

THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BHANJANAGAR

**PRESENT: -Miss Veeyenna Nayak, LL.M.
Judicial Magistrate First Class, Bhanjanagar.**

JO Code-OD00902

Dated, this the 12th day of August, 2026

2(a)CC. No. 132/2021

Tr.No. 105/26

(Arising out of ASI of Excise Bhanjanagar, P.R No. 59/2021-22 dtd. 24.09.2021 U/s.52 (a) of The Orissa Excise Act.)

Complainant				State of Odisha			
PRESENTED BY				Sri Dhabaleswara Majhi,(Ld.A.P.P)			
ACCUSED PERSON				Babu Behera, aged about 65 years, S/o- Late Puruspttam Behera, resident of Sankasahi, Bhanjanagar, P.S- Bhanjanagar, Dist:- Ganjam.			
REPRESENTED BY				Shri M.K. Patnaik, A.K. Gouda and Associates			
Date of offence				24.09.2021			
Date of P.R				24.09.2021			
Date of reading over and explaining of particulars of offence/Contents of charge				13.02.2026			
Date of commencement of evidence				26.05.2026			
Date on which judgment is reserved				12.08.2026			
Date of Judgment				12.08.2026			
Date of Sentencing Order, if any				-			
Accused Details							
Rank of the Accused	Name of the Accused person	Date of Arrest	Date of Release on Bail	Offences Charged with	Whether Acquitted/ Convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of section 428, Cr.P.C
A1	Babu Behera	24.09.2021	28.09.2021	U/s. 52(a) of Orissa Excise Act.	Acquitted	NA	NA

JUDGMENT

1. In the present case the above named accused person (A1) stands charged under section U/s. 52(a) of Orissa Excise Act for being in exclusive and conscious possession of 10 litres of I/D liquor in a white colour plastic jarkin without having valid license or authority.
2. Prosecution's case in brief is that on 24.09.2021 at about 08.30 AM while the informant Rameswar Behera, ASI of Bhanjanagar Excise station along with the departmental staff were performing patrolling duty at Bhanjanagar area they found one person was standing at Sankasahi chaka and carrying a white colour in his hand. On suspicion they detained him and on being search they found a white colour plastic jarkin having 10 litres of I/D liquor in that jarkin. On being asked he disclosed her name as Babu Behera, S/o- Late Purusottam Behera, At-Sankhasahi, Bhanjanagar, PS-Bhanjanagar, Dist.-Ganjam. On being asked he could not produce any license or authority towards such possession. Then he tested the substance by blue litmus paper and on contact the blue coloured paper turned into red. He also conducted smell test, tongue test and from the above test and from his

departmental service experience, he came to know that it is nothing but I/D liquor. Then he measured the liquid which comes in total 10 litres of I/D liquor. Then he collected 500 ml from the said jarkin in a clean white colour bottle and send it to chemical examination. He seized the rest liquor and prepared the seizure list on the spot which was read-over and explained to the accused person and witnesses. On finding it to be correct, the accused and the witnesses put their signatures on the body of the seizure list. He also prepared the spot map on the spot itself. He handed over a copy of the seizure list to the accused person and forwarded before Ld. SDJM, Bhanjanagar.

3. The case was registered vide P.R. Case No. 59-2021/2022 dtd. 24.09.2021 U/s. 52(a) of Orissa Excise Act and directed the I.O to take up investigation of the case. On the said direction, I.O. visited the spot, examined the witnesses and recorded their statement U/s 161 Cr.P.C, and based on the investigation he submitted the P.R. U/s. 52(a) of The Orissa Excise Act against the accused to face his trial in the court of law. Hence this case.
4. The plea of the accused person is denial simpliciter and false implication.

5. POINTS FOR DETERMINATION

- I) Whether on 24.09.2021 at 08.30 AM at Sankasahi, Bhanjanagar, the accused person was possessing 10 litres of I/D liquor in a white colour plastic jarkin without any license or authority?
- II) Whether the seized substance was nothing but of I/D Liquor?
- III) Acquittal or conviction, if any?

REASONS FOR DETERMINATION

- 6. For avoiding the repetition of evidence and to avoid the overburdening of court records all the points are being analysed and determined simultaneously. As per section 102 of Indian Evidence Act, 1872 (hereinafter referred to as 'I.E.A') the onus of proving these points is on the prosecution. Due to the cardinal principle of criminal jurisprudence viz., the presumption of innocence, the prosecution must prove the guilt of the accused person beyond any reasonable doubt.
- 7. To discharge this burden, the prosecution has examined one witnesses namely P.W.1-M. Rakesh, the independent seizure witness to this case. On the other hand, defence has examined none on its behalf.

8. It is the evidence of P.W.1 being the independent seizure witness expressed his unawareness regarding the occurrence and deposed that he does not know anything about the case. Nothing was seized by the police in his presence. He proved his signature on the seizure list vide Ext-P1/P.W.1 and his signature thereon on the spot map vide Ext-P2/P.W.1. In his cross examination he testified that the contents of the seizure list was not read over and explained to him. he put his signature on the said documents at the instance of the excise police. He was not examined by the excise police in this case.
9. As per the findings in **Mina Ketan Muduli -V- State of Orissa reported in (2001) 20 OCR 107**, the vital question in a liquor case is whether the seized liquor is distilled or not. On scrutinization of evidence available on record, it is found that there is no official witness supporting the factum of seizure. Thus, the entire case of prosecution is based upon the evidence of P.W.1. Law is well settled that conviction can be based on the evidence of official witnesses, if the same is found to be consistent and credible. Even the evidence of official witness can be assessed and accepted. The Hon'ble High Court of Orissa in the case of **Jhadia**

Naik V. State reported in 2010 (46) OCR 659 has observed that :-“ *In cases of this nature where substantive sentence of imprisonment is compulsory after conviction, a heavy duty is cast upon the prosecution to establish the case beyond any reasonable doubt.*”

From the above discussions, it is found that the evidences of prosecution witnesses is wholly inconsistent, non-corroborative and doubtful in respect of the alleged recovery and seizure, especially, when the entire case revolves round the seized articles. For all the aforesaid reasons, it is found that a doubt is created as regards to the alleged conscious and exclusive possession of the accused over the seized articles.

In a case U/s. 52 (a) of Odisha Excise Act the fact of seizure from the exclusive and conscious possession of the accused should be proved strictly but in the case in hand none of the witness to the seizure have corroborated regarding the factum of seizure. The fact of seizure of the I/D liquor from the exclusive and conscious possession of the accused has not been proved. Considering the above fact and circumstances of this case, I am of the view that there is no iota of evidence against the accused

to substantiate his involvement in commission of the alleged offence. Therefore, it can safely be concluded that prosecution has been failed to prove its case against the accused beyond all reasonable doubt for which the accused is entitled to an acquittal.

10. Consequently, the accused person namely Babu Behera is held not guilty U/s. 52(a) of Orissa Excise Act and accordingly, he stands acquitted therefrom under section 248 (1) of Cr.P.C. The accused person be set at liberty forthwith and be discharged from his bail bond.
11. The seized articles, if any, be destroyed after the expiry of the statutory period of the appeal i.e., four months. If there is an appeal, the same shall be disposed as per the order of the appellate court.

Enter this case as mistake.

Sd/-

J.M.F.C, Bhanjanagar

The judgment is typed to my dictation, corrected by me and pronounced in the open Court on this the 12th day of August, 2026, under my signature and seal of the Court.

Sd/-

J.M.F.C, Bhanjanagar

LIST OF PROSECUTION/DEFENCE/COURT WITNESSESS

A. PROSECUTION WITNESSES:

RANK	NAME	NATURE OF EVIDENCE
P.W.1	M. Rakesh	Independent seizure witness

B. DEFENCE WITNESSES:

RANK	NAME	NATURE OF EVIDENCE
-	-	-

C. COURT WITNESSESS:

RANK	NAME	NATURE OF EVIDENCE
-	-	-

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. PROSECUTION EXHIBITS:

SL NO.	EXHIBIT NO.	DESCRIPTION
1	Ext-P1/P.W.1	Signature of P.W.1 on Seizure list
2	Ext-P2/P.W.1	Signature of P.W.1 on Spot map

B. DEFENCE EXHIBITS:

SL NO.	EXHIBIT NO.	DESCRIPTION
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C. COURT EXHIBITS:

SL NO.	EXHIBIT NO.	DESCRIPTION
-	-	-

D. MATERIAL OBJECTS:

SL NO.	M.O NO.	DESCRIPTION
-	-	-

Sd/-

J.M.F.C, Bhanjanagar.