

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS ::
MUMMIDIVARAM.**

PRESENT:- Sri S.Srinivas, B.Com., LL.M.,
Judicial Magistrate of First Class, Mummdivaram.
Friday, this the 13th day of January, 2023
C.C.No.415/2022

Between:

State: Sub -Inspector of Police,
Mummdivaram P.S

... Complainant.

and

Kanumenu Subba Rao,
S/o.Venkateswara Rao,
age 30 years, C/Gollalu,
Nallavaripeta, Ch.Gunnepalli Village,
Mummdivaram Mandal.

... Accused

This case is coming on 12.01.2023 for arguments before me in the presence of learned A.P.P. for the State and of Sri Ch.Ajay Kumar, Advocate for the Accused and upon hearing the Arguments on both sides having stood over for consideration till this day, the court made the following :

J U D G M E N T

1. The gravamen of the charge against the accused is that he was found in possession and sale of Green stone brandy bottles -16 and thereby committed the offence punishable U/sec. 34(a) r/w 34(1)(i), 14 of A.P Excise Amendment Act.

2. The case of the prosecution in brief is that:-

On 20.12.2021 at about 04.25 P.M, the accused was caught at Peddakaluvagattu, Nallavaripeta, Ch.Gunnepalli Village, Mummdivaram Mandal when he was found in possession and sale of Green stone brandy bottles -16. On enquiry accused revealed that he used to purchase liquor bottles from Government liquor shop with a view to sell the same at higher price and maintaining belt shop. On that LW5/K.Suresh Babu, S.I of police also questioned about any license or permission hold by accused. Accused failed to show any such license or permission. LW5/K.Suresh Babu, S.I of Police secured the presence of

LW3/Inapurapu Nagaraju and LW4/Inapurapu eera Bhadra Rao. Finally an occurrence report drafted by S.I of police for seizure of Green stone brandy bottles -16. He also arrested accused and shifted property along with accused to Mummidivaram police station. Basing on occurrence report he registered a case in crime No.269/2021 U/sec.34(a) r/w 34(1)(i), 14 of A.P Excise Amendment Act. He sent the sample to chemical analysis for opinion and on receiving FSL report has Indian made liquor and on completion of investigation, he laid charge sheet against accused.

3. This court took the cognizance U/sec. 34(a) r/w 34(1)(i), 14 of A.P Excise Amendment Act-2020. On appearance of the accused copies of documents were furnished to him as contemplated under section 207 Cr.P.C.

4. Accused is examined under section 239 Cr.P.C., he denied the offence. Hence the charge U/sec. 34(a) r/w 34(1)(i), 14 of A.P Excise Amendment Act is framed, read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried. Hence the accused has been tried for the said charge.

5. To substantiate its case, the prosecution examined PWs1 to 4. Exs.P.1 to P7 and MO.1 is got marked as detailed in the appendix of evidence.

6. After closure of the prosecution evidence, the accused was examined under section 313 Cr.P.C, explaining the incriminating circumstances, appeared in the evidence of prosecution witnesses, for which, he denied them as false and reported no defence evidence.

7. Now the point for consideration is :-

Whether the prosecution establishes its case by proving seizure of the contra band under cover of Ex.P1 occurrence report to bring home the guilt of the accused for the charge U/sec. 34(a) r/w 34(1)(i), 14 of A.P Excise Amendment Act-2020 beyond all reasonable doubt?

POINT:

8. The case of the prosecution is that the accused was found in possession of Green stone brandy bottles -16 that the contraband was seized under cover of Ex.P1 occurrence report. SI of police also secured the presence of independent eye witnesses and examined them as Pws.3 and 4. The version Pws.1 to 4 is sufficient to connect the accused for the charge levelled against him. Hence, prays to punish the accused according to law.

9. The version of PW.1 is that he along with his staff found the accused who is in possession of liquor without having valid license and maintaining belt to shop with a view to sell the liquor for higher rate. SI of Police arrested the accused in the presence of independent eye witnesses and prepared Ex.P1 occurrence report. Pws.3 and 4 examined by prosecution who are the independent eye witnesses as per prosecution. On observing Pws.3 and 4 version, they stated that they do not anything related to this case and nothing was witnesses by them. Pws.3 and 4 independent eye witnesses not supported the prosecution case, totally turned hostile and deviated from their previous 161 Cr.P.C statement. In such a case, the sole testimony of PW2 who is constable and investigating officer i.e., PW1 deposed in similar lines. In these circumstances, it is highly unsafe to rely on the testimony of Pws.1 and 2 in the absence of corroboration from an independent source.

10. For the aforesaid reasons, this Court inclined to hold that the prosecution has miserably failed in proving the guilt of the accused for the charge U/sec. 34(a) r/w 34(1)(i), 14 of A.P Excise Amendment Act beyond all reasonable doubt and that the suggested plea of the accused that the case has been foisted against him for statistical purpose cannot be ruled out.

11. In the result, the accused is found not guilty for the charge U/sec. 34(a) r/w 34(1)(i), 14 of A.P Excise Amendment Act and is acquitted U/s.248 (1) Cr.P.C. MO1 shall be destroyed after lapse of appeal time. The bail bonds if any of the accused shall be in force for Six months.

Typed to my dictation by the Stenographer, corrected and pronounced by me in open court, this the 13th day of January, 2023.

Sd/- S.Srinivas
**Judicial Magistrate of First Class,
MUMMIDIVARAM.**

Appendix of evidence
Witnesses examined

For Prosecution:

PW1/06.12.2022 : K.Suresh Babu
PW2/26.12.2022 : N.Srinivasa Rao
PW3/11.01.2023 : Inapurapu Naga Raju
PW4/11.01.2023 : Inapurapu Veera Bhadra Rao

For Defence: None

DOCUMENTS MARKED

For prosecution :

Ex.P.1/PW1: Occurrence report, dt.20.12.2021
Ex.P.2/PW1: Original First Information Report, dt.20.12.2021
Ex.P.3/PW1 : Rough Sketch, dt.20.12.2021
Ex.P.4/PW1: Letter of advice, dt.30.12.2021
Ex.P.5/PW1: Chemical Analysis Report, dt.03.01.2022
Ex.P6/PW3 : 161 Cr.P.C statement of PW3, dt.20.12.2021
Ex.P7/PW4 : 161 Cr.P.C statement of PW4, dt.20.12.2021

For Defence: Nil

MOs. Marked

M.O.1 : Green stone brandy sample bottle

Sd/- S.Srinivas
**Judicial Magistrate of First Class,
MUMMIDIVARAM.**

CALENDAR AND JUDGMENT
:IN THE COURT OF THE JUDL.FIRST CLASS MAGISTRATE, MUMMIDIVARAM:
CALENDAR CASE NO.415/2022

Date of Offence	:	20.12.2021
Date of Report	:	20.12.2021
Date of arrest of accused	:	21.12.2021
Date of release of accused	:	23.12.2021
Date of commencement of Trial	:	06.12.2022
Date of close of Trial	:	12.01.2023
Date of sentence or order	:	13.01.2023
Name of the Complainant	:	State : Sub-Inspector of Police, Mummidivaram P.S
Name of the accused	:	Kanumenu Subba Rao, S/o.Venkateswara Rao, age 30 years, C/Gollalu, Nallavaripeta, Ch.Gunnepalli Village, Mummidivaram Mandal.
Offence	:	U/sec. 34(a) r/w 34(1)(i), 14 of A.P Excise Amendment Act
Plea of Accused	:	Not guilty
Finding	:	Not guilty
Sentence:	:	In the result, the accused is found not guilty for the charge U/sec. 34(a) r/w 34(1)(i), 14 of A.P Excise Amendment Act and is acquitted U/s.248 (1) Cr.P.C. MO1 shall be destroyed after lapse of appeal time. The bail bonds if any of the accused shall be in force for Six months.

Sd/- S.Srinivas
Judicial Magistrate of First Class,
MUMMIDIVARAM.

Copy submitted to : The Hon'ble Chief Judl. Magistrate-Cum-Prl.Sr.Civil Judge, Rajamahendravararam.