

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE (JUNIOR DIVISION)
GURAZALA**

PRESENT Sri K.V.V. SATYANARAYANA,
Principal Civil Judge(Junior Division), Gurazala
FAC Additional Civil Judge (Junior Division), Gurazala.

Wednesday, this the 16th day of October, 2024.

C.C.No.801/2022

Between:-

Sub-Inspector of police, Dachepalli P.S.

... Complainant

And

Pulipogu Krishna Sagar, S/o.Mariyadanam, Age 34 Years, Srinagar Village of
Dachepalli Mandal, Guntur District AP

... Accused

This case is coming before me on 09-10-2024 for final hearing in the presence of learned Assistant Public Prosecutor for the State and of Sri K.Ch.Koteswara Rao, Learned Advocate for the Accused and on hearing both the sides, this matter having stood over for consideration till this day, this Court delivered the following:-

J U D G M E N T

1. The Sub-Inspector of Police, Dachepalli P.S., filed charge sheet against the above named accused in Cr.No.302/2021 for the offences under Sec.34(a) (i) of A.P. Excise Amendment Act.

2. **The brief averments in the charge sheet are as follows: -**

The alleged offence took place at Srinivasapuram cross road, Srinagar Village of Dachepalli Mandal. It is maintained in the charge sheet that on 31-07-2021, E.Bala Nagi Reddy of Dachepalli P.S., arrested the accused who is a resident of Dachepalli Village as he was found in possession of liquor without any license or permit. It is maintained that on 31-07-2021 at morning time accused went to Damarcherla Village of Telangana State and purchased 41 liquor bottles from a wine shop in Damarcherla, placed them in a plastic bag and was returning to Srinagar Village on foot and when he reached Srinivasapuram cross roads he noticed the police conducting check and tried to escape from the scene by leaving the bag but was caught hold of by LW.5/E.Bala Nagi Reddy SI of Police Dachpalli PS., with the help of his staff PC.4173-S.Venkatramnaik, PC.6696-P.Venkateswarlu, PC.6766-G.Nagababu, HG.1205-Sk.Rasool, (LWs.1 to 4). It is further maintained the

accused is resident of Srinagar Village and has been doing the illegal business of selling liquor in Srinagar and surrounding Villages, at higher price than on MRP, by obtaining the same from Telangana State at MRP. On verifying the plastic bag, L.W.5/E.Bala Nagi Reddy, found 41 liquor bottles and seized the same and prepared police proceedings as no mediators were available to draft mediatorsnama and basing on the police proceedings, he registered FIR in Cr.No.302/2021 for the offences under Sec.34(a) of A.P.Excise Act. During the course of investigation, he secured the presence of PC.4173-S.Venkatramnaik, PC.6696-P.Venkateswarlu, PC.6766-G.Nagababu, HG.1205-Sk.Rasool, as L.Ws.1 to 4 and recorded their detailed Sec.161 Cr.P.C statements, and arrested the accused and sent him to judicial remand. Later, L.W.5 sent one bottle from the seized contraband to Chemical Examiner, Prohibition and Excise Department, Guntur and obtained chemical analysis report, which opined that the sample contained Alcohol of Indian Liquor. After completion of investigation, he handed over the investigation to LW.6/L.Sudheer Kumar, S.I of Police, Dachepalli P.S., he filed charge sheet before this Court.

3. This court took cognizance against the accused for the alleged offences under Section 34(a)(i) of AP Excise Amendment Act.
4. On appearance of accused, copies of case documents were furnished to him in compliance of section 207 of Cr.P.C and he was examined under Sec.239 of Cr.P.C for the allegations made against him under Sec.34(a) of A.P. Excise Act, 1968 charge is framed for offence under 34(a) of A.P. Excise Act. The contents were explained to him in Telugu. Having understood the same, he denied the commission, pleaded not guilty and claimed to be tried.
5. During the course of trial, the prosecution, in order to establish the guilt of accused, examined E.Bala Nagi Reddy, SI of Police, (LW 5) as PW1 and relied on Exhibits **P1** to **P5**. The learned Assistant Public Prosecutor has given up the evidence of PC.4173-S.Venkatramnaik, PC.6696-P.Venkateswarlu, PC.6766-G.Nagababu, HG.1205-Sk.Rasool,, (LWs 1 to 4) and the prosecution evidence is closed.

6. Then this court examined the accused under section 313 of Cr.P.C and the incriminating circumstances appearing in evidence against him were put to him for which he denied, stating that he has no complicity with the crime and reported no evidence in his defence. Hence Defence evidence is closed.
7. Heard the learned APP and the counsel for accused and the case is posted for Judgment. Perused the material available on record.
8. Now the point before this court, stood for consideration is: -

Whether the prosecution proved the accusation against the accused under Section 34(a) of AP Excise Act beyond all reasonable doubt?

POINT:

9. The prosecution chose to examine LW.5 as PW 1, who is the investigating officer. P.W.1 in his chief-examination reiterated the contents of the charge sheet with an addition that 06-180 M.L., Mansion House Brandy bottles, 13-180M.L., Good Day Prestige Whisky bottles, 07-180M.L., MC Dowells Whisky bottles, 13-90M.L., Old Admiral Brandy bottles, 02-180 M.L., Imperia Blue Whisky bottles in total 41 bottles were seized and Police Proceedings, FIR, Rough Sketch and Chemical analysis report vide RC No.2169/2021 Dt.16-12-2021 were marked as Exs.P1 to P4 through P.W.1. P.W.1 further deposed that he made proposal to the Deputy Commissioner, P & E, Guntur for confiscation of the seized contraband and accordingly received confiscation Order. Confiscation order vide C.No.2902/SEB/GTR (R)/2022, dt.18-05-2022 was marked as **EX. P.5**, through P.W.1.
10. During the cross-examination by defence counsel, P.W.1 admitted that the scene of offence is a busy locality with vehicles passing by and Srinagar Village is about 2 KMS away from the scene of offence. PW.1 further stated that Srinagar Village has a revenue office and revenue officials are available and he did not issue any summon to any person to act as mediator. P.W.1 further stated that he is the complainant and investigating officer in this case. He further stated that he prepared the police proceedings, FIR, Rough Sketch and charge sheet in this case and he did not enquire in the wine shop where accused alleged to have purchased the contraband in

Telangana State and stated that he prepared the police proceedings at the scene of offence and it took about one hour to complete the same. PW.1 further admitted that no independent witness is examined in this case. P.W.1 denied the suggestions that he conducted table investigation and that the case was foisted against the accused for statistical purpose.

11. From the evidence of P.W.1, it is clear that the investigation agency did not secure the presence of mediators, and the reason assigned for the same is not satisfactory, as the scene of offence being Srinivasapuram cross road, Srinagar Village of Dachepalli Mandal, people do exist as the time of offence as it is not a late hour at night or too early at the dawn and admittedly it is a busy locality, so he could have secured the presence of any revenue official as mediator. It is stated that P.W.1 tried to secure the presence of mediators but he failed to produce any written requisition made by him to any person to act as mediators. Hence the seizure made is not in accordance with Section 100 (4) of Cr.P.C and the same was held by the Hon'ble High Court of Andhra Pradesh in **Yedduri Sreenivasulu vs State of Andhra Pradesh 2002 (1) ALD Cri 347** wherein while dealing with the application of section 100(4) Cr.P.C it has been held that

“non passing of written order to procure presence of a witness makes the entire search conducted by the prosecution vitiated, being without jurisdiction and as a necessary corollary.”

12. Further, in order to bring home the guilt of the accused, the prosecution did not examine the inhabitants of that locality to say that accused was found in possession contraband illegally. In the case of **S.Babu saheb @babu Vs The State of A.P'** reported in '**2010(1) A.L.T(Crl.) 32 A.P'** the lordship held that:supuser

"When they are conducting the search in a colony or at a place wherein there is possibility of securing the presence of independent mediators, the Excise officials or Prohibition officers are bound to take the local respectable independent inhabitants. They must make sincere efforts to secure local respectable mediators, that is the mandate of section 100(4) of Cr.P.C. As referred to in the above provisions, the Excise officials are also authorized to issue an order in writing asking them to act as

mediators under sub section (4) of section 100 of Cr.P.C. The object of section 100 of Cr.P.C is to ensure confidence in the neighbours and in the public in general that a genuine search has been made and incriminating material has been really found and not planted." Thus, when there were no mediators secured and examined it creates a doubt in the mind of this court as to the guilt of the accused.

13. Furthermore, as rightly contended by the learned counsel for the defence that no incriminating evidence is produced to prove the offence except oral testimony of P.W.1. In **Adapa Ramababu@Ramu Vs State of A.P 2014 (1) ALD (Cri)966 (A.P).**, their lordship held that

"whatever be the truthfulness or otherwise of the evidence of Police officials, it is not at all safe to convict an individual on the basis of that. It is only in extreme cases where other evidence is not available and the suspicion that surrounds the evidence of a police officials is almost removed, that the court can rest its conclusion on the evidence of the police officials." Hence the said two reasons i.e., non-procurement of mediators and uncorroborated evidence of Investigating Officer are fatal to the case of the prosecution.

14. In view of the above discussion, this court is of the considered view that prosecution could not establish the guilt of the accused beyond all reasonable doubt. Hence, they are entitled to acquittal. Accordingly, the point is answered, against the prosecution.
15. **In the result**, the accused is not found guilty for the offence under Section 34(a) of AP Excise Act, and he is hereby **acquitted** under section 248(1) of Cr.P.C. The bail bonds of accused shall remain in force for a period of six months from the date of this judgment. MOs.1 to 5 and un-marked case property, if any, shall be destroyed after the expiry of appeal period.

Dictated to the Stenographer, Grade-III, typed by her, corrected and pronounced by me on this the 16th day of October, 2024 in open court.

Sd/-Sri.K.V.V.Satyanarayana
Principal Civil Judge (Junior Division), Gurazala.
Additional Civil Judge (Junior Division), Gurazala.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution:

P.W.1 : E.Bala Nagi Reddy

For Defence: None

DOCUMENTS MARKED

For Prosecution:

Ex.P.1 : Police Proceedings

Ex.P.2 : FIR

Ex.P.3 : Rough Sketch

Ex.P.4 : Analysis Report vide RC.No.2169/20210, dt.16-12-2021

Ex.P.5 : Confiscation Proceedings vide C.No.2902/SEB/GTR (R)/2022, dt.18-05-2022

For Defence: Nil

Material Objects: M.Os.1 to 5

Sd/-Sri.K.V.V.Satyanarayana
Principal Civil Judge (Junior Division), Gurazala.
Additional Civil Judge (Junior Division), Gurazala.

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FAC ACJ(JD), GZL

CALENDAR AND JUDGMENT
IN THE COURT OF THE ADDITIONAL CIVIL JUDGE (JUNIOR DIVISION)
GURAZALA

C.C.No.801/2022

Date of:

Offence	Report of complainant	Apprehension of accused	Date of remand/ 41-A Cr.P.C Notice	Release on bail	Commencement of trial	Closure of trial	Sentence or order
31-07-21	31-07-21	31-07-21	31-07-21	04-08-21	18-09-24	18-09-24	16-10-2024

Between:

State: Sub-Inspector of Police, Dachepalli P.S . . . **Complainant**

And

Pulipogu Krishna Sagar, S/o.Mariyadanam, Age 34 Years, Srinagar Village of Dachepalli Mandal, Guntur District AP

. . . **Accused**

Crime Number	302/2021 of Dachepalli P.S
Offence	Sec.34(a) of A.P.Excise Act
Plea of Accused	Not guilty
Finding of the Court	Found not guilty
Reasons for delay	Due to non production of witnesses

Judgment:

In the result, the accused is not found guilty for the offence under Section 34(a) of AP Excise Act, and he is hereby **acquitted** under section 248(1) of Cr.P.C. The bail bonds of accused shall remain in force for a period of six months from the date of this judgment. MOs.1 to 5 and un-marked case property, if any, shall be destroyed after the expiry of appeal period.

Sd/-Sri.K.V.V.Satyanarayana
Principal Civil Judge (Junior Division), Gurazala.
Additional Civil Judge (Junior Division), Gurazala.

Copy submitted to :

The Hon'ble Chief Judicial Magistrate-Cum-Principal Senior Civil Judge, Guntur.

Copy to: The Superintendent of Police, Guntur Rural.

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FAC ACJ(JD), GZL