

IN THE COURT OF JUDICIAL MAGISTRATE

FIRST CLASS, DISTRICT-KORAPUT

Present: Smt. Sudha Bai Agrawal, LL.B.,
Judicial Magistrate First Class, Koraput.
J.O.Code-OD0773

26th February, 2024

2(a)CC –226/2021
Trial No.383/2022

Arising out of Excise Station, Koraput P.R. No.40/2021-2022
u/s.52(a) Odisha Excise Act

Complainant	State of Odisha
Represented By	Sri Subash Senapati, Asst. APP
Accused	Bijaya Nayak, aged about 36 years, S/o- Subash Nayak, Vill- Paraja Street, PS- Koraput Town, Dist- Koraput.
Represented By	Sri G. Panigrahi, Advocate and his associates

Date of Offence	12.07.2021
Date of FIR	N/A
Date of Charge sheet	PR No.40/01.09.2021
Date of Framing of Charge	24.08.2022

Date of commencement of evidence	27.10.2022
Date on which Judgment is reserved	23.02.2024
Date of Judgment	26.02.2024
Date of the Sentencing Order, if any	N/A

Accused Details :							
Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of section 428, Cr.P.C
1	Bijaya Nayak	- NA -	24.08.2022	u/s-52(a) Odisha Excise Act	Acquitted	-NA-	-NA-

J U D G M E N T

The above named accused stands charged for committing offence punishable u/s.52(a) Odisha Excise Act.

2. The case of the prosecution in a nutshell is that on 12.07.2021 at about 02.50 PM, the informant along with

his staff were performing patrolling duty at Paraja Street village under Koraput Town P.S. During patrolling duty, they saw that the accused namely Bijaya Nayak was selling liquor in his house verandah. On search, they found one motor tube kept inside the jerry bag containing 10 litres of I.D. liquor. He conducted blue litmus paper test which turned into red. He conducted hydrometer test. Then the informant seized the liquor and prepared seizure list. Collected four samples from the seized liquors and destroyed the rest liquor on the spot. The accused was served notice u/s 41-A of Cr.P.C. Basing on this report the case was registered and after investigation finding prima facie material against the accused, I.O. submitted P.R. against the accused for commission of alleged offence punishable u/s.52(a) Odisha Excise Act and cognizance of offence thereunder was taken. Hence this trial.

3. The case of the defence is one of complete denial and that of false implication.

4. The points for determination in this case are as follows:

(i) Whether on 12.07.2021 at about 02.50 PM at Parja Street village under Koraput Town P.S., the accused was

in exclusive and conscious possession of a motor tube inside the jerry bag containing 10 litres of I.D.liquor without any valid license?

(ii) Whether the seized liquid is nothing but I.D. liquor?

5. In order to prove its case the prosecution has examined three witnesses. On the other hand defence has examined none on its behalf.

6. Coming to the evidence on record PW1 stated that on 12.07.2021 at about 2.50 P.M. he along with OIC of Excise Dillip Kumar Ratha and other staff had been to Paraja Sahi under Koraput Town P.S. During course of patrolling duty, they noticed that a person was selling liquor in front of his house. On suspicion, they search and recovered 10 litres of I.D. liquor kept inside a black tube. Blue litmus paper test was conducted and it turned red. Other tests were conducted and it was found to be ID liquor. The liquor was measured by litre measure and found to be 10 litres. The liquor was seized in presence of witnesses by the informant. He proved his signature on the seizure list, hydrometer chart and spot map as Ext.P1/PW1, Ext.P2/PW1 and Ext.P3/PW1 respectively.

Four samples of 500ml each were drawn in four numbers of bottles from the seized liquor. The rest of the liquor was destroyed on the spot and the accused Bijaya Nayak was released under notice u/s 41-A of Cr.P.C.

During cross examination he stated that no command certificate was issued in his favour and that he cannot say the company name or any identification mark of the tube which the liquor was kept and that he cannot say the names of the houses situated nearby and he cannot say the khata number and plot number of the alleged house and that the seized liquor is not found in the court today.

PW2 stated that on 12.07.2021 at about 2.50 P.M. he along with other staff had been to Paraja Sahi under Koraput Town P.S. During course of patrolling duty, they noticed that the accused Bijaya Nayak was selling liquor in his house verandah. On search they found one motor tube kept inside the jerry bag containing liquor. He conducted blue litmus paper test and it turned red. He also conducted hydrometer test and found the temperature 75 F, indication 75 and strength 34.4 UP. From the test and his service experience, he came to know that it was nothing but I.D. liquor. On being asked, the accused failed

to produce any document for the possession of the same. He measured the liquor and found it to be 10 litres. Then, the liquor was collected in 4 nos of bottles and the motor tube was destroyed at the spot. He prepared the seizure list. He proved the seizure list, blue litmus paper test, hydrometer chart and spot map as Ext.P1¹/PW2, Ext.P1²/PW2, Ext.P2¹/PW2, Ext.P3¹/PW2 and his signature thereon as Ext.P1³/PW2, Ext.P2²/PW2 and Ext.P3²/PW2 respectively. He served notice u/s 41-A of Cr.P.C. to the accused person.

During cross examination he stated that, he had not submitted any document regarding his patrolling duty on that day and that the motor tube was plain and nothing was written on it and the same has not been mentioned in the PR and that he had not verified the ownership of the house and that he had not measured the atmospheric temperature before conducting hydrometer test and that blue litmus paper turns into red when it came in contact with any acidic substance and that he had not undergone any distillery training and that he had not submitted any experience certificate in this case and that he had not sent the sample for chemical examination and that he had not produced the liquor in the court.

PW3 stated that he know nothing about this case. At the instance of police, he had put his signature on the seizure list, hydrometer chart and spot map marked as Ext.P1⁴/PW3, Ext.P2³/PW3 and Ext.P3³/PW3.

During cross examination he stated that he was not examined by the I.O. in this case and that as he do not know anything he had put his signatures at the instance of the police.

7. During course of argument, Ld. Defence counsel submitted that the evidence of the official witness finds no independent corroboration. Hence, prosecution evidence should not be relied upon to hold the accused liable for the offence. In this circumstances, production of materials object or sample thereof before the court would have supported the prosecution case as far as seizure is concerned. However the sample liquor was neither produced before the Court nor has given any cogent explanation to that effect. Thus it creates a room for doubt to believe the seizure which the prosecution alleges to be from the exclusive and conscious possession of the accused.

If at all for the sake of argument, the seizure is

believed, it is to be seen whether the alleged seized liquid was I.D. liquor or not. However, PW2 has not submitted his experience certificate and he during his cross examination admitted that he had not undergone any distillery training. Admittedly, the sample was drawn for chemical examination but the same has not been sent for chemical examination. The above facts shows that it cannot be safely relied that the seized liquid was nothing but I.D. liquor.

8. In view of the above discussion, this court is of the opinion that prosecution has failed to adduce sufficient evidence to prove that I.D.liquor was seized from the exclusive and conscious possession of the accused.

9. In the result, the accused is found not guilty for committing offence punishable u/s.52(a) Odisha Excise Act and accordingly he is acquitted there from u/s.248 (1) Cr.P.C. The bail bond furnished by the accused person shall remain in force for a further period of six months in view of the provisions U/s 437A of Code of Criminal Procedure.

C.J(J.D.) -cum- J.M.F.C., Koraput.

10. The seized articles if any, be destroyed after the expiry of the appeal period and in case of appeal as per the order of the Appellate Court.

11. Enter this case as mistake of fact.

12. The accused is present. The judgment is dictated and corrected by me, pronounced in the open Court on 26th day of February, 2024 under my signature and seal of this Court.

C.J(J.D.) -cum- J.M.F.C., Koraput.

LISTOFPROSECUTION/DEFENCE/COURTWITNESSES		
A.Prosecution Witnesses		
RANK	NAME	NATURE OF EVIDENCE
PW1	Prasanta Ku. Naik	Official witness
PW2	Dillip Kumar Ratha	Informant -cum – I.O.
PW3	Ashok Kumar Turuk	Seizure witness
B. Defence Witnesses		
RANK	NAME	NATURE OF EVIDENCE
NIL		
C. Court Witnesses		
RANK	NAME	NATURE OF EVIDENCE

NIL		
LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. Prosecution Exhibits		
Sl. No.	Exhibit Number	Description
1	Ext. P1/PW1	Signature of PW1 on seizure list
2	Ext. P1 ¹ /PW2	Seizure list
3	Ext. P1 ² /PW2	Blue litmus paper test
4	Ext. P1 ³ /PW2	Signature of PW2 on seizure list
5	Ext. P1 ⁴ /PW3	Signature of PW3 on seizure list
6	Ext. P2/PW1	Signature of PW1 on hydrometer chart
7	Ext. P2 ¹ /PW2	Hydrometer chart
8	Ext. P2 ² /PW2	Signature of PW2 on hydrometer chart
9	Ext. P2 ³ /PW3	Signature of PW3 on hydrometer chart
10	Ext. P3/PW1	Signature of PW1 on spot map
11	Ext. P3 ¹ /PW2	Spot map

12	Ext. P3 ² /PW2	Signature of PW2 on spot map
13	Ext. P3 ³ /PW3	Signature of PW3 on spot map
B. Defence Exhibits		
Sl. No.	Exhibit Number	Description
NIL		
C. Court Exhibits		
Sl. No.	Exhibit Number	Description
NIL		
D. Material Objects		
Sl. No.	Material Object Number	Description
NIL		

C.J(J.D.) -cum- J.M.F.C., Koraput.