

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS ::
JAMMALAMADUGU**

Present: **Smt. S.Bhargavi**,
Judicial Magistrate of First Class, Jammalamadugu

Tuesday, the 03rd October, 2023

Calendar Case No.814 of 2022

Between:-

The State: Represented by the Enforcement Inspector,
Jammalamadugu.

... Complainant

Vs.

Bogala Lakshmi Narasimha Reddy, Age 31 yrs, S/o B.B.Obula Reddy,
Caste:Kapu, R/o. D.No.16/236, Kalvakatta (St), Proddatur (T & M).

... Accused

This case is coming on 20.09.2023 before me for final hearing in the presence of the learned Assistant Public Prosecutor Sri C. Veeranjanyulu for the complainant and of Sri G.V.Anjaneyulu Babu, Advocate for the accused; upon perusing the material papers on record and having stood over for determination till this day, this Court delivered the following:-

JUDGMENT

The Enforcement Sub-Inspector, Jammalamadugu filed charge sheet in Cr.No.46/2020 of her P.S, for the offence punishable U/sec.34 (1) (a) of Andhra Pradesh Excise (Second Amendment) Act 2019 (herein after A.P. Excise Act) against the accused.

2. The prosecution's case as per the charge sheet, in brief, is as follows:- On 03.06.2020 at about 5.30 pm., during the raids organized by the P&E.I, Jammalamadugu. In which P.W1/L.W1/N.Chandra Mani along with her staff conducted raids in detection of Excise cases. Wherein they found the accused at Kanneluru Cross in between Jammalamadugu to Proddatur bus road of Jammalamadugu Mandal 3 kms of east from the SEB Jammalamadugu Station, holding and standing with a white plastic bag. On suspicion P.W1 along with

her staff surrounded him and detained him. On interrogation the accused revealed his identity particulars and confessed that he is possessing 05 liquor bottles. On that P.W1 deputed LW2/P.Naresh Babu to secure mediators from Diguapatnam Colony. He went and return in vain. On enquiry, the accused voluntarily confessed that he possess 05 (180 ml.,) NDPL (Manufacture by National distilleries of Karnataka). The accused did not produce any bills or permits to the above bottles. On enquiry the accused admitted that he purchased those liquor bottles an unidentified person. On that P.W1 seized the contraband after drawing the sample and arrested the accused under special report dated 26.06.2020 at 6.30 am. Then they return to police station along with accused and contraband. P.W1 registered a case in Cr.No.46/2020, for the offence u/sec 34(a) of A.P.Excise Act and issued F.I.R to the concerned. Later on completion of formalities P.W1 issued 41-A Cr.P.C Notice on the accused. During the investigation P.W1 send the sample drawn in the case. Thereafter the same the further investigation held by her Sub-Ordinate Officer LW3-A.Saraswathi, Enforcement Sub Inspector. She submitted a requisition before the Deputy Commissioner of Special Enforcement Bureau, Anantapuram for the purpose of confiscation of the contraband seized in the case. After concluding the investigation LW3-A.Saraswathi, Enforcement Sub Inspector, SEB Station, Jammalamadugu filed the charge sheet before the Court. P.W1 can identify her signatures being her Sub-Ordinate Officer.

3. The case was taken on file for the offence punishable U/sec.34(a) of Andhra Pradesh Excise Act (herein after A.P. Excise Act) and issued summons to the accused.

4. On appearance of the accused before this Court, case copies were furnished to him as contemplated U/sec.207 Cr.P.C.

5. The accused was examined U/sec.239 Cr.P.C. and the charge for the offence U/sec.34(a) of A.P. Excise Act were framed against accused, read over and explained its contents in Telugu language to him, for which he pleaded not guilty and claimed to be tried.

6. In pursuance of the case of the prosecution, the prosecution has examined PW.1 and got marked Exs.P1 to P6 and M.O.1. The evidence of Lws.2 & 3/P.Naresh Babu and A.Saraswathi, Enforcement Sub-Inspector, Jammalamadugu gave up by the learned Assistant Public Prosecutor (herein after A.P.P).

7. After the closure of the prosecution side evidence, the accused were examined U/sec.313 Cr.P.C. and the incriminating material was put to them. They have denied the same and reported no defence evidence.

8. Heard the both sides. The learned A.P.P. submitted his arguments, that the evidence of P.W.1 clinchingly establishing the facts of the prosecution case. He further argued that the evidence of P.W.1 in corroboration with Ex.P1 to P6, M.O.1, establishing the overt act of accused beyond all reasonable doubt as charged before the court. He prayed to convict him.

9. On the other hand, the learned counsel for the defense submitted his arguments, that P.W.1 who is the excise official deposed before court in support of prosecution case. Her evidence is interested being excise official of the same department. Her evidence establishing that the proceedings under Ex.P1 not held as per law. Hence prosecution failed to bring home the guilt of the accused for the offence u/sec.34(a) of A.P. Excise Act and hence the accused is to be acquitted.

10. Now the point that arises for determination is **“Whether the prosecution could bring home the guilt of the accused for the offence U/sec.34(a) of A.P. Excise Act beyond all reasonable doubt?”**

POINT:-

11. In the present case on hand, PW.1-N.Chandramani, Proh. & Excise Sub Inspector, Jammalamadugu is the Investigating Officer. Ex.P1 is the special report, dated 26.06.2020; Ex.P2 is the F.I.R. in Cr.No.59/2020 of SEB station, Jammalamadugu; Ex.P3 is the letter of advise dated 26.06.2020; Ex.P4 is the analysis report in C.E.No.904/2020 dated 14.10.2020; Ex.P5 is the attested copy of confiscation proceedings issued by the Deputy Commissioner of Special Enforcement Bureau, Anantapuram in RC.No.1976/2021/B1, dated 11.07.2022 and Ex.P6 is the attested copy of destruction panchanama dated 25.08.2022. M.O.1 is 180 ml of NDPL is marked in CPR. No.147/2021.

12. The evidence of PW.1 establishing before the court, that on 03.06.2020 at about 5.30 pm., during the raids organized by the P&E.I, Jammalamadugu. In which P.W1 along with her staff conducted raids in detection of Excise cases. Wherein they found the accused at Kanneluru Cross in between Jammalamadugu to Proddatur bus road of Jammalamadugu Mandal 3 kms of east from the SEB Jammalamadugu Station, holding and standing with a white plastic bag. On suspicion P.W1 along with her staff surrounded him and detained him. On interrogation the accused revealed his identity particulars and confessed that he is possessing 05 liquor bottles. On that P.W1 deputed LW2/P.Naresh Babu to secure mediators from Diguapatnam Colony. He went and return in vain. On enquiry, the accused voluntarily confessed that he possess 05 (180 ml.,) NDPL (Manufacture by National distilleries of Karnataka). The accused did not produce any bills or permits to the above bottles. On enquiry the accused admitted that he purchased those liquor bottles an

unidentified person. On that P.W1 seized the contraband after drawing the sample and arrested the accused under special report dated 26.06.2020 at 6.30 am. Then they return to police station along with accused and contraband. Based upon Ex.P1, P.W1 registered a case in Cr.No.46/2020, for the offence u/sec 34(a) of A.P.Excise Act and issued F.I.R to the concerned. Later on completion of formalities P.W1 issued 41-A Cr.P.C Notice on the accused. During the investigation P.W1 send the sample drawn in the case. The Letter of advise dated 03.06.2020. The analysis report in CE.No.904/2020, dated 14.10.2020. Thereafter the same the further investigation held by her Sub-Ordinate Officer LW3-A.Saraswathi, Enforcement Sub Inspector. She submitted a requisition before the Deputy Commissioner of Special Enforcement Bureau, Anantapuram for the purpose of confiscation of the contraband seized in the case. The attested copy of confiscation proceedings issued by the Deputy Commissioner of Special Enforcement Bureau, Anantapuram in RC.No.1976/2021/B1, dated 28.06.2022. Thereafter as per the said proceedings the property in the case was destroyed under the cover of panchanama dated 25.08.2022. The property in C.P.R.No.147/2021 i.e., 180 ml., NDPL is marked as M.O.1. After concluding the investigation LW3-A.Saraswathi, Enforcement Sub Inspector, SEB Station, Jammalamadugu filed the charge sheet before the Court. P.W1 can identify her signatures being her Sub-Ordinate Officer.

13. During the cross examination of PW.1, she deposed, that the scene of offence is situated on the main road. No written orders were issued by her on LW2/P.Naresh Babuto secure the mediators from Diguapatnam Colony, Jammalamadugu Town. She admitted that there was vehicular traffic and Human traffic at the scene of offence. They never tried to secure any mediators from the bi-passers at the scene of offence. She is the person who

detected the crime and did substantial portion of investigation in the case. She never drawn sample liquor from each of the liquor bottles seized in the case except collecting the sample vide M.O.1. She denied that she is deposing false for the purpose of the case.

14. From the above evidence it is clear, that PW.1 is the person who detected the crime, arrested the accused, seized the contraband, and Investigating Officer who did substantial portion of investigation in the case. Thereby it is clear, that PW.1 is the person informant and the Investigating Officer in the case.

15. The **Hon'ble Apex Court in Mohanlal Vs. The state of Panjab reported in (2018) SCC online SC 974** held that *"the accused will be prejudiced of his right to free and fair investigation, if the informant is the Investigating Officer of the case."*

16. In this case also PW.1 is the informant cum Investigating Officer and hence taking into consideration of the above dictum, this court proceed to weigh the evidence of PW.1.

17. PW.1 categorically admitted in her evidence, that the place of seizure i.e. the scene of offence is situated on the main road. No written orders were issued by her on LW.2/P.Naresh Babu to secure the mediators from Diguapatnam Colony, Jammalamadugu. The scene of offence having number of bi-passers in that area. But she never try to secure mediators from any one of the inhabitant of said area. She simply deposed, that she deputed LW.2/P.Naresh Babu to bring mediators but in vain. The record also revealing that it is not mentioned in Ex.P1 proceedings with whom he enquired to act as mediators. She also further admitted that no written orders issued by her to secure the mediators for the proceedings under Ex.P1.

18. In **Yeduru Sreenivasul Reddy Vs. State of A.P. reported in 2002 (1) ALT(Crl.) 251 (A.P)**, the Hon'ble High Court of Andhra Pradesh held that *"in absence of punch witnesses, written order to be passed that no one was willing to act as punch witnesses. When such written orders was not passed, evidence that no one was willing to act as punch witnesses cannot be believed or relied upon. Entire search is without jurisdiction."*

19. Here in this case also no written order was passed by P.W.1 in securing the punch witnesses, there is no evidence placed before the court about the enquiry made in securing the punch witnesses. Admittedly the place of offence is situated in a area nearby where bi-passers are existing but no one from the said area secured to act as mediators in the case. Thereby the entire search is hit by Sec.100(4) Cr.P.C,. As per the above dictum and provision of law the search and seizure under Ex.P1 is without jurisdiction.

20. Except P.W.1 the official of same department, none other were examined to establish the case of prosecution, though the offence said to be noticed in the vicinity of a public place having human traffic. The search is not made as per law.

21. PW.1 deposed in her evidence, that she never collected sample of liquor from each of the liquor bottle seized in the case. In **Mudavath Mothia Vs. State of A.P. reported in 2002 (1) ALT (Crl.) 437 (A.P)**, It was held at Paragraph No.5, that *"moreover only one sample of sachet was produced before the court and not all the sachets seized and it is for the prosecution to establish that all the samples of sachets seized contain I.D. liquor and is not proved"*.

22. From the above dictum it is clear, that the prosecution failed to prove that apart from M.O.1, the other bottles also contains the liquor.

23. Thereby it is clear, that the prosecution fails as such, the search is improper and hit by Sec.100(4) Cr.P.C, the Investigating Officer is the complainant, prosecution could not prove the other bottles seized from the accused also contains the liquor.

24. Hence, it is deduced that the prosecution failed to prove the guilt of accused beyond all reasonable doubt for the offence charged against him.

25. Accordingly the point is answered against the prosecution and in favour of the accused.

In the result, the accused is found not guilty for the offence punishable u/sec.34(a) of A.P. Excise Act, for the same he is acquitted u/sec.248 (1) of Cr.P.C. The bail bonds of the accused with that of his sureties on record shall treated as the bail bonds secured for the purpose u/sec.437-A of Cr.P.C., the same shall be in force for a period of six months from this date. M.O.1 in CPR No.145/2021 on the file of the court shall destroy of expiry of appeal time.

Typed to my dictation by Personal Assistant, corrected and pronounced by me in the open Court, this the 03rd day of October, 2023.

Sd/- S.Bhargavi,
JUDICIAL MAGISTRATE OF I CLASS,
Jammalamadugu.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED FOR

PROSECUTION :-

PW.1: N.Chandramani

DEFENCE :-

- NIL -

EXHIBITS MARKED FOR PROSECUTION :

Ex.P1: The Special Report, dated 03.06.2020

Ex.P2: The F.I.R. in Cr.No.46/2020 of SEB Station, Jammalamadugu

Ex.P3: The letter of advise dated 03.06.2020.

Ex.P4: The analysis report in C.E.No.904/2020, dated 14.10.2020

Ex.P5: The attested copy of confiscation proceedings issued by the
Deputy Commissioner of Special enforcement Bureau, Anatapuram in
RC.No.1976/2021/B1, dated 28.06.2022.

Ex.P6: The attested copy of destruction panchanama dated 09.07.2022

EXHIBITS MARKED FOR DEFENCE :- Nil.

Material objects:

MO.1:180 ml NDPL in CPR No.145/2021.

**Id/- S.B.,
J.M.F.C., JMD.**

CALENDER AND JUDGMENT

Calendar and Judgment tried by the Judicial Magistrate of First Class:
Jammalamadugu

DATE OF						
Offence	Report	Apprehension of accused	Release on bail	Commencement of trial	Close of trial	Judgment
03.06.2020	03.06.2020	-	-	28.06.2023	20.09.2023	03.10.2023

Calendar and Judgment in **C.C.No.814/2022 in Cr.No.46 of 2020** of SEB Station, Jammalamadugu on the file of Judicial Magistrate of First Class, Jammalamadugu.

Between:-

The State: Represented by the Enforcement Inspector,
Jammalamadugu.

... Complainant

Vs.

Bogala Lakshmi Narasimha Reddy, Age 31 yrs, S/o B.B.Obula Reddy,
Caste:Kapu, R/o. D.No.16/236, Kalvakatta (St), Proddatur (T & M).

... Accused

Offence: U/sec.34(a) of A.P. Excise Act.

Finding: The accused is found not guilty.

Sentence: In the result, the accused is found not guilty for the offence punishable u/sec.34(a) of A.P. Excise Act, for the same he is acquitted u/sec.248 (1) of Cr.P.C. The bail bonds of the accused with that of his sureties on record shall treated as the bail bonds secured for the purpose u/sec.437-A of Cr.P.C., the same shall be in force for a period of six months from this date. M.O.1 in CPR No.145/2021 on the file of the court shall destroy of expiry of appeal time.

Sd/- S.Bhargavi,
**Judicial Magistrate of First Class,
Jammalamadugu.**