

FORM-A 2(a) CC NO-56/2022

**IN THE COURT OF THE ADDL. CIVIL
JUDGE(JR.DIV)-CUM- JUDICIAL MAGISTRATE
FIRST CLASS(A. Mishra), BALANGIR**

**PRESENT: Miss Arghyarupa Mishra,B.A.LL.B(H)
Judicial Magistrate First Class, Balangir
JO Code:- OD-01011**

Date of Judgment :03.07.2026

2(a)CC No. 56/2022

(R.N.125/2022)

Trial No.1063/2025

(Arising out of Excise Station, Balangir PR No.13/2022-2023)

Complainant	State of Odisha
Represented by	Sri Suryakanta Bag, Ld. APP & Miss Arundhati Sahu, Ld. APP
Accused	1.Sarathi Bhue S/o- Late Sidheswar Bhue At- Sialbahali, PS-Sadar, Dist-Balangir
Represented by	Sri B.Mishra, & his associates, Ld. Advocate, Balangir.

FORM-B

Date of Offence	17.05.2022
Date of FIR/Advance PR	17.05.2022
Date of Charge sheet/F.P.R	20.05.2022
Date of Framing of Charge	10.11.2022
Date of commencement of evidence	18.04.2026
Date of which judgment is reserved	Does not arise
Date of the Judgment	03.07.2026
Date of the Sentencing Order, if any	Nil

Accused Details:	
Rank of the Accused	A1
Name of the Accused	Sarathi Bhue
Date of Arrest	17.05.2022
Date of Release on Bail	19.05.2022
Offences charged with	u/s- 52 (a) of Odisha and Excise Act
Whether Acquitted or convicted	Acquitted
Sentence imposed	Not arise
Period of Detention undergone during Trial for purpose of section 428, CrPC	No
Status of Accused person: The Accused person is on bail.	

JUDGMENT

1. The accused person stands charged and prosecute for the commission of the offence punishable U/S. 52(a) of Odisha and Excise Act.

2. The case of the prosecution in a nutshell is that :

On 17.05.2022 while the informant was posted as Inspector of Excise station at DMU, Balangir. On the same day at about 09.30 A.M, he along with other excise staffs were conducting patrolling duty in the areas of Sialbahali under Sadar PS of Balangir. The accused person namely Sarathi Bhue, s/o- Late Sidheswar Bhue of village Sialbahali under Sadar PS

of Balangir was selling ID liquor in the chicken shop of Sialbahali. On suspicion they detained him and on search they found 30 liters of ID liquor in the plastic bucket. Then he prepared the seizure list at the spot in the presence of witnesses and the same was read over and explained to the accused and the witnesses and they also put their signature after understanding the contents of it. One copy of the seizure list was handed over to the accused person at the spot. Thereafter he submitted the PR.

3. The plea of accused person is one of complete denial and false implication.

4. The point for determination in this case is as follows:-

- (i) Whether on 17.05.2022 at 09.30 A.M village of Sialbahali, PS - Sadar, District- Balangir 30 liters of ID liquor in the plastic bucket. were seized from the exclusive and conscious possession of the accused and thereby he committed an offence punishable U/s. 52(a) of Odisha and Excise Act?

5. In order to prove its case, prosecution has examined one witness in total PW1 is the informant as well as the IO. Defence has not examined any witnesses neither has adduced any documentary evidence to repudiate the charge leveled against the

accused. Prosecution has adduced certain documents marked as exhibits which are more fully described at the foot of the judgment.

5. To warrant a conviction u/s. 52(a) of Odisha and Excise Act, the prosecution must prove that the accused was in exclusive and conscious possession of 30 liters of ID liquor in the plastic bucket without any license or permit for such possession.

PW1 who is the informant of Excise station at DMU, Balangir deposed that on the same day at about 09.30 A.M, he along with other excise staffs were conducting patrolling duty in the areas of Sialbahali under Sadar PS of Balangir. The accused person namely Sarathi Bhue, s/o- Late Sidheswar Bhue of village Sialbahali under Sadar PS of Balangir was selling ID liquor in the chicken shop of Sialbahali. On suspicion they had detained him and on search had found 30 liters of ID liquor in the plastic bucket. They had conducted the blue litmus paper test for which the blue litmus paper turned red and had also conducted hydrometer test. Then they had found temperature to be 88°F, Indication 80.2° and strength 50.5UP. Thereafter they had conducted the smell test and the smell was found to be similar to the ID liquor. From the above test and from my departmental experience she had come to know that the seized liquor was ID

liquor. Then he collected the sample in a clean bottle and sealed the same by means of paper and lac and also obtained the signature of the witnesses. The remaining liquor pouches were destroyed at the spot due to the portability problem. Then he prepared the seizure list at the spot in the presence of witnesses and the same was read over and explained to the accused and the witnesses and they also put their signature after understanding the contents of it. He proved the seizure list vide Ext.P1/PW1 and his signature thereon as Ext.P1/1/PW1. He proved the Spot map vide Ext.P2/PW1 and his signature thereon was marked as Ext.P2/1/PW1. He proved the hydrometer chart vide Ext.P3/PW1 and his signature thereon was marked as Ext.P3/1/PW1. He proved the litmus paper vide Ext.P3/2/PW1. One copy of the seizure list was handed over to the accused person at the spot. Thereafter he submitted the PR.

In his cross examination, he had stated that she had no prior acquaintance with the accused person. He admitted that the spot was a busy place and that he could not say about the surrounding areas of the spot. He could not say the manufacturing date, batch, number, shape and size of the seized articles. The blue litmus paper test turned red on coming into contact with any acidic substance. The Hydrometer test varied

with temperature. He admitted that the seized articles are not produced before the court. He could not say the entry number of the Malkhana register. He had not filed any documents showing his duty on that day. There were no outsiders present at the spot apart from the charge sheeted witnesses.

6. During the course of argument the learned defence counsel argued that there is no independent corroboration and evidence of the official witnesses are full of contradictions, prosecution failed as a whole and the accused may be acquitted. On the other hand, learned A.P.P. argued that reliance can be placed upon the evidence of the official witnesses and accused may be convicted. In such circumstances, law is well settled that reliance can be placed upon the version of the official witnesses if their evidence is found to be cogent, clinching and credible and in a case u/s. 52 (a) of Odisha and Excise Act. The presence of the accused over the contraband articles constitute the offence, for which the aspect of the possession should be brought in clear and cogent terms leaving any ambiguity or doubt.

7. Now, the entire case of prosecution is based upon the evidence of the official witness i.e. who is IO as well as the informant of this case and. Law is well settled that conviction can be based on the evidence of official witnesses, if the same is found to be consistent

and credible. Even in absence of the independent witness, the evidence of official witness can be assessed and accepted. However, it appears from the evidence of P.W.1 that 30 liters of ID liquor in the plastic bucket was seized from the exclusive and conscious possession of the accused which he had without any license or authority. But the seized pouches which were recovered from the exclusive and conscious possession of the accused were not produced in the court. That apart, prosecution has not come up with any explanation or justification for none production of the seized articles in the Court. Therefore, obviously, the prosecution has conducted the investigation in a most perfunctory manner. Besides it is the duty of the prosecution to produce the seized articles during trial, but they failed to do so. Further, the independent witness to the seizure has stated that nothing was seized in his presence and he has put his signature on the seizure list at the instance of the excise officials. At this stage it is difficult to know as to recovery of the seized excisable article from the exclusive and conscious possession of the accused. Hence, it cannot be safely said that the excisable articles was recovered from the exclusive and conscious possession of the accused on the relevant day in absence of any independent corroboration as

well as non production of articles before court.

8. The next point is to ascertain whether the recovered liquid substance was liquor or not. On perusal of the evidence it is observed that the official witnesses examined have stated that the recovered article was nothing but liquor. The OIC of excise has stated during his cross examination that he did not send the seized liquor for chemical examination. The OIC of Excise should have made all endeavors to get the same tested it through a chemical analyst. **In Minaketan Muduli Versus State of Orissa 2002 (II) O.L.R. 647** the prosecution should make all the endeavors to get the seized material tested by the chemical analysis. That may be regarded the surest test to establish that the seized material is nothing but any kind of liquor. In the present case at hand P.W.1 has not sent the liquor for its chemical examination which is surest test for identification of the liquor.

9. The Hon'ble High Court of Orissa in the case of **Jhadia Naik V. State** reported in 2010 (46) OCR 659, vide Para-6 has observed inter-alia that:- *“In cases of this nature where substantive sentence of imprisonment is compulsory after conviction, a heavy duty is cast upon the prosecution to establish the case beyond any reasonable doubt.”*.

10. From the above discussions, it is found that the evidence of prosecution witnesses is wholly inconsistent, non-corroborative and doubt in respect of the alleged recovery and seizure, especially, when the entire case revolves round the seized articles. For all the aforesaid reasons, it is found that a doubt is created as regards to the alleged conscious and exclusive possession of the accused over the seized articles. That apart, it is the settled principle of law that in case of offence punishable with substantive imprisonment some amount of independent corroboration is required to prove the allegation leveled against the accused. However, in the instant case prosecution has failed to adduce any independent corroboration to prove the alleged offence against the accused.

11. In view of aforesaid observations, this court is of considered opinion that the prosecution has failed to prove its case against the accused beyond all reasonable doubts. As a result the accused is found not guilty for the commission of offence u/s. 52 (a) Odisha and Excise Act and he is acquitted there from u/s. 248(1) of CrPC. He is discharged from his bail bond forthwith along with surety.

The seized articles be destroyed after four months of expiry of statutory period of appeal, if no

appeal, is preferred and in case of appeal same shall be dealt with as per direction of appellate Court.

Enter the case as a mistake of fact.

**Judicial Magistrate First Class,
Balangir
Dt.03.07.2026**

The judgment is typed to my dictation, corrected by me and pronounced in open court today i.e. **3rd day of July, 2026** under my signature and seal of this court.

**Judicial Magistrate First Class,
Balangir**

FORM-C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES		
A. Prosecution Witnesses		
RANK	NAME	NATURE OF EVIDENCE
P.W.1	Pramod Kumar Panda	Informant as well as the IO
B. Defence Witness, if any:		
RANK	NAME	NATURE OF EVIDENCE

D.W.1	Nil	
C. Court Witnesses, if any		
RANK	NAME	NATURE OF EVIDENCE
C.W.1	Nil	
LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. Prosecution Exhibits		
Sl. No.	Exhibit Number	Description
1	Ext.P1/PW1	Seizure list
2	Ext.P1/1/PW1	Signature of PW1 on Seizure list
3	Ext.P2/PW1	Spot map
5	Ext.P2/1/PW1	Signature of PW2 on Spot map
6	Ext.P3/PW1	Hydrometer Chart
7	Ext.P3/1/PW1	Signature of PW3 on hydrometer Chart
8	Ext.P3/2/PW1	Litmus paper
B. Defence Exhibits, if any		
Sl. No.	Exhibit Number	Description
	Nil	
C. Court Exhibits, if any		
Sl. No.	Exhibit Number	Description
	Nil	
D. Material Objects:		
Sl. No.	Material Object	Description
	Nil	

**Judicial Magistrate First Class,
Balangir
Dt.03.07.2026**