

FORM-A

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL
MAGISTRATE, BANKI.**

**Present:- Shri Sadhanjeet Panda, LL.M
S.D.J.M., Banki.
J.O. Code No. OD-0676**

[Dated this on 24th day of March, 2026]

**2(a)CC No.184/2022
Trial No.30/2024**

(Arising out of P.R No.132/2022-23 dtd.19.11.2022 of Banki
Excise Station u/s- 52 (a)(i) Odisha Excise Act.)

Complainant	STATE OF ODISHA
REPRESENTED BY	SRI UTKALA MANTRY SRI AMULYA KUMAR PRADHAN Ld. APPs, BANKI.
ACCUSED	TRINATHA SAHOO, AGED ABOUT 40 YEARS, S/O. SURATHA SAHOO, VILLAGE- BADAPADARA, P.S.-BEGUNIA, DIST- KHURDA.
REPRESENTED BY	SRI BISWARANJAN PANDA AND HIS ASSOCIATES, ADVOCATES, BANKI, DIST- CUTTACK, ODISHA.

FORM-B

Date of offence	19.11.2022
Date of P.R	19.11.2022
Date of PR (Final)	01.03.2023
Date of framing of charge	05.02.2024
Date of commencement of evidence	06.04.2024

Date on which judgment is reserved	24.03.2026
Date of Judgment	24.03.2026
Date of sentencing Order, if any	Does not arise

Accused Details

Rank of the accused	Name of the accused	Date of arrest	Date of Release on bail	Offence charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of section 428 of CrPC
1.	Trinatha Sahoo	19.11.2022	24.11.2022	52(a)(i) Odisha Excise Act	Acquitted	Does not arise	Does not arise

JUDGMENT

1. The above named accused stands charged for commission of offence punishable u/s-52 (a)(i) Odisha Excise Act.

2. The case of the prosecution is that :-

On dtd.19.11.2022 at about 7 A.M while the informant-cum-I.O i.e. the then OIC of Excise namely Bijaya Kumar Bhanja, Banki Excise Station along with his staff were performing patrolling duty at Charichhak area under Baideswar P.S, found the accused Trinatha Sahoo, S/o. Suratha Sahoo,

Village- Badapadara, P.S.-Begunia, Dist. Khurda was coming from Pasania Sabar Sahi towards Charichhak road by riding one Hero Honda CD 100 SS motorcycle without registration number by keeping one white colour jerry bag in his back side seat in a suspicious manner and thereafter they detained him and on search they found that there was one jerry bag consisting three numbers of rubber bladders each containing 20 litres of I.D liquor (i.e. in total 60 litres of I.D liquor) were present and on demand the accused failed produce any such documents for possessing the same and then the seizure was made. After completion of investigation the I.O has submitted the final P.R against the accused Trinatha Sahoo u/s.52(a)(i) of Odisha Excise Act. Hence, this case.

3. The plea of defence u/s- 313 of Cr.P.C is of complete denial and that of false implication.

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

i) *Whether on dtd.19.11.2022 at about 7 A.M at Charichhak area under Baideswar P.S the accused Trinatha Sahoo was found in exclusive and conscious possession of three numbers of rubber bladder each containing 20 litres of I.D liquor (i.e. in total 60 litres of I.D liquor) without any valid license or authority and thereby committed an offence punishable u/s-52(a)(i) of Odisha Excise Act ?*

ii) *Whether the said liquor was nothing but I.D liquor ?*

5. In order to substantiate its case prosecution has examined all the three witnesses, amongst them P.W.1 is the official witness, P.W.3 is the informant-cum-I.O whereas P.W.2 is the independent seizure witness of this case. On the other hand, defence has examined none on its behalf.

6. It is a settled position of law that prosecution has to prove its case beyond reasonable doubts. Keeping in mind the

above settled principle I perused the entire evidence adduced from the side of the prosecution.

P.W.1, the then Constable of Excise, Banki namely Biswanath Soren deposed that he knows the informant as well as the accused in this case and on 19.11.2022 at about 7 A.M while he along with the informant were performing patrolling duty at Charichhak area under Baideswar P.S. found the accused was coming from Pasania Sabar Sahi towards Charichhak road by riding one Hero Honda CD 100 SS motorcycle without registration number by keeping one white colour jerry bag in his back side seat in a suspicious manner and thereafter, they detained him and on search they found that there was one jerry bag consisting three numbers of rubber bladders each containing 20 litres of I.D liquor (i.e. in total 60 litres of I.D liquor) were present and on demand he failed to produce any such documents for possessing the same and thereafter blue litmus paper test was conducted and the blue litmus paper turns to red and the liquor and the vehicle was seized from the possession of accused and then seizure list was prepared in presence of witnesses at the spot. He proved his signature on the seizure list vide Ext.P-1/P.W.1.

In his cross-examination he deposed that he is not finding the seized liquor before this court today and he has not undergone distillery training and he cannot furnish any document to indicate the fact that he was on duty on that day and he had no prior acquaintance with the accused and so also he had not verified any I.D proof of the accused. Again he said that he was not examined by the I.O in this case and no command certificate was issued to them to perform their duty on that day. Lastly he deposed that if the blue litmus paper is poured to any acidic substance it will change its colour to red.

P.W.2 i.e. the independent seizure witness namely Ramesh Chandra Sethi deposed that he knows the informant Bijay Kumar Bhanja but he does not know the accused Trinatha Sahoo (Name suggested by the Ld. APP) of this case and he does not know anything about this case and so also nothing has been seized by the excise officials in his presence. He proved his signatures on the seizure list, hydrometer chart and spot map vide Ext.P-1/1/P.W.2, Ext.P-2/P.W.2 and Ext.P-3/P.W.2 respectively.

In his cross-examination he deposed that he does not know the contents of the seizure list, hydrometer chart and spot map respectively but he had only put his signatures on the said seizure list, hydrometer chart and spot map which was not duly filled as per the instruction of excise officials.

P.W.3 namely, Bijaya Kumar Bhanja, the then OIC of Excise Station, Banki deposed that on 19.11.2022 at about 7 A.M, he along with his staff were performing patrolling duty at Charichhak area of Baideswar P.S. and during their patrolling he found that accused Trinatha Sahoo was coming from Pasania Sabar Sahi towards Charichhak road by riding one Hero Honda CD 100 SS motorcycle without registration number by keeping one white colour jerry bag in his back side seat in a suspicious manner and thereafter they detained him on the said spot and recovered one jerry bag consisting three numbers of rubber bladders each containing 20 litres of I.D liquor (i.e. in total 60 litres of I.D liquor) from the possession of the accused and due to his service experience he confirmed that it is I.D liquor and the said liquor was seized in presence of available seizure witnesses and he collected the sample of such liquor in a plastic bottle. Again he said that after preparation of seizure list the contents of the seizure list was read over and explained to the

accused as well as to the witnesses to which they found it correct and the seizure witnesses and the accused put their respective signatures on the seizure list. He proved the seizure list (which was prepared by him) along with his signature thereon vide Ext.P-1/2/P.W.3 and Ext.P-1/3/P.W.3 respectively. Similarly, he proved the tested litmus paper along with his signature thereon which is attached with the case record vide Ext.P-1/4/P.W.3. He also prepared the hydrometer chart of the said liquor and found its temperature as 82 degree F., indication 81.2 and strength as 52.0 degree UP. He also proved the said hydrometer chart (which was prepared by him) along with his signature thereon vide Ext.P-2/2/P.W.3 and Ext.P-2/3/P.W.3 respectively. He also proved the spot map (which was prepared by him) along with his signature thereon vide Ext.P-3/2/P.W.3 and Ext.P-3/3/P.W.3 respectively. Lastly he deposed that after these procedures he had submitted the P.R against the accused u/s.52(a)(i) of Odisha Excise Act to face his trial.

In his cross-examination he deposed that he has not undergone any distillery training and he is not finding the seized liquor before the court today and further, he has not produced the tour diary details of that day before this court. Again he said that he has not verified the I.D proofs of the accused and the place of seizure is a busy and populated area and the challan regarding the amount of liquor seized is not sent to the Hon'ble Court. Lastly he deposed that he knows that if the blue litmus paper poured into any acidic substance it will change its colour to red.

7. Law is well settled that the possession contemplated under this Act, is not mere physical possession but exclusive and conscious possession. The prosecution evidence examined in connection with this case is silent with respect to the exact place

of seizure and also silent regarding people staying in the near vicinity. Hence, it cannot be conclusively established that the accused is in the management, control and conscious or exclusive possession of the alleged article in the alleged place of seizure. No document relating to alleged place of seizure is verified or seized in this case. The prosecution has no clue about the shape, size of the seized articles. The investigating officer cannot be termed to be an expert u/s- 45 of the Indian Evidence Act, 1872. It was held in **2002 (I) OLR 490** that prosecution has to lead unequivocal evidence so that his opinion can be regarded as an expert. But here the seizure of I.D liquor from the exclusive and conscious possession of the accused is not proved by the prosecution. Law is well settled that the prosecution must stand on its own leg by giving convincing, cogent, clear, reliable and trustworthy evidence. In these circumstances the prosecution has become unable to prove its case beyond all reasonable doubts with respect to seizure from the exclusive and conscious possession of the accused and identity of the alleged articles.

Further, it has been held in ***Abhimanyu Sahu Vs. State of Orissa (2011) 49 OCR 514*** that possession means exclusive and conscious possession. But the prosecution was unable to establish it beyond reasonable doubt that the said I.D liquor was seized from the exclusive and conscious possession of the accused.

Again there is no evidence as to chemical examination of seized items. Such articles have not been produced before the court. In ***Suma Das Vrs State of Orissa reported in 1993(II) OLR -392, Hon'ble Court*** has observed that "*Chemical test is the surest test for determining the illicit liquor. Other tests are litmus and hydrometer test but they cannot be said to be 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 the Indian Evidence*

Act. Simple statement that the officer has been working in the department for a number of years would not attract Section 45 of the Indian Evidence Act". In the instant case there is absolutely no evidence as to chemical examination of alleged seized items.

8. Here in the present case though the prosecution has examined one independent seizure witness but he knows nothing about this case. Admittedly, the seized article was not produced in the court hall during course of trial goes against the case of the prosecution. Further, no such command certificate has been submitted it could not be ascertained whether on the alleged date, time and place the informant along with his staffs was performing patrolling duty or not. Further, it is found that the P.Ws.1 & 3 are the official witnesses they may be interested for their positive outcome. That apart neither the informant nor the official witness has undergone any distillery training. Further, it is important to mention here that the excise officials have not verified any I.D proofs of the accused to ascertain his identity. Law is well settled that the prosecution must stand on its own leg by giving convincing, cogent, clear, reliable and trustworthy evidence. In these circumstances the prosecution has become unable to prove its case beyond all reasonable doubts with respect to seizure from the possession of the accused and identity of the alleged articles.

9. In the result the accused Trinatha Sahoo is found not guilty of committing the offence punishable u/s-52 (a)(i) Odisha Excise Act and he is acquitted therefrom u/s-248(1) of the Cr.P.C. He be set at liberty and discharged from his bail bond.

Enter this case as a "Mistake of Fact".

The seized liquor be destroyed after four months of expiry of the appeal period, if no appeal is preferred and in the event of appeal, the same shall be dealt with as per the order of

the appellate Court.

Further, the seized vehicle be handed over to the rightful owner (subject to out-come of the confiscation proceeding, if any), and the Zimanama shall be cancelled, after the expiry of four months of appeal period, if no appeal is preferred and in case of an appeal, as per the order of the Hon'ble Appellate Court.

Sd/-

S.D.J.M., Banki.

This judgment is dictated and corrected by me and pronounced in the open court today on this the 24th day of March, 2026 under my hand and seal of this court.

Sd/-

S.D.J.M., Banki.

FORM-C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES		
A. Prosecution Witnesses		
RANK	NAME	NATURE OF EVIDENCE
P.W.1	Biswanath Soren	Official witness
P.W.2	Ramesh Chandra Sethi	Independent seizure witness
P.W.3	Bijaya Kumar Bhanja	Informant-cum-IO
B. Defence Witness		
RANK	NAME	NATURE OF EVIDENCE
NIL	None	Does not arise
C. Court Witnesses		
RANK	NAME	NATURE OF EVIDENCE
NIL	None	Does not arise

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. Prosecution Exhibits		
S.I No	Exhibit Number	Description
1	Ext.P-1/P.W.1	Signature of P.W.1 on the seizure list
2	Ext.P-1/1/P.W.2	Signature of P.W.2 on the seizure list
3	Ext.P-2/P.W.2	Signature of P.W.2 on the hydrometer chart
4	Ext.P-3/P.W.2	Signature of P.W.2 on the spot map
5	Ext.P-1/2/P.W.3	Seizure list
6	Ext.P-1/3/P.W.3	Signature of P.W.3 on Ext.P-1/2/P.W.3
7	Ext.P-1/4/P.W.3	Blue litmus paper
8	Ext.P-2/2/P.W.3	Hydrometer chart
9	Ext.P-2/3/P.W.3	Signature of P.W.3 on Ext.P-2/2/P.W.3
10	Ext.P-3/2/P.W.3	Spot map
11	Ext.P-3/3/P.W.3	Signature of P.W.3 on Ext.P-3/2/P.W.3
B. Defence Exhibits		
S.I No	Exhibit Number	Description
NIL	NIL	Does not arise
C. Court Exhibits		
S.I No	Exhibit Number	Description
NIL	NIL	Does not arise
D. Material Objects :		
S.I No	Material Object Number	Description
NIL	NIL	Does not arise

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