

**IN THE COURT OF ADDITIONAL JUDICIAL FIRST CLASS MAGISTRATE
CHODAVARAM**

Present : Smt.G.Swarna
Additional Judicial Magistrate of First Class,
Chodavaram

Thursday, this the 31st day of August, 2023

CALENDAR CASE No.1106/2022

BETWEEN:

State represented by Sub-Inspector of Police, A.Koduru
Police Station.

... Complainant

AND:

Sammenga Mahalaxmi, S/o. Late Dalayya, 56 years, Yatha,
Coolie, Singannadorapalem Village, K.Kotapadu Mandal.

... Accused

This case is coming before me on 29-08-2023 for final hearing in the presence of Learned Assistant Public Prosecutor for the complainant and of Sri K.A.Naidu, Advocate for the accused and having stood over for consideration on this day and this Court delivered the following:-

J U D G M E N T

1. The Sub Inspector of Police, A.Koduru Police Station filed this case in Crime No.321/2020 alleging that accused has committed the offence punishable under Section 7(B) r/w. 8(B) of A.P.Prohibition and Amendment Act, 2020.

2. ***The facts of the prosecution case in brief is that:***

On 23-11-2020 morning on receipt of credible information, while LW.1/Head Constable secured his staff LW.2/Police Constable and LW.3/Home Guard, rushed to the outskirts of Singannadorapalem Village, K.Kotapadu Mandal at about 11:00 hrs, apprehended the Accused with the assistance of LW.2 and LW.3 when he was possessing the ID arrack for selling

purpose. LW.1 when asked the Accused to show license of the Government to possess and selling the ID Arrack but he did not show any license. On that, LW.1 seized one yellow colour plastic can containing 5 liters of ID Arrack, from his possession worth Rs.1,000/- under cover of an Occurrence report, since no persons are available to act as mediators. Later, LW.1 to 3 brought the Accused along with seized contraband to the Police Station, A.Koduru and handed over to LW.5/Sub Inspector of Police for further action.

3. LW.5/Sub Inspector of Police registered the above occurrence report as a Case in Cr.No.321/2020 under Section 7(B) r/w. 8(B) of Prohibition (Amendment) Act 2020 of A.Koduru Police Station and investigated into it.

4. During the course of investigation, LW.5 examined LW.1 to 3 and recorded their statements u/s. 161(3) Cr.P.C. and sent the Accused for remand and also forwarded the material objects to LW.4 for chemical analysis and after obtaining the analysis report, filed charge sheet against the accused.

5. This Court took cognizance of the offence under Section 7(B) r/w. 8(B) of A.P.Prohibition and Amendment Act, 2020 against accused. On appearance of accused, copies of case papers as required under Section 207 of Cr.P.C. were furnished to accused.

6. Accused was examined under Section 239 of Cr.P.C., for which he denied the offence. Charge under Section 7(B) r/w. 8(B) of A.P.Prohibition and Amendment Act, 2020 was framed against accused, read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

7. In order to establish its case, prosecution has examined PW.1 to PW.3 and got marked Exs.P1 to P3 and MO.1. Learned Assistant Public Prosecutor has given up the evidence of G.Srinivas (LW.4). Even inspite of issuance of summons, neither summons on LW.1 served nor LW.1 is produced before this Court. Since the Investigating Officer was already examined and two more witnesses who participated in the raid were already examined, the evidence of LW.1 is closed by this Court.

8. After closure of prosecution evidence, accused was examined under Section 313 of Cr.P.C., with regard to the incriminating material appearing in the evidence of prosecution witnesses, for which he denied and on enquiry, reported no defence evidence.

9. Heard learned Assistant Public Prosecutor for complainant and learned counsel for accused and perused the material on record.

10. Now, the point that arise for determination is:-

Whether prosecution is able to establish the guilt of Accused beyond all reasonable doubt for the alleged offences punishable U/sec. 7(B) r/w. 8(B) of A.P.Prohibition and Amendment Act, 2020 ?

11. **POINT:**

To prove the case of prosecution, P.W.1 to PW.3 were examined and Exs.P1 to P3 and MO.1 were marked. P.W.1 is the Police Constable, PW.2 is the Home Guard and PW.3 is the Sub Inspector of Police/Investigating Officer.

12. The learned Assistant Public Prosecutor argued that three

witnesses were examined by the prosecution, the prosecution witnesses corroborated with each other and proved the seizure of contraband from the possession of accused. He argued that the sample is tested and proved to be ID liquor, the accused is proved to be in possession of ID liquor and so, the prosecution proved the case against the accused and he prays to convict the accused.

13. Prosecution Per contra, the learned defence counsel argued that prosecution did not examine any independent witnesses, the Investigation Officer did not secure any mediators at the scene of offence though the scene of offence is a busy locality. He argued that the investigation officer failed to follow the procedure under Section 100(4) Cr.P.C. for search and seizure and Ex.P3 is Chemical Analysis Report which was marked through Investigating Officer, Chemical Analyst was not examined. He argued that the prosecution failed to prove the case against accused and he prays to acquit the accused.

14. The Police Constable, A.Koduru Police Station was examined as PW.1. PW.1 deposed in his evidence that on 23-11-2020 at about 11.00 AM, on receiving credible information, he, LW.1/V.V.Satyanarayana and LW.3/B.Prasad went to Singannadorapalem village outskirts and there, they found Accused by holding a plastic can in his hand. They checked the can an arrack smell was coming out. Immediately they took Accused in custody, they tried for mediators but in vain. On verification, they found 5 liters of I.D. liquor in the said can. On questioning Accused confessed that he purchased the said ID liquor from an unknown person for selling the same for higher price. Then they drew 250 ml of I.D. liquor into a bottle as a sample for analysis, sealed

and labeled and seized the same under cover of Ex.P1 occurrence report after effecting arrest of the Accused and later they brought Accused and property to station for further action and handed over to Sub Inspector of Police

15. PW.2 who is the Home Guard deposed that on 23-11-2020 at about 11.00 AM, on receiving credible information by Sub Inspector of Police, he, PW.1 and LW1./V.V.Satyanarayana, went to Singannadorapalem village outskirts and there they found Accused by holding a 5 liters capacity plastic can in his hand. They checked the can, an arrack smell was coming out. Immediately they took the Accused in custody. They tried for mediators but in vain. On verification, they found 5 liters of I.D. liquor in the said 5 liters can. On questioning Accused confessed that he purchased the said ID liquor from an unknown person for selling the same for higher price. Then they drew 250 ml of I.D. liquor into a bottle as a sample for analysis, sealed and labeled and seized the same under cover of Ex.P1 occurrence report after effecting the arrest of Accused and later they brought Accused and property to our station for further action and handed over to Sub Inspector of Police.

16. PW.3, who is the Investigating Officer, deposed that on 23.11.2020 at about 11.00 AM on receiving credible information, he deputed LW.1/V.V.Satyanarayana, PW.1 and 2 to Singannadorapalem village outskirts to conduct raid. On the same day at 12.30 PM they brought Accused along with seized contraband and Ex.P1 occurrence report and handed over to him. Basing on Ex.P1 occurrence report, he registered a case Cr.No.321/2020 u/s 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act, 2020 and issued Ex.P2 FIR and he sent Accused to Hon'ble Court for judicial custody. Later he sent the

sample for analysis and after receipt of Ex.P3 analysis report, he filed charge sheet and after completion of investigation he filed charge sheet.

17. Now coming to appreciation of evidence on hand, the case of the prosecution is that the Accused was found in possession of illicitly distilled liquor which was seized by PW.1 and 2. PW.3 filed charge sheet for the offence under Section 7(B) r/w 8(B) of A.P. Prohibition Amendment Act, 2020.

Sec.7B defines the offence of Prohibition of Boot Legging Activities: The manufacturing, transporting, settling, buying, importing, exporting or storing of any alcoholic liquor and supplying or transporting of any raw materials for the manufacture of alcoholic liquor illegally or clandestinely, otherwise than in accordance with the provisions of the A.P.Excise Act, 1968 is hereby prohibited.

18. The Accused herein is charged for the offence of illegal possession of illicitly distilled liquor. PW.1 and PW.2 deposed that they found the Accused in possession of illicitly distilled arrack of 5 liters and also deposed that the contraband was seized at the scene of offence from the accused, under cover of an Ex.P1 occurrence report, *prima facie* shows that the sample of contraband is illicitly distilled liquor, unfit for human consumption and injurious to health, thereby the contraband is prohibited under Section 7(B) of A.P. Prohibition Amendment Act. However, as this case was registered based on police proceedings, the entire case of the prosecution is based on the seizure of the contraband from the possession of accused.

19. As per Section 23 of A.P. Prohibition Act, 1995 PW.1 and 2 are bound to follow the procedure laid down under the Code of Criminal Procedure

relating to search. It follows that Section 100 of Cr.P.C has to be followed by PW.1 and 2 at the time of search and seizure of the contraband. As per Section 100 Cr.P.C any Investigating Officer is bound to conduct the search in the presence of two respectable inhabitants of the locality.

20. During cross examination, PW.1 and 2 stated that though they went to scene of offence on credible information, they did not secure any officials as mediators and admitted that the scene of offence is a major panchayat and they tried to secure local persons as mediators and did not mention their names in the mediators report and did not issue any notices to the officials of village i.e., VRO, Panchayat Secretary to act as mediators.

21. The very own admissions of the prosecution witnesses, leads to the inference that there was ample scope for the Investigating Officer to secure the revenue officials or the villagers or the public to act as mediators, so it is the duty of PW.1 and PW.2 to prove such efforts made by them. Ex.P1 also does not disclose the efforts made by PW.1 and 2. So, this Court finds that the prosecution did not prove the efforts made by the Investigation Officer to comply the provisions of Section 100(4) of Cr.P.C. moreover, no property seized from the possession of the accused.

22. This Court further relies on the decision reported in Gajamker Narayana Vs. State of A.P., reported in 2005 (3) ALT (CRL.) 1 (A.P) wherein it was held at paragraph No.5 as follows:

Here in the case on hand, the accused was found in possession of I.D liquor at Bypass Road, Rangadampally,

near Siddipet. The evidence of P.W.1, the excise Sub-Inspector, discloses that there are residential houses at a distance of 25yards from the scene of offence. There are hotels also near the scene of offence. As per the evidence of P.W.1, they took the panch witnesses along with them to the scene. The distance between the scene of offence and the police station is about three kilometers as per the evidence of P.W.3, the then excise Inspector, Siddipet. Thus, from the evidence on record, it is clear that the excise officials picked up panch witnesses at the police station and took along with them to the scene of offence situated at a distance of three kilometers. Neither the testimony of P.W.1 nor that of P.W.3 discloses that they tried to secure independent respectable inhabitants of the locality where the offence was allegedly committed, to act as mediators. Ex.P1, panchanama, also does not disclose that any effort was made by excise officials to secure independent respectable inhabitants of the locality.

23. Therefore, in the absence of specific evidence in that regard, I am bound to come to the conclusion that the provisions of Section 100(4) Cr.P.C. are not followed by the police officials while seizing the bottle containing ID liquor. Therefore, the seizure made in this case is illegal.

24. The entire case of the prosecution is based on Ex.P1 and the evidence of PW.1 to PW.3 are police officials. However, Ex.P1 contains the confession of accused hit under Section 25 Evidence Act, 1872.

25. It was also argued by learned defence counsel that the report is not proved through expert. Ex.P3 was marked through the Investigating Officer and infact though the expert is cited as a witness in this case, the prosecution failed to examine them. The Ex.P3 is the crucial document to prove the nature of the contraband and to prove the charges against the accused, but it was

argued that the accused lost his opportunity to cross-examine the expert. These aspects pertaining to Ex.P3 affect the credibility of the report.

26. Hence in view of foregoing discussion, this Court finds that though the prosecution got marked the documents, it failed to prove the possession of the contraband by Accused, which forms the very basis for the case of the prosecution. So, this Court finds the charges against the Accused are not proved beyond reasonable doubt and the Accused is entitled for acquittal.

27. In the result, the Accused is found not guilty for the offence under Section 7(B) r/w 8(B) of A.P.Prohibition Amendment Act, 2020 and accordingly, he is acquitted for the above offence under Section 248(1) Cr.P.C. and the bail bonds of the Accused shall be in force for a period of six months under Section 437(A) of Cr.P.C. The property i.e., MO.1 sample bottle is ordered to be destroyed after expiry of appeal time.

Typed to my dictation to the Stenographer Grade-III, corrected and pronounced by me in open Court, on this the 31st day of August, 2023.

**Sd/- G.Swarna
A.J.F.C. Magistrate,
Chodavaram**

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR COMPLAINANT:

PW.1	K.Srinivasu
PW.2	Bandaru Prasad
PW.3	B.Appalanaidu

FOR ACCUSED:NIL

EXHIBITS MARKED

FOR COMPLAINANT:

Ex. P1: Occurrence Report

Ex. P2: First Information Report

Ex. P3: Chemical Analysis Report

FOR ACCUSED:NIL

MATERIAL OBJECTS MARKED

FOR COMPLAINANT:

MO1: Sample Bottle

FOR ACCUSED: NIL

**Sd/- G.Swarna
A.J.F.C. Magistrate,
Chodavaram**

CALENDAR & JUDGMENT
CALENDAR CASE TRIED BY THE COURT OF A.J.F.C. MAGISTRATE AT
CHODAVARAM

Date of Offence	: 23-11-2020
Date of Report or Complaint	: 23-11-2020
Date of apprehension of Accused	: 23-11-2020
Date of accused released on bail	: 26-11-2020
Date of Commencement of Trial	: 14-03-2023
Date of Closure of trial	: 29-08-2023
Date of sentence or order of Court	: 31-08-2023
Explanation for Delay & Remarks	: No such Delay
Calendar Case No.	: C.C.No.1106/2022
Name & Address of complainant	: State represented by Sub-Inspector of Police, A.Koduru Police Station.
Name and address of accused	: Sammenga Mahalaxmi, S/o. Late Dalayya, 56 years, Yatha, Coolie, Singannadorapalem Village, K.Kotapadu Mandal.
Section of law	: Section 7(B) r/w. 8(B) of A.P.Prohibition Amendment Act.
Finding of Court	: Accused is found not guilty

Sentence or Order of the Court	: In the result, the Accused is found not guilty for the offence under Section 7(B) r/w 8(B) of A.P.Prohibition Amendment Act, 2020 and accordingly, he is acquitted for the above offence under Section 248(1) Cr.P.C. and the bail bonds of the Accused shall be in force for a period of six months under Section 437(A) of Cr.P.C, The property i.e., MO.1 sample bottle is ordered to be destroyed after expiry of appeal time.
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Sd/- G.Swarna
A.J.F.C. MAGISTRATE,
CHODAVARAM