

IN THE COURT OF PRINCIPAL JUDICIAL MAGISTRATE OF FIRST CLASS,
PITHAPURAM.

Present: Smt.M.Sudha Rani,
Principal Judicial Magistrate of First Class, Pithapuram

Thursday, the 14th day of September, 2023.

CALENDER CASE NO.493/2022

Between:

State: Sub-Inspector of Police, U.Kothapalli Police Station.

...Complainant

And

Gurajapu Srinu, S/o.Arjuna Rao, A/35 years, C/Settibalija, Raavivaaripadu,
H/o.Ponnada Village, U.Kothapalli Mandal. Aadhaar No.546891440943.

... Accused

This case is coming on 12.09.2023 for final hearing before me in the presence of Learned Assistant Public Prosecutor for complainant-State and of Sri V.Venkatesh, Advocate for Accused, and the 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, U.Kothapalli Police Station filed charge sheet against the accused in Cr.No.115/2020 on its file for the offence punishable under section 7(A) r/w 8(B), 8(e) of A.P.Prohibition Act.

2. Brief facts of the charge sheet are that on 05.06.2020 at about 6:15 P.M, on receipt of information about the preparation of ID arrack illegally at an manufacturing unit (batti) at near Raavivaripadu, H/o.Ponnada Village premises, PW2 along with PW1, LW2/PC 3035, proceeded to the spot and found the accused when he tried to flee away from the batti along with one plastic can on seeing the police party by leaving the jaggery wash and some batti articles, and then police caught hold him and on enquiry he revealed his identity particulars as accused in this case and confessed that he is preparing ID arrack to sell the same at higher price, and that PW2 arrested the accused, seized 10 liters of I.D arrack after drawing the sample of half litre of I.D.arrack, plastic drum-1, iron drum-1 and destroyed the jaggery wash under the cover of occurrence report. Basing on the occurrence report, PW2 registered a case in Cr.No.115/2020 under section 7(A) r/w 8(b) of A.P.Prohibition Act, 1995, recorded the statements of witnesses, served 41-A Cr.P.C notice on the accused. After receipt of analysis report, and on completion of investigation, PW2 filed charge sheet against the accused.

3. This case was taken on file against the accused for the offence under Section 7(A) r/w 8(B) of A.P.Prohibition Act.

4. On appearance of the accused, copies of documents were furnished to the accused as required under section 207 Cr. P. C.

5. Accused was examined under section 239 of Code of Criminal Procedure. A charge under section 7(A) r/w 8(B) of A.P.Prohibition Act is framed against the accused, read over and explained to accused in Telugu. Having heard and understanding the same, accused pleaded not guilty and claimed to be tried.

6. In support of the case of the prosecution, P.Ws.1 & 2 are examined and Exs.P1 to P5 and MO1 are marked.

7. After closure of prosecution evidence, accused was examined under Section 313 Cr.P.C by explaining the incriminating material available against him for which he denied the same. Accused did not choose to examine any defence witnesses and no documents were marked on behalf of the defence.

8. Heard both sides. Perused the oral and documentary evidence on record.

9. Now the point for determination is,

Whether the prosecution is able to establish the guilt of the accused for the offence under section 7(A) r/w 8(B) of A.P.Prohibition Act beyond all reasonable doubts?

10. **POINT:**

PW1, Boddepalli Anil Kumar, Police Constable deposed that on 05.06.2020 at about 6:45 P.M, on receipt of information regarding manufacturing of ID liquor, he along with LW2/PC 3035 accompanied PW2 to the outskirts of Ravivarapupadu and found a person besides casulina thope manufacturing ID arrack on a oven and on seeing the police he tried to escape and then they caught hold of him and on enquiry he revealed his identity particulars as accused in this case, and basing on his confession, PW2 seized 100 litres of FJ Wash, 10 litres of ID arrack, Iron drum, plastic drum from the place of offence and destroyed the jaggery wash at the place of offence and drawn half litre of ID arrack under occurrence report prepared by him, and obtained the signature of accused on occurrence report, and SI of Police signed on it and brought the accused along with seized property to the police station and SI of Police examined him.

During his cross-examination, he admitted that the signatures of accused were not obtained on the occurrence report and he did not signed on the occurrence report and that the scene of offence is a busy locality. He stated that they did not enquire from whom the accused purchased the ID arrack. He denied the suggestion that no ID arrack was seized from the possession of accused and that no confession was recorded at the place of offence and that the sample bottle was planted at police station and deposing false. He denied the suggestion that he did not accompany the SI of Police to the scene of offence and that his signature was not obtained on the occurrence report.

11. PW2, K.Pardha Saradhi, SI of Police deposed as on the same lines of PW1 regarding conducting of raid, arresting of accused and seizure of property after drawing sample under the cover of occurrence report. PW2 further deposed that basing on Ex.P1 occurrence report, he registered a case in Cr.No.115/2020 U/Section.7(A) r/w 8(B), 8(e) of A.P.Proh. Act, sent the accused for judicial remand, recorded the statement of witnesses, sent the sample to the chemical examiner for analysis, and destroyed the remaining ID arrack after obtaining the proceedings from SDPO and after completion of investigation, he filed charge-sheet in this case.

During his cross-examination, he admitted that date is not mentioned on MO1 sample bottle and he prepared Ex.P1 occurrence report and he did not measure the ID arrack. He denied the suggestion that the scene of offence is a busy locality and he did not enquire from whom the accused purchased the ID arrack and he did not serve any witness summons to VRA, Village Revenue Officer and village elders. He denied the suggestion that he did not try to secure mediators and he adds that no one were available by that time and cannot say the names of those persons whom they tried to secure mediators. He denied the suggestion that no ID arrack was seized from the possession of accused and no confession was recorded at the place of offence and that the sample bottle was planted at the police station and that he filed the false case against the accused for statistical purpose and due to political rivalries and that Ex.P1 is prepared at the police station and that he is deposing false and denied the suggestion that LW1 & LW2 his staff did not accompany him to the scene of offence, he could not obtain their signatures on Ex.P1 and the identity slips.

12. The learned APP argued that by examining PWs 1 & 2 and by marking Ex.P1 to Ex.P5 and MO1, the prosecution established the guilt of the accused beyond reasonable doubt and prays to convict the accused according to law.

13. The defence counsel argued that there are no independent witnesses except the police officials to establish that the accused is manufacturing and selling the ID arrack and that while conducting raid and seizure PW2 failed to follow the prescribed procedure as contemplated U/sec.100 (4) of Cr.P.C. He further argued that the accused is no way concerned with the offence and that MO1 is planted for the purpose of this case. Thus, he prays to acquit the accused under benefit of doubt.

14. As can be seen from the record, the search, seizure and arrest was conducted by PW2 alone and P.W.1 is Police Constable, who accompanied PW2 during the course of search and seizure. On a careful perusal of the evidence of P.Ws 1 and 2, it is quite evident that PW2 failed to follow the prescribed procedure as contemplated U/sec.100(4) Cr.P.C during the search and seizure. The learned counsel for the accused rightly pointed out that P.W.1 failed to give the details of the persons whom they approached to act as mediators. Admittedly, no summons were served on any one calling them as mediators. P.Ws 1 and 2 failed to refer the names of the persons who refused to act as mediators. If the fact that their efforts to secure the mediators were went in vain is true, what prevented the Police Officials to take appropriate legal action against the persons refused to assist him. PW2 failed to follow the procedure prescribed U/sec.100 (4) Cr.P.C. It is expedient to have a glance on section 100 (4) of Cr.P.C. for better appreciation of the evidence in this case.

15. "Sec.100 (4) reads as follows:: Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do." As per the Sec 100 (4) of Cr.P.C. when the independent mediators in that locality are not available, the police

officials has to record the same and issue an order in writing as prescribed above. It is pertinent to note here that P.W.1 who accompanied PW2 to the scene of offence at the time of raid categorically stated in his cross-examination that the scene of offence is a busy locality, but they did not try for mediators at the scene of offence. Moreover, PW2 admitted that the scene of offence is a busy locality, but did not enquire from whom the accused purchased the ID arrack and the persons whom they tried to secure mediators.

16. It is settled law that in the absence of independent mediators the entire procedure vitiates the case. I feel it is just and proper to go through the relevant case law in this regard. The Hon'ble High Court of A.P in the case of "**S.BABU SAHEB @ BABU VS THE STATE OF A.P**", reported in "**2010(1) A.L.T. (CrI.) 32 A.P**", wherein it is held that "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 persons to act as mediators". In **Pothabathula Abbulu V. State of AP in CrI.R.C.No.1758/2005 dated 6.7.2021**, wherein it is held that lack of Punch witness at the time of seizure- conviction on the basis of such evidence would not be appropriate.

17. It is clear from the record that no such procedure was adopted by the Investigating Officer though the scene of offence is a busy locality. It is settled law that in the absence of independent mediators, the entire procedure vitiates the case.

18. As seen from the record, no special circumstances are explained by P.W.2 what compelled him to proceed under Ex.P1 occurrence report, though the scene of offence is not an isolated area and the time of arrest is not the odd hours and it is at 6:45 P.M in a broad day light. It is pertinent to note that the reason shown by P.W.1 and PW2 for their failure to secure the mediators is not convincing, as it was admitted by P.W.2 that the scene of offence is a busy locality. Moreover, PW1 did not sign on occurrence report. Thus, his presence by the time of Ex.P1 is doubtful and it is fatal to the case of prosecution. For all these reasons, it is not safe to rely upon

the testimony of P.W.1 and 2. Hence, the search and seizure of I.D. arrack from the possession of the accused is not proved. P.W.1 is Constable, who accompanied PW2 at the time of the alleged search and seizure. Except the evidence of P.W.1 who is subordinate to P.W.2, and that there is no other material evidence is available on record to prove the search and seizure in this case.

19. As per the chemical analysis report the same was received in that office on 24.06.2020, whereas the sample was drawn by PW2 on 05.06.2020. Thus, the delay in sending sample for chemical analysis report is not properly explained and it is fatal to the case of the prosecution. As rightly contended by the defence counsel, sample bottle which was marked as MO1 is not fresh bottle. Thus, accuracy of Ex.P4 analysis report is doubtful, as sample was not drawn in fresh and clean sample bottle, and is fatal to the case of the prosecution.

20. With the above said observation, I safely come to conclusion that the prosecution miserably failed to establish the guilt of the accused for the offence under section 7(A) r/w 8(B) of A.P.Prohibition Act, beyond all reasonable doubt and the accused is entitled for acquittal. Accordingly point is answered.

21. In the result, accused is found not guilty for the offence under Section 7(A) r/w 8(B) of A.P.Prohibition Act. Accordingly, accused is acquitted for the said offence under Section 248(1) Cr.P.C. Bail bonds of accused shall be in force for further period of six months from the date of judgment as per Section 437-A of Cr.P.C and thereafter shall stand cancelled. MO1 shall be destroyed after appeal time is over.

Typed to my dictation to the stenographer, corrected and pronounced by me in open court, this the 14th day of September, 2023.

Sd/- Smt.M.Sudha Rani
Principal Judicial Magistrate of First Class,
Pithapuram.

APPENDIX OF EVIDENCE **WITNESSES EXAMINED**

For Prosecution:

PW.1/20.07.2023 : Boddepalli Anil Kumar, Police Constable
PW.2/18.08.2023 : K.Pardha Saradhi, SI of Police

For Defence: None.

EXHIBITS MARKED

For Prosecution:

Ex.P1/PW2 : Occurrence report.
Ex.P2/PW2 : FIR in Cr.No.115/2020 of U.Kothapalli PS

Ex.P3/PW2 : Letter of Advice

Ex.P4/PW2 : Chemical Analysis Report

Ex.P5/PW2 : Attested copy of proceedings from SDPO, dated: 10.10.2020

For Defence: Nil.

MATERIAL OBJECTS MARKED

MO1: Sample bottle.

Sd/- Smt.M.Sudha Rani
Principal Judicial First Class Magistrate,
Pithapuram.

//t.c.f.b.o //

PJFCM

CALENDAR AND JUDGMENT

IN THE COURT OF THE PRINCIPAL JUDICIAL MAGISTRATE OF FIRST CLASS,
PITHAPURAM.

C.C.No.493/2022

Date of offence	:	05.06.2020
Date of report or complaint	:	05.06.2020
Date of apprehension of the accused	:	05.06.2020
Date of Release on bail	:	05.06.2020
Date of commencement of trial	:	20.07.2023
Date of close of trial:	:	18.08.2023
Date of sentence or order	:	14.09.2023
Explanation of delay or remarks	:	Due to non production of witnesses by the prosecution.
Name of the Complainant	:	State: Sub-Inspector of Police, U.Kothapalli P.S.
Name of the accused	:	Gurajapu Srinu, S/o.Arjuna Rao, A/35 years, C/Settibalija, Raavivaaripadu, H/o.Ponnada Village, U.Kothapalli Mandal. Aadhaar No.546891440943.
Offence	:	Under Section 7(A) r/w 8(B) of A.P.Prohibition Act
Finding	:	Found not guilty.
Sentence	:	

In the result, accused is found not guilty for the offence under Section 7(A) r/w 8(B) of A.P.Prohibition Act. Accordingly, accused is acquitted for the said offence under Section 248(1) Cr.P.C. Bail bonds of accused shall be in force for further period of six months from the date of judgment as per Section 437-A of Cr.P.C and thereafter shall stand cancelled. MO1 shall be destroyed after appeal time is over.

Sd/- Smt.M.Sudha Rani
Principal Judicial Magistrate of First Class,
Pithapuram.

Copies submitted to:

1. The Hon'ble Chief Judicial Magistrate, East Godavari, Rajamahendravaram.
2. The Superintendent of Police, Kakinada.

//t.c.f.b.o //

PJFCM