

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

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

Friday, this the 24th day of November, 2023

CALENDAR CASE No.996/2022

BETWEEN:

State represented by Sub-Inspector of Police, Cheedikada
Police Station.

... Complainant

AND:

Elaboina Pentayya, S/o. Samalayya, 39 years, Konda
Veedhi Village, Cheedikada Panchayat and Mandal,
Visakhapatnam District.

... Accused

This case is coming before me on 20-11-2023 for final hearing in the presence of Learned Assistant Public Prosecutor for the complainant and of Sri I.Ganesh, 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, Cheedikada Police Station filed this case in Crime No.131/2021 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 21-10-2021 at 6:00 hrs, on receipt of credible information of illegal selling the illicit arrack without any license of the Government by LW.4/K.Sudhakara Rao, Sub Inspector of Police, he along with LW.1/K.Gopalarao, Police Constable and LW.2/A.Simhachalam, Home Guard rushed to the outskirts of Konda Veedhi Village, Cheedikada Mandal and found

one male person having possession of ID arrack and he selling ID arrack illegally at outskirts of Kondaveedhi Village, Cheedikada Mandal. LW.4 caught him with the help of his staff and when questioned, he disclosed his identity and found 2 liters of ID Arrack from his possession. Total worth Rs.600/- and LW.4 seized the same under cover of occurrence report.

3. LW.4 registered the above occurrence report as a Case in Cr.No.131/2021 under Section 7(B) r/w. 8(B) of Prohibition (Amendment) Act 2020 of Cheedikada Police Station and investigated into it.

4. During the course of investigation, LW.4 examined LW.1 and LW.2 and sent the arrested Accused to judicial remand and also sent the material objects to LW.3, A.Muneesree, 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 liquor, unfit for human consumption and injurious to health and after obtaining the analysis report, LW.4 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 she 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 and got marked Exs.P1 to P3 and MO.1. Learned Assistant Public Prosecutor has given up the evidence of K.Gopalarao (LW.1), A.Simhachalam (LW.2) and G.Srinivasulu (LW.3).

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 was examined and Exs.P1 to P3 and MO.1 were marked. P.W.1 is the Sub-Inspector of Police/Investigating Officer.

12. The learned Assistant Public Prosecutor argued that one witness was examined by the prosecution, the prosecution witness corroborated with

Ex.P1 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 Sub Inspector Of Police was examined as PW.1. PW.1 deposed in his evidence that on 21-10-2021 at about 7.00 AM, on credible information received by him about selling of ID Liquor. Then himself, L.W.1, LW.2 went to the outskirts of Kondaveedhi Village and found the accused. On seeing them, he tried to escape. Then they apprehended him. On questioning the accused disclosed his identity and voluntarily confessed that he is in possession of ID Liquor and selling the same. Immediately they took the accused into custody. They tried for mediators but in vain. On verification, they found 2 liters of I.D. liquor in a plastic bottles. On questioning the accused confessed that he purchased the same from an unknown person for selling the same for higher price. Then he 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. Later they brought the accused and property to station for further action. He registered Ex.P2 FIR in Cr.No.131/2021 U/Sec.7(B) r/w 8(B) of A.P.Prohibition Amendment Act 2020 and sent the accused to judicial remand and he sent and send the samples to REL for chemical analysis. On 07-01-2022 he received Ex.P3 Chemical Analysis Report. After completion of investigation he filed charge sheet against the Accused.

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 liquor which was seized by PW.1. PW.1 filed charge sheet for the offence under Sec.7B 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.

16. The Accused herein is charged for the offence of illegal possession of illicitly distilled liquor. PW.1 deposed that they found the Accused in possession of illicitly distilled arrack of 2 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 Sec.7B 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.

17. As per Sec.23 of A.P. Prohibition Act, 1995 PW.1 is bound to follow the procedure laid down under the Code of Criminal Procedure relating to search. It follows that Sec.100 of Cr.P.C has to be followed by PW.1 at the time of search and seizure of the contraband. As per Sec.100 Cr.P.C. any Investigating Officer is bound to conduct the search in the presence of two respectable inhabitants of the locality.

18. During cross examination, PW.1 admitted that Kondaveedhi Village is a major panchayat Village and he had not secured any official as a mediator and also had not mentioned in Ex.P1 whom they requested to act as a mediator. PW.1 also admitted that he had not prepared any rough sketch of the scene of offence.

19. The very own admissions of the prosecution witnesses, leads to the inference that there was ample scope for the Investigating Officer to secure the village officials or the villagers or the public to act as mediators, so it is the duty of PW.1 to prove such efforts made by him. Ex.P1 also does not disclose the efforts made by PW.1. 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.

20. 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.

21. 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.

22. The entire case of the prosecution is based on Ex.P1 and the evidence of PW.1 is police official. However, Ex.P1 contains the confession of Accused hit under Section 25 of Indian Evidence Act, 1872.

23. It was also argued by the 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.

24. 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.

25. 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 24th day of November, 2023.

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

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR COMPLAINANT:

PW.1 K.Sudhakara Rao

FOR ACCUSED:NIL

EXHIBITS MARKED

FOR COMPLAINANT:

Ex. P1: Occurrence Report

Ex. P2: Original 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	: 21-10-2021
Date of Report or Complaint	: 21-10-2021
Date of apprehension of Accused	: 21-10-2021
Date of accused released on bail	: 27-10-2021
Date of Commencement of Trial	: 09-11-2023
Date of Closure of trial	: 09-11-2023
Date of sentence or order of Court	: 24-11-2023
Explanation for Delay & Remarks	: No such Delay
Calendar Case No.	: C.C.No.996/2022
Name & Address of complainant	: State represented by Sub-Inspector of Police, Cheedikada Police Station.
Name and address of accused	: Elaboina Pentayya, S/o. Samalayya, 39 years, Konda Veedhi Village, Cheedikada Panchayat and Mandal, Visakhapatnam District.
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