

KABC030694582015



Presented on : 17.10.2015
Registered on : 17.10.2015
Decided on : 26.09.2025
Duration : 09y/11m/09days

**IN THE COURT OF XLI ADDL. CHIEF JUDICIAL
MAGISTRATE , AT : BENGALURU**
PRESIDED OVER BY: TATTANDA DAMAYANTI SOMAYYA
B.A.,LL.B.,

**XLI Addl. Chief Judicial Magistrate
Bengaluru**

Dated on this 26th day of September 2025

C.C.No.24871/2015

**COMPLAINANT : The State
by Bengaluru Rural Railway PS**

-V/s-

**ACCUSED : 1. Rafiq – Split up in
CC No.13125/2023**
2. Ningaraj
S/o. Hanumanthappa,
Aged 24 years, R/at. Basapura Village,
Main Road, Near Maruthi Mandir,
Bengaluru.

Date of Commission of offence	20.04.2015
Date of report	20.04.2015
Date of arrest	21.04.2015
Name of the complainant	B.N.Bheemanna
Date of commencement of	18.11.2023

recording Evidence	
Date of closing evidence	10.09.2025
Offences complained of	U/Sec.32 of Karnataka Excise Act
State Represented by	Senior Asst. Public Prosecutor
Accused Represented by	Sri. H.Jagadeesha., Advocate.
Opinion of the Judge	As per final orders

J U D G M E N T

[Delivered on 26.09.2025]

The PSI of Bengaluru Rural Railway police station has filed charge sheet against the accused for the offence punishable U/Sec.32 of Karnataka Excise Act.

2. Brief facts of prosecution case is as follows:

On 20.04.2015 at 11p.m., at Yeshwanthpura railway station the accused No.2 along with accused No.1 found illegally transporting 200 bottles of Real honey brandy from Goa in Velankani express train bearing No. 17315 to sell the same at Tamilnadu to make money. On the basis of report given by CW.1, the Bengaluru Rural Railway police have registered this case in Cr. No.83/2015.

3. On 21.04.2015, the accused No.1 and 2 were arrested and produced before the court. The court remanded them to judicial custody. As per order dated: 27.04.2015, they were enlarged on bail.

4. After the investigation, the IO filed charge sheet against the accused. The Court has taken cognizance of the offence punishable U/Sec.32 of Karnataka Excise Act. The Court complied with Sec.207 of Cr.P.C., and furnished charge sheet copies to the accused.

5. Subsequently, the accused No.1 did not appear before the court. Hence, the case against accused No.1 is split up and a separate CC No.13125/2023 came to be registered against him.

6. The Court heard both the parties. As there were no grounds to discharge accused No.2, the Court framed charge for the offence punishable U/Sec. 32 of Karnataka Excise Act.

7. In order to prove its case, the prosecution got examined 3 witnesses as PW.1 to 3 and got marked Ex.P.1 to 5 documents and

MO.1. After completion of the prosecution evidence, the statement of accused No.2 was recorded U/Sec.313 of Cr.P.C., wherein he denied the incriminating evidence led against him. He did not choose to lead his defense evidence.

8. I have heard the arguments of Senior APP and Sri. HJ Advocate.

9. On the basis of allegations made against the accused, the following points arise for my consideration:

1. Whether the prosecution proves beyond all reasonable doubt that, the accused No.2 along with accused No.1 found illegally transporting 200 bottles of Real honey brandy from Goa in Velankani express train bearing No. 17315 on 20.04.2015 at 11p.m., at Yeshwanthpura railway station to sell the same at Tamilnadu to make money and thereby he has committed the O/P/U/Sec.32 of Karnataka Excise Act?

2. What order?

10. My answers to the above points are as under:

Point No.1 : In Negative

Point No.2 : As per final orders for the following:

REASONS

Point No.1:

11. The burden is casted on the prosecution to prove that, the accused No.2 along with accused No.1 found illegally transporting 200 bottles of Real honey brandy from Goa in Velankani express train bearing No. 17315 on 20.04.2015 at 11p.m., at Yeshwanthpura railway station to sell the same at Tamilnadu to make money.

12. In order to prove its case, the prosecution got examined the complainant/CW.1 as PW.1, eye witness/CW.5 as PW.2 and seizure mahazer witness/CW.2 as PW.3 and got marked spot cum seizure mahazar as Ex.P.1, report/complaint given by PW.1 as Ex.P.2, FIR as Ex.P.3, endorsement issued by FSL as Ex.P.4, chemical analysis report as Ex.P.5 and chemically examined brandy bottle as MO.1.

13. CW.1/PW.1 – B.N.Bheemanna in his evidence has stated that, while he was working as PSI at Bengaluru Rural Railway police station on 20.04.2015, he along with CW.5 to 8 and Hanumaiah were deputed to night duty. They received an information about illegal transportation of liquor in the general compartment of Velangani Express. When they were doing patrolling duty at plat form No.1, they noticed 2 persons carrying 2 bags each. On enquiry, they told their names as Rafiq and Ningaraju. Hence, he called CW.2 and 3 pancha witnesses to the spot. On inspection they found 50 bottles of Real Honey brandy of 750 m.l. each in every bag. They were not having any permit for transporting such a huge quantity of brandy bottles. Hence, he seized those brandy bottles by drawing Ex.P.1-Mahazar. Thereafter, he came to the station along with those 2 persons, mahazar and seized excisable articles. Accordingly, he himself gave Ex.P.2-report and registered Ex.P.3/FIR. He separated one bottle from seized excisable articles, sealed it to send the same to

chemical examination. He produced those 2 persons to the court. He recorded the statements of CW.5 to 8. MO.1 is brandy bottle, which was sent to chemical examination. He has identified accused No.2. On 28.04.2015, he forwarded the brandy bottle to FSL through CW.9. By obtaining the court permission on 29.04.2015, he handed over the remaining bottles to the inspector of Yeshwanthapura excise range. Ex.P.4 is the endorsement issued by FSL for having received the article. He recorded the statement of CW.9. On 22.06.2015, by completing the investigation, he filed charge sheet against the accused. On 06.02.2016, HC-Shiva Kumar received Ex.P.5 chemical analysis report from FSL.

14. CW.5/PW.2-C.B.Padashetty in his evidence has stated that, while he was working as Head constable at Bengaluru Rural Railway police station on 20.04.2015 at 11.15p.m., he was doing patrolling duty along with PW.1, CW.6 to 8 at platform No.1 of Yeshwantapura Railway station. At that time, they noticed two

persons, who were carrying one bag each, who alighted from Velangani Express train. On enquiry they told their names as Rafiq and Ningaraju. On inspection they found 100 bottles of liquor in each bag. He does not remember the name of the brand. The PW.1 called 2 pancha witnesses to the spot and in their presence he seized those bottles by drawing mahazar. Subsequently, they took those 2 persons, mahazar and seized articles to the station. He has identified accused No.2. He can identify the liquor bottles, which were seized in mahazar. MO.1 is the chemically examined liquor bottle.

15. CW.2/PW.3-Mohammed Rafiq in his evidence has stated that, Ex.P.1 bears his signature. On the intervening night of 20/21/04/2015, the police seized 200 brandy bottles at platform No.1 of Yeshwantapura railway station from one Rafiq and another person. He does not know the name of the brand. The police seized liquor bottles from railway compartment. He signed Ex.P.1 at Yeshwantapura Railway station. He has not given any

statement to the police. MO.1 is the liquor bottle, which was sent for chemical examination.

16. In view of the alleged seizure made by PW.1 through Ex.P.1, he gave Ex.P.2 report and on the basis of that report, Ex.P.3/FIR came to be registered against the accused. The PW.1 is the officer who gave complaint, registered the case and filed charge sheet against the accused. The prosecution contends that, the accused alighted from Velangani express and they were carrying 2 bags each and each bag contained 50 bottles of Real Honey brandy of 750 m.l., each. They were not having any bill or permit to transport those excisable articles.

17. As per the prosecution papers, the PW.1 allegedly seized 200 bottles of Real Honey brandy in between 11.30p.m of 20.04.2015 to 1.30 a.m., of 21.04.2015. As per Ex.P.4 on 07.05.2015, a single bottle of Real Honey Rare Old Grape Brandy bottle was sent to FSL for chemical examination. The PW.1 did not assign

reasons as to why he retained the bottle in the station almost for a fortnight.

18. As per the prosecution papers, the PW.3 and CW.3 are pancha witnesses and signatories to Ex.P.1/mahazar. The PW.3 in his chief examination has stated that, the police have seized 200 brandy bottles from one Rafiq and another person. But he does not know brand name of alcohol bottles, which were allegedly seized by the police. According to PW.3, the police have seized 4 brandy pouches and 200 brandy bottles from those two persons. According to PW.3, the police have seized those alcohol bottles from the railway compartment.

19. The PW.3 did not describe the bags in which those two persons allegedly transporting those excisable articles. The PW.1 stated that Rafiq was carrying 2 bags and Ningaraj was carrying 2 bags, which consists of 50 alcohol bottles in each bag. But, those bags are not produced before the Court. The PW.2 is a police

official, who allegedly assisted the PW.1 for seizing excisable articles from the accused.

20. The PW.2 in his evidence has stated that, Rafiq and Ningaraj were carrying one bag each and each bag consisted of 100 bottles of liquor. This version of PW.2 is contrary to the contents of Ex.P.1 and the version of PW.1. In the present case, the PW.1 being the complainant cum IO has not produced the so called bags, which were allegedly used for transporting 200 bottles of brandy.

21. Moreover, the PW.1 being the complainant cum investigation officer has not seized any railway tickets from the accused so as to say that, those alcohol bottles were illegally transported by the accused in Velangani Express train from Goa to Bengaluru on 20.04.2015. The IO did not collect any evidence regarding the source of those alcohol bottles. The IO did not investigate the matter effectively to know from whom or from which shop the accused allegedly purchased or brought the excisable articles in Velangani train to sell the same at Tamilnadu.

22. In order to seize excisable articles, which were found illegally possessed or transported, the seizing officer ought to have taken prior permission from the Court or he ought to have prepared search warrant U/Sec.54 of Karnataka Excise Act, if there was no time to obtain such permission from the Court. But, the PW.1 did not say anything about obtaining such permission and preparation of search warrant under Excise Act. It means that, the PW.1 being the complainant cum IO has not made search and seizure in accordance with law.

23. As per Ex.P.1, the PW.1 allegedly seized 200 bottles of Real honey brandy of 750ml each from the accused at Yeshwanthapura railway station, which is bounded on the East by booking office, West by plat form No.2, North by the premises of plat form No.1 and South by foot over bridge. But, no independent witness is a signatory to Ex.P.1. The PW.3 being a signatory to Ex.P.1 has stated that, the police have seized 200

alcohol bottles from general railway compartment. His version is contrary to the version of PW.1 and contents of Ex.P.1.

24. The PW.3 stated that, the police did not issue notice calling upon him to be a pancha witness to the seizure mahazer. The PW.3 admits that, he is an auto rickshaw driver. Without calling nearby coolies available in the railway station, the PW.1 called an auto driver/PW.1, who parks his auto rickshaw outside the station. This also makes the Court to doubt the case of the prosecution.

25. Out of 200 brandy bottles only one bottle was sent to FSL. The PW.1 has mentioned or shown 190 Real Honey bottles of 750 m.l., each in PF No.15/2015. What happened to remaining 9 bottles has not been explained in PF No.15/2015. Though the prosecution contends that those excisable articles were seized from platform No.1 of Yeshwantapura Railway station, no independent witnesses arrayed as witnesses to this case. The PW.3 stated that, 200 bottles of liquor were brought from general

railway compartment and seized at plat form No.1 of Yeshawanthapura railway station. But, he did not mention the name of the train from which the police allegedly seized those excisable articles. His version is not supported by the oral evidence of any independent witnesses.

26. In the present case, no independent witnesses came forward to say that, he or she has seen the police seizing 200 bottles of Real Honey Brandy by drawing Ex.P.1 mahazar from the accused. Non seizure of bags and non reporting the same to the court in PF No.15/2015 makes the court to doubt the case of the prosecution. In the present case, the prosecution has not produced cogent documents before the court to say that the accused ever travelled in Velangani Express train bearing No.17315 on 20.04.2015.

27. Except an oral assertion that, MO.1 and remaining 199 bottles of Real Honey brandy were found transported in Velangani express train by the accused, the prosecution has not produced any documents to show that, the accused travelled in

that train on 20.04.2015. The IO did not produce 4 bags allegedly used for transporting those bottles. The alleged search and seizure is not made in accordance with law. From the evidence led by PW.1 to 3, it is not proved that, the accused found illegally transporting 200 Real Honey brandy bottles of 750m.l. each in Velangani express train. The IO did not take the photographs of the excisable articles along with bags and accused while drawing Ex.P.1 mahazer. Hence, there is no convincing evidence before the Court to connect the accused with the alleged crime.

28. In such circumstances, the evidence led by PW.1 to 3 is no way helpful to the case of the prosecution to hold the accused guilty of the offence. Thus, the prosecution has failed to prove that, the accused No.2 along with accused No.1 found illegally transporting 200 bottles of Real honey brandy from Goa in Velankani express train bearing No. 17315 on 20.04.2015 at 11p.m., at Yeshwanthpura railway station to sell the same at Tamilnadu to make money. Accordingly, I answer point No.1 in negative.

Point No.2: For the aforesaid reasons, I proceed to pass the following:

ORDER

By exercising the powers conferred U/Sec.248[1] of Cr.P.C., the accused No.2 is acquitted from the charge of Sec. 32 of Karnataka Excise Act.

Bail bonds executed by accused No.2 stands cancelled.

Bonds executed by accused No.2 U/Sec.437[A] of Cr.P.C., shall be in force for a period of 6 months.

The property seized under PF No.15/2015[PR No.17/2024] i.e., 199 real Honey brandy bottles are already handed over to the Inspector of Yeshwanthapura excise range by the IO.

MO.1-chemically examined Real Honey brandy bottle is ordered to be kept intact till the disposal of Split up case registered against accused No.1 in CC No.13125/2023.

26.09.2025

[TATTANDA DAMAYANTI SOMAYYA]
XLI A.C.J.M., BENGALURU

ANNEXURE**LIST OF WITNESSES EXAMINED FOR PROSECUTION:**

PW.1 : B.N.Bheemanna
PW.2 : C.B.Padashetty
PW.3 : Mohammed Rafiq

LIST OF DOCUMENTS MARKED FOR PROSECUTION:

Ex.P.1 : Spot cum seizure mahazar
Ex.P.1[a] : Signature of PW.1
Ex.P.1[b] : Signature of PW.3
Ex.P.2 : Report given by PW.1
Ex.P.2[a] : Signature of PW.1
Ex.P.3 : FIR
Ex.P.3[a] : Signature of PW.1
Ex.P.4 : Acknowledgment issued by FSL
Ex.P.5 : FSL Report
Ex.P.5[a] : Signature of PW.1

LIST OF MO's MARKED ON BEHALF OF PROSECUTION

M.O.1 : Chemically examined brandy bottle

LIST OF WITNESSES EXAMINED FOR THE ACCUSED :

NIL

LIST OF DOCUMENTS MARKED FOR THE ACCUSED :

NIL

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Dictated on : 24.09.2025

Transcribed on : 25.09.2025

checked on : 26.09.2025

Signed on : 26.09.2025

[TATTANDA DAMAYANTI SOMAYYA]

XLI A.C.J.M., BENGALURU

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