

KARC030066972022



IN THE COURT OF THE PRL CIVIL JUDGE AND J,M.F.C-II

RAICHUR

Presented: Sri Anil Shekhanavar,
B.Com., L.L.B
Prl.Civil Judge & J.M.F.C-II,Raichur.

Dated this 17th day of April-2023.

CRIMINAL CASE NO.4318/2022

COMPLAINANT:

The State through Excise Range PS, Raichur

(By Asst. Public Prosecutor)

//Versus//

ACCUSED:

01. Hussainappa S/o Bheemayya Nayak
Occ:Labourer,
R/o Shakhawadi village, Raichur

(Accused By B.G., Advocate)

J U D G M E N T

The Police Inspector of Excise Police station, Raichur has filed final report against the accused for the offences punishable under Section 32(1) and 34 R.w.section 38(A) of Karnataka Excise Act.

2. The case of the prosecution in a nut-shell as follows:-

It is alleged by the prosecution that, on 17.02.2021 at about 05:45 pm at Shakhavadi village Raichur, accused found selling liquor in his shop and found possession of 1) 180 ML original choice whiskey of 24 tetra packets, 2) 650 ML Kingfisher strong beer 12 bottles, 3) 330 ML Kingfisher strong beer 6 tins, with an intent to sell the same to the public without having license from the concerned authority and thereby committed an aforesaid alleged offences.

3. The case has been registered against under crime no. 27/2020-21 and panchanama has been preferred in presence of panchas. The material object were seized and taken out as samples. The same were sent for chemical analysis and after obtaining the report of chemical analysis, charge sheet has been filed against the accused for the alleged offences.

4. Thereafter, cognizance for the offence were taken and issued summons to the accused. Accused has appeared through their counsel and obtained bail. Thereafter, Court has framed charge against the accused for the offences punishable under Sections

32(1) and 34 R.w.section 38(A) of Karnataka Excise Act. Accused denied the charge and claims to be tried.

5. In order to prove the case, the prosecution has examined the witnesses as PW1 to PW6 and got marked documents at Ex.P1 to Ex.P7 and MO.1 to 20.

6. Accused has been examined under Section 313 of Code of Criminal Procedure. Incriminating material appearing in the prosecution witnesses have been brought to the notice of the accused, who denied the same. They have not chosen to lead any evidence.

7. Heard Learned APP and Learned Counsel appearing for the accused at length.

8. Upon hearing arguments and on perusal of material placed on record, following points arises for consideration.

- 1. Whether prosecution proves beyond all reasonable doubts that, accused on 17.02.2021 at about 05:45 pm at Shakhavadi village Raichur accused found selling liquor in his shop and found possession of 1) 180 ML original choice whiskey of 24 tetra packets, 2) 650 ML Kingfisher strong beer 12 bottles, 3) 330 ML*

Kingfisher strong beer 6 tins, without any license for the purpose of sale and thereby committed the offences punishable Sections 32(1) Karnataka Excise Act?

2. Whether prosecution proves beyond all reasonable doubts that on the same date, time and place, accused was found possession of liquor knowing fully well that the liquor bottles found in their possession against to the law and thereby committed the offence punishable Section 34 read with section 38(A) of Karnataka Excise Act?

3. What order?

9. My findings to the above points are as under:

Point Nos.1 and 2 : In Negative,

Point No.3 : As per final order, for the following

REASONS

10. POINT NO.1 and 2 :- Both these points are interrelated to with each other and involve in appreciation of evidence and facts. The finding of Point No.1 will have bearing on Point No.2. Hence to avoid repetition, both these points are taken together for common discussion. In order to prove the case, the prosecution has examined the witnesses as PW1 to PW6 and got marked documents at Ex.P1 to Ex.P7 and MO1 to 20.

11. In the instant case, criminal investigating machinery has been set into motion by CW9/PW2 and CW5/PW1 who are the official witnesses wherein in PW1 deposed about the raid of the accused, wherein PW-2 deposed that he has received credible information on 17.02.2021, with regard possession and selling of liquor at Shakhavadi village, Raichur and then, he secured panchas i.e., CW2 and CW3 and along with them, he and his staff CW.4 and 5 left their station and reached the spot. Further, he has deposed that they have found to accused possession and selling of liquor and he ran away from the spot. Further, he deposed that they have seized aforesaid material object and collected sample for the purpose of chemical examination and drawn mahazar. Further, he has brought seized item and mahazar to the police station and filed first information statement and himself registered the case in crime No.27/2020-21 against the accused and sent first information report. Further he deposed that, he wrote the letter to forensic lab for chemical examination and obtained the report and he recorded the statement of CW.4 and 5. he handed over the case file to CW.8 for further investigation. The defense learned counsel of the accused cross examined the PW-1 and PW-2. They have denied the entire suggestions made by the defense counsel.

12. In order to prove raiding panchanama, the prosecution examined panch witnesses i.e., CW2/PW5 and CW3/PW6. They are independent attesting witnesses to the Ex.P1. But, in their evidence, they have stated that, police have not conducted mahazar and not seized anything in their presence and they do not know the contents of Ex.P1. PW5 and PW6 have turned hostile. The learned APP cross-examined them, but, nothing worthwhile have been elicited from their mouth.

13. PW-3 who is the investigating officers and has been deposed that he received the case file from CW-7, he has wrote an application to the Gram Panchayath Shakhavadi and received report. Further he deposed that, he handed over the case file to CW.9 for further investigation. The defense counsel cross examined him, wherein, he has denied entire suggestions of the defence counsel.

14. PW-4 who is the investigating officers and has been deposed that he received the case file from CW-8. After completion of investigation has been filed charge sheet against accused. The defense counsel cross-examined PW4, wherein, he has denied the entire suggestions made by defense counsel.

15. After carefully analysis of the evidence of PW-1 to PW-6 in the given set of circumstances and after giving anxious consideration to the arguments addressed by the either sides, the only evidence available that of the official witnesses and there evidence is not collaborated by the independent seizure witnesses examined by the prosecution. At this juncture it is relent able to assail well settled legal proposition that the seizure of the material object from the possession of the accused, is required to be proved by independent which should not be tainted with illegalities and infirmities. Under such circumstances, it is expected that, attesting witnesses to the seizure mahazar as well as raid panchanama must speak inconsonance with the prosecution version. In the absence of supporting of prosecution version by the above witnesses, the version of other charge sheeted witnesses is neither wholly believable nor wholly unbelievable. These circumstances, call for corroboration from the independent witnesses. Admittedly, prosecution failed to get support of independent witness. Therefore, the prosecution version is not at all corroborated. Therefore, the prosecution has utterly failed to prove the case beyond reasonable doubt that accused has committed the alleged offences under section 32(1) and 34 read with section

38(A) of Karnataka Excise Act. Hence, the accused is entitled for benefit of doubt. Accordingly, this court has answer **Point No.1 and 2 in the Negative.**

16. POINT NO.3:- For the foregoing reasons, I proceed to pass the following:-

ORDER

Acting under Section 248(1) of Criminal Procedure Code, Accused is hereby acquitted for the offences punishable under Sections 32(1) and 34 read with section 38(A) of Karnataka Excise Act.

The Bail bonds of accused and Surety Bonds shall continued for the period of 6 months.

The office is hereby directed to return the properties M.O.1 to M.O.20 the concerned authority and the concerned authority is hereby directed to dispose off the properties M.O.1 to M.O.20 which are seized in this case in accordance with law, after appeal period is over.

(Dictated to the Stenographer and transcribed her, script revised, corrected and then pronounced by me in the open court on this the 17th day of April-2023).

Sd/-
(Anil Shekhanavar)
Prl.Civil Judge and JMFC-II,
Raichur

ANNEXURES

List of the Witnesses examined by the Prosecution:

PW1 : Shashidhar
 PW2 : Baslingappa
 PW3 : B.Kavitha
 PW4 : Hanumatha
 PW5 : Balaraja Gouda
 PW6 : Naveenkumar

List of the Documents exhibited for the Prosecution:

Ex.P1 to 5 : Panchanama, Complaint, FIR, Application
 and Reports,
 Ex.P1(a) to 5(a) : Signatures
 Ex.P.1(b) : Signature
 Ex.P.6 & 7 : Application and Reports
 Ex.P.6(a) : Signature

List of the MOs marked on behalf of the Prosecution:

MO1 to 20 : 14 tetra packets, 3 Kingfisher sample bottle, 3
 K.F.Tins

List of the Witnesses examined for defence:

--Nil--

List of the Documents exhibited for defence:

--Nil--

List of the MOs marked on behalf of Defence:

--Nil--

sd/-

(ANIL SHEKHANAVAR)
PRL.CIVIL JUDGE & JMFC-II,
RAICHUR.