022 under Ex.P5. P.W2 further deposed that, on basis of the proceedings of the S.P, Annamayya District the property he destroyed the seized ID arrack under cover of panchanama on

25.08.2022 at 11.00 AM in the presence of mediators i.e., LW2 and LW3 attested by them under Ex.P.6 and after completion of investigation P.W2 filed charge sheet in this case.

During cross examination P.W2 stated that, they all 3 members proceeded to the scene of offence at 3.00 PM. They all three members caught hold the accused. P.W2 tried for securing mediators but they are not available. They carried empty sample bottle to the scene of offence.

DISCUSSION

13. During cross examination PW.1 admitted that the scene of offence is a busy locality, Reddipalli village is a big village VRAs and VROs are very much available. They did not mention the descriptive particulars of plastic can in Ex.P1.

During cross examination P.W2 admitted that, the description of can is not mentioned in Ex.P1 and he did not measure the ID arrack. P.W2 did not mention the descriptive particulars of empty sample bottle in Ex.P1 and he did not examine any independent witnesses in and around of scene of offence to know about selling of ID arrack and preparation of ID arrack by the accused. P.W2 further admitted that, he did not visit the place where the accused prepared ID arrack as per his confessional statement.

14. It is stand of accused that hotel situated at scene of offence and PW.1 and PW.2 never visited the scene of offence and they did not caught hold the accused and they did seized the ID liquor from the possession of accused. The core contention of accused that PW.2 prepared all documents at police station and obtained signature of accused and they put their signatures at police station. PW.1 do not anything about this case and on instructions of S.I of police he deposed false. It is further stand of accused that, the accused is noway concerned to the present case. The further stand of

accused that destruction panchanama is prepared at police station and obtained the signatures of the LW2 and LW3 on Ex.P1 and he deposed false. The accused is noway concerned the seized property and MO1 and P.W2 planted MO1 for the purpose of this case. P.W2 never saw the accused and P.W2 identified him with the help of police.

15 On the other hand, the learned defence counsel argued that, no independent witness is examined by the prosecution and that no local mediators shown to have secured at the time of arrest of accused and destruction of contraband under the cover of police proceedings. Hence, there is no sufficient ground to convict the accused by extending the benefit of doubt.

16. 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. It is not the evidence of PW1 and PW.2 that they made efforts to secure mediators for the local inhabitants. No proper explanation was offered by PW1 and PW.2 for non securing mediators at the scene of offence. Hence, I am of view that the search made by PW2 and his staff is contrary to the mandatory provision laid down under section 100 (4) of Cr.P.C.,

In Hon'ble State versus Arun AIR 2003, SC. 801 held that

“Where there are no independent witnesses from the locality of the scene of offence, prosecution must offer reasonable explanation as to why it has not been chosen to be an outsider as Panch witness.”

17. As observed above, no explanation was offered by PW1 and PW.2 for non-securing mediators at the scene of offence. In such circumstances, I am of view that even the police proceedings which is marked as Ex.P1 cannot be relied on.

18. 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 "illicitly distilled liquor and unfit for human consumption and injuries to health". But, it is for the prosecution to establish that such sample which was referred to Chemical were seized from the possession of the accused, except interested testimonies of PW.1 & PW.2, 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. The prosecution given up the evidence of LW.2 to L.W4 It is need less to say that, securing the analysis report, and destruction panchanama doesn't by itself prove the case of the prosecution.

19. Except interested testimonies of PW.1& PW.2, no supporting material has been placed on record. PW.1 and PW.2 belong to one and the same office and PW.1 is a subordinate of PW.2. There is nothing special in PW.1 and PW.2 narrating the incident without any material discrepancies. Admittedly the scene of offence is a busy locality even though the mediators are very much available in and around scene of offence PW2 failed to take independent and respectable inhabitants of the place of offence. Thus, PW.2 has not complied with the mandatory provisions of section 100(4) Cr.P.C.,. Thus, PW.2 did not follow the statutory and mandatory provisions. There is no corroboration to the testimony of PW1 and PW.2, as there is no independent witnesses. Admittedly P.W2 did not mention the descriptive particulars of plastic can in Ex.P.1. The evidence of

PW1 and PW.2 and the contents of Ex.P1 is contradictory. The seizure of I.D. Arrack from possession of accused is doubtful.

20. Therefore, in view of the above infirmities and discrepancies in the investigation and evidence of P.W1 and P.W2, it is highly unsafe to place reliance upon the interested testimony of P.W1 and P.W2 to base conviction of the accused, particularly, more so, when there is no independent mediators. 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 not guilty of the offence with which he stood charged. The point is answered accordingly against the prosecution.

21. In the result, accused is found not guilty for the offence punishable under section 7(B) r/w 8(e) of A.P.P. (Amendment) Act, 2020 and accordingly, he is acquitted under Sec.248 (1) Cr.P.C The bail bonds of the accused 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 directly on laptop by the stenographer corrected and pronounced by me in the open Court on this 16th day of February, 2024.

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

MEMO OF EVIDENCE
Witnesses examined

For prosecution:-

For defence:- Nil

PW.1: B.Amarnath, Head constable

P.W2: P.Pratap Reddy, S.I of Police

Exhibits marked

For prosecution:

For defence:- Nil

Ex.P.1: Police proceedings.

Ex.P.2: FIR

Ex.P.3: Letter of advice

Ex.P.4: Chemical analysis report.

Ex.P.5: Proceedings.

Ex.P.6: Destruction panchanama.

Material Objects Marked:

M.O.1: Sample bottle

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

// True Copy //

**Judicial Magistrate of First Class,
Nandalur.**

CALENDAR AND JUDGMENT

Calendar and Judgment tried by the Judicial Magistrate of I Class , Nandalur.

DATE OF						
Offence	Report	Apprehension of	Release on bail	Commencement of trial	Close of trial	Judgment
03.01.2022	03.01.2022	04.01.2022	07.01.2022	12.01.2024	08.02.2024	16.02.2024

Calendar and Judgment in **C.C.No.493 of 2022** on the file of Judicial Magistrate of First Class, Nandalur.

COMPLAINANT: State:Sub-Inspector of Police, Pullampet Police Station..

ACCUSED:

Kola Chengalrayudu S/o Subbaiah, aged 62 years, Balija by caste, R/o Eguvareddipalli h/o T.Kammappalli village, Pullampet Mandal, Annamayya District.

Offence : Under Section 7(B) r/w 8(e) of A.P.P. (Amendment) Act, 2020

Finding : Accused found not guilty for the offence under section 7(B) r/w 8(e) of A.P.P. (Amendment) Act, 2020

Sentence: In the result, accused is found not guilty for the offence punishable under section 7(B) r/w 8(e) of A.P.P. (Amendment) Act, 2020 and accordingly, he is acquitted under Sec.248 (1) Cr.P.C The bail bonds of the accused 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 First Class,
Nandalur.**

Copy submitted to the Hon'ble I Addl. District and Sessions Judge, Kadapa.

Dis No. Dt.

// True Copy //

**Judicial Magistrate of First Class,
Nandalur**