

C.C. No.707/2022
Dt. 08-11-2024

Calendar and Judgment
District of Kurnool

Calendar of cases tried by the Judicial Magistrate of First Class, Nandikotkur

Report or Complaint	Apprehensi on of Accused	Release on Bail	Commence ment of trial	Close of trial	Explanation of delay and remarks
03-04-2022	04-04-2022	08-04-2022	26-09-2024	26-09-2024	Prosecution did not produce witnesses

Complainant	State represented by Sub- Inspector, Nandikotkur Police station
Accused	Shikari Venkatesh, aged 26 years, S/o Gopal, H No 19-29-4-4, Shikaripeta, Nandikotkur Town
Offence	7-A r/w 8(e) of A.P. Prohibition Act
Finding	Accused is found not guilty for the offence punishable under section 7-A r/w 8(e) of A.P. Prohibition Act
Sentence	Accused is acquitted under section 248 (1) of Cr.P.C.

Sd/-V.Divya

Judicial Magistrate of First Class,
Nandikotkur.

Copy submitted to: The Hon’ble Chief-Judicial Magistrate, Kurnool.

**IN THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS,
NANDIKOTKUR**

Present: Smt V.Divya,
B.A, LL.B(Hons.), LL.M
Judicial Magistrate of First Class
Friday, this the 08th day of November, 2024

C.C. No. 707/2022

Between:

State represented by
Sub- Inspector,
Nandikotkur

... Complainant

And

Shikari Venkatesh,
aged 26 years,
S/o Gopal,
H No 19-29-4-4,
Shikaripeta,
Nandikotkur Town

.... Accused

This case is coming before me for adjudication in the presence of learned Assistant Public Prosecutor for prosecution and Sri M.V.Balanagiah Guptha, Advocate for accused. Upon hearing them, as the matter has stood over for consideration till this day, this Court made the following:

JUDGMENT

1. Sub- Inspector, Nandikotkur Police Station has laid charge sheet against the accused for the offence under 7-A r/w 8(e) of A.P.Prohibition Act.
2. Brief facts of the prosecution case is that on 03-04-2022 at 10.00 AM, While conducting raids, police caught hold of accused in possession of 3 Liters of ID Arrack and when questioned, accused stated that he is about to sell said arrack for profit. To that effect, police prepared a Police Proceedings and basing on it, registered a case in Crime No.51/2022 for the offence under section 7-A r/w 8(e) of A.P.Prohibition Act and seized 3 Liters of ID Arrack after collecting sample. Then the police arrested the accused and sent him to Judicial custody. Thereafter, sample was sent for chemical analysis. During the course of investigation, Chemical Examiner opined that the sample of seized property is illicitly distilled liquor unfit for human consumption and injurious to health".

After completion of investigation, charge sheet filed against accused for the offence under section 7-A r/w 8(e) of A.P.Prohibition Act.

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

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

5. Accused is examined under section 239 of Cr.P.C. he denied the contents of charge sheet and documents relied on by the prosecution. After hearing and on consideration, a charge for the offence punishable under section 7-A r/w 8(e) of A.P. Prohibition Act has been framed, read over and explained to the accused in Telugu for which accused denied the charge, pleaded not guilty and claimed to be tried.

6. During the trial, on behalf of prosecution, N.Rameswaraiah examined and Exs. P1 to 5 and M.O.1 is marked.

7. After closure of prosecution evidence, Accused is examined under section 313 Cr.P.C and incriminating material available against the accused was read over and explained in Telugu. Having understood, accused pleaded not guilty. When Accused is called to enter upon defence evidence, he did not choose to examine any defence witnesses and no documents were marked on behalf of the defence.

8. Heard arguments on both sides.

9. Now the point for determination is: -

Whether the prosecution has proved the guilt of accused for the offence punishable under section 7-A r/w 8(e) of A.P. Prohibition Act beyond all reasonable doubts?

10. Learned Asst. Public Prosecutor submitted that-

a) Accused was found in possession of 3 Liters of ID Arrack in contravention of law and in support of the same, Police Proceedings prepared by the police.

- b) Oral and documentary evidence clearly established the case of prosecution.
- c) Evidence on record is cogent and clinching to prove the guilt of accused beyond all reasonable doubts. Hence, prays to punish the accused.

11. Per contra, learned counsel for defence submitted that-

- a) There are several contradictions in between Police Proceedings and the evidence deposited before the Court.
- b) Police did not follow section 100 Cr.P.C while seizing the property.
- c) Police registered false case for statistical purpose and Accused is falsely implicated the accused.
- d) Prosecution failed to establish the guilt of accused beyond all reasonable doubts and so Accused is entitled for benefit of doubt.

12. Considering the entire material available on record and on scrutinizing the oral and documentary evidence and arguments submitted by both the counsels, this Court is of the following view:

- A. Prosecution examined the excise official as P.W.1 and got marked Police Proceedings as Ex.P1, original First Information Report as Ex.P.2, Chemical Analysis report as Ex.P.3, attested copy of destruction proceedings dt:30.03.2023 as Ex.P4, attested copy of destruction panchanama dt:12.04.2023 as Ex.P5 and sample bottle as M.O.1
- B. PW1 in his evidence deposed that on 03-04-2022, While conducting raids, police went to Shikaripeta, Nandikotkur and there caught hold of accused in possession of 3 Liters of ID Arrack and prepared Ex.P1 Police Proceedings and submitted Ex.P2 original F.I.R to the Court and basing on Ex.P1, collected sample and seized remaining property and sample was sent for chemical analysis and later received Ex.P3 chemical analysis report dated 30-03-2023
- C. PW1 in his cross examination deposed that they did not try to secure

official witnesses as mediators and he further deposed that Ex.P1 did not disclose the colour of utensil in which seized property was found.

D. As per Ex.P.3, M.O.1 is illicitly distilled liquor unfit for human consumption and injurious to health", unfit for human consumption and injurious to health.

E. Sec.100 Cr.P.C specifically states that,

"It is the duty of the investigating officer to secure any responsible local inhabitant to act as mediator for search and if at all any person refused to act as mediator, written requisition can be given to said person and if he refused even after that he can be punished in accordance with law."

F. As per the evidence of prosecution, it is clear that the investigating agency failed to exercise the duty vested upon them to secure any local habitants or officials available nearby to act as mediators. It is also clear from the evidence that no written requisition or summons were issued to local inhabitants to act as mediators which raises clear suspicion with regard to the case of prosecution.

G. Law is settled with regard to sole testimony of a police official. Hon'ble Apex Court has time and again reiterated the importance of considering the credence of the witness.

H. Hon'ble Apex Court in **Tahir Vs. State (1996) 3 SCC 338** held that-

"No infirmity attaches to the testimony of police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by

them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence does not in any way affect the creditworthiness of the prosecution case."

- I. Said legal position was again reiterated by Hon'ble Apex Court in **Naresh @ Satya Vs. State 2024:DHC:3202** wherein it was held that-

"Conviction can be recorded on the sole testimony of police officials without corroboration from a public witness, if it inspires confidence."

- J. No doubt it is settled legal position that merely on the ground that no independent witnesses were present at the time of search, evidence of police officials need not be looked into with suspicion but it is equally important that evidence of police officials shall be scrutinized on par with other witnesses to inspire confidence.

- K. Apparently, there are no efforts made by the investigating officers to secure any of the local inhabitants. Excuse given by the police that they made efforts but could not secure any mediators has no basis as there is no evidence on record to establish that police served notices but the local inhabitants refused to attend as mediators.

- L. In view of the settled legal position, I hold that the investigating agency has not followed the mandatory procedure prescribed under section 100(4) Cr.P.C and the evidence given by the police did not inspire confidence. Hence, I hold that the prosecution failed to prove the guilt of the accused beyond all reasonable doubts. Hence this is the fit case to grant benefit of doubt to the accused.

13. In the result, Accused is found not guilty for the offence punishable under section 7-A r/w 8(e) of A.P. Prohibition Act and accordingly Accused is

acquitted under section 248 (1) of Cr.P.C. Bail bonds of the 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. M.O.1 shall be destroyed after the lapse of appeal time.

Typed to dictation, corrected and pronounced by me in the open Court, this the 08th day of November, 2024

Sd/-V.Divya

**Judicial Magistrate of First Class,
Nandikotkur.**

APPENDIX OF EVIDENCE WITNESSES EXAMINED

FOR PROSECUTION	FOR DEFENCE
N.Rameswaraiah	- NIL-

DOCUMENTS MARKED

FOR PROSECUTION	FOR DEFENCE
Ex.P-1: Police proceedings Ex.P-2: First Information Report Ex.P-3:Chemical Analysis Report Ex.P-4:Attested copy of destruction proceedings dated 30-03-2023 Ex.P-5:Attested copy of destruction proceedings dated 12-04-2023	- NIL-

MATERIAL OBJECTS MARKED

M.O.1 : sample bottle

Sd/-V.Divya

**Judicial Magistrate of First Class,
Nandikotkur.**