

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

Present : Smt.P.Pradeepa
Principal Civil Judge (Junior Division), Anakapalli
(FAC) Additional Judicial Magistrate of First Class,
Chodavaram

Monday, this the 8th day of April, 2024

CALENDAR CASE No.1141/2022

BETWEEN:

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

... Complainant

AND:

Potala Pentayya, S/o. Late Chinnodu, aged 46 years,
Cultivation, Gunnempudi Village, Butchiyyapeta Mandal.

... Accused

This case is coming before me on 03-04-2024 for final hearing in the presence of Learned Assistant Public Prosecutor for the complainant and of Sri Ch.Babu Rao, 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, Butchiyyapeta Police Station filed this case in Crime No.253/2021 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 11-11-2021 at about 7:00 hrs, LW.4/B.Ramakrishna, Sub-

Inspector of Police received credible information of illegal selling the illicit arrack without any license of the Government, then he deployed his staff LW.1/K.Satya Rao, Head Constable and LW.2/L.Nageswara Rao, Home Guard to Gunnempudi Village outskirts of Butchiyyapeta Mandal, at that time one person selling contraband illicit arrack at his cattle shed, then his staff caught him and enquired about his details, on questioning the accused voluntarily disclosed his identity and confessed that he he makes ID arrack at his cattle shed and sell the same at high cost. Then LW.1 seized 3 liters of illicit arrack from his cattle shed and taken 250 ML sample from seized property for chemical analysis and arrested the accused under cover of occurrence report.

3. LW.4 registered the above occurrence report as a Case in Cr.No.253/2021 under Section 7(B) r/w. 8(B) of Prohibition (Amendment) Act 2020 of Butchiyyapeta Police Station and investigated into it.

4. During the course of investigation, LW.4 examined the witnesses, recorded their detailed statements in Case Diary Part-II and sent the Accused for remand and also sent the material objects 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 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 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 and PW.2 and got marked Exs.P1 to P3 and MO.1. Learned Assistant Public Prosecutor has given up the evidence of K.Satya Rao (LW.1) and A.Muneeswari (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 and PW.2 were examined and Exs.P1 to P3 and MO.1 were marked. P.W.1 is the Home Guard, PW.2 is the Sub-Inspector of Police/Investigating Officer.

12. The learned Assistant Public Prosecutor argued that two 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 REL 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 Home Guard was examined as PW.1. PW.1 deposed in his evidence that on 11-11-2021 at about 7:00 A.M. on credible information received by their Sub-Inspector of Police, LW.4/B.Ramakrishna, himself, LW.1/K.Satyarao went to Gunimpudi Village Butchayyapeta Mandal when they reached to cattle shed of Pothala Pentayya they observed that the accused was selling the I.D. Arrack. When they checked the plastic bottle which were in the possession of the accused they observed that one bottle containing 2 Liters of I.D. and the other bottle containing 1 Liter of I.D arrack. After observing the same LW.1 obtained the details of the accused. Later as per the directions of L.W.1 K.Saltyarao he went into the village for securing the presence of mediators, but in vain. After his return from the

village, on questioning accused confessed that he manufactured the said ID liquor for selling the same for higher price. They 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.

15. PW.2/B.Ramakrishna, Sub Inspector of Police deposed that on 11-11-2021 at about 7.50 am, he received the case property along with accused and occurrence report and other material, from LW.1/K.Satyaraao, HC1275 and PW.1/L.Nageswara Rao, HG 563 who were deputed to conduct raid at outskirts of Gunnempudi Village, Buchiyyapeta Mandal. After receipt of occurrence report, basing on that he registered the case in Cr.No.253/2021 for the offence under Section 7(B) r/w 8(B) of A.P.Prohibition Amendment Act of Butchiyyapeta Police Station. The Ex.P2 Original FIR was sent to the Hon'ble AJFCM Court, Chodavaram and copies to all concerned. He recorded the statements of LW.1, LW.2/PW.1 and sent the accused to Judicial custody. He send the material objects to Chemical examiner, REL, Visakhapatnam. He received the Ex.P3 REL report. The details of remaining contraband was sent for destruction to DDC Committee, as per the orders we destructed the same. investigation, he filed the Charge sheet against the accused.

16. 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.2 filed charge sheet for the offence under Section 7(B) r/w 8(B) of A.P.Prohibition Amendment Act, 2020.

Section 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.

17. 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 3 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.

18. As per Section 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 Section 100 of Cr.P.C has to be followed by PW.1 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.

19. During cross examination, PW.1 stated that he tried to secure the mediators but in vain. During cross examination, PW.2 admitted that he did not participate in the raid conducted by PW.1 and LW.1 and also admitted that even after receipt of the case record from PW.1, he did not visit the scene of offence for further investigation and he did not examine the local witness of the surrounding area.

20. 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.

21. 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.

22. 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.

23. The entire case of the prosecution is based on Ex.P1 and the evidence of PW.1 and PW.2 are police officials. However, Ex.P1 contains the confession of Accused hit under Section 25 of Indian Evidence Act, 1872.

24. 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.

25. 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.

26. 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 8th day of April, 2024.

Sd/- P.Pradeepa
Principal Civil Judge (Junior Division)
Anakapalli
(FAC) A.J.F.C. Magistrate,
Chodavaram

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR COMPLAINANT:

PW.1 L.Nageswararao

PW.2 B.Ramakrishna

FOR ACCUSED:NIL

EXHIBITS MARKED

FOR COMPLAINANT:

Ex. P1: Occurrence Report

Ex. P2: Original First Information Report

Ex. P3: REL Report

FOR ACCUSED:NIL

MATERIAL OBJECTS MARKED

FOR COMPLAINANT:

MO.1 : Sample Bottle

FOR ACCUSED: NIL

Sd/- P.Pradeepa
Principal Civil Judge (Junior Division)
Anakapalli
(FAC) 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	: 11-11-2021
Date of Report or Complaint	: 11-11-2021
Date of apprehension of Accused	: 11-11-2021
Date of accused released on bail	: 15-11-2021
Date of Commencement of Trial	: 18-03-2024
Date of Closure of trial	: 27-03-2024
Date of sentence or order of Court	: 08-04-2024
Explanation for Delay & Remarks	: No such Delay
Calendar Case No.	: C.C.No.1141/2022
Name & Address of complainant	: State represented by Sub-Inspector of Police, Butchiyyapeta Police Station.
Name and address of accused	: Potala Pentayya, S/o. Late Chinnodu, aged 46 years, Cultivation, Gunnempudi Village, Butchiyyapeta 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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