

FORM A

IN THE COURT OF THE JUDICIAL MAGISTRATE, 1st CLASS, KALIMPONG PRESENT: SMT. DITI BHATTACHARJEE (JO CODE WB01365) JUDICIAL MAGISTRATE, KALIMPONG <u>[DATE OF DELIVERY OF JUDGMENT : 08.07.2026]</u> G.R. NO: 35 of 2024 (CIS No. 121 of 2024) CNR: WBDJ08-000593-2024 TR 118 of 2024 <u>Reference to Lava P.S. Case No. 03 of 2024 dated 17.02.2024</u> <u>Under Section 46A(c) of Bengal Excise Act</u>	
COMPLAINANT	State of West Bengal
REPRESENTED BY	LD. A.P.P. Sri Sanjay Chourashia.
ACCUSED	Sonu Kumar Kharwar
REPRESENTED BY	1. Ld. Advocate Mrs. Manisha Chettri 2. Ld. Advocate Mr. Bhaskar Subba 3. Ld. Advocate Mr. Kushal Giri

Form No. (M) 35

FORM B

DATE OF OFFENCE	17.02.2024
DATE OF FIR	17.02.2024
DATE OF PROSECUTION REPORT	28.08.2024
DATE OF CHARGE	11.03.2025
DATE OF COMMENCEMENT OF EVIDENCE	26.08.2025
DATE ON WHICH JUDGMENT IS RESERVED	N.A.
DATE OF JUDGMENT	08.07.2026
DATE OF SENTENCING ORDER, IF ANY	N.A.

ACCUSED DETAILS :

Rank Of The Accused	Name Of The Accused	Date Of Arrest	Date Of Release On Bail	Offences Alleged With	Whether Acquitted Or Convicted	Sentence Imposed	Period Of Detention Undergone During Trial For Purpose Of Section 428 Of Cr.PC
1	Sonu Kumar Kharwar	18.02. 2024	26.02. 2024	46A (c) of the B.E. Act	Acquitted	N.A.	N.A.

FORM C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. PROSECUTION :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	CVF Mangal Singh Tamang	Police witness
PW2	ASI Dinesh Dahal	Police witness
PW3	CV Naren Tamang	Police Witness
PW4	SI Sanjay Roy	Police witness
PW5	SI Deepak Tigga	Police witness
PW6	SI Ravi Lepcha	Police witness

B. DEFENCE WITNESS, IF ANY : NONE

C. COURT WITNESS, IF ANY : NONE

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS:

A. PROSECUTION:

SL. No.	EXHIBIT NUMBER	DESCRIPTION
1	Exhibit P-1/PW1	The signature of PW1 over the said seizure list dated 17.01.2024
2	Exhibit P-1/1/PW3	The signature of PW3 over the said seizure list dated 17.01.2024
3	Exhibit P-1/2/PW6	The seizure list dated 17.01.2024 along with the signature of PW6.
4	Exhibit P-2/PW2	The receiving endorsement on the written compliant containing official

		seal and signature of SI Pratik Subba
5	Exhibit P-2/1/PW6 & Exhibit P-2/2/PW6	Typed complaint and the signature of PW6 over the typed complaint
6	Exhibit P-3/PW2	The formal FIR filled up by SI Pratik Subba
7	Exhibit P-4/PW2	The rough sketch map of the PO
8	Exhibit P-4/1/PW2	The index of the PO
9	Exhibit P-5/PW2	The prayer dated 18.02.2024 before the Ld. CJM, Kalimpong to handed over the seized articles and the case to O/C Excise, Kalimpong along with the signature of the PW2.
10	Exhibit P-6/PW5 Exhibit P-6/1/PW5	The re-seizure memo dated 23.02.2024 and the signature of PW5 over the re-seizure memo

B. DEFENCE EXHIBITS : NONE
C. COURT EXHIBITS : NONE
D. MATERIAL OBJECTS : NONE

Dictated & Corrected by me,

Sd/-
Judicial Magistrate, Kalimpong

Sd/-
(Smt. Diti Bhattacharjee)
Judicial Magistrate, Kalimpong
JO Code- WB01365

J U D G M E N T

The facts:

1. This case arose out of the complaint filed by the ASI Ravi Lepcha, of Rangpo C.P under Lava P.S, before the O/C Lava P.S on 17.02.2024 to the effect that on 17.02.2024 during the special raid duty, he received a secret source information that accused was selling huge quantity of liquor without any valid licence for his illegal gain. Accordingly, the complainant registered the fact in the General Dairy Entry Register vide PS GDE No. 480 dated 17.02.2024 and informed the fact to O/C Lava P.S. As per the direction and instruction of O/C Lava, he along with the CV/899 Mangal Singh, Dorjee Tamang and CV/150 Naren Tamang left for Rangpo Forest Village to work out the information in hand. They arrived at the Rangpo Forest Village and being identified by the source, they held raid at the residence of the accused person person and managed to apprehend in person. On search, 06 (six) bottles of Sikkim XXX Prize Rum containing 750ml in each bottle, 01 (one) bottle of Royal Stag Deluxe Whiskey containing 750ml in each bottle and 23 (twenty three) bottles of HIT Strong Beer containing 650ml in each bottle were recovered from the possession of the accused person. On demand, the accused failed to produce any valid documents/licence in respect of store/sale of the illicit liquor recovered from the possession of the accused person. On being asked, the accused disclosed his name and identities . The accused also disclosed that he was selling such liquor since long for his

illegal gain. Accordingly, ASI Ravi Lepcha seized all the different types of liquors from the possession of the accused person under a proper seizure list and arrested the accused person under a proper memo of arrest after observing all the formalities of arrest. The whole process of search and seizure was made between 19:15 hrs to 19:35 hrs on 17.02.2024. The worth of the seized articles valued around Rs. 3910/- (Three Thousand Nine Hundred and Ten rupees)

2. On receiving the written complaint, the O/C Lava started Lava P.S. Case No. 03/2024 dated 17.02.2024 u/s 46A(c) of B.E. Act and endorsed the case to ASI Dinesh Dahal of Lava P.S. for investigation. Thereafter, the case along with all seized articles and relevant papers had been handed over by ASI Dinsh Dahal to the O/C Excise Department, Kalimpong and this case was endorsed to SI of Excise Deepak Tigga for the completion of the enquiry. During the course of enquiry, SI Deepak Tigga got transferred and this case was further endorsed to SI of Excise Sanjay Roy for completion of its enquiry and thereafter to S.I. Saurav Sharma.
3. The E/O, after due investigation, submitted the Prosecution Offence Report being P.R. No. 67/2024-25 dated 28.08.2024 under Section 46A(c)/ 52 of the Bengal Excise Act against the accused person Sonu Kumar Kharwar.
4. Cognizance of the offence punishable under Section 46A(c)/ 52 of Bengal Excise Act was taken by the Ld. C.J.M, Kalimpong vide order No. 06 dated 28.08.2024 and the case record was made over to this Court for trial.

The Trial:-

5. The case record was formally received by this Court on 03.12.2024 vide order No. 01 and the case was registered for trial vide TR No. 118 of 2024.
6. On the basis of the Prosecution Offence Report submitted by the E/O and on perusal of all the existing materials in support of the offence, this Court found prima facie case against the accused person under Section 46A(c)/ 52 of the Bengal Excise Act and as such the substance of the charges had been read over and explained to the accused person to which the accused person pleaded not guilty and claimed to be tried under the law by saying 'Kasoor Chaina' and hence the trial commenced.
7. In the course of the trial the prosecution has produced six (06) witnesses including the E/O who were examined by the prosecution. After the closure of the prosecution evidence, the accused person had been examined under Section 313 Cr. P.C. in the course whereof they refused to adduce any witness in support of his defence. Thus, evidence was closed and argument was heard from both sides and the matter came up for Judgment.

Points for determination:-

- a) Whether the accused has committed the offences under Section 46A (c)/ 52 Of the Bengal Excise Act?
- b) Whether the prosecution has been able to prove the guilt of the accused person beyond all reasonable doubt?

DECISION WITH REASONS:

8. For the ends of the brevity of convenience, the aforesaid points are taken up together for consideration. The burden of proving that the accused has committed the offence as mentioned above lies heavily on the prosecution and the prosecution has to prove the same beyond scope of all reasonable doubts.
9. Ld. A.P.P. argued that the case of the case has been proved against the accused person and thus prays for conviction of the accused.
10. On the contrary, the defence counsel argued to that effect that the public witnesses have not been joined in the investigation of the case and the accused person has been falsely implicated in this case and thus the accused person is liable to be acquitted from the present case.
11. Now, let the evidence of prosecution witnesses be scanned to see as to how far the prosecution has been able to prove the charges leveled against the accused person beyond all reasonable doubts.
12. Now, on perusal of the evidence on record, it appears that the E/O did not seize any document from the possession of the accused from which it can be ascertained the house belongs to the accused and accused was selling the liquors without any valid licence from his own house. The seizing officer did not put any details of seized liquors like manufacturing date, expiry date, M.R.P. , Batch No., Serial No. etc. and other details from which the seized articles can be identified. Even when the seized alamots were handed over to the

Excise Department, no details of the seized liquors had be mentioned in the re-seizure list as well.

13. Even Seized articles had not been produced before the Court during the trial and as such the seized liquors have not been identified by the witnesses.

14. Moreover, from the Rough sketch map and index of the P.O., it appears that there are other residential houses and shops in and around the P.O. but the E/O did not cite any independent witness in the P.R. All witnesses deposed in this case are police witnesses. But the Court cannot convict an accused on the basis of the testimony of the police witness only. Prosecution also did not take any initiative to bring any independent witness to prove the case against the accused. The prosecution case has not been duly corroborated by the evidence of independent witnesses.

15. The de-facto complainant ASI Ravi Lepcha had stated during his cross-examination that the Command Certificate was issued to him while authorizing him for the raid duty and that command certificate had been seized by the E/O. But no such Command Certificate has been placed before the Court by the prosecution and thus marked as exhibit. Nothing is on the record from which it can be ascertained that ASI Ravi Lepcha was duly authorized to conduct the raid at the P.O. on the relevant date and time on the basis of the secret source information and CV 899 Mangal Singh Dorjee Tamang and CV 150 Naren Tamang were also duly authorised to accompany the de-facto complainant on the relevant date and time.

16. Even the PW6 i.e. the de-facto complainant also admitted during cross-examination that he did not inform the Excise Department immediately after getting the secret information and did not ask Excise Department to be present at the time of search and Seizure. He also admitted that the P.O. is surrounded by other residential houses but in spite of that, he did not ask any respectable person of the locality to be present at the time of seizure. So, no independent seizure witness is also there in this case. All seizure witnesses are the police witnesses.
17. E/O has not mentioned the manufacturing date, serial no., batch no. etc. of the seized articles in the re-seizure list also.
18. The de-facto complainant had stated in the written complaint that after making an entry in the GDE Register, he started for raid duty along with two Civic Volunteers as mentioned therein. But no such G.D.E. Register extract had been seized by the E/O of this case, not it been produced before the Court.
19. Lastly and most importantly, no sample of the seized liquors was being sent for chemical examination in this case and thus no chemical report is there in this case. So, without having the chemical examination Report being marked as exhibit by chemical examiner/ expert, the Court cannot reach into a definite conclusion regarding the nature of the seized liquors. Moreover, as no details of the seized liquors have been mentioned in the seizure list or re-seizure list, so proper identification of the seized items is also under challenge.

20. Thus, as discussed above, the Court finds multiple lacuna in the whole search and seizure procedure. No Probative consistency is there in the prosecution case which is necessary to convict the accused person of the charges leveled against him.

21. It is the duty of the prosecution to prove the case against the accused beyond all reasonable doubt but the prosecution has absolutely failed to prove its case against the accused. Thus, this Court finds no reason to believe the commission of any offence by the accused under Section 46A(c)/52 of the Bengal Excise Act and thus, this Court finds it fit and proper to acquit the accused persons from the charges under section 46A(c)/52 of the Bengal Excise Act.

22. All the points are thus answered in the negative and as a result, the present case fails and the accused persons merit acquittal.

23. Hence, it is,

ORDERED

24. That the accused persons namely **Sonu Kumar Kharwar** is found not guilty of offence u/s 46A(C)/52 of the Bengal Excise Act and hereby acquitted U/S 248(1) of Cr. P.C. and set to liberty forthwith.

25. The bail bonds on behalf of the accused person shall remain in force for next six months in view of Section 437A of Criminal Procedure Code. Sureties are accordingly discharged.

26. Seized Alamats, if any be destroyed after the expiry of the appeal period.

27. The Complainant has a right to prefer Appeal under the proviso of

Section 372 of Cr. P.C. against the Judgment and if required may seek free legal assistance from the appropriate Legal Services Authority to institute and prosecute such appeal.

28. Let a copy of this Judgment of acquittal be forwarded to the district Magistrate and Chairman, D.L.S.A, Kalimpong for due intimation to the victim as defined under Section 2(wa) of the Cr. P.C.

29. The case is thus disposed of on contest by pronouncement of this Judgment in the open Court on the **08th day of July, 2026.**

30. Dealing assistant is directed to make necessary entries in the germane registers and upload the Judgment in the Case Information System at once.

Dictated & Corrected by me,

Sd/-
Judicial Magistrate, Kalimpong
JO Code- WB01365

Sd/-
(Smt. Diti Bhattacharjee)
Judicial Magistrate, Kalimpong
JO Code- WB01365