

**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

Wednesday, this the 16th day of October, 2024

CALENDAR CASE No.1061/2022

BETWEEN:

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

... Complainant

AND:

Bantu Manikyam, S/o. Late Mahalakshmi, aged 59
years, Cultivation, Dibbidi Village, Butchiyyapeta Mandal,
N/o. P and T Colony, D.No.60-721, 3rd Street,
Rajahmundry Urban, East Godavari District.

... Accused

This case coming before me on 10-10-2024 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.402/2020 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 03-09-2020 at 9:00 hrs, on receipt of credible information by

LW.5/D.Venkanna, Sub Inspector of Police, he deployed LW.1/J.Arjun, Head Constable, LW.2/G.Venkata Rao, Police Constable and LW.3/K.Pydiraju, Police Constable, to Dibbidi Village, Butchiyyapeta Mandal, found one person illegally selling ID arrack in front of his house, on seeing Police, he tried to escape and then, LW.1 along with LW.2 and 3 caught the accused and on questioning, he disclosed his identity and further confessed that he purchased ID arrack from unknown persons at Chintaloore village outskirts, V.Madugula Mandal and selling the same at his village illegally at high cost. 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.

3. LW.5, basing on the above said occurrence report, registered FIR in Cr.No.402/2020 for the offences punishable under Section 7(B) r/w. 8(B) of Prohibition (Amendment) Act, 2020 of Butchiyyapeta Police Station and took up investigation. During the course of investigation, LW.5 examined the witnesses i.e., LWs.1 to LW.3, recorded their statements in Case Diary Part-II, arrested the accused and sent him for remand. Further, LW.5 sent the samples of the seized property to LW.4/G.Srinivasulu, Government Chemical Examiner for Prohibition and Excise, Regional Prohibitory Excise Laboratory, Visakhapatnam for chemical analysis and LW.4 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 verification of the investigation, LW.6/B.Rama Krishna, Sub-Inspector of Police, 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 PW.2 and got marked Exs.P1 to P3 and MO.1. Learned Assistant Public Prosecutor has given up the evidence of J.Arjun (LW.1), K.Pydiraju (LW.3), G.Srinivasulu (LW.4) and B.Ramakrishna (LW.6). PW.1/G.Venkata Rao is the Police Constable, PW.2/D.Venkanna 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 and PW.2 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 two witnesses were 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 though the scene of offence is a busy locality. 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.4) was not examined. Hence, accordingly the prosecution failed to prove the case against Accused and he prayed to acquit the accused.

14. The Police Constable was examined as PW.1. PW.1 deposed in his evidence that on 03-09-2020 at about 9:00 A.M. on receipt of credible information received by their Sub Inspector (LW.5) of Police at 8.30 AM, he along with LW.1, LW.2 went to the house of accused at Dibbidi Village. There they found accused selling the I.D. Arrack outside the house of accused. Immediately they apprehended accused and on questioning accused disclosed his name and identify and confessed that accused purchased the I.D.Arrack from Chinthaluru village from unknown person and in turn sells the same in the village for higher price. On verification they found that accused were in possession of 2.00 Liters of I.D. Arrack in a plastic bottle. Immediately they arrested accused and seized the 2.00 Liters

of I.D. Arrack from the possession of accused under the cover of Ex.P1 occurrence report. Later L.W.3 collected sample of 250 ML of I.D. Arrack from the 2.00 Liters of I.D.Arrack found in the possession of accused for analysis and seized and labeled it. Later they took accused along with the case property to the police station and handed him and the case file to LW.5 for further action.

15. PW.2/D.Venkanna, Sub-Inspector of Police, deposed that on 03-09-2020, basing on Ex.P1, he registered Ex.P2 FIR in Cr.No.402/2020 for the offences punishable U/Secs.7(B) r/w. 8(B) of A.P. Prohibition Amendment Act of 2020 against accused. He sent accused to the court for judicial remand and he examined L.Ws.1 to 3 and recorded their statements. On 05-10-2020, he sent M.O.1 to REL, Visakhapatnam for analysis and on 28-11-2020, LW.6 received the Ex.P3 REL Report dated 28-11-2020 from LW.4. After completion of entire investigation, LW.6 filed charge sheet before this court.

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 Arrack and the same was seized by LW.1 in the presence of PW.1 and LW.3. PW.1 deposed that they 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.

17. 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.

18. During cross examination, PW.1 categorically admitted that there they did not try to secure the presence of neither the Panchayat Secretary nor the village elders of Dibbidi village to act as mediators Whereas PW.2 nowhere in his evidence made a whisper with regard to the efforts made by LW.1, PW.1 and LW.3 to secure the presence of mediators at the scene of offence.

19. The very own admissions 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 or PW.2 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.

20. 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 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 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.”

21. 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.

22. 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.

23. Another aspect is that the chemical analysis report i.e., Ex.P3 is not proved through LW.4 and got marked through the Investigating Officer/PW.2 though LW.4 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.4. 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.4. Even otherwise, as the seizure of contraband from the possession of the accused is 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.

24. Hence in view of foregoing discussion, this Court finds that though the prosecution examined PW.1 and PW.2 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 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) 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 16th day of October, 2024.

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

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR COMPLAINANT:

PW.1 G.Venkata Rao

PW.2 D.Venkanna

FOR ACCUSED:NIL

EXHIBITS MARKED

FOR COMPLAINANT:

Ex. P1: Occurrence Report

Ex. P2: Original First Information Report

Ex. P3: Chemical Analysis Report dated 18-11-2020

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	: 03-09-2020
Date of Report or Complaint	: 03-09-2020
Date of apprehension of Accused	: 03-09-2020
Date of accused released on bail	: 09-09-2020
Date of Commencement of Trial	: 01-08-2024
Date of Closure of trial	: 27-09-2024
Date of sentence or order of Court	: 16-10-2024
Explanation for Delay & Remarks	: No such Delay
Calendar Case No.	: C.C.No.1061/2022
Name & Address of complainant	: State represented by Sub-Inspector of Police, Butchiyyapeta Police Station.
Name and address of accused	: Bantu Manikyam, S/o. Late Mahalakshmi, aged 59 years, Cultivation, Dibbidi Village, Butchiyyapeta Mandal, N/o. P and T Colony, D.No.60-721, 3 rd Street, Rajahmundry Urban, East Godavari 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.

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