

**IN THE COURT OF MS. DEEPARANI JENA, SUB
DIVISIONAL JUDICIAL MAGISTRATE, BALANGIR,
DISTRICT-BALANGIR**

Present :

**Ms. Deeparani Jena, LLM,
Sub-Divisional Judicial Magistrate, Balangir
U. I. D. of J. O.-OD-0751**

Dated this the 14th day of July, 2026

[2(a) CC No. 350 of 2025, Trial No. 971 of 2025, Regd.No.450 of 2025]

(P.R.No.81 of 2025-26, U/s.52(a) of the Orissa Excise Act)

Complainant	State of Odisha
REPRESENTED BY	Sri Braja Mohan Mishra, A.P.P.
ACCUSED PERSON	1. Balakrushna Bag , aged about 20 years, S/o. Late Supar Bag, Resident of village- Landapathar, P.S.-Deogaon, District- Balangir
REPRESENTED BY	Sri S.K.Panigrahi & Associates, Balangir

Date of offence	10.08.2025
Date of F.I.R./PR	10.08.2025
Date of Charge sheet	18.09.2025
Date of framing charges	30.10.2025
Date of commencement of evidence	16.12.2025
Date on which judgment is reserved	--
Date of the judgment	14.07.2026
Date of sentencing or, if any	--

Accused Person Details :							
Rank of the accused	Name of the accused	Date of Arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of Section 468 BNSS

1	Balakrushna Bag	Notice served U/s. 35(3) of BNSS	--	U/s.52 (a) of Orissa Excise Act, 2008	Acquitted	--	--
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J U D G M E N T

1. The accused person stands prosecuted for the commission of offence punishable U/s.52(a) of the Orissa Excise Act.

2. The backdrop of this case is that on 10.08.2025 at about 8.00 AM. while the informant-cum-IO i.e OIC of Excise, Tusura Excise Station, Balangir namely Srikanta Kumar Panigrahi along with other Excise staffs were conducting patrolling duty at Landapathar area under Deogaon PS, Balangir, he found that a person was going on the village road carrying a white colour jari bag in his right hand, in a suspicious manner. On suspicion he detained the person, gave their identification to him and on being asked the person disclosed his identity as Balakrushna Bag of Landapathar, Balangir. On search he recovered a jari bag containing 49 nos. of fish marked polythene pouches, each containing 200ml., in total 9.8 liters of OS liquor, from his possession. On demand the accused failed to produce any licence or authority for keeping and transporting of the same. Hence the informant seized the said liquor and prepared the seizure list in presence of witnesses. During inquiry, he

being the IO in this case, tested the OS liquor by means of blue litmus paper and hydrometer and found the same is OS liquor. As the offence U/s.52(a) of the Orissa Excise Act was made out, the informant proceeded against the accused person. He served notice to the accused person U/s.35(3) of BNSS. After completion of inquiry, he submitted P.R. vide No.81 of 2025-26 U/s.52(a) of the Orissa Excise Act, 2008 against the accused person to face his trial in the Court of law. Accordingly cognizance taken and particulars of offence U/s. 52(a) of Odisha Excise Act was read over and explained to the accused to which he denied and claimed for trial. Hence, the present trial.

3. The plea of the accused person is one of complete denial and false implication.

4. In view of the above facts, it is to be determined:-

a) Whether on dtd.10.08.2025 at about 8.00 AM at Landapathar under Deogaon PS, Balangir, the accused was found in exclusive and conscious possession of 9.8 liters of OS liquor without any license or authority to possess the same ?

b) Whether the seized article was nothing but OS liquor ?

5. In order to prove its case, the prosecution has examined three P.R. witnesses on its behalf out of which PW.1 is the independent seizure witness and PW.2 is the complainant-cum-I.O, PW-3 is the official

seizure witness, in this case. Prosecution has further proved Ext.P-1/PW.1 to Ext.P-3/3/PW.3 on its behalf. The defence has examined none on his behalf.

6. Now, Let this Court keenly appreciate the evidence of all the witnesses vis-a-vis the points for determination in order to prove the allegation against the accused.

PW-2, the I.O. of this case has deposed that on 10.08.2025 at about 8.00 AM he along with his staffs while conducting patrolling duty at Landapathar under Deogaon PS, he found that one person was going on the village road by carrying a white colour jari bag in his right hand. On suspicion he detained the person on the road and gave their identification to him. On being asked he identified himself as Balakrushna Bag of Landapathar. Thereafter, he searched the accused person and found one white jari bag containing 49 nos. of fish marked OS liquor pouches, each containing 200 ml. in total 9.8 liters of OS liquor, from the possession of the accused. All the liquor pouches were having identical shape and size so, he collected 600 ml. of OS liquor from three liquor pouches, kept in a plastic bottle and conducted blue litmus paper test in which the colour of the blue litmus paper turned into red while it came in contact with said liquor. He has also conducted hydrometer test on the sample liquor and found temperature as 80°F, Indication as 88.4° and Strength as 72.4° UP. He prepared hydrometer chart

proved vide Ext-P-1/1/PW-2 on which he has signed. He proved the tested blue litmus paper affixed on the hydrometer chart vide Ext-P-1/3/PW-2. From the above testes, his work experience, smell and colour of the liquor, he found the same is OS liquor. On demand he failed to produce any valid license for such possession of liquor. So, he seized the said liquor and prepared seizure list proved vide Ext-P-2/1/PW-2 on which he has signed. He kept the tested liquor as sample and destroyed the rest liquor on the spot. He also prepared the spot map proved vide Ext-P-3/1/PW-2 on which he has signed. He read over and explained the contents of seizure list to the accused and the witnesses present there and they put their signature on it. Thereafter, he served notice to the accused U/s. 35(3) of BNSS. On dtd. 18.08.2025 he has submitted PR vide PR report No. 81 of 2025-26 after completion of the investigation against the accused person U/s. 52(a) of Odisha Excise Act, 2008 to face his trial in the court of Law. In the cross-examination he has stated that, he had no prior acquaintance with the accused person. The occurrence spot is a busy place. He could not say the manufacturing date, batch number, shape and size of the seized liquor pouches. He has not taken any photograph or videograph during destruction of the seized liquor on the spot. He admitted the fact that the blue litmus paper turns into red colour while it comes in contact with any acidic

substance so also temperature differs in different weather. He has not undergone any distillery training to identify liquor.

PW-3 who is the official seizure witness to this case, has supported the case of prosecution so far as search and seizure is concerned. In the cross-examination he has stated that he had no prior acquaintance with the accused person. The occurrence spot is a busy place. He could not say the manufacturing date, batch number, shape and size of the seized liquor pouches. They had not taken any photograph or videograph during destruction of the seized liquor on the spot. He admitted the fact that the blue litmus paper turns into red colour while it comes in contact with any acidic substance. He did not have any personal knowledge regarding the hydrometer test. He has not undergone any distillery training to identify liquor.

PW-1, the independent seizure witness, has deposed that, he does not know the informant but knows the accused of this case. Nothing had been seized in his presence by the Excise Officer. Excise Officers only asked him to put his signatures on three separate plain papers and he put his signatures on the same. He proved his signatures on the hydrometer chart, seizure list and spot map. He further stated that he did not know the contents of the papers in which he put his signatures as per the direction of Excise Officer.

7. On careful scrutiny of the evidence on record it is found that PW.2 and PW.3 have deposed that PW-2 had seized 9.8 liters of OS liquor in total, from the possession of the accused. They have also stated that PW-2 has conducted blue litmus paper test in which the colour of blue litmus paper turned into red, when that came in contact with the said seized liquid. However, blue litmus paper test is not a conclusive proof which shall ascertain whether the seized article was contraband or not. They have further stated that PW-2 has conducted hydrometer test but the manner and procedure of hydrometer test has not been stated by them in their deposition. The evidence of PW-2, who is the IO in this case, is also silent regarding the chemical examination of seized liquor. Further, it is evident from the evidence of PW-2 & PW-3 that the seized article has never been produced before the court for its identification. Now, it is pertinent to mention here that it has been observed by our own Hon'ble High Court in the case of *Bhagia Sahoo Vs State of Orissa in (2002) 93 CLT-684*, the Hon'ble court observed that when the liquor seized is not produced before the court and when no reason for such non production is provided and independent witness is not supporting the seizure, the evidence provided by the prosecution is not sufficient for conviction. It is settled principle of law that the testimony of official witnesses should not be merely discarded because they are

official witnesses, but ordinarily it should be corroborated by independent witnesses. However, the prosecution has examined one independent witness i.e. PW-1, who did not support the case of the prosecution. Accordingly, the prosecution has failed to adduce evidence regarding the seizure of the above mentioned liquor from the possession of the accused person from any independent source. In **2003(I) OLR 344:(2003)25 OCR 185** the Hon'ble Apex court held that "*in absence of cogent independent evidence bringing home the guilt, non corroboration of seizure witnesses, no person can be convicted*". One of the golden principles in criminal jurisprudence is that prosecution has to strictly prove its case beyond all reasonable doubt. In this case, whether the seized article is OS liquor or not and the recovery of the above seized liquor from the possession of the accused is doubtful. Hence, in view of the aforesaid analysis, it is seen that prosecution has not adduced sufficient evidence before this Court to establish that the seized article contained OS liquor and the accused was in exclusive and conscious possession of any contraband article.

8. Taking into account the above discussion and the evidence on record I conclude that prosecution has failed to establish the vital ingredients like exclusive and conscious possession of OS liquor by the accused and the nature of liquor to bring home the charge U/s.52(a) of the Orissa Excise Act beyond all

reasonable doubt.

9. In the result, the accused is found not guilty for the commission of offence U/s.52(a) of the Orissa Excise Act and I acquit him there from under the provision of Sec.278(1) of BNSS. Accused be set at liberty forthwith being discharged from his bail bond furnished prior to conduct of trial.

The seized liquor be destroyed after expiry of the appeal period, if no appeal is preferred and in case of appeal, subject to the order of the Appellate Court.

Enter this case as mistake of fact.

**Sub Divisional Judicial Magistrate,
Balangir**

This judgment is typed to my dictation and corrected by me and pronounced in the open Court today on this the 14th day of **July, 2026** under my signature and seal of the Court.

**Sub Divisional Judicial Magistrate,
Balangir**

LIST OF PROSECUTION / DEFENCE/ COURT WITNESSES		
1. Prosecution Witnesses		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS , OTHER WITNESS)
PW.1	Gopa Bhue	Independent seizure witness
PW.2	Srikanta Kumar Panigrahi	Informant-cum-I.O
PW.3	Bibhuti Bhusan Bhoi	Official Seizure witness (Constable of Excise)
2. Defence witness, if any		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS , OTHER WITNESS)
	Nil	Nil
3. Court witnesses, if any		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS , OTHER WITNESS)
	Nil	Nil
LIST OF PROSECUTION/DEFENCE/ COURT EXHIBITS		
Prosecution Exhibits		
Sl. No.	Exhibit Number	Description
1	Ext-P-1/PW-1	Signature of PW-1 on hydrometer chart
2	Ext-P-1/1/PW-2	Hydrometer chart
3	Ext-P-1/2/PW-2	Signature of PW-2 on hydrometer chart
4	Ext-P-1/3/PW-2	Tested blue litmus paper affixed on the hydrometer chart
5	Ext-P-1/4/PW-3	Signature of PW-3 on hydrometer chart
6	Ext-P-2/PW-1	Signature of PW-1 on seizure list
7	Ext-P-2/1/PW-2	Seizure list
8	Ext-P-2/2/PW-2	Signature of PW-2 on Seizure list
9	Ext-P-2/3/PW-3	Signature of PW-3 on Seizure list
10	Ext-P-3/PW-1	Signature of PW-1 on spot map
11	Ext-P-3/1/PW-2	Spot map

12	Ext-P-3/2/PW-2	Signature of PW-2 on spot map
13	Ext-P-3/3/PW-3	Signature of PW-3 on spot map
Defence Exhibits , if any		
Sl. No.	Exhibit Number	Description
1	Nil	Nil
Court Exhibits, if any		
Sl. No.	Exhibit Number	Description
1	Nil	Nil
Material objects :		
Sl. No.	Material Object Number	Description
1	Nil	Nil

**Sub Divisional Judicial Magistrate,
Balangir**