

TNVR150010402026

Presented on : 26-05-2026

Registered on : 26-05-2026

Decided on : 19-06-2026

Duration : 0 years, 0 months, 24 days



**IN THE COURT OF JUDICIAL MAGISTRATE
ARUPPUKOTTAI**

PRESENT : Selvi. D.Jeyapradha, B.A.,B.L.,(Hon's)

Judicial Magistrate, Aruppukottai.

Friday, the 19th day of June, 2026

Calendar Case 141/2026

The State rep. by The Sub-Inspector of Police, Aruppukottai Town Police Station.	:	Complainant
//Verus//		
Gunasekaran, (24/2026) S/o. Karthik, 137, Deva nagar 1 st street, Bharathiyar road, Madurai South taluk, Madurai.	:	Accused

1.	Serial Number	CC.No.141/2026
2.	Name of the Police Station and Crime Number	Aruppukottai Town Police Station Crime No. 110/2026
3.	Name of Accused	Gunasekaran, (24/2026)
4.	Age	S/o. Karthik, 137, Deva nagar 1 st street, Bharathiyar road, Madurai South taluk, Madurai.
5.	Father's Name	
6.	Residence	

7.	Occupation	-		
8.	Occurrence date	26.02.2026		
9.	Date of Complaint	-		
10.	Date of Apprehension	26.02.2026		
11.	Release on Bail	26.02.2026		
12.	Date of Commitment	-NA-		
13.	The Period of remand of the Accused	The accused is arrested on 26.02.2026 and released station bail on same day		
14.	The date of filling of the Complaint/ final report in the Court	26.05.2026		
15.	The date of committal of the case to the Court of Session	-NA-		
16.	The date of questioning of accused under section 251, 263, 269 and 67 of the Bharathiya Nagarik Suraksha Sanhita, 2023 as the case may be	08.06.2026		
17.	Filing of all miscellaneous Petitions and their results including the results on challenge before superior Courts, except routine petitions like petitions under section 355 of BNSS	-		
18.	Date of Examination in chief and Cross- Examination of a witness	witness	Examination of Chief	Cross- Examination
		PW1	12.06.2026	12.06.2026
		PW2	15.06.2026	15.06.2026
		PW3	15.06.2026	15.06.2026
		PW4	15.06.2026	15.06.2026
19.	Date of examination of the accused under Section 351 (b) (1) of BNSS	16.06.2026		
20.	Details of abscondence of an	-		

	accused and his appearance/ production , as the case may be and grant of stay by superior Courts and the results there of	
13.	Date of Commencement of Trial	12.06.2026
14.	Date of closure of Trial	16.06.2026
15.	Sentence or Order	19.06.2026
16.	Service of Copy of judgment of finding on Accused	Case ended in acquittal, hence copy not furnished.
17.	Explanation of delay	No delay

This case came up for final hearing before this Court on 16.06.2026 in the presence of Mr. Senthil Kumar, Learned Assistant Public Prosecutor for the state and Mr.A.Arumugaperumal, B.A.,B.L., Learned counsel for the Accused. After perusal of the available case records, and upon hearing arguments of both sides and having stood over for consideration till this day, this Court delivers the following:

JUDGMENT

1. The Sub-Inspector of Police, Aruppukottai Town Police Station, has filed a final report in connection with an incident of selling liquor bottles at an additional price, which allegedly occurred on 26.02.2026 at approximately 11.00hrs. As per the report, while Sub-Inspector Arunkumar, along with police personnel, was patrolling and monitoring the Aruppukottai Town area in connection with prohibition and gambling-related crimes under the jurisdiction of the Aruppukottai Town Police Station, the accused Gunasekaran was found to be in possession of white cement bag

full a 35 liquor bottles for the purpose of selling them at a higher price for personal profit near the Aruppukottai New busstand, without any government license or permission. The seized bottles were: OLD SECRET XXX RUM – 10 Bottles, EXPRESS BRANDY – 17 Bottles, MENS CLUB BRANDY – 8 Bottles, accordingly final report has been filed against the accused under section 4(1)(C) of Tamil Nadu Prohibition Act (herein after called as ‘TNP Act’).

2. COGNIZANCE:

Upon perusal of the charge sheet, this Court was satisfied that a prima facie case has been established against the Accused. Accordingly, this Court took cognizance of the offence under Section 4(1) (A) of TNP Act and issued summon to the accused. Upon his appearance before the Court, copies of the case records were duly furnished to him at free of cost, in compliance with Section 230 of BNSS.

3. FRAMING OF CHARGES:

Upon perusal of the records, this Court was satisfied that there is ground for proceeding against the Accused and hence, a charge is framed against him. The accused is charged under section 4(1) (A) of TNP Act. The charge is then read over and explained to him as per the mandate of section 263 of BNSS. Having understood the charge, the accused pleaded ‘not guilty’ and claimed to be tried. Hence, this court proceeded with the trial of the case.

4. PROSECUTION WITNESSES

In support of its case, the Prosecution examined four witnesses, PW1 to PW4 and Exhibits P1 to P3 were marked, and the prosecution's evidence was closed.

5. EVIDENCE OF THE PROSECUTION IN BRIEF:

Four official witnesses were examined on the side of the prosecution. PW1 (Head Constable Vigneshkumar), PW4 (Gr.1 Police Thamaraikannan) deposed that on 26.02.2026, while on patrol duty along with Sub-Inspector Arunkumar in connection with prohibition, ganja, and gambling offences, in the, Aruppukottai New Bus stand area, they noticed the accused standing with White cement bag, containing 35 bottles of government liquor. When questioned about the possession of the said liquor, the accused reportedly admitted that he had no license or legal authority and that he was keeping the liquor for the purpose of selling it at a higher price for personal gain. Following this, the accused was arrested on the spot, the liquor bottles were seized, and a seizure mahazar was prepared, in which PW1 and PW4 are signed as witnesses, PW2, Sub-Inspector Arunkumar, corroborated the above facts and further stated that, in the absence of independent witnesses, he obtained the signatures of accompanying police personnel for the seizure mahazar. He registered Crime No. 110/2026 under Section 4(1)(C) of the Tamil Nadu Prohibition Act, and later handed over the case file upon transfer. PW3, Sub Inspector Vijayakumar, who continued the investigation, stated that he handed over the seized 35 liquor bottles (OLD SECRET XXX RUM -10, EXPRESS BRANDY-17 and MENS CLUB BRANDY - 8) to the

Assistant Commissioner for destruction on 10.03.2026 and obtained a destruction certificate and after completing the investigation, filed the final report under Section 4(1)(A) of the Tamil Nadu Prohibition Act against the accused.

6. SECTION 351(1)(b) of BNSS PROCEEDINGS:

Upon completion of the prosecution evidence, the Accused is examined under Section 351(1)(b) of BNSS, and the incriminating circumstances arising from the evidence on record are put forth to him. The accused denied all the allegations and the incriminating circumstances brought forth by the prosecution. No oral or documentary evidence was adduced on behalf of the accused. Accordingly, the defence evidence was closed.

7. POINTS FOR DETERMINATION:

On perusal of the connected documents and records, the questions that arise for consideration in this case are enumerated below,

- i. Whether the Prosecution has established the ingredients of the offence under section 4(1) (A) of the TNP Act against the Accused?**
- ii. Whether the Prosecution has proved the case beyond all reasonable doubt as against the accused?**

Both sides' counsel placed their submissions to substantiate their case.

8. APPRECIATION OF EVIDENCE AND DISCUSSION:

(Both of the above points involve similar adjudication; hence, this court is inclined to address these two points simultaneously in order to avoid recapitulation of facts and evidence)

8.1. Before addressing the points for consideration, it is pertinent to note that in criminal proceedings, the burden of proof squarely lies on the Prosecution, which must establish the guilt of the accused beyond a reasonable doubt. As per Section 104 of the Bharatiya Sakshya Adhiniyam, 2023 (herein after referred to as BSA), it is incumbent upon the Prosecution to prove the allegations levelled against the accused beyond all reasonable doubt as stated above. However, for the offence under 4(1) (A) of the TNP Act, the accused is presumed to have committed the alleged offence unless the contrary is shown. The said presumption is enumerated under section 4 (2) (a) of the TNP Act. In order to draw this presumption against the accused preliminary set of facts needs to be established by the prosecution. Such as the alleged case property of 35 bottles of government liquor was indeed recovered from the possession of the accused.

8.2 The learned counsel for the prosecution submitted that the recovery of 35 bottles of liquor from the possession of the accused has been duly established before this Court through the examination of PW1, PW2 and PW4. In such circumstances, the presumption under the relevant provisions of the Act operates against the accused, thereby shifting the burden upon him to rebut the same. Conversely, the learned

counsel for the accused contended that the prosecution has failed to discharge its initial burden of proof. It is argued that the witnesses examined on behalf of the prosecution are interested parties, and their testimonies cannot be solely relied upon, especially in the absence of any independent public witnesses. Furthermore, it is submitted that the prosecution has not established that the seized bottles actually contained liquor, as no scientific or chemical examination was conducted to confirm the contents.

8.3 Rival submissions made by both sides' counsels are considered. In this case at hand, the recovery was effected by PW2, whereas PW1 and PW4 are the witnesses for the said recovery. All of these witnesses are police officials. It is settled law that when only police witnesses have been examined, their evidence must be thoroughly scrutinised. All of the prosecution witnesses are interested in the success of the prosecution case, and therefore, the probability of their being guided by extraneous factors, other than truth, cannot be ruled out. The police witnesses cannot be straightaway termed as unreliable witnesses, however, when there is a possibility of joining any public witness in the investigation and still no genuine efforts are made to join the independent person as witness, then the testimony of the police witness does not lend sufficient credence/reliability, unless it is corroborated by independent material witness.

8.4 The prosecution witnesses PW1, PW2 and PW4, deposed that public witnesses refused to sign and testify as witnesses, despite the request from the investigating officer, during the process of recovery and thus they could not be joined as witnesses in this case. While so, no evidence was marked to establish that the prosecution has taken bonafide efforts by sending the summons to the said witnesses or taken action against those witnesses who failed to assist the prosecution under section 214 of the BNS or for other offences. In view of the same, it is duly established that genuine efforts were not made by the Investigating Officer of this case to join the public witness. The non-joining of the public witness despite their easy availability at the time of the alleged recovery of the article creates doubt in the story of the prosecution.

8.5 In addition to the same, no scientific examination was done to establish the fact that the 35 bottles alleged to be recovered from the accused contain liquor. Reliance is placed on the decision of Hon'ble Madras High Court in **Vella pinna Thevar Vs unknown**, reported in **1970 MLJ (Cri) 689**, wherein it was held as follows,

4. A legal ground has been raised for quashing the conviction under Section 4(1) (a). The learned Counsel for the petitioner argues that the prosecution will have to establish that the articles seized from the accused were liquor under Section 3 (9) of the Act. Distilled arrack has not been subjected to scientific analysis by a Chemical Examiner. The learned Counsel bases his argument on the authority of the decision of the Supreme Court of India in State of Andhra Pradesh v. Madiga Boosenna and Ors.

(1968) 1 S.C.J 160 : (1968)1 M.L.J (S.C.) 57 :(1963) 1 An. W.R. (S.C.) 57 : (1968) M.L.J. (Crl.) 12. This argument has considerable force. Inasmuch as the prosecution has failed to prove that what has been seized from the accused is ' liquor', the conviction under Section 4 (1) (a) is set aside.

8.6 It is incumbent on the prosecution to bring on record the link evidence to show that the sample of the recovery alleged to have been made by the police witness from the accused was analysed by forensic examination without it being tampered with by anyone, failure of which is a ground in favour of the accused. From the above discussions, it could be seen that the prosecution has miserably failed to establish the foundational facts stated above to attract the presumption under section 4 (2) (a) of the TNP Act against the accused.

8.7. It is a settled principle of law that an investigation is a systematic collection of facts for the purpose of ascertaining what occurred and explaining how and why it occurred. When the same individual acts as both the complainant and the investigating officer, it may raise concerns regarding the fairness of the investigation and the accused's right to a fair trial, as guaranteed under Article 21 of the Constitution of India. Such a situation may lead to the concentration of unchecked and arbitrary powers in the hands of the police, particularly in cases involving penal statutes that impose a reverse burden of proof.

8.8. In the present case, a substantial and material part of the investigation was carried out by the de-facto complainant himself, namely PW2. Only the formal acts

of obtaining the registration number for the seized amount and filing the final report were performed by PW3 after the transfer of PW2. Thus, it is evident that the de-facto complainant and the Investigating Officer are, for all practical purposes, one and the same person. However, it is equally well settled that in every case where the informant is also the investigator, it cannot be presumed that bias has been caused to the accused, nor can the entire prosecution case be disbelieved on that ground alone, unless actual bias, procedural irregularity, or prejudice is demonstrated. Reliance is placed on the judgment of the Hon'ble Supreme Court of India in **Mukesh Singh v. State (Narcotic Branch of Delhi)**, reported in **AIR 2020 SC 4794**, wherein it has been held as follows:

10.1. Therefore, merely because the complainant conducted the investigation that would not be sufficient to cast doubt on the entire prosecution version and to hold that the same makes the prosecution version vulnerable. The matter has to be left to be decided on a case-to-case basis without any universal generalization.

11..... Only in a case where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum-investigator and the case of the prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the

complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record....

From the above principles, it is evident that the mere fact of the informant acting as the investigator does not automatically vitiate the prosecution case, but the presence of procedural lapses assumes significance. In the present case, several such irregularities are apparent namely, the failure to secure independent public witnesses despite their availability, the omission to show that bonafide steps have been taken by the prosecution to secure those witnesses or to penalise them when they failed to assist the prosecution under section 214 of the BNS, the lack of steps taken to ascertain whether the seized bottles in fact contained liquor, further it is mandatory on the part of the police personnel to take video recording when search is made as per section 105 of BNSS but no such video was taken. In these circumstances, the fact that the informant himself acted as the Investigating Officer and conducted a substantial and material portion of the investigation assumes greater significance. Such a course of investigation causes serious prejudice to the accused and infringes the accused's right to a fair and impartial investigation, as contemplated under the principles laid down in the aforesaid judgment.

8.9. In furtherance of the above discussion, it can be very well said that the prosecution has failed to establish its case beyond all reasonable doubt, and as a result, the benefit of the doubt ought to be reckoned in favour of the accused person.

Accordingly, this Court concludes that the prosecution has failed to establish the essential ingredients of the offence under section 4 (1) (A) of the TNP Act against the Accused beyond all reasonable doubt.

9. DECISION:

- i. In the result, this Court finds that **the Accused is not guilty of the offences under section 4 (1) (A) of the TNP Act** and thus he is acquitted from the aforementioned charge as per section 271(1) of BNSS. The Bail bond of the accused person shall stand cancelled after the lapse of the limitation period for preferring the appeal.
- ii. In this case, the property was already destroyed. Hence, no order is passed.

Dictated to Steno-typist, transcribed and formatted by steno-typist and then corrected and pronounced by me in the open Court on this 19th day of June, 2026.

**Judicial Magistrate,
Aruppukottai.**

APPENDIX-A

PROSECUTION SIDE WITNESS:-

S.No.	Rank of Witness	Name of the Witness	Remarks
1.	PW1	Vigneshkumar (Head Constable)	Seizure Mahazar Witness
2.	PW2	Arumkumar (Sub-Inspector)	Investigation officer
4.	PW3	Vijaiyakumar (Sub-Inspector)	Investigation officer

5.	PW4	Thamaraikannan(Gr-1 Police)	Seizure Mahazar Witness
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APPENDIX-B

PROSECUTION SIDE EXHIBITS:-

S.No.	Exhibit	Description of document
1.	Ex.P1	Seizure Mahazar
2.	Ex.P2	FIR
3.	Ex.P3	Destruction certificate

APPENDIX-C

MATERIAL OBJECTS- NIL

APPENDIX-D

DEFENCE SIDE WITNESS – NIL

APPENDIX- E

DEFENCE SIDE EXHIBITS – NIL

Note:

1. No Witnesses were detained more than three times.
2. Nature of disposal communicated to the concerned Police.
3. The Accused person is enlarged on bail during the pronounced of judgment.

**Judicial Magistrate,
Aruppukottai.**