

**IN THE COURT OF THE SUB-DIVISIONAL JUDICIAL
MAGISTRATE, ATHAGARH, DISTRICT-CUTTACK.**

Present : Smt. S. Kunmun Achary, LL.M,
Sub-Divisional Judicial Magistrate,
Athgarh.
J.O Code- OD00625

Dated this the 08th day of May, 2024.

2(a)CC No. 241 of 2022

*(arising out of Excise Station Athgarh P.R. No. 129 / 2022-23)
Trial No.-58/2023 //C.I.S No. 250/2022*

Complainant:	State of Odisha Prosecution.						
Represented By:	Shri. D. P. Mansingh, Ld. A.P.P, Athgarh. Shri. S. Mohanty, Ld. APP, Athgarh						
Accused:	Sabita Mallick, aged about 42 years W/o.- Basanta Mallick At- Tarading(Mohanty Sahi), PS- Athgarh Dist.-Cuttack						
Represented By:	Shri. S.K Sahoo & Asso.. Ld. Adv., Athagarh						
Date of Offence				13.10.2022			
Date of P.R.				29.10.2022			
Date of Charge-Sheet				29.10.2022			
Date of Framing of Charges				04.04.2023			
Date of Commencement of Evidence				12.06.2023			
Date on which judgment is reserved				-			
Date of Judgment				08.05.2024			
Date of 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	Sabita Mallick	Appeared 24.03.2023	24.03.2023	Offence u/s. 52(a)(i) Odisha Excise Act	Acquitted	N.A	-

Offence u/s. 52(a)(i) Odisha Excise Act.

J U D G M E N T.

1. The above named accused stands charged u/s. 52(a)(i) Odisha Excise Act, that is to be hereinafter referred to as 'the Act,' for the purpose of brevity.

2. The case of the prosecution is laid forth as follows : -

On 13.10.2022 at about 10.00 A.M, while the complainant OIC of Excise Station, Atharh, Shri. Bijaya Kumar Bhanja and other staff were on patrolling duty at Tarading under Athgarh P.S, Dist.-Cuttack, he had detained the accused Sabita Mallick on suspicion, and on search, had recovered 15 litres of ID liquor from the illegal possession of the accused, hence they had seized the same and filed Prosecution Report against the accused, on the basis of which cognizance u/s. 52(a)(i) Odisha Excise Act was taken and prosecution was initiated against her, resulting in the present trial.

3. The plea of defence is one of denial and false implication.

4. In the present case the following points need to be determined:

1. *Whether on 13.10.2022 at about 10.00 A.M at Tarading under Athgarh P.S, Dist.-Cuttack, the accused was found in illegal, exclusive and conscious possession of 15 of ID liquor ?*
2. *Whether the substance that was recovered was nothing but ID liquor?*

5. In order to establish its case the prosecution has examined three witnesses in its favour, out of whom P.Ws 1 is the complainant-cum-investigating officer, P.W. 2 is the official seizure witnesses and P.W. 3 is the independent seizure witness in this case. On the other hand, the defence had examined none in its favour.

6. The accused is facing trial for allegedly having committed an offence u/s. 52(a)(i) Odisha Excise Act for bringing home the guilt of the accused under this penal provision of law, the prosecution needs to establish two points, firstly that the accused was found in illegal exclusive possession of contraband articles, which in the present case is 15 litres of ID liquor and secondly, regarding the conclusive nature of the contraband articles. To establish its allegations, the prosecution had examined one official seizure witnesses as P.Ws 2 who has deposed that on 13.10.2022, at about 10.00 a.m, while she was on patrolling duty along with the complainant at Tarading under Athgarh P.S, Dist.-Cuttack, the complainant had detained the accused in suspicion and had recovered and seized 15 litres of ID liquor from her possession. He further deposed that the complainant had also conducted blue litmus paper test and hydrometer test and after ascertaining the nature of the liquor, he seized it. P.W-1 is the complainant has also deposed in the same light that he had apprehended the accused from whose possession, he had seized 15

litres of ID liquor. To prove the factum of seizure, the prosecution has examined the above two official witnesses. P.W. 3 who is the independent seizure witness he pleaded ignorance about the seizure. It was put forth by Ld. Defence counsel that as the seizure had not been supported by independent witness, the seizure should not be believed but law is well-settled that evidence of official witnesses should not be discarded out rightly, they only need a careful scrutiny. In the present case, the witnesses supporting case of prosecution are only official witnesses and the seizure has not been supported by independent witness. Thus, in such circumstances, to strengthen the prosecution case, the seized articles must be produced before court during trial or account must be given regarding its present existence to clear any doubt on the point of seizure but that has not been done so in the present case which creates doubt on the seizure. Thus, basing on the above discussion, this court finds it safe to conclude that prosecution had failed to prove the factum of seizure conclusively.

7. Coming to the next point that the seized substance was nothing but ID liquor, it is has been held in a catena of rulings delivered by superior courts that chemical test is the surest test for determining the illicit liquor. Other tests are litmus and hydrometer test but cannot be said to be the surest unless prosecution establishes by evidence

that the officer who made the test was specially skilled because his evidence is to be accepted as evidence of expert u/s. 45 of Indian Evidence Act. In the present case, it appears from the case record that P.W-1 has send the alleged seized liquor for Chemical Examination. However, the scientific officer who has issued the said report has not been examined as a witness in this case by the prosecution, so as to testify regarding the said Report.

8. On the basis of the above discussions, this court is of the conclusion that prosecution has failed to prove its case against the accused u/s. 52(a)(i) Odisha Excise Act beyond reasonable doubt. Resultantly, accused person namely Sabita Mallick is found not guilty of offence u/s. 52(a)(i) Odisha Excise Act and is acquitted thereof u/s. 248(1) Cr.P.C. The accused person is on bail. She be discharged from her bail bond and be set at liberty forthwith, in connection with this case. The accused be set at liberty forthwith.

The bail bond of the accused person shall remain in force for six months from today in terms of section 437(A) of Cr.PC.

The seized ID liquor, if any, be destroyed four months after expiry of appeal period, if no appeal is preferred, and if preferred, be dealt with as per the direction of the appellate court.

Enter this case as 'mistake of fact' for statistical purposes.

Status of the accused:- The accused is on bail and is absent before this court today but is however allowed to be represented u/s. 317 Cr.P.C.

Judgment is typed to my dictation, corrected and pronounced by me in the open court today this is the 08th day of May 2024 given under my hand and seal of this court.

Sd/-

S.D.J.M, Athgarh

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES		
A. PROSECUTION WITNESSES		
RANK	NAME	NATURE OF EVIDENCE
P.W.1	Bijaya Kumar Bhanja	Complainant-cum-I.O
P.W.2	Premanjali Trikey	Official seizure witness
P.W. 3	Sidhanta Mallick	Independent seizure witness
B. DEFENCE WITNESS, IF ANY		
RANK	NAME	NATURE OF EVIDENCE
-	Nil	-
C. COURT WITNESS, IF ANY		
RANK	NAME	NATURE OF EVIDENCE
-	Nil	-
LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. PROSECUTION EXHIBITS		
SL. NO.	EXHIBIT NUMBER	DESCRIPTION
1.	Ext. P1/PW1	Seizure list
2.	Ext. P1 ¹ /PW1	Signature of PW1 on Ext. P1/PW1
3.	Ext. P1 ² /PW2	Signature of PW 2 on Ext. P1/PW1
4.	Ext. P1 ³ /PW3	Signature of PW 3 on Ext. P1/PW1

5.	Ext. P2/PW1	Rough sketch map
6.	Ext. P2 ¹ /PW1	Signature of PW 1 on Ext. P2/PW1
7.	Ext. P2 ² /PW2	Signature of PW2 on Ext. P2/PW1
8.	Ext. P2 ³ /PW3	Signature of PW 3 on Ext. P2/PW1
9.	Ext. P3/PW1	Hydrometer chart
10.	Ext. P3 ¹ /PW 1	Signature of PW1 on Ext. P3/PW1
11.	Ext. P3 ² /PW2	Signature of PW2 on Ext. P3/PW1
12.	Ext. P3 ³ /PW3	Signature of PW3 on Ext. P3/PW1
13.	Ext. P4/PW1	Blue litmus paper
14.	Ext. P4 ¹ /PW1	Signature of PW 1 on Ext. P4/PW1
15.	Ext. P5/PW1	Requisition for chemical examination
16.	Ext. P5 ¹ /PW1	Signature of PW 1 on Ext. P5/PW1
17.	Ext. P2 ¹ /PW1	Signature of PW 1 on specimen brass seal
18.	Ext. P6/PW1	Signature of PW 1 on Experience certificate
B. D10EFENCE EXHIBITS, IF ANY		
SL. NO.	EXHIBIT NUMBER	DESCRIPTION
-	Nil	-
C. COURT EXHIBITS, IF ANY		
SL. NO.	EXHIBIT NUMBER	DESCRIPTION
-	Nil	-
D. MATERIAL OBJECTS:		
SL. NO.	MATERIAL OBJECT NUMBER	DESCRIPTION
-	Nil	-

Sd/-
S.D.J.M, Athgarh