

**IN THE COURT OF THE ADDL.JUDICIAL FIRST CLASS MAGISTRATE-CUM-ADDL.
JUNIOR CIVIL JUDGE :: PEDDAPURAM::**

PRESENT: Smt. G.Bullemma,
Additional Judicial First Class Magistrate-cum-Addl. Junior Civil Judge
Thursday, the 13th day of July, 2023

CALENDER CASE NO.1162/2023

Between

STATE – Rep by its

Special Enforcement Bureau Sub –Inspector,
Peddapuram. **(Cr.No.178/2021)**

..... Complainant

and

Pilli Venkateswararao,

S/o Arjhunarao,

Age: 37 years, Caste: Settibalija,

R/o Marripudi village,

Rangampeta Mandal.

..... Accused

This case having come up for hearing before me on this day in the presence of Sri D.Nagaraju, Assistant Public Prosecutor for prosecution and Sri P.Bala Krishna, learned Advocate for the Accused and the matter having stood over for consideration till this day, this court delivered the following:-

J U D G M E N T

1. This is an offence of possessing and transporting of I.D.Arrack for the purpose of sale. This is an offence of boot legging activities under Section 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act,2020.
2. The averments of the charge sheet in brief are as follows:

On 16-02-2021 at about 08:15 A.M, while K.Tatareddy, the Sub-Inspector, Special Enforcement Bureau, Peddapuram along with his staff D.Veerabhadrrao and D.Premanandam, Prohibition and Excise Constables while conducting patrol for Prohibition and Excise Offences, found the Accused near Beelalamma temple in Singampalli village limits of Rangamepta Mandal in suspicious condition with one gunny bag with two polythene covers, who on seeing the police personnel in uniform started running. The staff identified him and chased him and arrested on enquiry, the person revealed his identity to K.Tatareddy,, the Sub-Inspector, Special Enforcement Bureau, Peddapuram, later he tried for mediators but in vain. On examination the polythene covers containing 5 liters each of I.D Liquor, total 10 liters of I.D.Liquor. Then K.Tatareddy, the Sub-Inspector, Special Enforcement Bureau, Peddapuram informed the Accused that possession, sale, purchase, transportation and

manufacture of I.D.Liquor is an offence under A.P. Prohibition (Amendment) Act, 2020, arrested the Accused and drawn 300 ml of I.D.Liquor into on clean bottle for analysis purpose, and seized the remaining I.D.Liquor under cover of Special Report.

K.Tatareddy,, Prohibition and Excise Sub-Inspector registered the special report as Cr.No.178/2021 for the offence under Section 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act,2020, he produced the Accused before the Hon'ble Court for judicial remand. He forwarded the sample to Chemical Examiner, Kakinada along with letter of advice through Assistant Prohibition and Excise Superintendent, Kakinada. The Chemical Examiner analyzed the sample and opined in C.E.No.659/2021 dated 01-04-2021 that the sample at S.No.9252 is illicitly distilled liquor under for human consumption and injurious to health. The remaining property was destroyed as per the orders of the Superintendent of Police, Kakinada Rc.No.56/2020/DCRB.

After receiving the Analysis report and after completion of entire investigation, Y.Nagendra Krishna, Sub-Inspector, SEB, Peddapuram, filed the charge sheet against the Accused for the offence under Section 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act,2020.

3. The case is taken on file for the offence punishable under Section 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act,2020, against the Accused.
4. On appearance of the Accused, copies of case documents are furnished to the Accused under section 207 Cr.P.C.
5. Subsequently, the Accused is examined under Section 239 of Criminal Procedure Code and charge was framed for the offence under Section 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act,2020, and read over and explained the contents of charge to the Accused in Telugu language. After understood, the Accused denied the same and pleaded not guilty and claimed to be tried.
6. In the course of trial, the prosecution got examined P.W.1 and got marked Exs.P1 to P4, besides the material object M.O.1.

7. After closure of prosecution evidence, the Accused is examined under section 313 Cr.P.C explaining the incriminating evidence against the Accused that has come on record through the prosecution witnesses, which the Accused denied and reported no defence evidence.
8. Heard the Assistant Public Prosecutor for the state and the counsel for the Accused and perused the evidence, oral and documentary, on record.
9. **Now the point for determination** is whether the prosecution proved the guilt of the Accused for the offence punishable under Section 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act, 2020, beyond all reasonable doubt?
10. **Point for determination:**

To bring home the guilt of the Accused, the prosecution got examined P.W.1; and got marked Exs.P1 to P4 and M.O.1.

The P.W.1 testified that on 16-02-2021 at about 08:15 A.M, while he along with his staff proceeded for raid and by the time they reached near Beelalamma temple in Singampalli village of Jaggampeta Mandal, he found one male person on suspicious manner by possession one gunny bag containing two polythene covers, contains 05 liters each of I.D.Arrack, totalling 10 liters of I.D Arrack; on enquiry, the Accused revealed his name as Accused in this case. On further enquiry, the Accused stated that he possessed ID liquor and he purchased I.D.Arrack from unknown person at cheaper rate and transporting the same for sale at higher price. Then he deputed D.Premanandam, to secure mediators, he tried to secure mediators from neighborhood. He returned after 15 minutes and stated to him, that no one came forward to act as mediators. Then he opened the bag it contains a polythene cover, contain 10 liters of I.D.Arrack. He lifted 300 ml. of Liquor from the 10 liters of I.D.Liquor for analysis purpose. Accordingly, he drafted a Special Report and he along with his staff Accused person also affixed signatures on it. The admitted Special report is marked as Ex.P1. The Admitted bottle with identity slip is marked as M.O.1. He registered the Ex.P1 as a case in Cr.No.178/2021 for the offence under 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act, 2020 of Excise Police station,

Peddapuram. After that he has forwarded the Letter of Advice/Ex.P3 along with sample for analysis purpose. He received Chemical Analysis report from Government Chemical Examiner, Prohibition and Excise Laboratory, Kakinada. They opined the sample is illicitly distilled Liquor unfit for human consumption and injurious to health and after receiving the same, Y.Nagendra Krishna, Sub-Inspector of SEB station filed charge sheet.

11. In the cross-examination, P.W.1 admitted that the scene of offence is residential area and he tried to secure mediators, but none were came forwards to act as mediator, he did not issue written summons to secure official as mediators. He denied the suggestion that this case was foisted against the Accused for statistical purpose.
12. This court relied upon the judgment in Mudavath Mothia Vs State of A.P delivered by the Hon'ble High Court of A.P, held that "when the Excise officials are entrusted with the investigation of cognizable offence, they become police officials and the Excise officials can never say that they are not the police officials. When once they become police officials the confession recorded by them with the proceedings is in admissible. Moreover, the panchanama prepared by the Excise officials is hit by Section 25, 27 of Indian evidence act, 1872 and Section 161 of Cr.P.C. The benefit if any arises due to any invalidity of the investigation, only goes to the Accused and once the panchanama is hit by Section 25 and 27 of the Indian evidence Act and Section 161 of Cr.P.C, and when the independent witnesses are not examined by the prosecution. The prosecution theory of seizing the sachets from the custody of the Accused has to be looked with suspicion. The non examination of independent mediator is fatal to the prosecution version. The seizure proceedings drafted also cannot be considered in view of the bar under Section 25 and 27 of Indian Evidence Act, 1872 and Section 161 of Cr.P.C".
13. In this case also the independent witnesses are not examined, and a seizure panchanama is looked with suspicion and the prosecution case is fatal

due to the non examination of the independent witnesses. The benefit of doubt is certainly given in favour of the Accused.

14. Circumstantial Evidence: In order to sustain conviction, the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the Accused only and none else. The Circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the Accused but should be inconsistent with his innocence.
15. Admittedly the alleged scene of offence is residential area and the time of alleged offence being at 08:15 A.M, and not odd hours, there appears every possibility of availability of civilians at the alleged scene of offence. But, no independent witness other than the complainant personnel is examined.
16. Further, P.W.1 did not made any effort for securing the presence of mediators, neither the constable examined nor any document is filed to the effect of asking any third party to act as mediator or refusal of that third party to act so. Thus, except the self serving testimony of complainant personnel, no independent witness is examined as to seizure of the alleged contraband from the Accused and lifting of the M.O.1 sample from that alleged contraband. So, the prosecution failed to follow procedure under Section 100(4) Cr.P.C. Hence, in the absence of any corroborative evidence from independent source as to the recovery of the alleged illicitly distilled liquor from the possession of the accused. In this case the investigating officer and informant are same persons. The Court do not find it safe to conclude affirmatively on the basis of the self serving testimony of P.W.1 that the Accused committed the offence punishable under Section 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act,2020. So, the Accused is entitled for acquittal. As a consequence, the Court is of the finding that the prosecution failed to prove the guilt of the Accused for the offence punishable under Section 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act,2020, beyond all reasonable doubt. Accordingly, the point is determined.

17. In the result, Accused is found **not guilty** for the offence punishable under Section 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act, 2020. Consequently the Accused is **acquitted** under section 248(1) Cr.P.C. The M.O.1 shall be destroyed, after expiry of appeal time. Bail bonds of the Accused shall in force for a period of six months, in view of section 437-A of Cr.P.C.

Dictated to the shorthand writer, corrected and pronounced by me in the open court on this the 13th day of July, 2023.

Addl. J.F.C. Magistrate,
Peddapuram

APPENDIX OF EVIDENCE
Witnesses Examined

For Prosecution:-

P.W.1 : 07-07-2023 : K.Tatareddy, Sub-Inspector, Special Enforcement
Bureau, Peddapuram

For Defence:- None.

Exhibits marked

For Prosecution:-

Ex. P1 : 16-02-2021 : Special Report

Ex. P2 : 16-02-2021 : F.I.R

Ex. P3 : 16-02-2021 : Letter of advice

Ex. P4 : 01-04-2021 : Chemical analysis report.

For Defence:- Nil.

Material Objects Marked

M.O.1: Sample bottle.

A.J.F.C.M

**CALENDAR AND JUDGMENT
IN THE COURT OF THE ADDL.JUDICIAL FIRST CLASS MAGISTRATE-
CUM-ADDL. JUNIOR CIVIL JUDGE :: PEDDAPURAM::**

PRESENT: Smt. G.Bullemma,
Additional Judicial First Class Magistrate-cum-Addl. Junior Civil Judge
Thursday, the 13th day of July, 2023

CALENDER CASE NO.1162/2022

Date of	
Offence	: 16-02-2021
Complaint	: 16-02-2021
Appearance of accused	: 07-07-2023
Arrest of the Accused	: 16-02-2021
Released on bail	: 18-02-2021
Commencement of trial	: 07-07-2023
Closure of trial	: 07-07-2023
Sentence/Order	: 13-07-2023
Reasons for delay	: No delay.
Name of the complainant	: The state, rep by the Station House Officer, Prohibition and Excise Police station, Peddapuram.(Cr.No.178/2021)
Name of the accused	: Pilli Venkateswararao, S/o Arjhunarao, Age: 37 years, Caste: Settibalija, R/o Marripudi village, Rangampeta Mandal.
Offence	: under Section 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act,2020.
Plea of the Accused	: Not guilty.
Finding	: The Accused is found not guilty for the offence punishable under Section 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act,2020.
Sentence	: In the result, Accused is found not guilty for the offence punishable under Section 7(B) r/w 8(B) of A.P. Prohibition (Amendment) Act, 2020. Consequently the Accused is acquitted under section 248(1) Cr.P.C. The M.O 1 shall be destroyed, after expiry of appeal time. Bail bonds of the Accused shall in force for a period of six months, in view of section 437-A of Cr.P.C.

Addl. J.F.C. Magistrate,
Peddapuram

Copy submitted to the Honourable Chief Judicial Magistrate, East
Godavari, Rajamahendravaram.

