

IN THE COURT OF LD CHIEF JUDICIAL MAGISTRATE, DARJEELING

CR 03 of 2023 (02 of 2023)

State

Vs

Prayash Limbu & others

Order No. 35

Dated: 09.03.2026

Today is fixed for charge, chemical report, hearing of the prayer for disposal and filing of DCF.

Out of four accused persons two accused persons namely Prayash Limbu and Dawa Bhutia are present by filing haizra and accused Gopal Thapa and Anwarul Haque are absent without steps.

Ld. APP and Ld. Advocate for the accused are present.

The case record is taken up for prayer of O/C Excise Sadar Excise Circle, Darjeeling for disposal of seized alamats by way of destruction.

Heard Ld. APP who submitted that huge quantity of seized liquor is lying in the Excise Malkhana occupying a lot of space causing inconvenience for renovation. He submitted that the seized articles in connection with this case is required to be disposed of by way of destruction to create some space in the Malkhana to cop-up with the articles to be seized in the cases to be arose. He further submitted that 03 bottles of samples have been sealed and labelled from the seized alamats for the purpose of production before the court during the course of trial of this case. So there is no embargo to allow the prayer placed by the concerned OC Excise, Sadar Circle, Darjeeling.

He also banked his submission on the Judgment passed in CR No. 23/2023 dated 04.04.2023 of the Hon'ble High Court, Circuit Bench at Jalpaiguri.

Perused the case record, the Judgment referred and available materials therein.

The record reveals that 194.35 litres of NDP Sikkim made Hit Beer 650 ml, 44.22 litres of NDP Sikkim made Honey Bee 750 ml, 26.25 litres NDP Sikkim made Millennium XXX Rum 750 ml were recovered with an offending vehicle bearing registration No. WB 74AA 2999 and WB 73B 7648 on 20.07.2022 at Garvetar Zero Point, Singla FP, under Rangli Rangliot PS. Thereafter the instant case was initiated.

The provision of Bengal Excise Act, 1909 as provided u/s 78 reflects the Collector has been empowered to entertain the application for the custody of the intoxicant and other articles, if any seized under the Act before any report is submitted to jurisdictional magistrate under Sub Sec (4) of Section 74 of the Act. Here the case lying in hand reflects that the PR has been submitted arraigning **Prayash Limbu, Dawa Bhutia and Gopal Thapa**. Thereafter cognizance of the offence punishable u/s 46A(c) of Bengal Excise Act 1909 has been taken.

This court would like to consider the prayer for disposal/ destruction of the seized liquor as prayed by the I.O and in support of the prayer I.O has placed the reliance on the Judgment passed in CR 23/2023 by the Hon'ble Calcutta High Court, Circuit Bench at Jalapiguri as well as the landmark Judgment authored by Hon'ble Supreme Court in Sundarbhai Ambalal Desai Vs State of Gujarat. Hon'ble High Court, Calcutta, Circuit Bench at Jalpaiguri in its Judgment (Supra) refers the proposition laid down by the Supreme Court in Sundarbhai Ambalal Desai Vs

State of Gujarat. Therefore, I went through the aforesaid Judgment and like to bring here the relevant portion as follows:

" For articles such as seized liquor also, prompt action should be taken in disposing of it after preparing necessary panchnama. If sample is required to be taken sample may be kept properly after sending it to the Chemical Analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing".

Therefore there is direction to dispose of the large quantity of liquor stored at the police station after preparing necessary panchnama, and its samples are required to be taken which may be used for the purpose of sending it to the chemical analyser as well as to produce before the court during the course of trial. Here I would like to bring the rule 242 of West Bengal Excise (Foreign Liquor) Rules, 1998 as hereunder:

"242. Disposal of confiscated foreign liquor- Confiscated foreign liquor which are known to have been of licit origin and not tampered with, shall be sold by auction subject to a reserved price which shall be equal to the amount of duty leviable on the article or a similar article. If such price is not obtained, the article shall be destroyed.

Other confiscated foreign liquor shall be destroyed."

The sine que non for disposal of the foreign liquor as provided in Rule 242 is :

- 1) The liquor having known to have licit origin .
- 2) It should not be tampered with.

Thereafter those confiscated foreign liquor shall be subject of sale by auction to a reserved price equal to the amount of duty leviable on the article or a similar article.

The Rule also provides that other confiscated foreign liquor shall be destroyed.

The instant case arose on 20.07.2022 and more or less two years have been passed since then which, if for the sake of argument considered to be fit for human consumption, expired due to lapse of time. Therefore the question of chemical analyzing to ascertain being fit for human consumption of each bottle will serve no purpose so the question of selling by auction does not arise. Then what left to consider for disposal/destruction is nothing as it is a simple case of illegal possession of seized non duty paid foreign liquors.

The record also reveals that the samples drawn from the seized alamat had been sent for their examination and but the chemical examination report has not been received.

Therefore considering the judgments relied upon and the aforesaid facts and circumstances I do not find any impediment to allow the prayer for disposal/ destruction of the seized alamat of the instant case.

Hence, it is

ORDERED

that the prayer of OC Excise, Sadar Excise Circle, Darjeeling. for disposal/ destruction of seized liquor is considered and allowed.

The seized articles of this instant case be destroyed observing all the statutory provision by preparing proper panchnama and taking authenticated photographs by the disposal committee after preserving the sample of bottles, if any, for trial purpose.

The entire process of disposal/ destruction must be videographed and compiled in the CD/ pendrive / DVD to send it along with the report.

Let a copy of this order be sent to the I.O for intimation and strict compliance.

BC II to comply.

To 08.04.2026 for appearance, charge and compliance.

D & C by me

*Chief Judicial Magistrate,
Darjeeling*

*Chief Judicial Magistrate
Darjeeling*