

CALENDAR AND JUDGMENT
IN THE COURT OF THE VI METROPOLITAN MAGISTRATE, VIJAYAWADA.

C.C. No.654/2022

- 1) Date of Offence : 18.06.2020
- 2) Date of Complaint : 18.06.2020
- 3) Date of Apprehension of accused : --
- 4) Date of Commencement of Trial : 18.11.2022
- 5) Date of Close of Trial : 05.12.2022
- 6) Date of Judgment : 01.02.2023
- 7) Complainant : The State, represented by Sub-Inspector of Police, SEB, Patamata P.S., Vijayawada.
- 8) Name of the accused : Kunchipudi Venkata Leela Prasad, S/o.Late Raja Mohana Rao, aged 52 years, Caste by Kamma, R/o.Postal Colony, patamata, Vijayawada.
- 9) Offences : U/s.Sec.34(a) of AP Excise Act, 1968.
- 10) Plea of accused : NOT GUILTY
- 11) Finding : NOT GUILTY
- 12) Result : In the result, the Accused is found not guilty for the offence punishable under Section 34(a) of A.P. Excise Act and he is acquitted under Section 248(1) of Code of Criminal Procedure for the said offence. The M.O.1 shall be destroyed after appeal time is over. The Bail Bonds of the Accused shall stand cancelled after expiry of Six months, as per the Section 437-A of Cr.P.C.
- 13) Explanation for delay : This case was taken on file on 10.10.2022. Trial was commenced on 18.11.2022 and closed on 05.12.2022. The Judgment was pronounced on 01.02.2023. Hence, the delay.

Sd/- Sri. G.Lenin Babu
VI Addl. Metropolitan Magistrate,
Vijayawada.

**IN THE COURT OF THE VI ADDL. METROPOLITAN MAGISTRATE : :
VIJAYAWADA.**

PRESENT: SRI G. LENIN BABU
VI Addl. Metropolitan Magistrate, Vijayawada.

Wednesday, this the 1st day of February, Two Thousand and Twenty Three.

C.C. No.654/2022.

Between :

The State, represented by Sub-Inspector of Police,
Patamata P.S., Vijayawada.

. . . Complainant.

And

Kunchipudi Venkata Leela Prasad, S/o.Late Raja
Mohana Rao, aged 52 years, Caste by Kamma,
R/o.Postal Colony, patamata, Vijayawada.

... Accused.

This Case is coming before me on 28.12.2022 for final hearing in the presence of the learned **Assistant Public Prosecutor**, for the Complainant/State and **Sri.Sk.S.Basha**, Advocate for Accused, and the matter having stood over for consideration till today, this Court delivered the following :-

J U D G E M E N T

01. The Accused is arraigned before the Court for the offences punishable under Section 34(a) of Andhra Pradesh Excise Act, 1968.

02. The brief averments of the prosecution case are :-

On 18.06.2020 at about 04.00 a.m., on credible information, the Sub-Inspector of SEB Patamata P.S., Vijayawada., along with his staff proceeded to Auto Nagar, Vijayawada, and found the Accused who is proceeding on a Motor Cycle bearing No.AP 16 CL 9348 with mica bag and on seeing the police, the accused skulk away they stopped the accused. On interrogation, the accused confessed that he possessed liquor bottles. Then he opened the bag and found 1. Old Admiral Special VSOP Brandy 180 ML-07 liquor bottles and failed to furnish any license for possession of the said liquor bottles and the Accused disclosed his identity particulars and also said that the above said liquor bottles were brought and to sell at higher rates. Then, the Sub-Inspector informed the Accused that possession and sale of Liquor bottles is an offence punishable under Section 34(a) of A.P. Excise Act, 1968 without any License or permit and drawn one bottle as sample and sent for chemical analysis, which were sealed and affixed identity slips to entire property and sample duly signed by them and the Accused under the cover of Special Report which

was drafted at the scene of offence and detained the Accused and returned to the Police Station along with case property and Accused. Basing on the Special Report, the Sub-Inspector of Police, Patamata P.S., Vijayawada., registered a case in Cr.No.79/2020 under Section 34(a) of Andhra Pradesh Excise Act,1968 and issued notice to the Accused u/s.41-A of Cr.P.C. and sent the samples to the Government Chemical Examiner, Kakinada, who inturn examined the samples, issued an Analysis Report in which he opined that the samples are "INDIAN MADE LIQUOR" and after completion of investigation, the Sub-Inspector filed charge sheet in this case.

03. The case is taken cognizance for the offence punishable under Section 34(a) of Andhra Pradesh Excise Act, 1968.

04. On appearance of the Accused before the Court, copies of the documents were furnished to him as contemplated under Section 207 of Code of Criminal Procedure and he was examined under Section 239 of Code of Criminal Procedure and read over and explained the contents of the charge for the offence punishable under Section 34(a) of Andhra Pradesh Excise Act, 1968 in Telugu to the Accused and he pleaded not guilty and claimed to be tried.

05. On behalf of the prosecution, P.W.1 was examined and Exs.P1 to P5 and M.O.1 were marked. The evidence of L.W.2/K.Madhu, L.W.3/P.Lakshmana Rao was given up by the learned A.P.P.

06. After closure of prosecution evidence, the Accused was called upon to explain the incriminating circumstances appearing against him from the prosecution evidence as contemplated under Section 313 of Code of Criminal Procedure and Accused denied the same and reported no evidence in defence.

07. Heard both sides. Now the point for determination is :-

Whether the prosecution proved the guilt of the Accused for the offence punishable under Section 34(a) of Andhra Pradesh Excise Act, beyond all reasonable doubt?

POINT :-

08. To prove its case, the Prosecution has examined P.W.1 and got marked Exs.P1 to P5 and M.O.1.

09. **P.W.1** is the Sub-Inspector of Police, SEB, Patamata P.S.

10. **Ex.P1** is the Special Report. **Ex.P2** is the First Information Report. **Ex.P3** is the Letter of Advice. **Ex.P4** is the Chemical Analysis Report. **Ex.P5** is the mediators report, dt.21.06.2022. **M.O.1** is the sample bottle of unexpanded portion of Old Admiral VSOP Brandy.

11. It is the case of the prosecution that P.W.1 along with his staff found the Accused in possession of 07 IMFL bottles without any license and they seized the said contraband from the possession of the Accused and drawn samples for analysis purpose and returned to Police Station and he registered a case basing on Ex.P1 issued notice to the Accused u/s.41-A of Cr.P.C. and sent the samples for analysis purpose and after receipt of Ex.P4, the Inspector filed charge sheet in this case.

12. It is the case of defence that the Accused did not commit any offence and he was falsely implicated in this case for statistical purpose.

13. Now, to prove the offence under Section 34(a) of Andhra Pradesh Excise Act, the prosecution must prove that P.W.1 and other staff found the Accused in possession of 07 IMFL bottles without any license, which is prohibited under the Act.

14. At the outset, it is the case of prosecution that P.W.1 and along with his staff proceeded to Auto Nagar, Vijayawada , and saw the Accused in possession of 07 liquor bottles without any license and they detained him and seized the property under Ex.P1/Special Report. P.W.1 deposed that on 18.06.2020 at about 04.00 p.m., he along with other staff proceeded to Auto Nagar, Vijayawada , Vijayawada, and found the Accused in possession of 07 IMFL bottles and they seized the contraband from him under the cover of Ex.P1 and they tried to secure mediators but in vain and took samples from the seized property under M.O.1 returned to SEB, Patamata P.S, along with Accused and the seized property and then he registered a case against Accused basing on Ex.P1 and issued notice to the Accused U/s.41-A of Cr.P.C. and also sent the samples for analysis purpose and after completion of investigation and receipt of Ex.P4/Analysis Report, he filed charge sheet in this case.

15. Now, to prove the offence under Section 34(a) of Andhra Pradesh Excise Act against Accused, the evidence of P.W.1 is relevant. As can be seen from the evidence of P.W.1, admittedly he is Sub-Inspector of Police, SEB, Patamata P.S. So, Ex.P1 which was recorded by Sub-Inspector cannot be believed, to the extent of the confession said to be made by the Accuse, as a confession before a police officer is inadmissible in evidence. When P.W.1 is a police officer, his evidence has to be scrutinized with caution and see whether the seizure of contraband from the Accused was true and made as per the procedure prescribed under law.

16. In the cross examination of P.W.1, he admitted that the scene of offence is a residential area. He did not serve notices to the neighbors of the locality to act as mediators. He did not serve notices to the revenue officials to act as mediators did not serve notices to the revenue officials to act as mediators. He did not serve seizure list to the accused. He did not fill the FSL form at scene of offence. He did not mention the batch number in Ex.P1. He did not sent the sample to the chemical analyst on the same day. Ex.P1 does not contain whose scribed it. He did not examine the person who carried sample to the chemical analyst. He did not drawn samples from each bottle. It shows that P.W.1 did not secure any mediators for the seizure of contraband from the Accused though available near the scene of offence. Further, no written summons were given to any persons to act as mediators as per P.W.1. So, the evidence of P.W.1 shows that he did not follow the procedure prescribed under Section 100(4) of the Code of Criminal Procedure, wherein it mandates that “before making search the officer about to make it shall call upon two or more independent and respectable persons of the locality in which, the place is to be searched to attend and witness the search and may issue an order in writing to them” and 100(5) envisages that “the search shall be made in their presence and the list of things seized shall be prepared by the officer and signed by such witnesses” and Section 100(7) shows that “a copy of the list of things seized shall be given to the persons from whom the property is seized”. But, the evidence of P.W.1 shows that the procedure prescribed under Sections 100 (4), (5) and (7) was not followed while seizing the contraband from the Accused. Admittedly, the scene of offence is a busy locality, but

P.W.1 did not issue any written summons to any witnesses to act as mediators for the seizure of contraband from the possession of the accused, he made only a stray statement that he tried to secure mediators. Under the above circumstances, the evidence of P.W.1 cannot be believed to be trustworthy as he failed to comply with the mandatory provisions under Sections 100 (4), (5) and (7) of Code of Criminal Procedure. When P.W.1 did not secure any mediators, though the scene of offence is a busy locality, it creates a doubt over the evidence of P.W.1 who is a police witness. In the above circumstances, it creates a reasonable doubt over the case of prosecution whether really P.W.1 seized the contraband from the Accused, as he is a police officer and he did not secure any independent mediators, though available near the scene of offence.

17. It is further considering point is that the P.W.1 who is the Informant/De-facto Complainant is the Investigating Officer in this case. At this juncture, it is helpful to rely upon a Judgment given by the **Hon'ble Supreme Court of India in Mohanlal Vs. the State of Punjab in CRIMINAL APPEAL No.1880 of 2011 Dt.16.08.2018 at Para No.15 held that:**

"It was held that the Head Constable being the complainant himself could not have proceeded with the investigation and it was a practice, to say the least, which should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation".

18. The Learned Counsel for the accused submitted that P.W.1 being the Sub-Inspector who was present at the time of offence and he was the investigating officer and as such, it is fatal to the case of the Prosecution. According to the case of the Prosecution, P.W.1 has drafted Ex.P1, took up investigation of the case registered Original F.I.R. vide Ex.P2, sent the sample for chemical analysis, received Ex.P4. P.W.1 was the person who drafted Ex.P1, registered Ex.P2 and he being the investigation officer, certainly it is not proper and correct. The investigation ought to have been done by any other investigating Officer. On this score itself, the investigation is bound to suffer and as such, the entire proceedings will be vitiated.

19. Hence, it is held that the evidence of P.W.1 cannot be believed and accepted to be true as P.W.1 failed to follow the mandatory procedure prescribed under law for seizure of contraband from the Accused. When the evidence of P.W.1 is held to be not trustworthy, and when the alleged seizure of contraband from accused was not made according to the procedure prescribed under law, it creates a reasonable doubt over the case of prosecution and hence, it is held that the prosecution has failed to prove the necessary ingredients for the offence punishable under Section 34(a) of Andhra Pradesh Excise Act against the Accused beyond all reasonable doubt. Hence, the Accused is entitled for benefit of doubt and liable to be acquitted. Accordingly, the point is answered.

20. **In the result, the Accused is found not guilty for the offence punishable under Section 34(a) of A.P. Excise Act and he is acquitted under Section 248(1) of Code of Criminal Procedure for the said offence. The M.O.1 shall be destroyed after appeal time is over. The Bail Bonds of the Accused shall stand cancelled after expiry of Six months, as per the Section 437-A of Cr.P.C.**

Typed to the dictation by the Stenographer, corrected and pronounced by me
in open Court, on this the 1st day of February, 2023.

Sd/- Sri. G.Lenin Babu
VI Addl. Metropolitan Magistrate,
Vijayawada.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR PROSECUTION :

P.W.1 : P.Siva Prasad, Sub-Inspector of Police, SEB, Patamata P.S.

FOR DEFENCE: NIL.

EXHIBITS MARKED

FOR PROSECUTION :

Ex.P1 : Occurrence Report, dt.18.06.2020,
Ex.P2 : First Information Report, dt.18.06.2020,
Ex.P3 : Letter of Advice,
Ex.P4 : Chemical Analysis Report, dt.07.07.2020.

Ex.P5: Mediators report, dt.21.06.2022.

FOR DEFENCE: NIL.

MATERIAL OBJECTS MARKED

FOR PROSECUTION :

M.O.1 is the sample bottle of unexpanded portion of Old Admiral VSOP Brandy.

FOR DEFENCE: NIL.

Sd/- Sri. G.Lenin Babu
VI Addl. Metropolitan Magistrate,
Vijayawada.

