

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

PRESENT Ms.PARIMI ALEKYA,

Additional Civil Judge (Junior Division), Gurazala.

Friday, this the 07th day of February, 2025.

C.C.No.830/2022

Between:-

State: Inspector of Police, Karempudi PS

. . . Complainant

And

Challa BhuLakshmi, W/o.Late Raja Rao, Age 38
Years, Vaddera Colony, Vinukonda Road,
Karempudi Village and Mandal

. . . Accused

This case is coming before me on 06-02-2025 for final hearing in the presence of learned Assistant Public Prosecutor for the State and of Sri K.Sk.Nagur Mastan, 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

01. The Sub Inspector of Police, Karempudi Police Station has filed a charge sheet against the accused in Crime No.91/2020 for the offences punishable under Section 34(a) of AP Excise Act.

02. The brief facts of the case of the prosecution is as follows :

The accused hatched a plan to purchase liquor bottle at Telangana State on MRP and to bring the same to Andhra Pradesh for selling it at higher rates and thereby she sent her elder son namely Challa Ajay (juvenile in conflict with law) to Telangana State who purchased the liquor bottles and brought them to their house and the accused kept the bottles in her house. On 26-06-2020 at about 06.00 p.m., LW3/K.Appala Naidu along with LWs 1 and 2/Ch.Kiran Babu, G.Siva Kumari on receipt of information rushed to the house of the accused and on seeing them, accused tried to escape but however LWs 1 to 3 apprehended the accused and seized Mansion House XO brandy 180ml- 50 bottles from the possession of the accused under the cover of police proceedings and no mediators were available. Basing on the said police proceedings he registered a case in Crime No.91/2020 punishable under Section 34(a) of AP Excise Act.

During the course of his investigation, LW3/K.Appala Rao has examined and recorded the statements of LWs 1 and 2/Ch.Kiran Babu, G.Siva Kumari, visited scene of offence, issued Section 41-A CrPC notice to the accused and the juvenile in conflict with law by informing the accused to produce the juvenile in conflict with law before Juvenile Justice Board upon receipt of summons. Later, LW3

handed over the case to LW4/G.Ravi Krishna who in turn sent the material objects for chemical analysis and accordingly obtained the chemical analysis report from the Government Chemical Examiner, wherein it was opined that the sample is illicit liquor. After completion of investigation, LW4 filed charge sheet against the accused for the offences punishable under Section 34(a) of AP Excise Act. Hence the prosecution case in nutshell.

3. The case was taken on file for the offence punishable under Section 34(a) of AP Excise Act against the accused.

4. On appearance of the accused, she was furnished with the copies of documents, as required under Section 207 of Criminal Procedure Code.

5. The accused was examined under Section 239 of Criminal Procedure Code. Charge under Section 34(a) of AP Excise Act has been framed against the accused, read over and explained to her in vernacular, for which she pleaded not guilty and claimed to be tried.

6. During the course of trial, the prosecution has examined PW1 and got marked Exs.P1 to P4 and MO1.

7. After the closure of the prosecution evidence, the accused was examined under Section 313 of Criminal Procedure Code and the incriminating circumstances appearing in the evidence of the

prosecution witnesses is read over and explained to her, for which she denied the same and reported no defence evidence.

8. Heard both sides.

9. The point for determination is:

“Whether the prosecution brought home the guilt of the accused for the offence punishable under Section 34(a) of AP Excise Act beyond reasonable doubt.”

10. **POINT :**

(a) To substantiate its case, prosecution examined PW1 and got marked Exs.P1 to P4 and MO1. PW1 is the police personnel, who said to have detected the crime.

(b) Unfolding the prosecution case, PW1 deposed that on 20-06-2020 at about 05.30 p.m. he received information as to illegal transportation of contraband and he along with his staff LW 1 and 2/Ch.Kiran Babu, G.Siva Kumari proceeded to the scene of offence and noticed the accused with one white bag and that on seeing them she tried to run away from the scene of offence, but however they apprehended her. That upon enquiry by PW1, she revealed her identity particulars and confessed that she used to sell the liquor bottles and also showed the bag which contained the liquor bottles and that upon verification by PW1, he found Mansion House XO brandy 180ml-50 bottles in the possession of the accused. Upon

being questioned by PW1 the accused failed to give accountability for possession of the liquor bottles and therefore PW1 seized the contraband from the possession of the accused. Accordingly, PW1 prepared police proceedings and on basis of the police proceedings he registered the case in crime No.91/2020 under Section 34(a) of AP Excise Act, issued notice under Section 41-A to the accused. Further he examined and recorded the statements of LWs 1 and 2/Ch.Kiran Babu, G.Siva Kumari and prepared rough sketch map. Thereafter he handed over the case to LW4/G.Ravi Krishna who sent the sample bottle for chemical analysis to Regional Prohibition and Excise Laboratory, Guntur and received report. On completion of investigation, LW4 filed charge sheet against the accused for the offences punishable under Section 34(a) of AP Excise Act.

(c) During the cross examination of PW1, he categorically stated that he has not mentioned the vehicle number on which he went to the scene of offence and has not examined the persons present near the scene of offence and also scene of offence is a busy locality. He further stated that he cannot say the batch numbers of the seized contraband and he is the complainant and investigating officer in the present case and also that he did not try to secure the presence of the mediators.

(d) Coming to the appreciation of evidence on record, the evidence of P.W.1 is nothing but replica of contents of charge sheet and who deposed as per the record. P.W.1 during his chief-examination stated as to the procedural aspect as to registering the case, sending the sample to the Chemical Examiner for analysis and filing of charge sheet after completion of investigation. PW1 admitted that the scene of offence is a busy locality and he has not tried to secure the presence of the mediators and also he did not examine the persons present near the scene of offence.

(e) As per the case record, there are no independent witnesses for the case of the prosecution, P.W.1 is the Police official and therefore the evidence has to be scrutinized carefully and cautiously. The evidence of P.W.1 could be considered for the procedural aspect to complete the investigation only.

(f) Adverting to the plea of defence counsel about arrest of accused and seizure of contraband in the absence of mediators, the prosecution case has entirely failed to mention reasons as to why the independent mediators could not be secured during the seizure of the alleged contraband from the accused and that PW1 in his cross examination stated that he has not tried to secure the presence of mediators and he did not examine the persons present near the scene of offence, which makes it highly suspicious to

believe their efforts to secure the presence of the mediators. According to the Judgment of Hon'ble High court of AP in Yedduri Srinivasarao v/s State of AP 2002(1) ALD criminal 347, wherein, while dealing with the application of Section 100(4) of Criminal Procedure Code, 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. As per the case of prosecution though they tried to secure the mediators, none came forward to act as mediators for the seizure of contraband. When the place of offence is busy locality where there is movement of the public and there is every possibility to public to act as mediators, it is highly improbable to believe the version of prosecution that none came forward to act as mediators for the seizure of contraband. In such circumstances it is not safe to place reliance on the interested testimony of PW.1. All these facts lead to inference that the police officials have failed to secure two or more independent or respectable inhabitants of locality for seizure of contraband. Consequently, the seizure of contraband as alleged from Ex.P1 – police proceedings vitiated.

(g) As per the evidence of P.W.1, it is evident that P.W.1 did not make efforts to secure the presence of any independent witness or

Village Sarpanch, Ward Members, or V.R.O to act as mediators. Further more, LW4/Sub Inspector of Police who is the complainant in the case is the investigating officer. In this context, it is pertinent to refer to the observations of Hon'ble High Court of AP in Podhaturi Satyam Reddy Vs. State of AP reported in 2001(1) ALT (Crl.) 66 AP wherein his lord ship held that:

“The position of law is well settled. In this case PW.1 was informant rather the complainant. He himself took up the investigation and filed charge sheet. Certainly, this is an infirmity in this case. This certainly reflects the credibility of the investigation done in the matter. The prosecution cannot rely upon the evidence of PW.1 solely. The courts below were not correct in relying upon this evidence. Hence, the benefit of this procedural irregularity is given to the accused”.

(h) The facts and circumstances of the above referred case are similar to the case on hand. In the present case as can be seen from Ex.P1, LW4/Sub Inspector of Police is the investigating officer and complainant in the case. As rightly pointed out by the defence counsel it certainly effects the investigation. Even in a case between Gyan Singh and Ors v. State of U.P reported in 1995 Supp (4) SCC

658, the Hon'ble Apex Court observed that conviction could not be based on the uncorroborated testimony of an official witness.

(i) In view of the above decision, it can be rightly concluded that mere registering the crime and securing the analysis report in favour of the prosecution by itself does not prove the case of prosecution. Except the evidence of P.W.1 who is the police official and highly interested in securing the conviction for the accused, there is no other independent evidence on record to bring home the guilt of the accused.

(j) Taking into consideration of the overall circumstances of the case, the prosecution has miserably failed to bring home the guilt of the accused with cogent and convincing evidence and therefore, the accused is entitled for acquittal for the offence with which she is charged. In the light of above discussion, this point is answered against the prosecution.

11. In the result, the accused is found not guilty for the offence punishable under Section 34(a) of AP Excise Act and accordingly she is acquitted of the same under Section 248(1) of Criminal Procedure Code. The bail bonds of the accused and her sureties, if any shall remain in force for a period of six months from the date of

this judgment as per Section 437A of Criminal Procedure Code.

MO1 shall be destroyed after expiry of appeal time.

Typed to my dictation by the Stenographer-III, corrected and pronounced by me in the Open Court, this the 07th day of February, 2025.

Sd/-Ms.Parimi Alekya

Additional Civil Judge (Junior Division),

Gurazala.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution:

PW1: K.Appala Naidu

For Defence: None

DOCUMENTS MARKED

For Prosecution:

Ex.P.1 : Police Proceedings

Ex.P.2 : First Information Report

Ex.P.3 : Rough Sketch

Ex.P.4 : Chemical Analysis Report vide RC.No.1192/2020,
dt.20-07-2020

For Defence:

NIL

Material Objects:

M.O.1 : Sample bottle

Sd/-Ms.Parimi Alekya
Additional Civil Judge (Junior Division),
Gurazala

//True Copy//

ACJ(JD), GZL

CALENDAR AND JUDGMENT
IN THE COURT OF THE ADDITIONAL CIVIL JUDGE
(JUNIOR DIVISION)::GURAZALA
C.C.No.830/2022

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
20-06-20	20-06-20	20-06-20	20-06-20	--	31-01-25	31-01-25	07-02-25

Between:-

State: Inspector of Police, Karempudi PS

. . . Complainant

And

Challa BhuLakshmi, W/o.Late Raja Rao, Age 38
Years, Vaddera Colony, Vinukonda Road,
Karempudi Village and Mandal

. . . Accused

Crime Number	91/2020 of Karempudi P.S
Offence	Section 34(a) of AP Excise Act
Plea of Accused	Not guilty
Finding of the Court	Found not guilty
Reasons for delay	Due to non production of witnesses

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Judgment:

In the result, the accused is found not guilty for the offence punishable under Section 34(a) of AP Excise Act and Section 188 of Indian Penal and accordingly he is acquitted of the same under Section 248(1) of Criminal Procedure Code. The bail bonds of the accused and his sureties, if any shall remain in force for a period of six months from the date of this judgment as per Section 437A of Criminal Procedure Code. MO1 shall be destroyed after expiry of appeal time.

Sd/-Ms.Parimi Alekya

**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.

//True Copy//

ACJ(JD), GZL