

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 3rd day of January, 2025]

**2(a)CC No.210/2022
Trial No.344/2022**

(Arising out of P.R No.144/2022-23 dtd.01.12.2022 of Banki
Excise Station u/s- 52 (a)(i) Odisha Excise Act.)

Complainant	STATE OF ODISHA
REPRESENTED BY	SMT. RASHMIREKHA KAR, SRI PABITRA MOHAN PATtnaik SRI SANTOSH KUMAR MISHRA Ld. APPs, BANKI, DIST- CUTTACK.
ACCUSED	BIDYADHARA SAHOO, AGED ABOUT 58 YEARS, S/O. LATE NILAMANI SAHOO, VILLAGE- DHEGUA, P.S.-BANKI, DIST- CUTTACK.
REPRESENTED BY	SRI BIJAYA KUMAR SETHY AND HIS ASSOCIATES, ADVOCATES, BANKI, DIST- CUTTACK, ODISHA.

FORM-B

Date of offence	01.12.2022
Date of P.R	01.12.2022
Date of PR (Final)	23.12.2022

Date of framing of charge	12.07.2023
Date of commencement of evidence	19.04.2024
Date on which judgment is reserved	24.12.2024
Date of Judgment	03.01.2025
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.	Bidyadhar Sahoo	Does not arise	Does not arise	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.01.12.2022 at about 4.30 P.M while the informant-cum-I.O i.e. the then OIC of Excise namely Debananda Bhuyan, Banki Excise Station along with his staff

were performing patrolling duty at Dhegua village area under Banki P.S, found the accused Bidyadhara Sahoo, S/o. Late Nilamani Sahoo, Village- Dhegua, P.S. Banki, Dist. Cuttack was coming from Dhegua village towards Gadadharpur village by holding a white colour jerry bag in a suspicion manner for which they detained him near pond of the said Dhegua village and on search they found one rubber bladder containing 20 litres of I.D liquor from the possession of accused and on demand when the accused failed to produce any valid license or authority for possessing such liquor then the seizure was made. After completion of investigation the I.O has submitted the final P.R against the accused Bidyadhara 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.01.12.2022 at about 4.30 P.M at Dhegua village area under Banki P.S the accused Bidyadhara Sahoo was found in exclusive and conscious possession of one rubber bladder containing 20 litres of I.D liquor present in the said jerry bag 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 informant-cum-I.O, P.W.2 is the official witness whereas P.W.3 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 namely, Debananda Bhuyan, the then informant-cum-I.O., Excise Station, Banki deposited that on 01.12.2022 at about 4.30 P.M he along with his staff were performing patrolling duty at Dhegua village area under Banki P.S. and during their patrolling he found accused Bidyadhar Sahoo was coming from Dhegua village towards Gadadharpur village by holding a white colour jerry bag in a suspicious manner and on suspicion he detained him near the pond of Dhegua village and on search he found that one rubber bladder containing 20 litres of I.D liquor and on smell, taste and of blue litmus paper test it is concluded that it is nothing but I.D. liquor and due to his service experience he also confirmed that it is I.D. liquor. Further, he deposed that the said liquor was seized in presence of available seizure witnesses and he collected the sample of such liquor in a plastic bottle and then 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/P.W.1 and Ext.P-1/1/P.W.1 respectively and similarly the blue litmus paper which turned to red and attached to this case record along with his signature is marked Ext.P-1/2/P.W.1. He also proved the spot map (which was prepared by him) along with his signature thereon vide Ext.P-2/P.W.1 and Ext.P-2/1/P.W.1 respectively. Lastly he deposed that after this procedures he 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 the command

certificate was issued to them to conduct their duty on that day and he had no prior acquaintance with the accused and he does not know from which place and from whom the liquor was procured by the accused. Further he deposed that he is not finding the seized liquor before this court today and he has not undergone distillery training.

P.W.2, the then Constable of Excise, Banki namely Shankar Singh deposed that he knows the informant as well as the accused in this case and on 01.12.2022 at about 4.30 P.M while he along with the informant were performing patrolling duty at Dhegua village area under Banki P.S. found the accused Bidyadhar Sahoo was coming from Dhegua village towards Dadadharpur village by holding one jerry bag in his right hand in a suspicious manner and thereafter, they detained him and on search they recovered one red colour rubber bladder containing 20 litres of I.D liquor present in the said jerry bag 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 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 and spot map vide Ext.P-1/3/P.W.2 and Ext.P-2/2/P.W.2 respectively.

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. Further he deposed that he had no prior acquaintance with the accused and he had not verified any I.D proof of the accused. Lastly he deposed that he was not examined by the I.O in this case.

Lastly, **P.W.3** i.e. the independent seizure witness namely Bijay Pradhan deposed that he does not know the informant as well as the accused Bidyadhara 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 and spot map vide Ext.P-1/4/P.W.3 and Ext.P-2/3/P.W.3 respectively.

In his cross-examination he deposed that he does not know the contents of the seizure list and spot map respectively but he put his signatures on the said seizure list and spot map respectively as per the instruction of excise officials.

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. The record clearly shows that although the liquor has been seized by the I.O-cum-informant but no such chemical examination report has been found in the case record to prove that the seized liquid is I.D liquor. Further,

it is found that the P.Ws.1 & 2 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 Bidyadhara 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.

Sd/-

S.D.J.M., Banki.

This judgment is dictated and corrected by me and pronounced in the open court today on this the 3rd day of January, 2025 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	Debananda Bhuyan	Informant-cum-IO
P.W.2	Sankar Singh	Official witness
P.W.3	Bijay Pradhan	Independent seizure witness
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	Seizure list
2	Ext.P-1/1/P.W.1	Signature of P.W.1 on the Ext.P-1/P.W.1
3	Ext.P-1/2/P.W.1	Blue litmus paper
4	Ext.P-2/P.W.1	Spot map
5	Ext.P-2/1/P.W.1	Signature of P.W.1 on the Ext.P-2/P.W.1
6	Ext.P-1/3/P.W.2	Signature of P.W.2 on the Ext.P-1/P.W.1
7	Ext.P-2/2/P.W.2	Signature of P.W.2 on Ext.P-2/P.W.1
8	Ext.P-1/4/P.W.3	Signature of P.W.3 on Ext.P-1/P.W.1
9	Ext.P-2/3/P.W.3	Signature of P.W.3 on Ext.P-2/P.W.1
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.