

**IN THE COURT OF THE PRINCIPAL JUNIOR CIVIL JUDGE –CUM -
JUDICIAL MAGISTRATE OF FIRST CLASS:: PUNGANUR**

Present : Sri G.Karthik,

Principal Junior Civil Judge- Cum-
Judicial Magistrate of First Class, Punganur.

Wednesday, this the 13th day of September, 2023

C.C.No.691 of 2022

Between:

The State represented by the Sub Inspector of Police,
Chowdepalle Police Station.

... Complainant.

Vs.

Peddakonda Chandrababu, aged about 32 years, S/o P.Reddeppa,
caste by Yadava, coolie, Vooturu village, H/o Peddayallakuntla,
Chowdepalle mandal.

... Sole Accused.

This case has come before me on 08.09.2023 for final hearing in the presence of the learned Assistant Public Prosecutor for the State **Sri T.Rama Krishna** and of **Sri M.R.Ragavendra**, Advocate for the accused, on hearing both sides and upon perusing the material on record and having stood over for determination till this day, this Court delivered the following:-

J U D G M E N T

1. The Sub-Inspector of Police, Chowdepalle Police Station, filed charge sheet in Cr.No.49/2022 for the offence punishable under section 7(B) r/w 8(B) of Andhra Pradesh Prohibition (Amendment Act), 2020 against the accused.

2. The case of the prosecution is that on 23.04.2022 at about 09.00 AM on credible information PW.3 found accused in unlawful possession and sale of I.D.Arrack at the house of accused in Vooturu village, along with PW.2, LW.2 P.M.Kiran Kumar and mediators PW.1, LW.4 M. Reddeppa and on seeing them accused having plastic bag tried to skulk away from the place. Then PW.3 with the help of his staff apprehended accused. On enquiry by PW.3 accused revealed his identity particulars

and confessed that he was in possession of 40 packets of I.D.Arrack of 100 ML each in order to sell the same illegally without any valid license or permit. Then PW.3 arrested accused and seized the contraband and drawn the sample under cover of arrest cum seizure mahazarnama dt.23.04.2022 and registered the crime for the offence under section 7B r/w 8B of A.P Prohibition (Amendment Act), 2020 and produced accused before Court for judicial remand. PW.3 had sent the sample to Prohibition & Excise Laboratory, Chittoor for chemical analysis report and received the chemical analysis report, wherein it is opined that the sample is "Illicitly distilled liquor unfit for human consumption and injurious to health" and sent a requisition to Superintendent of Police, Chittoor with a request to destroy case property according to law. After completion of investigation PW.3 filed charge sheet against accused .

3. After perusing the record, cognizance was taken for the offences punishable under section 7B read with 8B of Andhra Pradesh Prohibition Act against accused.

4. On appearance of accused, case copies were furnished to him under section 207 of Code of Criminal Procedure, 1973 (herein after referred as Cr.P.C for brevity and convenience). The accused was examined under section 239 of Cr.P.C. and a charge under section 7B read with 8B of Andhra Pradesh Prohibition (Amendment Act), 2020 was framed against him, the contents of the charge are explained to the accused in Telugu for which accused pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined PW.1 to PW.3 and got marked Exs.P1 to P3 and M.O.1. The learned APP has given up the evidence of remaining witnesses i.e., LW.2 PM Kiran Kumar, LW.4 M.Reddeppa and LW.5 C.Rajeswari

6. After conclusion of prosecution evidence, accused was examined under section 313 Cr.P.C., and the incriminating circumstances appearing in the evidence against accused was explained to him to enable him, to give any explanation for such adverse circumstances in the evidence. The accused denied the same and stated no defence evidence.

7. Heard arguments on both sides. Perused the record. This case record is received by this Court at the stage of examination under section 239 Cr.P.C from I Additional Junior Civil Judge-cum-I Additional Judicial Magistrate of First Class, Punganur as per the proceedings of Hon'ble Chief Judicial Magistrate, Chittoor in Dis.No.1021/2022 dt.22.11.2022.

8. The learned Assistant Public Prosecutor argued that the prosecution has examined P.W.1 to P.W.3 to prove the guilt of accused for the offence under section 7B read with 8B of Andhra Pradesh Prohibition (Amendment Act), 2020. The evidence of P.W.1 to P.W.3 corroborates with each other in all material aspects which establishes that accused was found in possession of seized contraband without any license and as such accused is liable to be convicted for the offence under section 7B read with 8B of Andhra Pradesh Prohibition (Amendment Act), 2020.

9. Per contra, the learned counsel for accused argued that the police have falsely implicated the accused in this case only for statistical purpose. He further argued that PW.3 did not secure the local independent witnesses at the time of alleged search and seizure of contraband from accused as such the alleged search and seizure conducted by PW.3 is not according to law. Further, the evidence of PW.1 to PW.3 is not corroborated in material aspects. Hence, the prosecution failed to prove the guilt of accused beyond all reasonable

doubts for the offence punishable under section 7B read with 8B of Andhra Pradesh Prohibition (Amendment Act), 2020.

10. **Now the point for determination is:-**

Whether the prosecution has proved the guilt of accused beyond all reasonable doubts for the offence punishable under section 7B read with 8B of Andhra Pradesh Prohibition (Amendment Act), 2020?

11. **P O I N T :-**

(i) To prove the guilt of accused for the offence punishable under section 7B read with 8B of Andhra Pradesh Prohibition (Amendment Act), 2020 the prosecution must prove beyond all reasonable doubts that on 23.04.2022 accused was found in unlawful possession of seized contraband at the scene of offence which is prohibited. To prove the same the prosecution has examined PW.1 to PW.3 and got marked Ex.P1 to P3 and M.O.1. PW.3 is Investigating Officer. P.W.2 is police constable who accompanied PW.3 for the purpose of investigation. PW.1 is Village Revenue officer. Ex.P1 is arrest cum seizure mahazar dt.23.04.2022. Ex.P2 is F.I.R. Ex.P3 is Chemical Analysis report. M.O.1 is Unexpended portion of sample packet.

(ii) P.W.1 deposed that on 23.04.2022 at about 9.00 am while he was present in Tahsildar Office, Chowdepalle their Tahsildar telephoned him and informed him that he received a phone call from SI of Police Chowdepalle and asked him to send him to the Police Station accordingly he along with G.Mallikarjuna Reddy went to Chowdepalle Police Station and met the SI of Police who informed that they received some credible information with regard to sale of ID arrack at Vooturu Village and requested them act as mediators in this regard. PW.1 further deposed

that immediately himself, G.Mallikarjuna Reddy, SI of Police and two constables proceeded to Vooturu Village in private vehicle and reached house of accused at about 9.15 am. PW.1 further deposed that on seeing them they found accused having white plastic cover and trying to escape from the place. Then the police caught hold accused and the PW.3 enquired him and on enquiry by PW.3 accused stated his name and address particulars as P.Chandrababu and also stated that he is transporting ID Arrack from Sugalimitta and made them as packets in order to sell the same for his luxuries and PW.3 opened the plastic cover in their presence and found 40 packets of ID Arrack of 100 ml each worth of Rs.30/- each, PW.3 explained to accused that transportation or possession and sale of ID arrack is an offence and arrested accused and seized the above said contraband and lifted one sample packet for chemical analysis under the cover of arrest cum seizure mahazar dt.23.04.2022 vide Ex.P1 he along with Mallikarjuna Reddy and accused signed in the mahazar and he know the contents of Ex.P1.

(iii) PW.2 deposed that on 23.04.2022 at about 9.00 am while he along with LW 2 P.M.Kiran Kumar, PW.3 were present in the Police Station PW.3 received credible information about possession and transportation and sale of ID arrack at Vooturu village, Peddyellakuntla Panchayat. Then he along with LW.2 P.M.Kiran Kumar accompanied with PW.3 to the above said place in police vehicle and reached there at about 10.30 am and found accused keeping a white colour plastic bag and on seeing them accused tried to skulk away from the said place and they able to caught hold accused and on enquiry by PW.3 accused stated his name and address particulars and also stated that accused is transporting ID Arrack from Sugalimitta Thanda in order to sell the same for his

luxuries. PW.2 further deposed that PW.3 secured mediators from the neighboring village and opened the plastic bag in their presence and found 40 packets of ID Arrack of 100 ml each worth of Rs.1,500/- in total. Then PW.3 explained to accused that transportation or possession and sale of ID arrack is an offence and arrested accused and seized the above said contraband and lifted the sample packet for chemical analysis under the cover of confession, arrest cum seizure mahazar in the scene of offence. Then accused, seized contraband were brought to the Chowdepalle police station, then PW.3 registered the case and took up further investigation.

(iv) PW.3 deposed in similar lines to that of PW.2 regarding the arrest of accused and seizure of contraband and he further deposed his part of investigation regarding registration of case under Ex.P2 and forwarding the accused for judicial custody before this Court. PW.3 further deposed that he drawn sample of 100 ML of I.D Arrack for chemical analysis purpose and sent sample of I.D.Arrack to Prohibition & Excise Laboratory, Chittoor for chemical analysis, the same was analyzed and received report by him wherein it is opined that the sample is "Illicitly distilled liquor unfit for human consumption and injurious to health" and also sent a requisition for confiscation of the remaining seized contraband to Superintendent of Police, Chittoor for confiscation and necessary action and the same is pending. After completion of investigation PW.3 filed charge sheet against accused.

(v) PW.1 deposed that on instructions of their Tahsildar he and G.Mallikarjuna Reddy went to Chowdepalli Police Station and then himself, G.Mallikarjuna Reddy, PW.2 and LW.2 P.M.Kiran Kumar proceeded to scene of offence from Chowdepalli police station along with

PW.3 in private vehicle. Whereas PW.3 deposed that he directly called to the PW.1 and LW.4 M.Reddeppa to come to police station and PW.2 deposed that they secured mediators i.e PW.1 and LW.4 M.Reddeppa at the scene of offence after they caught hold the accused. There is major contradiction in the evidence of PW.1 to PW.3. PW.1 is the V.R.O of Chowdepalli Village but not scene of offence village. PW.2 deposed that there are some residential houses at the scene of offence. Perusal of evidence of PW.1 to PW.3 shows that PW.3 did not secure local independent witnesses to act as mediators to the alleged search and seizure of contraband from the possession of accused and arrest of accused. At this stage it is relevant to note section 100(4) of Cr.P.C, according to which while conducting search the investigating officer shall call upon two or more independent and respectable inhabitants of the **locality** in which the place to be searched is situate to attend and witness the search and if **local inhabitants** are not available efforts has to be made to call upon inhabitants from other locality to act as witnesses and issue an order in writing to them. PW.2 deposed that there are residential houses at scene of offence. But PW.3 did not issue any written order to any local inhabitants or the nearby inhabitants to attend and act as witness to the search and seizure. At this stage it is relevant to refer judgment of Hon'ble High Court of Andhra Pradesh reported in **Yeduru Sreenivasulu Reddy Vs State of Andhra Pradesh, 2002 (1) ALD Cri 347** wherein while dealing with the application of section 100(4) Cr.P.C the Hon'ble High Court held that in the absence of written order under section 100 (4) of Cr.P.C the evidence of prosecution witnesses that no one came forward to act as witnesses to panchanama cannot be believed and relied upon and the entire search conducted by the

prosecution is vitiated. In the present case also PW.3 has not issued any written order to any local inhabitants or the nearby inhabitants to attend and act as witnesses to the search and seizure. So, the reasons given by PW.1 and PW.3 for not securing local inhabitants as mediators at the time of search and seizure are not satisfactory. Further, PW.3 has not prepared any rough sketch of scene of offence. Therefore, this Court is of the view that non securing of local independent witnesses as mediators at the time of search and seizure is fatal to the case of prosecution and the evidence of PW.1 to PW.3 with regard to seizure of contraband from accused cannot be believed as there are contradictions in the evidence of PW.1 to PW.3.

(v) In view of the above mentioned reasons, this Court is of the view that the prosecution has failed to prove guilt of accused beyond all reasonable doubts for the offence punishable under section 7B read with 8B of Andhra Pradesh Prohibition (Amendment Act), 2020. Accordingly, this point is answered in favour of accused.

12. In the result, this Court found accused **not guilty** for the offence under section 7B read with 8B of Andhra Pradesh Prohibition (Amendment Act) 2020, and accordingly, he is **acquitted** for the same under section 248 (1) of Code of Criminal Procedure, 1973 and set at liberty. The bail bonds of accused and his sureties shall be in force in terms of Sec.437A Code of Criminal Procedure, 1973 for a period of six months. M.O.1 is ordered to be destroyed after expiry of appeal time.

Typed to my dictation by the Stenographer in computer corrected signed and pronounced by me in open Court on this the 13th day of September, 2023.

Sd/- G.Karthik
Principal Junior Civil Judge-cum-
Judicial Magistrate of First Class,
Punganur.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED FOR

<u>For Prosecution</u>		<u>For Defence</u>	
PW.1	K.Nagendranath Reddy		- None -
PW.2	B.Buddanna Naik		
PW.3	G.Ravi Kumar		

EXHIBITS MARKED FOR PROSECUTION:-

Ex.P1	Arrest cum seizure mahazar dt.23.04.2022
Ex.P2	F.I.R.
Ex.P3	Chemical Analysis report.

EXHIBITS MARKED FOR DEFENCE:- Nil.

Material objects:-

M.O.1	Unexpended portion of sample packet
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Principal Junior Civil Judge–cum-
Judicial Magistrate of First Class,
Punganur.

CALENDAR AND JUDGMENT

District :: Chittoor
Calendar cases tried by the **PRINCIPAL JUNIOR CIVIL JUDGE –CUM - JUDICIAL MAGISTRATE OF FIRST CLASS:: PUNGANUR**

Date of Offence	Date of Report	Apprehension of Accused	Date of Released on Bail	Date of Comment of Trial	Date of Close of Trial	Date of Sentence or Order
23.04.2022	23.04.2022	23.04.2022	26.04.2022	02.03.2023	26.07.2023	13.09.2023

Explanation for delay: This case record was transferred to this Court from I Additional Junior Civil Judge-Cum-I Additional Judicial Magistrate of I Class, Punganur on 15.12.2022 at the stage of examination of accused. Thereafter, accused was examined U/s.239 Cr.P.C on 10.01.2023 and PW.1 to 3 were examined and prosecution side evidence was closed. The accused is examined U/s 313 Cr.P.C on 26.07.2023. Heard both sides on 08.09.2023. Judgment pronounced on today. Hence, the delay.

Judgment in **C.C.No.691/2022** on the file of Principal Junior Civil Judge–cum-Judicial Magistrate of First Class, Punganur.

Complainant: The State represented by the Sub Inspector of Police, Chowdepalle P.S

Name of the accused **Peddakonda Chandrababu**, aged about 32 years, S/o P.Reddeppa, caste by Yadava, coolie, Vooturu village, H/o Peddayallakuntla, Chowdepalle mandal.

Nature of Offence and section of law Unlawful possession of ID Arrack
Under Section 7B read with 8B of Andhra Pradesh Prohibition (Amendment Act) 2020

Finding Not guilty.

Sentence In the result, this Court found accused **not guilty** for the offence under section 7B read with 8B of Andhra Pradesh Prohibition (Amendment Act) 2020, and accordingly, he is **acquitted** for the same under section 248 (1) of Code of Criminal Procedure, 1973 and set at liberty. The bail bonds of accused and his sureties shall be in force in terms of Sec.437A Code of Criminal Procedure, 1973 for a period of six months. M.O.1 is ordered to be destroyed after expiry of appeal time.

Principal Junior Civil Judge–cum-
Judicial Magistrate of First Class,
Punganur.

Copy submitted to the Hon’ble Chief Judicial Magistrate, Chittoor vide
Dis.No....., Dt.....