

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE
:: PEDDAPURAM::**

PRESENT: Sri.G.HARSHA VARDHAN, Judicial First Class Magistrate-cum-
Principal Civil Judge(Junior Division), Peddapuram.
day, the 23th day of April, 2024
CALENDER CASE NO 1302 of 2022

Between :

STATE – The Sub-Inspector of police,
Gandepalli police station. **(Cr.No.04/2022)** Complainant

AND

Vanum Durgayya, s/o Sathiyya, A/30 yrs,
C/Settibalija, J.Kothuruvillage Jaggampeta mandal. Accused.

This case having come up for hearing before me on this day in the presence of Sri D.Nagaraju, Assistant Public Prosecutor for prosecution and Sri .Ch.K.Durga RAO, learned Advocate for the 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. This is an offence of illegally transporting of I.D.Arrack for the purpose of sale. This is an offence of boot legging activities under Section 7(B) r/w, 8(B) of A.P.P.Act-2020
2. The averments of the charge sheet in brief are as follows:

On 02.01.2022 at about 04:00 PM, while LW.5/S.Lakshmi Kantham , SI of police was presenting in the police station he received information about carrying and selling I.D arrack at outskirts of Gandepalli Village and Mandal, then SI of police along with his staff and two mediators were proceeded to the scene, there they found one male person manufacturing ID arrack the SI of police the accused in presence of mediators and examined the place, found 05 lts of ID arrack in 2 plastic covers, then SI of police arrested the accused person and seized the same and lifted 1000 ML, of I.D.Arrack for analysis and got affixed slip on it. Basing on the mediator report, LW.5/S.Lakshmi Kantham, SI of police registered as a

case in Cr.No.163/2022 for the offence under Section 7(B) r/w 8(B) of A.P.P.Act-2020. After receiving the analysis report as "it is unfit for human consumption and injurious to health" and after completion of entire investigation, LW.5/S.Lakshmi Kantham, SI of police filed charge sheet. Hence charge.

LW.5/S.Lakshmi Kantham, S.I of police preserved sample of 500 ML of arrack was separated from the seized plastic covers in plastic bottles as sample for onward transmission to the Government Chemical Examiner of Prohibition and Excise, Kakinada for Chemical Analysis.

LW.5/S.Lakshmi Kantham, S.I of police brought the accused person along with the case property, seized sample to the Gandepalli Police Station Basing on the mediators report registered a case in Cr.No.163/2022 U/Section 7(B) r/w 8(B) of A.P.P.Act-2020 of Gandepalli Police Station and submitted the copies of FIR to all officers concerned.

LW.5/S.Lakshmi Kantham, SI of police received analysis report the Chemical Examiner analyzed the sample and opined in the sample is illicitly distilled liquor under for human consumption and injurious to health. The proposal sent to Government Laboratory of Prohibition & Excise, Kakinada. After completion of entire investigation, LW6/Y.Ganesh Kumar, Sub-Inspector of police filed the charge sheet against the accused for the offence under Section 7(B) r/w. 8(B) of A.P. Prohibition Act- 2020.

3. The case is taken on file for the offence under Section 7(B) r/w. 8 (B) of A.P. Prohibition Act- 2020 against the accused.
4. On appearance of the accused, copies of case documents are furnished to the accused under section 207 Cr.P.C.
5. Subsequently, the accused is examined under Section 239 of Criminal Procedure Code and charge were framed for the under Section 7(B)

r/w.8(B) of A.P. Prohibition Act-2020 and read over and explained the contents of charge to the accused in Telugu language. After understood, the accused is denied the same and pleaded not guilty and claimed to be tried.

6. In the course of trial, the prosecution got examined P.Ws.1 and 2 and got marked Exs.P1 to 4 and marked and material object is marked as MO.1.
7. After closure of prosecution evidence, the accused are examined under section 313 Cr.P.C explaining the incriminating evidence against the accused that has come on record through the prosecution witnesses, which the accused are denied and reported no defence evidence.
8. Heard the Assistant Public Prosecutor for the state and the counsel for the accused and perused the evidence, oral and documentary, on record.
9. **Now the point for determination** is whether the prosecution proved the guilt of the accused for the offence punishable under Section 7(B) r/w 8 (B) of A.P. Prohibition Act-2020, beyond all reasonable doubt?
10. To bring home the guilt of the accused, the prosecution got examined P.Ws.1 and 2 got marked Exs.P1 to P4 .
11. One Voleti Chinna Veeraraju, VRO appeared as PW1 stated on 28.05.2021 at about 2:30 PM., SI of police, Gandepalli informed to act as a mediator. Himself, SI of police, VRA, and police staff went to outskirts of K.Gopalapuram Village and found male person manufacturing of ID arrack. On seeing them they tried to escape from us, but police caught them. On enquiry they came to know that , their name as **Vanum Durgayya**, identified the accused herein. Verified the persons at the scene of offence they found 05 lts of ID arrack in 1 polythene cover, Then

police lifted 1 sample of 500 ML ID arrack from packets for analysis purpose. Accordingly, he drafted mediator report and it is marked as Ex.P1.

12. In cross examination he admitted that police did not serve any written summons they informed to act as a mediator orally. He did not serve any written summons they informed to act as a mediator orally. He did not obtain any written permission about acting as mediator in this case in movement register. Police did not tired to secure any independent witness at the scene. He did not mention the physical features of accused in Ex.P1. He denied the suggestion that, accused is no way concern to this case.

13. LW.5/S.Lakshmi Kantham, SI of police appeared as PW2 stated that on 05.09.2023 at about 6:00 AM, he received information about contraband at outskirts of Uppalapadu Village, he secured mediators went to the scene and found one person manufacturing ID arrack, on seeing them he tried to skulk away but invain. On enquiry he revealed his name as **Vanum Durgayya,** on verification they found 05 lts of ID arrack in 1 polythene cover . He drew sample of 500 ML ID arrack from the contraband for analysis report. Samples were sent to chemical analysis report. Basing on the strengthen of the material he registered FIR in Cr.No.129/2022 under Section 7(B) r/w.8(B) of APP Act 2020, FIR is marked as Ex.P2, he send the letter of advice, Ex.P3 is letter of advice, he received chemical analysis report from analysis expert, Ex.P4 is chemical analysis report. Basing on the material he filed the charge sheet against the accused.

14. He admitted that the scene of offense is busy locality. They did not obtain any photographs at the scene. He denied the suggestion that , they never visit the scene of offense prepared the mediator report at police

station and taken the signatures on the same. He denied that accused has no way concern to this case and he filed the case against the accused for statistical purpose.

14. This court relied upon the judgment in Mudavath Mothia Vs State of A.P delivered by the Hon'ble High Court of A.P, held that "when the Excise officials are entrusted with the investigation of cognizable offence, they become police officials and the Excise officials can never say that they are not the police officials. When once they become police officials the confession recorded by them with the proceedings is in admissible. Moreover, the panchanama prepared by the Excise officials is hit by Section 25, 27 of Indian evidence act, 1872 and Section 161 of Cr.P.C. The benefit if any arises due to any invalidity of the investigation, only goes to the accused. Once the panchanama is hit by Section 25 and 27 of the Indian evidence Act and Section 161 of Cr.P.C, and when the independent witnesses are not examined by the prosecution, the prosecution theory of seizing the sachets from the custody of the accused has to be looked with suspicion. The non examination of independent mediator is fatal to the prosecution version. The seizure proceedings drafted also cannot be considered in view of the bar under Section 25 and 27 of Indian Evidence Act, 1872 and Section 161 of Cr.P.C".

14. Further, P.W.2 did not made any effort for securing the presence of mediators, neither the constable examined nor any document is filed to the effect of asking any third party to act as mediator or refusal of that third party to act so. Thus, except the self serving testimony of complainant personnel, no independent witness is examined as to seizure of the alleged contraband from the accused and the sample from that alleged contraband. So, the prosecution failed to follow procedure under Section 100(4) Cr.P.C. Hence, in the absence of any corroborative

evidence from independent source as to the recovery of the alleged illicitly distilled liquor from the possession of the accused. In this case the investigating officer and informant are same person. The Court did not find it safe to conclude affirmatively on the basis of the self serving testimony of P.W.1 and 2 that the accused committed the offence punishable under Section 7(B) r/w 8(B) of A.P. Prohibition Act-2020. So, the accused is entitled for acquittal. As a consequence, the Court is of the finding that the prosecution failed to prove the guilt of the accused for the offence punishable under Section 7(B) r/w 8 (B) of A.P. Prohibition Act, beyond all reasonable doubt. Accordingly, the point is determined.

15. In the result, is **not found guilty** for the offence punishable under Section 7(B) r/w 8 (B) of Andhra Pradesh Prohibition (Amendment) Act - 2020. Consequently accused are **acquitted** under section 248(1) Cr.P.C. The M.O.1 shall be destroyed, after expiry of appeal time. Bail bonds of the Accused shall in force for a period of six months, in view of section 437-A of Cr.P.C.

Typed to my dictation by the Stenographer Grade-III, corrected and pronounced by me in the open court on this the 23th day of April, 2024

J.F.C. Magistrate-cum
Peddapuram.

APPENDIX OF EVIDENCE

Witnesses Examined

For Prosecution:-

P.W.1 : 28.02.2024 : Voleti Chinna Veeraraju, VRO.

P.W.2 : 07-03-2024 : S.Lakshmi Kantham SI of police

For Defence:- None.

Exhibits marked

For Prosecution:-

Ex. P1 : 07-03-2024 : Mediators Report

Ex. P2 : 22.06.2023 : FIR

Ex. P3 : 05.09.2023 : Letter of advice

Ex. P4 : 07-03-2024 : Chemical analysis report.

For Defence:- Nil.

J.F.C. Magistrate-cum
Peddapuram.

**CALENDAR AND JUDGMENT
IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-CUM-
PRINCIPAL CIVIL JUDGE (JUNIOR DIVISION):: PEDDAPURAM::**

PRESENT: Sri.G.HARSHA VARDHAN,
Judicial First Class Magistrate-cum- Principal Civil Judge(Junior Division),
Peddapuram.

Tuesday, the 23th day of April, 2024

CALENDER CASE NO.04/2022

Date of	:	
Offence	:	Prior to 05.09.2023
Complaint	:	05.09.2023
Appearance of accused	:	02.04.2024
Arrest of the accused	:	05.09.2023
Released on bail	:	11.09.2023
Commencement of trial	:	14.06.2024
Closure of trial	:	11.07.2024
Sentence/Order	:	23.04.2024
Reasons for delay	:	No delay.
Name of the complainant	:	The state, rep by the Sub-Inspector of police, Gandepalli Police Station (Cr.No. 04/2022)
Name of the accused	:	
Offence	:	under Section 7(B) r/w 8(B) of A.P. Prohibition(Amendment) Act-2020.
Plea of the accused	:	Not guilty.
Finding and Sentence	:	The Accused is not found guilty for the offence punishable under Section 7(B) r/w 8 (B) of Andhra Pradesh Prohibition (Amendment) Act -2020. Consequently accused are acquitted under section 248(1) Cr.P.C. The MO.1 shall be destroyed, after expiry of appeal time. Bail bonds of the is shall in force for a period of six months, in view of section 437-A of Cr.P.C.

J.F.C. Magistrate
Peddapuram.

Copy submitted to the Honourable Chief Judicial Magistrate, East Godavari, Rajamahendravaram.

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J.F.C. Magistrate-cum
Peddapuram.

