

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF I CLASS,
THAMBALLAPALLE.**

Present : - Sri A. Umar Farooq,
Judicial Magistrate of I Class,
Thamballapalle.

Tuesday, the Fourth (04th) day of July, 2023

Calendar Case No.436 of 2022

Between :-

The State represented by the Sub Inspector of Police, Peddamandyam Police Station.

....Complainant

And :-

A.Reddeppa, S/o Late Chitteppa @ Sittappa, age 25 years, Coolie, r/o Siddavaram Village of Peddamandyam Mandal.

.... Accused

This case is coming on 03.07.2023 before me for hearing in the presence of learned A.P.P. for the state and of Sri. S.Gaffar Saheb, Advocate for accused, upon hearing both sides and this matter having stood over for consideration till this day, this court made the following –

J U D G M E N T

This is a case filed by the Sub-Inspector of Police of Peddamandyam P.S. who registered a case as in Crime Number 10/2021 against the accused for the offence as under Section 34(a) 34(1) r/w(a) 14(2) & 42 of A.P Excise Act, Amendment 2020.

02. **The brief averments of the charge sheet are as follows:**

On 17.01.2021 at about 09.30 AM, the S.I of Police (LW7), Peddamandyam P.S. on receiving the credible information proceeded to the Siddavaram Bus stop, Peddamandyam Mandal along with his staff and found one male person keeping the urea bag in his hand containing Karnataka liquor bottles on seeing the uniformed officers, he tried to escape, but they surrounded and detained him. Then Head Constable of Police, P.D.M. P.S. (PW2) verified and found one can containing 13 packets (180 ml) of Old Admiral VSOP Brandy which is worth about Rs.1,127/- and Passion Pro motor cycle AP03 BC 8122 the Head Constable of police (PW.2) has lifted 180 ml sample from the bottle and labelled, seized the property and arrested Accused under the

cover of police Proceedings. The police proceedings were drafted on the spot and after returning to the station registered a case in Crime No.10/2021 under Section 34(a) 34(1) r/w(a) 14(2) & 42 of A.P Excise Act, Amendment 2020. The sample was sent to Chemical Analysis by S.I. of Police (L.W.6) and the Chemical Examiner, Chittoor opined that the sample is illicitly distilled liquor unfit for human consumption and injurious to health and after due verification of investigation L.W.7 laid the charge sheet.

03. The case was taken on file for the offence Under Section 34(a) 34(1) r/w(a) 14(2) & 42 of A.P Excise Act, Amendment 2020 against the accused.

04. On appearance of accused in the Court, copies of relevant documents were furnished to him as contemplated under section 207 Cr.P.C.

05. This court having considered the record, examined him as under 239 of Cr.P.C. for the offence under Section 34(a) 34(1) r/w(a) 14(2) & 42 of A.P Excise Act, Amendment 2020 against the accused and the same was read over and explained to him for which he pleaded not guilty and claimed to be tried.

06. To prove the guilt of accused, the prosecution had examined PW1 and PW2 and got marked Ex.P.1 to Ex.P.3 and M.O.1. The prosecution has given up the remaining witnesses i.e. L.W.2 to 4, 6, 7.

07. After the closure of the prosecution side evidence, the accused is examined under Section 313 of Cr.P.C., for the incriminating evidence against him and he denied the same. The accused reported no defence evidence on his behalf.

08. Heard the arguments of the Learned Assistant Public Prosecutor and the defence counsel.

09. Now the point that arises for consideration is;

“Whether the prosecution is able to prove and establish the guilt of the accused for the offence as under Section 34(a) 34(1) r/w(a) 14(2) & 42 of A.P Excise Act, Amendment 2020 , beyond all reasonable doubt?”

10. **POINT:-** PW-1 is the Police Constable and P.W.2 is Head Constable of Police wherein P.W.1 reported that he along with L.W.2, accompanied P.W.2 on receiving credible information and proceeded on 17.01.2021 at about 09.30 A.M, and they proceeded to the Siddavaram

Bus stop, Peddamandyam Mandal and found one can containing 13 packets (180 ml) of Old Admiral VSOP Brandy which is worth about Rs.1,127/- and in order to sell the same with higher rate and on seeing them, the accused tried to ran away, on suspicion, they caught hold of him and on enquiry, he reveled his name as marginal accused A. Reddeppa and further confessed that the he is having possession of Old Admiral VSOP Brandy and they brought them to sell the same for higher prices. However under the cover of police proceedings which was drafted at the scene and the same is marked as Ex.P1. In addition to that, the prosecution also examined the other witness i.e. Head Constable of Police as P.W.2 and he also corroborated the version of P.W.1 of conducting raid and going to the scene and arresting the accused by P.W.2 under the police proceedings i.e. Ex.P1. However, P.W.2 after the arresting the accused and also registered the F.I.R. i.e. Ex.P2 and he corroborated his version with that of the prosecution case and stated that on receiving the credible information he along with his staff with the assistance of P.W.1 and others reached the scene and affected the arrest of the accused under Ex.P1 and they were carrying Old Admiral VSOP Brandy to sell the same and they were in possession of the said liquor and thereby under the cover of Ex.P1 he arrested him, drawn the sample and sent the sample to the chemical analysis and brought the accused to the police station and issued FIR and the same marked as Ex.P2 and subsequently he received the chemical analysis report which got marked as Ex.P3 and on perusal of the same it clearly shows that it is illicitly distilled liquor which is unfit for human consumption and injurious to health. Further the case property was sent for destruction and accordingly the Superintendent of Police, SEB, Annamayya District issued confiscation proceedings and later the contraband was destroyed in the presence of L.Ws.3 and 4 under cover of destruction panchanama, dated:23.07.2021 at about 11.00 a.m. and later he laid the charge sheet against the accused. However, from the common set of questions put forth during the cross examination of P.W.1 and P.W.2 by the learned counsel for the accused all the witnesses admitted that the scene of offence is an busy locality and confession cum seizure and arrest panchanama i.e. Ex.P1 was drafted under police proceedings and it is silent with respect to the measurements of the bottles and the cover in which it was found and also that they were unable to secure independent mediators from the scene as

it is admitted that they are about 60 to 70 residential houses at the scene. However, they denied that only for statistical purpose they have foisted this case against the accused.

11. The prosecution relies on the corroborative evidence of P.W.1 and P.W.2 and prays the Hon'ble Court to convict him. The learned counsel for the accused submitted that no Old Admiral VSOP Brandy was seized from the possession of the accused and this is a false case foisted against the accused for statistical purpose. He further submitted that the prosecution failed to prove the confession of crime by the accused and also the seizure of the Old Admiral VSOP Brandy from the possession of the accused. The search proceedings were also not conducted in the presence of the inhabitants of the same locality. Thus, the prosecution failed to follow the procedure established under Section 100 (4) of the Cr.P.C. For the above said reason, he prays to acquit the accused from this case.

12. In the light of above discussion wherein it is elicited that the accused was arrested in an open place and search along with seizure was conducted wherein there was very much availability of local persons as independent witnesses and as per Section 100 (4) of Cr.P.C, the prosecution must conduct the seizure panchanama in the presence of inhabitants of that locality where the property is seized. Furthermore, the prosecution failed to corroborate the link that the samples said to be drawn by P.W.2 are from possession of accused as under M.O.1 and thereby it raises a reasonable doubt with respect to seizure of case property from the possession of accused and the prosecution failed to follow the procedure under Section 100 (4) of Cr.P.C. Hence, this Court fairly considers the submissions made by the learned counsel for the accused and the prosecution failed to prove the crime by the accused and also seizure of the Old Admiral VSOP Brandy from the possession of the accused and the contents of the police proceedings. Furthermore, as per Sec.25 of Indian Evidence Act, confession made before a Police Officer is inadmissible as evidence. Confiscation proposals of two wheeler bearing No. AP03 BC 8122 to S.P, SEB for confiscation. Accordingly, the point is answered.

13. In the result, the accused is found not guilty for the offence punishable under Section 34(a) 34(1) r/w(a) 14(2) & 42 of A.P Excise Act, Amendment 2020 and thereby the accused is acquitted as under Section 248 (1) of Cr.P.C. for the said offence. The material object marked as

M.O.1 shall be destroyed after completion of appeal time. The bail bonds of the accused will be in force for a period of six months as under Sec.437 (A) of Cr.P.C.

Typed to my dictation by the Stenographer, corrected and pronounced by me in the open Court, this the 04th day of July, 2023.

**Judicial Magistrate of I Class,
Thamballapalle.**

**Appendix of Evidence
Witnesses examined on behalf of:**

Prosecution:

PW-1: A. Subramanyam, Police Constable

PW-2: B. Sham Prakash, Head Constable

Defence:

- None –

Exhibits marked on behalf of:

Prosecution:

Ex.P1: Police proceedings

Ex.P2: First Information Report in Cr.No.33/2022.

Ex.P3: Analysis report.

Defence:

-NIL-

Material Objects marked:

Prosecution:

M.O.1: is the unexpanded portion of sample packet.

Defence: - Nil –

Judicial Magistrate of I Class,
Thamballapalle.

IN THE COURT OF THE JUDICIAL MAGISTRATE OF I CLASS,
THAMBALLAPALLE.

CALENDER IN C.C.NO. 436/ 2022

Date of offence : 17-01-2021
 Date of complaint : 17-01-2021
 Date of taken on file : 01-08-2022
 Date of apprehension of accused : 17-01-2021
 Date of commencement of trial : 29-05-2023
 Date of close of trial : 03-07-2023
 Date of sentence or order : 04-07-2023

Complainant : The Station House Officer,
 Proh. & Excise Station,
 in Cr.No.10/2021

Name of the accused	Father's Name	Age
A. Reddeppa	Late Chitteppa	25 years

Village	Mandal	Religion	Calling
Siddavaram	Peddamandyam	--	--

Nature of offence : Under Section 34(a)
 34(1) r/w(a) 14(2) & 42
 of A.P Excise Act

Finding of the Court : Not guilty

Sentence or order : In the result, the accused is found not guilty for the offence punishable under section 34(a) 34(1) r/w(a) 14(2) & 42 of A.P Excise Act and he is acquitted under section 248 (1) of Cr.P.C., the bail bonds of the accused after any shall remain in force for the period of six months from today under section 437 (A) of Cr.P.C. for his appearance before the Hon'ble appellate court as and when directed the un marked non valuable case property if any shall be destroyed after expiry of appealed time.

Judicial Magistrate of I Class,
 Thamballapalle.