

APVS150013892022



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

Present : Ms.B.Suryakala,
Additional Civil Judge (Junior Division) – cum -
Additional Judicial Magistrate of First Class,
Chodavaram

Monday, this the 21st day of July, 2025

CALENDAR CASE No.1035/2022

BETWEEN:

State represented by Sub-Inspector of Police,
K.Kotapadu Police Station.

... Complainant

AND:

Boora Abadham, S/o. Appalanaidu, aged 36 years,
K.Gullepalli, K.Kotapadu Mandal, Visakhapatnam
District.

... Accused

This case coming before me on 14-07-2025 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, K.Kotapadu Police Station filed this case in Crime No.123/2021 alleging that accused has committed the offence punishable under Section 7(B) r/w. 8(B) of A.P. Prohibition (Amendment) Act, 2020.

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

On 02-09-2021 at about 7:00 hrs, on receipt of credible information, LW.4/G.Gopala Rao, Sub-Inspector of Police, he along with

LW.1/A.Kondala Rao, Police Constable and LW.2/N.Pydam Naidu, Home Guard, rushed to the house of the accused at K.Gullepalli village, K.Kotapadu Mandal, and found accused selling illicit ID arrack without any license. They detained the accused and seized the 2 liters of ID arrack from the scene of offence under the cover of occurrence report and taken 250 ml sample from the seized contraband for chemical analysis. Later, LW.4 brought the accused and seized property to the Police Station.

3. LW.4, basing on the above said occurrence report, registered FIR in Cr.No.123/2021 for the offence punishable under Section 7(B) r/w. 8(B) of Prohibition (Amendment) Act, 2020 of K.Kotapadu Police Station and took up investigation. During the course of investigation, LW.4 examined the witnesses i.e., LWs.1 and 2, recorded their statements in Case Diary Part-II, arrested the accused and sent him for remand. LW.4 sent the samples of the seized property to LW.3/A.Muneeswari, Government Chemical Examiner for Prohibition and Excise, Regional Prohibitory Excise Laboratory, Visakhapatnam for chemical analysis and LW.3 issued Chemical Analysis report opining that the sample is illicitly distilled arrack, unfit for human consumption and injurious to health. On obtaining the analysis report and after completion of investigation, LW.4 filed charge sheet against the Accused.

4. This case was taken on file for the offence under Section 7(B) r/w. 8(B) of A.P. Prohibition (Amendment) Act, 2020 against the Accused.

5. On appearance of accused, copies of case papers were furnished to him under Section 207 of Criminal Procedure Code, 1973 and was examined under Section 239 of Criminal Procedure Code, 1973, for which he denied the commission of the offence. Charge under Section 7(B) r/w. 8(B) of A.P. Prohibition (Amendment) Act, 2020 was framed against accused, for which he pleaded not guilty and claimed to be tried.

6. In order to establish its case, prosecution has examined PW.1 and got marked Exs.P1 to P3 and MO.1. Learned Assistant Public Prosecutor has given up the evidence of A.Kondala Rao (LW.1), N.Pydam Naidu (LW.2) and A.Muneeswari (LW.3). PW.1/G.Gopala Rao is the Sub Inspector of Police.

7. After closure of prosecution evidence, Accused was examined under Section 313 of Criminal Procedure Code, 1973, with regard to the incriminating material appearing in the evidence of prosecution witnesses, for which he denied and on enquiry, reported no defense evidence.

8. Heard learned Assistant Public Prosecutor for complainant and the learned counsel for Accused and perused the material on record.

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

Whether prosecution has proved the guilt of the accused for the offence punishable under Section 7(B) r/w. 8(B) of A.P. Prohibition (Amendment) Act, 2020 beyond all reasonable doubt?

10. In order to prove the case of prosecution, it has to be seen whether the evidence of PW.1 coupled with Ex.P1 to P3 and MO.1 are sufficient to base the conviction of the accused for the offence punishable u/s. 7(B) r/w. 8(B) of A.P. Prohibition (Amendment) Act, 2020, after scrutinizing them with due care and caution.

11. For better appreciation of the evidence, it is appropriate to look at the relevant provision, namely Section 7(B) r/w. 8(B) of A.P. Prohibition (Amendment) Act, 2020 which read as:

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.

Sec.8-B defines the offence of Penalty for sale, export, import and transport of alcoholic liquor manufactured illegally and clandestinely:- whoever in contravention of Section 7-B of this Act indulges in sale, export, import or transport of illicitly distilled alcoholic liquor shall on conviction be liable for imprisonment for a term which shall not be less than one year but which may extend upto eight years and with fine which shall not be less than rupees two lakhs for the first offence and which shall not be less than rupees five lakhs for the second offence.

12. The learned Assistant Public Prosecutor argued that one witness was examined by the prosecution and they corroborated with each other and proved the seizure of contraband from the possession of Accused. He further argued that the sample is tested and proved to be ID arrack. Hence, the prosecution is succeeded in showing that the accused is in possession of ID arrack and proved its case against the Accused and prayed to convict the accused.

13. Prosecution Per contra, the learned defense counsel argued that prosecution did not examine any independent witnesses, the Investigation Officer did not secure any mediators at the scene of offence. He further argued that the Investigation Officer failed to follow the procedure under Section 100(4) of Criminal Procedure Code, 1973 for search and seizure and Ex.P3 is Chemical Analysis Report was marked through Investigating Officer and Chemical Analyst (LW.3) was not examined. Hence, accordingly the prosecution failed to prove the case against

Accused and he prayed to acquit the accused.

14. The Sub Inspector of Police was examined as PW.1. PW.1 deposed in his evidence that on 02-09-2021 at about 7.30 AM on receipt of credible information by him, he along with LW.1 and L.W.2 went to the house of accused in Gullepalli Village. There they found accused in possession of 2 liters of ID arrack and on seeing them, accused tried to run away. Immediately, they chased and detained accused and on questioning, accused disclosed his identity and confessed that he was in possession of 2 liters of ID arrack. On verification they also found that accused was in possession of 2 liters of ID arrack. They tried to secure the presence of mediators but in vain. Later, he arrested accused and seized 2 liters of ID arrack under the cover of Ex.P1 occurrence report. LW.1 typed Ex.P1 occurrence report. He also lifted sample of 250 ml of ID arrack into a separate plastic bottle out of the 2 liters of ID arrack found in the possession of accused for analysis and sealed and labeled it. Later they took accused along with the case property to the police station for further action. Basing on Ex.P1, he lodged Ex.P2 FIR In Cr.No.123/2022 for the offence punishable u/s. 7(B) r/w. 8(B) of A.P. Prohibition (Amendment) Act, 2020 against accused. During the course of investigation, he examined LWs.1 and 2 and recorded their statements. He also produced the accused before this Court for judicial remand. Later, he sent MO.1 to REL, Visakhapatnam for analysis and received Ex.P3 REL report dated 07-01-2022 from LW.3. After completion of entire investigation, he filed charge sheet before this Court.

15. Now coming to appreciation of evidence on hand, the case of the prosecution is that the Accused was found in possession of illicitly distilled Arrack and the same was seized by PW.1 in the presence of LW.1 and LW.2. PW.1 deposed that he found the Accused in possession of 2

liters of ID arrack and also deposed that the contraband was seized at the scene of offence from the Accused under the cover of Ex.P1 occurrence report. Hence, the entire case of the prosecution is based on the allegedly seizure of contraband from the possession of accused.

16. As per Section 23 of A.P. Prohibition Act, 1995, police are bound to follow the procedure laid down under the Code of Criminal Procedure relating to search. It follows that Section 100 of Criminal Procedure Code, 1973 has to be mandatorily followed at the time of search and seizure and accordingly, any Investigating Officer is bound to conduct the search in the presence of two respectable inhabitants of the locality.

17. During cross examination, PW.1 categorically admitted that there are VRO, VRA and ward members are available in the village and no notice in writing was issued to any person to act as mediators in this case and that there are about 500 residential houses in Gullepalli village and he did not issue any notice in writing to the villagers of Gullepalli village to act as mediators in this case and that there are no mediators in this case. Admittedly, there are no mediators in this case. Even no plausible explanation, as to what refrained them from securing the presence of mediators at the scene of offence, to the satisfaction of this court was given by PW.1.

18. The evidence of the prosecution witness, 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. Now it is the duty of prosecution to prove such efforts were made. Neither the evidence of PW.1 nor Ex.P1 disclose the efforts made to secure the presence of independent mediators/witnesses. So, this Court finds that the prosecution did not prove the efforts made by the Investigation Officer in

compliance of the provisions of Section 100(4) of Criminal Procedure Code, 1973.

19. Further in a case between ***T.Rambabu Bulli and Another Vs. The State of A.P*** reported in **2009 (3) LS 340**, the Hon'ble High Court of A.P., held that, when the witnesses are police officials and if there is opportunity for them to secure independent mediators, if police fails to do so, it is not safe to rely on evidence of police people.

This Court further relies on the decision of the Hon'ble High Court of A.P 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 25 yards 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*"

The Hon'ble High Court of A.P., in the case of ***S.Babu Saheb @ Babu Vs State of A.P.***, reported in **2010 (1) ALT (Crl.) 32 AP**, held that, "When they

are conducting the search in a colony or at a place wherein there is possibility of securing the presence of independent mediators, the excise officials or prohibition officers are bound to take the local respectable independent inhabitants. They must make sincere efforts to secure local respectable mediators. That is the mandate of Section 100(4) of Cr.P.C As referred to in the above provisions, the excise officials are also authorized to issue an order in writing asking them to act as mediators under subsection (4) of Section 100 Cr.P.C The object of Section 100 Cr.P.C is to ensure confidence in the neighbours and in the public in general that a genuine search has been made and incriminating material has been really found and not planted.”

20. Therefore, in the absence of specific evidence in that regard, this court is bound to come to the conclusion that the provisions of Section 100(4) of Criminal Procedure Code, 1973 are not followed by the police officials while seizing the bottle containing ID Arrack. Therefore, the seizure made in this case is illegal, arbitrary and not in compliance of law.

21. Coming to alleged confession made by the accused, which is reduced into writing in Ex.P1, is hit by Section 25 of Indian Evidence Act, 1872 and the same cannot be taken into consideration.

22. Another aspect is that the chemical analysis report i.e., Ex.P3 is not proved through LW.3 and got marked through the Investigating Officer/PW.1 though LW.3 is cited as a witness in this case. No doubt that Ex.P3 is the crucial document to prove the nature of the contraband and to prove the charges leveled against the Accused, however the same is not proved through LW.3. These aspects pertaining to Ex.P3 affect the credibility of the report and though it is marked it cannot be looked into as its contents are not proved by examining LW.3. Even otherwise, as the seizure

of contraband from the possession of the accused are itself is not proved, Ex.P3 which states that contraband is illicitly distilled arrack, unfit for human consumption and injurious to health is of no avail.

23. Hence in view of foregoing discussion, this Court finds that though the prosecution examined PW.1 and got marked Ex.P1 to Ex.P3 and MO.1, it failed to prove the seizure of the contraband from the possession of the Accused, on which the entire case of the prosecution rests. So, this Court finds the charges against the Accused is not proved beyond reasonable doubt and the Accused are entitled for acquittal.

24. 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) of Criminal Procedure Code, 1973 and the bail bonds of the Accused shall be in force for a period of six months under Section 437(A) of Criminal Procedure Code, 1973. The property i.e., MO.1 sample bottle is ordered to be destroyed after expiry of appeal time.

Typed to my dictation by the Stenographer Grade-III, corrected and pronounced by me in open Court, on this the 21st day of July, 2025.

Sd/-B.Suryakala
A.J.F.C. Magistrate,
Chodavaram

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR COMPLAINANT:

PW.1 G.Gopala Rao

FOR ACCUSED:NIL

EXHIBITS MARKED

FOR COMPLAINANT:

Ex. P1: Occurrence Report

Ex. P2: Original First Information Report

Ex. P3: Chemical Analysis Report dated 07-01-2022

FOR ACCUSED:NIL

MATERIAL OBJECTS MARKED

FOR COMPLAINANT:

MO.1 : Sample Bottle

FOR ACCUSED: NIL

***Sd/-B.Suryakala
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	: 02-09-2021
Date of Report or Complaint	: 02-09-2021
Date of apprehension of Accused	: 02-09-2021
Date of accused released on bail	: 04-09-2021
Date of Commencement of Trial	: 10-07-2025
Date of Closure of trial	: 10-07-2025
Date of sentence or order of Court	: 21-07-2025
Explanation for Delay & Remarks	: No such Delay
Calendar Case No.	: C.C.No.1035/2022
Name & Address of complainant	: State represented by Sub-Inspector of Police, K.Kotapadu Police Station.
Name and address of accused	: Boora Abadham, S/o. Appalanaidu, aged 36 years, K.Gullepalli, K.Kotapadu Mandal, Visakhapatnam District.
Section of law	: Section 7(B) r/w. 8(B) of A.P. Prohibition (Amendment) Act, 2020
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) of Criminal Procedure Code, 1973 and the bail bonds of the Accused shall be in force for a period of six months under Section 437(A) of Criminal Procedure Code, 1973. The property i.e., MO.1

sample bottle is ordered to be destroyed
after expiry of appeal time.

Sd/-B.Suryakala
A.J.F.C. MAGISTRATE,
CHODAVARAM