

**IN THE COURT OF ADDITIONAL JUDICIAL FIRST CLASS MAGISTRATE ::
TUNI****PRESENT: SMT. SWARNA LATHA VOLGA MARKA,****A.J.F.C. Magistrate, TUNI****Tuesday, this the 22nd day of April, 2025****CALENDAR CASE NO :284/2023**

Between:

The Sub-inspector of police,
S.E.B.Tuni P.S.

.... Complainant.

And:

Karri Nageswararao @Pamayya, S/o.Ramaswamy,
at about A/28 years,
C/SC-mala, R/o.S.Annavaram village,
Tuni village and Mandal.

....Accused

This case is coming on 21.04.2025 before me for final hearing in the presence of Asst. Public Prosecutor for the Prosecution and Sri.Y.Lova Krishna, 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

1. The state represented by the S.E.B., Sub-Inspector of Police, Tuni, had filed charge sheet in Cr.No.874/2021, for the offences punishable u/s. 7(B) r/w 8(B) of A.P Prohibition (Amendment) Act, 2020 against accused.

2. The brief facts of the Prosecution are as follows:

On 24.12.2021 at about 3.30 P.M. L.W.4/B.Srinivasarao received credible information about illegal possession of F.J.Wash at Rajupeta village, Tuni Mandal. Immediately LW4 along with his staff conducted patrolling to the scene of offence. They noticed one male person in possession of 24 plastic drums and each drum has 200 liters of F.J.Wash, totally 4000 liters of F.J.Wash. Arrested the accused and seized the contraband which is in violation of A.P. prohibition Act 2020. On questioning by L.W.4 the accused revealed his identity. L.W.4 drew on sample containing 300 ml of F.J.Wash for chemical analysis purpose from the above contraband, sealed and labeled the

contraband and sample under cover of special report drafted on the spot by L.W.4. Basing on the special report L.W.4 registered a case in crime No. 874/2021 u/s. 7(B) r/w 8(B) of A.P Prohibition (Amendment) Act, 2020. LW4 Prohibition & Excise sub inspector sent the sample bottle to Chemical Examiner of Proh & Excise, Kakinada. After receiving the report LW4 filed charge sheet.

3. After considering the material papers on record, this court taken cognizance against the accused for the offence punishable u/s. 7(B) r/w. 8(B) of A.P Prohibition (amendment) Act 2020.

4. After appearance of accused, the case copies furnished to accused as per section 207 Cr.P.C.

5. The accused was examined u/s.239 Cr.P.C. The charge for the offence punishable u/s. 7(B) r/w 8(B) of A.P Prohibition (Amendment) Act, 2020, framed and explained to the accused in Telugu and for which accused pleaded not guilty and claims to be tried.

6. During the course of trial, On behalf of the prosecution, LW5 is examined as PW1, L.W.1 is examined as P.W.2, L.W.4 is examined as P.W.3 the learned A.P.P had given up the evidence of L.W.2, L.W.3, L.W.6 and L.W.7, Ex. P1 to P6 were marked.

7. After completion of prosecution evidence, the accused were examined u/s. 313 Cr.P.C., and for the incriminating evidence appearing in the prosecution against the accused is read over and explained to them in Telugu and Having understood the same, the accused denied the same and reported no defence evidence.

8. Heard both sides.

9. Now the point for consideration is :

Whether the prosecution has proved the guilt of the accused for the offences U/s.7(B) r/w.8(B) of A.P.P. act.2020, beyond reasonable doubt?

POINT

10. In order to prove its case, the prosecution examined three witness PW1 to 3 coupled with Ex.P1 to P6 were marked.
11. The learned APP has argued that the evidence of PW.1 and 2 coupled with Ex P1 to P6 are sufficient to prove the case of prosecution.
12. PW.2-Ginjala Lovaraju deposed that he do not know the accused. Police did not enquire him about the accused whether he is preparing I.D.arrack at their village. He did not state to the police that accused is preparing I.D.arrack and transporting in to other places. Police have not examined him and not recorded his statement. Ex.P1 is 161 Cr.P.C statement of PW.1.
13. To prove there case Prosecution had examined LW.1 as PW2, deposed that On 24.12.2021 at about 3.30 P.M. He received credible information about making of I.D arrack from F.J Wash. Then himself along with his staff conducted raid beside Peddagadda Vagu, Rajupeta village of Tuni mandal. The accused ran away on seeing the police. He deputed LW.2 to secure the mediators but in vain. He enquired about the accused particulars. At the time of search he found that 24 Plastic Drums and each drum has 200 liters of F.J Wash, totally 4000 liters, and also one white coloured gunny bag containing 4 polythene covers, and each cover contains 10 liters of I.D arrack. He destroyed the F.J wash at the scene of offence place. He obtained 500ml of sample of F.J wash and 300 ml of I.D arrack, sealed and labeled the bottles. He prepared the special report and P.W.2, LW.3 signed on the special report. He handed over the case property and case record to LW.3. Basing on the special report LW.13 registered the case in Cr.No.874/2021 for the offence under Section 7(B) r/w 8(B) of A.P.Prohibition Act. Ex.P2 is the FIR, Ex.P3 is the Special report. Ex.P4 is Rough Sketch.
14. During the cross examination of PW.2 it was elicited that the sample bottle is used bottle. The scene of offence is place is busy locality. The Rajupeta village is Major panchayat and has VRO and VRA and other revenue persons. He did not measure the contraband. He denied the suggestion that he did not followed 100 (4) procedure and that they drafted the case for the statistical purpose and that he had foisted a false case..
15. To prove there case, prosecution further examined LW.4 as P.W.3 deposed that On 02.01.2022 he went to the Lovakothuru village in search of

accused. On 08.01.2022 P.W.3 proceeded to Rajupeta village of Tuni mandal. For further investigation and he recorded the statements of LW.5 and LW.6. The accused obtained Anticipatory bail. On 12.03.2022 he sent the sample bottles for Chemical Analysis. On 27.03.2022 he received the C.E report. Ex.P5 is letter of advise. Ex.P6 is the C.E report. LW.7 filed charge sheet.

16. During the cross examination of PW.3 it was elicited that the scene of offence is an busy road. He did not secure the VRO, VRA for acting as mediators. He denied the suggestion that he did not follow the 100(4) procedure. The sample bottle is used bottle. There is a delay of 70 days for sending sample bottles. He denied the suggestion that they drafted the case for the statistical purpose and that he had foisted a false case.

17. The learned A.P.P argued that the evidence of P.W.1 to 3 coupled with Ex.P1 to P6 , well supports the case of the prosecution and there by the Prosecution proved the guilt of the accused beyond reasonable doubt. Hence, prayed the court to convict the accused.

18. On the other hand the learned Counsel for the accused argued that P.W.2 and 3 are excise officials who are interested in the investigation of this case and their evidence shall not be sole basis to convict the accused. He further argued that the confession made by the accused before the Police officer is hit by Section 25,26 of Indian Evidence Act and it shall not be taken in to consideration and the procedure contemplated under 100(4) is not followed. Hence, he sought for acquittal of the accused.

19. P.W.1 who is the eye witness to the incident did not speak anything about this case. On careful perusal of evidence of P.W.3 who deposed in his evidence that even though they deputed one of the staff members to secure the independent mediators none come forward to act as mediators and also did not mention the names of the mediators whom P.W.2 asked to act as independent mediators in the special report.

20. Further, Chemical analysis report Ex.P3, there is delay of 70 days in sending the sample to chemical analysis Laboratory, Kakinada. However, the said delay was not explained properly, As has been inter alia observed in **S. BABU SAHEB @ BABU Vs STATE OF A.P.[2010(1) ALT (CRL.)32]** and **2002(1) ALT (Crl.) 437(A.P.).**

21. According to Section 100(4) Criminal Procedure Code before making a search the officer or other person shall call upon two or more independent respectable inhabitants of that locality. If such inhabitant of the said locality not willing to be a witness to the search the officer concerned may issue an order in writing to them so to do. But in this case prosecution did not followed the procedure contemplated U/s 100 (4) Criminal Procedure Code and also failed to furnish any cogent and convincing reasons for not securing independent mediators. Therefore it is highly unsafe to rely on the testimony of police officer who is having interest in the prosecution case to convict the accused in the absence of other material evidence on record.

22. Further more the confession made by the accused before the Excise police officials, in the absence independent mediators at the time of arrest of accused and seizure of the I.D.Arrack hit by sec.25,26 of Indian Evidence Act. It is not safe to relay on the evidence of PW.1 to convict the accused. It was held in **Mudavath Mothia Vs State of A.P.(2) 2002(1)ALT (CrL.) 437(A.P.)**, where in Hon'ble High Court of A.P. inter alia held at para 5 as follows: "It was observed that when the excise officials are entrusted with the investigation of cognizable offences then they become equal to police officials. When once they become police officials, the confession recorded by them in the proceedings become in admissible. Therefore, seizure is hit under sec.25, 26 of Indian Evidence Act, 1872". Therefore, It is not to safe to reply on the evidence of P.W.1 and 2 to convict the accused.

23. Though the C.E. report was marked the investigating officer did not produce the samples that were sent to chemical analysis which creates to doubt as to the commission of the offence. Furthermore, the point to be considered is that in this case complainant and the investigating officer is one and the same. Infact, a complainant cannot be an investigating officer. From the evidence it is found that the I/O has not made any effort to secure independent witnesses though it was a busy locality.

24. Therefore in the light of above decision, the evidence of P.W.2 and 3, cannot be sole basis to convict the accused in the absence of other cogent evidence. The seizure was not carried out in accordance with the provisions of section 100(4) Criminal Procedure Code. In the absence of other independent

testimony believing the evidence of investigating officer to convict the accused may leads to miscarriage of Justice.

25. For the reasons stated above, this court is of the considered view that the Prosecution failed to prove the guilt of the accused beyond reasonable doubt. As such this court is inclined to acquit the accused.

25. In the result, the accused is found not guilty for the offence punishable u/s.7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act 2020. Accordingly, the accused is acquitted as per sec.248(1) Cr.P.C., for the said offence. The bail bonds of the accused, if any shall stands cancelled subject to provisions of sec.437-A Cr.P.C.,

Typed to my dictation by the Stenographer, corrected, signed and pronounced by me in the open court, this the 22nd day of April, 2025.

***Addl.Judicial First Class Magistrate
Tuni.***

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution:

P.W.1 : Ginja Lovaraju
P.W.2 : T.Ganesh
P.W.3 : B.Srinivasarao

For Defence : None

EXHIBITS MARKED

For Prosecution:

Ex.P.1 : 161 Cr.P.C statement of P.W.1
Ex.P.2 : FIR
Ex.P.3 : Special report
Ex.P.4 : rough sketch
Ex.P.5 : Letter of advice
Ex.P.6 ; C.E.report

For Defence : NIL

Material Objects

Nil

A.J.F.C.M

CALENDAR AND JUDGMENT**IN THE COURT OF THE ADDITIONAL JUDICIAL FIRST CLASS
MAGISTRATE :: TUNI****C.C.284/2023**

Date of Offence	: 24.12.2021
Date of Report	: 24.12.2021
Date of arrest of Accused	: 24.12.2021
Date of Release of accused on bail	: 14.06.2022
Date of commencement of Trial	: 08.01.2024
Date of close of Trial	: 17.04.2025
Date of sentence or order	: 22.04.2025
Crime No. and Name of the P.S	: Cr.No.284/2023 of S.E.B Tuni P.S
Name of the Complainant	: State : The State Represented by S.E.B. Tuni P.S
Name of the accused	: Karri Nageswararao @Pamayya, S/o.Ramaswamy, at about A/28 years, C/SC-mala, R/o.S.Annavaram village, Tuni village and Mandal.
Offence	: U/Sec.7(B) r/w 8(B) of A.P.P.Act.
Finding	: Found not guilty
Sentence	: In the result, the accused is found not guilty for the offence punishable under Section 7-B r/w 8(B) of A.P. Prohibition Act, 2020 and accused is acquitted under Section 248(1) Cr.P.C for the said charge. The bail bonds of the accused shall stand cancelled after lapse six months.

**A.J.F.C.MAGISTRATE
TUNI.**Copy submitted to : The Hon'ble Chief Judl. Magistrate-Cum-Prl.Sr.Civil Judge,
Rajamahendravaram.

