

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS,
BANAGANAPALLE.**

PRESENT :- J.KISHORE KUMAR,
JUDICIAL MAGISTRATE OF FIRST CLASS, BANAGANAPALLE.

Wednesday, this the 21st day of February, 2024.

C.C.No.636 OF 2022

BETWEEN :

The State, represented by the Enforcement Inspector of Police, SEB Banaganapalli.

... **COMPLAINANT**

AND :-

Yerukali Venkata Subbaiah, Aged 40 years, Son of Venkatanna, Resident of Cherlopalli Village, Owk Mandal.

... **ACCUSED**

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This Case, coming before me on 13-02-2024 for Arguments in the presence of Sri M.Madhava Rao, the Assistant Public Prosecutor, for the Prosecution and of Sri P.Babu, Advocate for the Accused, and upon hearing both sides, and having been stood over consideration till this day, this Court delivered the following:

J U D G M E N T

1. The Enforcement Inspector of Police, SEB Banaganapalli had laid Charge-sheet in Cr.No.369 of 2018 against the Accused for the offence punishable under Section 7[A] Read with 8[e] of A.P. Prohibition Act.

2. The contents of Charge-sheet, in brief, is as follows:-

On 10-12-2018 at about 14-30 hours, near cluster gate, Cherlopalle Village, Owk Mandal, wherein the Enforcement Inspector [LW3] along with his

staff i.e., LW1/S.Prasad - Constable and LW2/B.C.Obulesu Police Constable were apprehended the Accused and seized 5 liters of ID arrack from his possession under cover of Special Report and took sample from the seized arrack and pasted label signed by the Police officer and the Accused.

[a] Basing on the Special Report, the Enforcement Sub Inspector, Banaganapalle [LW3] had registered a Case as in Crime No.369 of 2018 under Section 7[A] Read with 8[e] of A.P. Prohibition Act. During the course of investigation, he arrested the Accused and thereafter, he sent sample to the Excise Lab, Kurnool for analysis report, and concerned Authorities examined sample and opined the sample is Illicitly distilled liquor unfit for human consumption and injurious to health. After completion of all legal formalities, he filed charge sheet against the Accused under the above section of law.

3. The Case was taken on file for the offence under Section 7(A) of R/w 8[e] of A.P.Prohibition Act, against Accused.

4. After receipt of summons, the Accused appeared before the Court, and the copies of the case documents were furnished to him as required under Section 207, Cr.P.C.

5. During the course of examination, the Accused is examined under Section 239 of Cr.P.C, regarding the allegations of the Prosecution, and the Charge framed under Section 7(A) R/w 8[e] of A.P.Prohibition Act, against the Accused is read over and explained to him in Telugu language, for which he pleaded not guilty, and claimed to be tried.

6. During the course of trial, the Prosecution has examined PW1 and PW2 and Exs.P1 to P5 are marked. M.O.1 got marked.

7. After closure of entire Prosecution evidence, the Accused was examined under Section 313 Cr.P.C., and explained the incriminating material appear against him in the evidence of Prosecution witnesses in Telugu Language, for which, he denied the same, and stated that he has no defence evidence.

8. Heard arguments on both sides.

9. Now, the Point arises for determination is ***whether the Prosecution is able to establish the guilt of Accused for the offence under Section 7(A) R/w 8[e] of A.P.Prohibition Act, beyond reasonable doubt?***

10. **P o i n t :** In order to prove the same the Prosecution has examined the Police Officials i.e., V.Krishna Murthy – Sub Inspector of Police and B.C.Obulesu – Police Constable were examined as PW1 and PW2 respectively deposed that on 10-12-2018 at about 14-30 hours, near cluster gate, Cherlopalle Village, Owk Mandal, wherein they found the Accused having 5 Liters of ID arrack, and that PW1 sent the PW2 to secure mediators, but nobody came forward to act as Mediators, thereafter, the PW1 drafted the Special Report. Thereafter, the PW1 registered a case against the Accused, and conducted material part of investigation and obtained FSL Report, and after completion of all legal formalities, the Sub Inspector of Police/LW4/P.Doulath Khan, has filed Charge sheet against the Accused.

11. In the cross examination, the PW1 deposed that the Place of offence is busy locality and that he did not secure any independent mediators for seizing the property. He further admitted that no Rough Sketch was prepared in this case, and that they did not follow the procedure as contemplated under section 100 of Cr.P.C. He further admitted that all the witnesses were belongs to their same Department.

12. During the Cross Examination of the PW2, he denied the formal suggestions posed by the Counsel for the Accused.

13. After going through the evidence of PW1 and PW2, this Court came to know that they are the Police Officials Witnesses, and that the Prosecution has failed to examine any mediators or independent witnesses to support the evidence of official witnesses. The evidence of Prosecution Witnesses shows that though they tried to get mediators from the scene of offence, nobody came forward to act as mediators. If any search or seizure is required to be in any case, the officer has to serve notices to the respectable inhabitants of the locality to asking them to stand as mediators which is mandatory as per section 100 (4) Cr.P.C. But in the instant case, no notices were served by the police officials to any independent witnesses. It goes to show that they did not get any independent witnesses from the scene of offence. Therefore, the prosecution has failed to prove the seizure of the case property from the possession of accused.

14. So, in this case, the Prosecution has mostly depended upon the Confession Statement made by the Accused which is inadmissible and hit by

Sections 25 and 27 of Indian Evidence Act. Therefore, there is no cogent and corroborative independent evidence to implicate and complicity of the Accused in the commission of offence.

15. In view of the above discussion, this Court concluded and holds that the Prosecution has failed to bring home the guilt of the Accused for the offence punishable under Section 7(A) R/w 8[e] of A.P. Prohibition Act beyond reasonable doubt.

Accordingly, the Point is determined against the Prosecution.

16. In the result, the Accused is found not guilty for the offence punishable under Section 7(A) R/w 8[e] of A.P.Prohibition Act, and hence, he is acquitted for the same under Section 248 [1] of Cr.P.C. The bail bonds of the Accused and their sureties shall remain inforce for further period of six months from the date of Judgment, as per Section 437-A of Cr.P.C., and thereafter, it shall stand cancelled. The M.O.1 /Sample Bottle, shall be destroyed after expiry of the Appeal time.

Typed to my dictation directly on system by the Stenographer, corrected and pronounced by me in open Court on this the 21st day of February, 2024.

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

APPENDIX OF EVIDENCE

WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION

PW1: V.Krishnamurthy [Sub Inspector of Police]

PW2: BC Obulesu [Police Constable]

WITNESSES EXAMINED ON BEHALF OF THE DEFENCE

None.

EXHIBITS MARKED ON BEHALF OF THE PROSECUTION

Ex.P1: Special Report.

Ex.P2: First Information Report.

Ex.P3: FSL Report.

Ex.P4: Destruction Panchanama.

Ex.P5: Signature of the PW2 on the Special Report.

EXHIBITS MARKED ON BEHALF OF THE DEFENCE

N I L.

MATERIAL OBJECTS MARKED ON BEHALF OF THE PROSECUTION

M.O.1– Sample Bottle.

**J.M.F.C.,
Banaganapalle.**

Judgment

C.C.No.636 of 2022

Dt : 21-02-2024

**IN THE COURT OF JUDICIAL MAGISTRATE OF THE FIRST CLASS
BANAGANAPALLE,****CALENDER IN C.C.No.636 of 2022**

Date of Offence	:	10-12-2018
Date of Complaint	:	10-12-2018
Date of Apprehension of Accused	:	10-12-2018
Date of taking on file	:	29-09-2022
Date of Appearance of Accused	:	29-11-2022
Date of Commencement of trial	:	06-07-2023
Date of Closure of trial	:	20-07-2023
Date of Sentence / Order	:	21-02-2024
Explanation for delay	:	No delay.
Complainant	:	The State, Represented by the Enforcement Sub Inspector, SEB Banaganapalli.

S.No. Name of the Accused Father's Name Age Calling Religion Residence

Yerukali Venkata Subbaiah, Aged 40 years, Son of Venkatanna, Resident of
Cherlopalli Village, Owk Mandal.

Nature of Offence : Possession of Indian Made Liquor.
Section of Law : Under Sec.7-A R/w 8[e] of A.P. Prohibition Act.
Finding of the Court : Accused is found not guilty.
Sentence/ Order :

In the result, the Accused is found not guilty for the offence punishable under Section 7(A) R/w 8[e] of A.P.Prohibition Act, and hence, he is acquitted for the same under Section 248 [1] of Cr.P.C. The bail bonds of the Accused and his sureties shall remain inforce for further period of six months from the date of Judgment, as per Section 437-A of Cr.P.C., and thereafter, it shall stand cancelled. The M.O.1 /Sample Bottle, shall be destroyed after expiry of the Appeal time.

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

Copy submitted to the Hon'ble Chief Judicial Magistrate – cum – Principal Assistant
Sessions Judge, Kurnool.

