

IN THE COURT OF VI ADDITIONAL SESSIONS JUDGE, CHENNAI.
Present:- Thiru K.Dhanasekaran, B.A., B.L., L.L.M.,
VI Additional Sessions Judge
Monday, the 30th day of October 2017
Sessions Case No.98 of 2017
(P.R.C.133/2016 on the file of XIII Metropolitan Magistrate,
Egmore @ Allikulam, Chennai-8)
Prohibition Enforcement Wing Police Station, Triplicanbe Unit, Periyamedu, Crime
No.405/2015

Complainant : The Inspector of Police,
Prohibition Enforcement Wing,
Triplicane Unit, Periyamadu,
Chennai.

Name of the Accused : 1. Agastin, S/o. Jebamalai,
No.70/53, 5th Street,
Annai Sivakami Nagar,
Ennore, Chennai – 57.
2. Sivakumar, S/o. Ganesan, (age 29)
No.73/20/2, Kappalpozhu Street,
Old Washermenpet, Chennai – 21.
3. Udhayakumar, S/o. Ashok, (age 30)
No.10/34, 3rd Main Road,
9th Cross Street, Kodungaiyur, Chennai – 118.
4. Mohan, S/o. Rangasamy, (age 46)
No.8/10, Kampar Street, Murugappa Nagar,
Thiruvottiyur, Chennai 57.
5. Thiruvallur Sampath, S/o. M.Rajendran,
No.56, Meenakshi Nagar, Ekkattur,
Thiruvallur District.
6. Kannadasan, S/o. Boominathan, (age 31)
No.89, Sasthiri Nagar, 1st Street,
Vyasarpadi, Chennai – 39.

Charges framed : 4(1)(aa) r/w 4(1-A) of TNP Act.

Plea of the accused : Not guilty.

Finding of the Court : Found guilty under Section 4(1)(aa)
of TNP Act, 1937 against A1 alone.

Found not guilty under Section 4(1-A)
of TNP Act, 1937 against A1 and found not
guilty under Section 4(1)(aa) and 4(1-A)
against A2 to A6

Sentence or Order

:

In the result, the first accused is found guilty for the charge framed under section 4(1)(aa) of Tamil Nadu Prohibition Act, 1937 and he is convicted and sentenced to undergo a simple imprisonment for a period of three months and also to pay a fine amount of Rs.1,000/- (Rupees one thousand) in default to undergo simple imprisonment for a period of three weeks. The prosecution has not proved the charges framed under section 4(1-A) of Tamil Nadu Prohibition Act, 1937 against the first accused and the prosecution has not proved the charges under section 4(1)(aa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 against second accused to sixth accused beyond all reasonable doubts and the first accused is acquitted from the charge under section 4(1-A) of Tamil Nadu Prohibition Act, 1937 and second accused to sixth accused are acquitted from the charges under section 4(1)(aa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 as contemplated under Section 235(1) of Cr.P.C. It is to be noted that the first accused had already undergone judicial custody from 13.11.2015 to 12.01.2016 (91 days) during his initial remand period so that the above said period already undergone the accused is ordered to be set off for quantum of sentence under section 428 of Cr.P.C. M.O.1 (Series) 750 ml Bombay Deluxe Grape brandy bottles 69 Nos. and M.O.2 750 ml Bombay Deluxe Grape brandy bottle one No. (which was sent to Chemical Analysis) are ordered to be destroyed after the appeal time is over.

The session case came up before me on 03.10.2017 for final hearing in the presence of the learned Additional Public Prosecutor Mr. Teack Raj, who had represented the prosecution and the learned advocate M/s Raja Sekar, who had represented the accused and on hearing of both side arguments and on careful perusal of oral and documentary evidence and materials, having stood order for consideration till date, this court today delivered the following:-

JUDGMENT

1. The prosecution submits that on 13.11.2015 at about 16.30 hours when the raiding police party consists of Mr.M.Albert then Sub-Inspector of police, Mr.Kirubakaran, Head Constable No.16654, Mr.Gopi, Head Constable No.20273 attached to Prohibition Enforcement Wing, Triplicane were monitoring about any offence relating to Prohibition at the junction of Ayanavaram – Konnur Highways (hereinafter it is referred to the place of occurrence) where the first accused was riding a two wheeler Honda Activa bearing Registration No.TN 18F 6181 along with the pillion rider, the second accused. When the second accused was seen the police raiding party, he flee away from the place of occurrence left over a cunny bag however the police raiding party had managed to caught hold the first accused who in turn told about identify of second accused. On suspicion, the police raiding party had opened up such cunny bag which contains 750 ML Bombay Deluxe Grape brandy 70 bottles belonged to Union Territory of Pondichery. A foul smell emanated from the said bottles with poisonous gas it creates eye irritation. Then the police raiding party had interrogated the first accused who in turn had confessed the crime that he used to purchase the brandy bottle in the Union Territory of Pondichery without any licence and permission from authority of Government, he sold away such bottles to the all other accused. When he had sold the said branch bottles belonged to Union Territory of Pondichery to the other accused he along with second accused return back but the police raiding party caught hold him thereby he had produced 750 ML Bombay Deluxe Grape brandy 70 bottles with cunny bags to the police raiding party. Thereafter the police raiding party had seized the above said bottles after preparation of seizure mahazar at about 18 hours on the same day itself. At the time the raiding party had smelled one opened brandy bottle which emanated a foul smell with eye irritation and poisonous gas. So that the police raiding party had sealed the same and sent it to the Forensic Science Department for getting public analyst report. Then the police raiding party had seized the

two wheeler found Honda Activa bearing Registration No.TN 18F 6181 and confiscated the same to the Government as per provisions of Prohibition Act, 1937. Then the police raiding party took the accused along with case properties to the police station and produce before the Inspector of Police, Prohibition Enforcement Link along with special report. After receiving the special report from the Sub-Inspector of police Mr.Albert, the Inspector of Police has been registered printed form of first information report in Crime No.405 of 2015 under Section 4 (1) (aa) r/w Section 4 (1-A) (Transport) of Tamil Nadu Prohibition Act 1937.

2. The sessions case was taken on file in PRC No.133/2016 on the file of the XIII Metropolitan Magistrate, Egmore @ Allikulam, Chennai where the case was taken up on 11.4.2017 and the copies of final report were served upon the accused under Section 207 of Cr.P.C. and committed to Honourable Principal Court of the Sessions, Chennai where this sessions case was taken cognizance in S.C.No.98 of 2017 and made over this court for final disposal according to law. The Additional Public Prosecutor for the State has opened up the case of prosecution under section 226 of the Code for which the learned defence counsel was also replied the same thereby this trial court had formed an opinion that a prima facie case is made out so that charges under section 4(1)(aa) r/w 4(1-A) of Tamil Nadu Prohibition Act were framed, read over and explained to them. When examined with reference to the substance of the charges all the accused pleaded not guilty and claims to be tried.

3. In order to bring home the guilt of all the accused, the prosecution examined Prosecution Witnesses No.1 to 7 and marked Ex.P.1 to P.14 and also marked M.O.1 and M.O.2 through relevant witnesses. No oral and documentary evidence on the side of accused.

4 .The following witnessess of prosecution were deposed their evidence in order to support the case of prosecution which would run as follows:-

Pw1 Mr. Albert, then Sub Inspector of Police, Prohibition Enforcement Wing Periamedu had deposed that on 13.11.2015 at about 4.30 p.m. Medavakkam Salai Junction, Kunnur High Way, he along with the Head Constable No.16654 Mr.Kirubakaran and Head Constable No.20273 Thiru. Gopi attached to Prohibition Enforcement Wing, Triplicane were monitoring about any offence relating to Prohibition where the first accused was riding a two wheeler Honda Activa bearing Registration No.TN 18F 6181 along with the pillion rider, the second accused. When the second accused was seen the police raiding party, he flee away from the place of occurrence left over a cunny bag however the police raiding party had managed to caught hold the first accused who in turn told about identify of second accused. On suspicion, the police raiding party had opened up such cunny bag which contains 750 ML Bombay Deluxe Grape brandy 70 bottles belonged to Union Territory of Pondichery. A foul smell emanated from the said bottles with poisonous gas it creates eye irritation. Then the police raiding party had enquired the first accused who in turn had confessed the crime that he used to purchase the brandy bottle in the Union Territory of Pondichery, he sold away such bottles to the all other accused without any licence and permission from authority of Government. The first accused was found in possession of the said brandy bottles without prior permission or licence from the authority of government so that the first accused was arrested by the Inspector of Police on that day itself. Since no one come forward to witness he along with two head constables and confession statement in witnessing the same thereby he had produced 750 ML Bombay Deluxe Grape brandy 70 bottles (M.O.1 series) with cunny bags to the police raiding party. Thereafter he had seized the above said bottles after preparation of seizure mahazar (Ex.P1) at about 5.30 p.m. on the same day itself. At the time he had smelled one

opened brandy bottle which emanated a foul smell with eye irritation and poisonous gas so that he had sealed the same and sent it to the Forensic Science Department for getting public analyst report. Then he had seized the two wheeler found Honda Activa bearing Registration No.TN 18F 6181 under seizure mahazar Ex.P2 and investigated the same to the Government as per provision of Prohibition Act. Then the police raiding party took the first accused along with case properties to the police station and produce before the Inspector of Police, Prohibition Enforcement Wing along with special report (Ex.P3).

PW2 Mr. Gopi then Head Constable No.20273 deposed that on 13.11.2015 at about 4.30 p.m. Medavakkam Salai Junction, Kunnur High Way, he had accompanied with the Pw1 Mr. Albert, then Sub Inspector of Police, Prohibition Enforcement Wing Periamedu and Head Constable No.16654 Mr.Kirubakaran attached to Prohibition Enforcement Wing, Tribilicane were monitoring about any offence relating to Prohibition where the first accused was riding a two wheeler Honda Activa bearing Registration No.TN 18F 6181 along with the pillion rider, the second accused. When the second accused was seen the police raiding party, he flee away from the place of occurrence left over a cunny bag however the police raiding party had managed to caught hold the first accused who in turn told about identify of second accused and confessed the crime. Since no independent witness come forward to witness the confession of the first accused, he along with Head Constable Kirubakaran put their respective signature in the seizure mahazar. His signature found on the Ex.P1 was marked as Ex.P4 and his signature found on the Ex.P2 was marked as Ex.P5. The signature found on the confession of statement of first accused was marked as Ex.P6. On 19.11.2015 when the Investigation officer has arrested the sixth accused Mr. Kanadasan he along with Head Constable Kirubakaran put their respective signature in the confession statement of sixth accused and it was marked as Ex.P7.

PW3 Thiru.Umashankar then Grade-I Constable attached to the Prohibition Enforcement Wing, Periamedu had deposed that on 14.11.2015 at about 10.00 a.m. when the investigation officer had arrested the second accused due to identification of first accused, the second accused had voluntarily given confession statement for which he along with one Grade-I Constable Mr.Saravanan put their respective signature therein.

PW4 Mr.Selvan residing at No159A, Brickline Salai, Otteri, Chennai 12 and doing business in platform situated at Ayanavaram Mental Hospital had deposed that he did not know about identify of all the accused and he did not know about the any fact relating to this case so that he is treated as Hostile witness on the requisition of learned additional prosecutor for State.

PW5 Tmt. Kala then Deputy Director of Forensic Science Department, Chennai had deposed that on 16.11.2015 when she was on duty, she had received a letter from Jurisdictional Magistrate for chemical analysis of case properties relating to Crime No.405 of 2015 on the file of the Prohibition Enforcement Wing Triplicane hence she had opened such model bottle she contains 750 ML liquid in which a label was affixed as Bombay Grape Brandy. On analysis, she had found 6.37/100 ML atropine so that she sent a chemical analyst report Ex.P8 to the Jurisdictional Magistrate concerned.

PW6 Dr. M.N. Rajamani Beem Rao then Incharge Director of Chennai Medical College in Medico Legal Section had deposed that he had received a requisition letter from the Investigation Officer for which he has sent a report (xerox copy) Ex.P9.

PW7 Tmt. Rajini, then investigation officer had deposed that on 13.11.2015 at about 7 p.m. when she was on duty she had received a special report from the Sub Inspector of police Mr.Albert stating that he along with police raiding party were monitoring the offence of prohibition by checking vehicle thereby they had noticed first accused and second accused along with a cunny bag containing 750 ML Bombay Deluxe Grape Brandy 70

bottles out of which one was opened thereby a foul smell was emanated with eye irritation and poisonous gas. However the second accused had managed to escape from the case of occurrence but the first accused had given confessed statement so that the Sub-Inspector of police Mr.Albert had arrested the first accused and he took the first accused and the case properties to the police station and produce before her along with a special report. The investigation officer has been registered an printed form of first information report Ex.P10. She had sent seizure mahazar along with Form 91 Ex.P11 to the Jurisdictional court with proper escort duty. The the investigation officer went to the place of occurrence on the same day itself at about 8.30 p.m. and prepare observation mahazar Ex.P12 and rough sketch Ex.P13 in front of the witnesses Mr.Palani and Selvam. She had arrested the second accused in front of the Grade-1 constable Mr.Uma Shankar and Head constable Mr.Saravanan at near by post office North Beach Road. At that time the second accused had voluntarily has given confession statement in front of the police constables. Thereafter she had sent the first accused and second accused to the jurisdictional court concerned for juridical custody with proper escort duty. On 19.11.2015 at about 10 a.m. she had arrested the sixth accused at Sastri Nagar first Street, Vyasarpadi in front of the head constables Mr.Kirubakaran and Mr.Gopi. At that time the sixth accused had voluntarily given a confession statement and it was recorded in front of the same police constables and recorded it. On 16.11.2015 she had sent a opened brandy bottle to the Forensic Science department for getting chemical analyst report. Thereafter she had received chemical anayst report and sent it to the PW6 Dr.Rajamani along with requisition letter for getting medical opinion thereby she got a medical opinion Ex.P9. The third accused, fourth accused and fifth accused has surrender before jurisdictional court concerned after getting anticipatory bail from the Honourable High Court of Judicature at Madras. Then the investigation officer had examined list of witnesses namely Albert,

Klirubakaran, Gopi, Uma Shakar, Saravanan, Mani, Selvam, Tmt. Kala, Dr. Rajamani Beem Rao and recorded the statement reduced into writing. She had seized two wheeler Honda Activa bearing registration No.TN 18F 6181 but nobody come forward to claim the vehicle as legal owner of it so that she had sent a notice to wife of the first accused on 7.12.2015 under section 14 (4) of Tamil Nadu Prohibition Act, 1937 but wife of the first accused did not come forward to claim the same. Thereafter she had sent a notice to the first accused after he had got bail in this case but the first accused also did not come forward to claim the same so that the above said two wheeler was confiscated to the Government with report Ex.P14 series. After completing investigation, the investigating officer has filed a final report against the accused under Section 4(1)(aa), 4(1-A) of Tamil Nadu Prohibition Act, 1937.

5. The accused person is questioned u/s. 313 of Cr.P.C. and explained the incriminating circumstances available against him in evidence for which he denied the same as not true and he had opted not to examine any defence witness.

6. Point for determination:-

Whether the prosecution proved the guilty of all the accused beyond all reasonable right, if so all the accused is liable to be punished under section 4(1)(aa) r/w 4(1-A) Tamil Nadu Prohibition Act, 1937 or not?

7. The Point:-

The prosecution submits that on 13.11.2015 at about 16.30 hours when the raiding police party consists of Mr.M.Albert then Sub-Inspector of police, Mr.Kirubakaran, Head Constable No.16654, Mr.Gopi, Head Constable No.20273 attached to Prohibition Enforcement Wing, Triplicane were monitoring about any offence relating to Prohibition at the junction of Ayanavaram – Konnur Highways (hereinafter it is referred to the place of occurrence) where the first accused was riding a two wheeler Honda Activa bearing

Registration No.TN 18F 6181 along with the pillion rider, the second accused. When the second accused was seen the police raiding party, he flee away from the place of occurrence left over a cunny bag however the police raiding party had managed to caught hold the first accused who in turn told about identify of second accused. On suspicion, the police raiding party had opened up such cunny bag which contains 750 ML Bombay Deluxe Grape brandy 70 bottles belonged to Union Territory of Pondichery. A foul smell emanated from the said bottles with poisonous gas it creates eye irritation. Then the police raiding party had interrogated the first accused who in turn had confessed the crime that he used to purchase the brandy bottle in the Union Territory of Pondichery without any licence and permission from authority of Government, he sold away such bottles to the all other accused. When he had sold the said branch bottles belonged to Union Territory of Pondichery to the other accused he along with second accused return back but the police raiding party caught hold him thereby he had produced 750 ML Bombay Deluxe Grape brandy 70 bottles with cunny bags to the police raiding party. Thereafter the police raiding party had seized the above said bottles after preparation of seizure mahazar at about 18 hours on the same day itself. At the time the raiding party had smelled one opened brandy bottle which emanated a foul smell with eye irritation and poisonous gas. So that the police raiding party had sealed the same and sent it to the Forensic Science Department for getting public analyst report. Then the police raiding party had seized the two wheeler found Honda Activa bearing Registration No.TN 18F 6181 and confiscated the same to the Government as per provisions of Prohibition Act, 1937. Then the police raiding party took the accused along with case properties to the police station and produce before the Inspector of Police, Prohibition Enforcement Link along with special report. After receiving the special report from the Sub-Inspector of police Mr.Albert, the Inspector of Police has been registered printed form of first information report in Crime No.405 of

2015 under Section 4 (1) (aa) r/w Section 4 (1-A) (Transport) of Tamil Nadu Prohibition Act 1937.

8. In order to verify the case of the prosecution, Pw1 Mr. Albert, then Sub Inspector of Police, Prohibition Enforcement Wing Periamedu had deposed that on 13.11.2015 at about 4.30 p.m. Medavakkam Salai Junction, Kunnur High Way, he along with the Head Constable No.16654 Mr.Kirubakaran and Head Constable No.20273 Thiru. Gopi attached to Prohibition Enforcement Wing, Triplicane were monitoring about any offence relating to Prohibition where the first accused was riding a two wheeler Honda Activa bearing Registration No.TN 18F 6181 along with the pillion rider, the second accused. When the second accused was seen the police raiding party, he flee away from the place of occurrence left over a cunny bag however the police raiding party had managed to caught hold the first accused who in turn told about identify of second accused. On suspicion, the police raiding party had opened up such cunny bag which contains 750 ML Bombay Deluxe Grape brandy 70 bottles belonged to Union Territory of Pondichery. A foul smell emanated from the said bottles with poisonous gas it creates eye irritation. Then the police raiding party had enquired the first accused who in turn had confessed the crime that he used to purchase the brandy bottle in the Union Territory of Pondichery, he sold away such bottles to the all other accused without any licence and permission from authority of Government. The first accused was found in possession of the said brandy bottles without prior permission or licence from the authority of government so that the first accused was arrested by the Inspector of Police on that day itself. Since no one come forward to witness he along with two head constables and confession statement in witnessing the same thereby he had produced 750 ML Bombay Deluxe Grape brandy 70 bottles (M.O.1 series) with cunny bags to the police raiding party. Thereafter he had seized the above said bottles after preparation of seizure mahazar (Ex.P1) at about 5.30

p.m. on the same day itself. At the time he had smelled one opened brandy bottle which emanated a foul smell with eye irritation and poisonous gas so that he had sealed the same and sent it to the Forensic Science Department for getting public analyst report. Then he had seized the two wheeler found Honda Activa bearing Registration No.TN 18F 6181 under seizure mahazar Ex.P2 and investigated the same to the Government as per provision of Prohibition Act. Then the police raiding party took the first accused along with case properties to the police station and produce before the Inspector of Police, Prohibition Enforcement Wing along with special report (Ex.P3).

9. In continuation of the evidence deposited by Pw1, PW2 Mr. Gopi then Head Constable No.20273 deposited that on 13.11.2015 at about 4.30 p.m. Medavakkam Salai Junction, Kunnur High Way, he had accompanied with the Pw1 Mr. Albert, then Sub Inspector of Police, Prohibition Enforcement Wing Periamedu and Head Constable No.16654 Mr.Kirubakaran attached to Prohibition Enforcement Wing, Triplicane were monitoring about any offence relating to Prohibition where the first accused was riding a two wheeler Honda Activa bearing Registration No.TN 18F 6181 along with the pillion rider, the second accused. When the second accused was seen the police raiding party, he flee away from the place of occurrence left over a cunny bag however the police raiding party had managed to caught hold the first accused who in turn told about identify of second accused and confessed the crime. Since no independent witness come forward to witness the confession of the first accused, he along with Head Constable Kirubakaran put their respective signature in the seizure mahazar. His signature found on the Ex.P1 was marked as Ex.P4 and his signature found on the Ex.P2 was marked as Ex.P5. The signature found on the confession of statement of first accused was marked as Ex.P6. On 19.11.2015 when the Investigation officer has arrested the sixth accused Mr. Kanadasan

he along with Head Constable Kirubakaran put their respective signature in the confession statement of sixth accused and it was marked as Ex.P7.

10 . On careful consideration of the first information report Ex.P10 along with deposition of prosecution witnesses No.1 and 2 it would reveals that both witnesses are corroborating the facts and circumstances contained in the first information report Ex.P10. No doubt as to the fact that Ex.P10 is also corroborating the special report Ex.P3. However this court has looked into evidence of PW3 it would reveals that Thiru.Umashankar then Grade-I Constable attached to the Prohibition Enforcement Wing, Periamedu had deposed that on 14.11.2015 at about 10.00 a.m. when the investigation officer had arrested the second accused due to identification of first accused, the second accused had voluntarily given confession statement for which he along with one Grade-I Constable Mr.Saravanan put their respective signature therein. Therefore, the first accused was arrested by Sub Inspector of police on 13.1.2015 at about 16.30 hours in the place of occurrence in the presence of PW2 but the counsel for accused raised a question that the arrest of first accused was illegal due to want of independent witness. In the juncture, the learned additional public prosecutor for the State vehemently argued that since no independent witness come forward to witness the arrest and confessional statement of first and second accused, the police officers PW2 put signature therein so that it is not fatal. In the juncture this trial court has taken a judicial notice about a citation reported in AIR 2001 SC 979 wherein Honourable Supreme Court of India held that mere fact that no independent witnesses were associated it recoveries is not sufficient to create doubt in prosecution version. Hence, non availability of independent witness for arrest and confessional statement of first accused is not fatal to the present facts and circumstances of the case. A close scrutiny of deposition of PW3 Thiru.Uma Shankar, Grade I Constgale deposed evidence that on 14.11.2015 at 10 A.M. when the Investigation officer

had arrested the second accused due to identification by first accused, the second accused had voluntarily given confession statement wherein he along with one Mr.Saravanan put forth their respective signature but such signature was not marked before this court for which no explanation offered on the side of prosecution. It would creates doubt about arrest and confession statement of second accused so that the second accused is entitled to get benefit doubt on this score only. Therefore, the prosecution has put forth evidence of Pw1,Pw2,Pw3 and Pw6 to establish that on 13.11.2015 at about 16.30 hours when the police party had intercepted the first accused and find out the possession of a cunny bag containing 750 ML Bombay Deluxe Grape brandy 70 bottles belonged to Union Territory of Pondichery without permission or licence from the concerned authorities.

11. It is further seen from the records that PW5 Tmt. Kala then Deputy Director of Forensic Science Department, Chennai had deposed that on 16.11.2015 when she was on duty, she had received a letter from Jurisdictional Magistrate for chemical analysis of case properties relating to Crime No.405 of 2015 on the file of the Prohibition Enforcement Wing Triplicane hence she had opened such model bottle she contains 750 ML liquid in which a label was affixed as Bombay Grape Brandy. On analysis, she had found 6.37/100 ML atropine so that she sent a chemical analyst report Ex.P8 to the Jurisdictional Magistrate concerned. And PW6 Dr. M.N. Rajamani Beem Rao then Incharge Director of Chennai Medical College in Medico Legal Section had deposed that he had received a requisition letter from the Investigation Officer for which he has sent a report (xerox copy) Ex.P9. In this juncture, this court has looked into the deposition of Pw5 Tmt. Kala, then Deputy Director of Forensic Science Department to find out a fact that whether seized liquor is come under the poisonous substance to invoke Section 4(1-A) of Prohibition Act. On perusal of the deposition of Pw5 it would reveals that on 16.11.2015 when she was on

duty she received a letter from the jurisdictional court along with sample liquors bottle for getting public analyst report as to the fact that whether the said liquors containing any poisonous substance so that she had scrutinized the same and gave a public analyst report Ex.P8. It is found in Ex.P8 that the seized liquor contained a poisonous substance of atropine measuring 6.37 mg. per 100 m.l. In this juncture, the counsel for accused has raised a question as to whether the poisonous substance of atropine measuring 6.37 mg. per 100 m.l. would cause a death of a person or not? if not so Section 4(1-A) of Prohibition Act cannot be invoked against the accused. Whereas, the learned public prosecutor would reply that any quantum of atropine is sufficient to invoke Section 4(1-A) of Prohibition Act so that this court has taken a judicial notice about a judgment dated 10.06.2009 delivered by the Honourable High Court of Judicature in Crl.A.No.1028 of 2002 in Vijayan /vs/The State rep. by Inspector of Police, Aninasi, P.E.W. wherein court discussed in paragraph 12 that

“ When doctor was asked to give opinion as to what would happen if a person consumes arrack mixed with atropine at the ration 8.6 mg. per 100 m.l. of arracks, he gave his opinion under Ex.P7 stating that depending upon the physique of the person, if atropine measuring 30 mg to 150 mg got mixed in the blood it would prove to be dangerous to life.”

On reading of the above said discussion made in the judgment delivered by the Honourable High Court of Judicature at Madras, I would learnt that if atropine measuring 30 mg. to 150 mg. is mixed in a blood, it would cause dangerous to life depending upon the physique of a person. And no doubt 30 mg of atropine is minimum requirement to cause dangerous life of a person. By applying the above said scientific method adopted by the Honourable High Court of Judicature at Madras, this court has also looked into facts

and circumstances of the present case, wherein Pw5 Mrs. Kala had given a public analyst report stating that one sample liquor bottle was containing 6.37 mg. of atropine per 100 m.l. The normal size of liquor bottle is having the capacity of 180 m.l. If that is taken into account, at the maximum of 17.2 mg of atropine would have been consumed along with liquor. Hence, on the basis of evidence of Pw5 the quantum of atropine contained in the bottle could not have resulted in danger to the life of the person who consumed it thereby section 4(1-A) of Tamil Nadu Prohibition Act, 1937 would not be attracted against accused. However, the prosecution has proved the fact against the first accused that on 13.11.2015 at about 16 hours when police party who consist of then police officials attached to Prohibition Enforcement Wing, Triplicane Mr.M.Albert then Sub-Inspector of police, Mr.Kirubakaran, Head Constable No.16654, Mr.Gopi, Head Constable No.20273 were searching offenders of prohibition at the place of occurrence where they had noticed the first accused who was in possession of a cunny bag containing 750 ML Bombay Deluxe Grape brandy 70 bottles belonged to Union Territory of Pondichery.

12. It is to be noted that police party who consist of then police officials attached to Prohibition Enforcement Wing, Triplicane Mr.M.Albert then Sub-Inspector of police, Mr.Kirubakaran, Head Constable No.16654, Mr.Gopi, Head Constable No.20273 but no independent witness was examined for which the counsel for defense would argued that the prosecution case is based upon police officials attached to the complainant police station so that a reasonable apprehension would arise about the case of the prosecution including seizure mahazar. In this juncture, Additional Public Prosecutor for the State would argue that since independent witness was not available at the place of occurrence, the police officials put their signature in seizure mahazar Ex.P1 and Ex.P2 under special circumstance arisen in the case why because the police party was roving around in searching of prohibition offenders. That apart, no individual would not available at the

place of occurrence for the type of prohibition cases for witnessing the seizure mahazar and arrest of the first and second accused. In the above said factual scenario, this trial court has looked into a citation reported in 1978 TLNJ 380 wherein court held that

“Section 4(1)(A): A conviction can certainly be based on the uncorroborated testimony judged by the standards adopted for judging the credibility of the testimony of any other witness, if found to be reliable. Merely on the ground that the witness, is a police officer, the court cannot start with a presumption that his testimony is open to suspicion”

On reading of the above said citation, it would clear that simple because of witnesses are being police officer, the court cannot start with a presumption that their testimony is open to suspicion and on that ground only prosecution case cannot be thrown out. Therefore, this court is considered a view that the contention of the learned Additional Public Prosecutor for the State that merely because of witnesses are being police officials, their testimony before the court could not be thrown out and a special circumstance was arisen in this case in order to control and prevent the activities of the offenders of the prohibition so that individual witness is not necessary in this case.

13 . The next core contention raised by the counsel for the defense that though the Pw7 Tmt. Rajini, then investigating officer had deposed that entry in general diary and pocket diary was recorded in their official records, they were not produced before this court as documents which would raise suspicion over the case of the prosecution. The learned Additional Public Prosecutor for the State would contend that prosecution need not be produced the entries of the general diary to prove the case in the present case. In this juncture this court has looked into the judgment dated 5.5.2006 delivered by the Honourable Supreme Court of India in Ashok Kumar and others /vs/ State

of Tamilnadu in Criminal Appeal No.1533 of 2004 reported in AIR 2006 SC 2419 = 2006(10) SCC 157 wherein court held as follows:-

“The question of drawing an adverse inference against the prosecution for non production of case diary or the general diary would have arisen had the court passed an order being satisfied that the prosecution intended to suppress some facts which were material for the purposes of arriving at the truth (or) otherwise of the prosecution case. If no such application had been filed and no order thereupon had been passed by the court, the question of drawing any adverse inference against the prosecution would not arise.”

On reading of the above said citation delivered by the Honourable Supreme Court of India it would crystal clear that the adverse inference cannot be drawn against the prosecution simple because of non production of copy of entries of general diaries when the defense has not at all filed any petition for production of the copies of entries of the same. Hence, non production of copies of general diary would not arose a suspicion over the prosecution case. In so far as third accused to sixth accused are concerned, though they are arrayed as accused on the basis of confessional statement of first accused but they are not arrested by the investigation officer instead they were released on anticipatory bail as per order in CrI. O.P.No.28654 of 2015 (A3), CrI.O.P.No.30125 of 2015 (A5) CrI.O.P.No.329 of 2016 (A4) by the Honourable High Court of Judicature at Madras and A6 was released on anticipatory bail in CrI.M.P.No.19326 of 2015 by the Honourable Principal Sessions Judge, Chennai. There is no corroborating evidence to link with the third accused to sixth accused to connect the offence of prohibition. Therefore, this trial court is considered view that no material evidence or convict third accused to sixth accused so that they are entitled to get acquittal from the charges framed against them.

14 . From the above said discussion facts and legal scenario this court holds that the prosecution has proved its case against the first accused under Section 4(1)(aa) of Tamilnadu Prohibition Act, 1937 beyond all reasonable doubts on the strength of deposition of Pw1 to Pw3 and Pw5 to PW7 and Ex.P1 to Ex.P14 for which the first accused has to punish for said offence. However, the prosecution has not proved its case against the first accused under Section 4(1-A) of Tamil Nadu Prohibition Act, 1937 for which the accused is entitled to get acquittal. And the prosecution has not proved the charges under section 4(1)(aa) and 4 (1-A) of Prohibition Act, 1937 against second accused to sixth accused beyond all reasonable doubts thereby they are entitled to get acquittal from the charges framed against them. The point is answered accordingly.

15 . Having found the first accused guilty under Section 4(1)(a) of Tamil Nadu Prohibition Act, 1937, the first accused is heard on the question about quantum of sentence under Section 235(2) of Cr.P.C for which the accused replied as he is working in shop establishment as coolie thereby he is running his family and his children so that he needs some leniency. Though the first accused pleads some leniency about quantum of sentence, he has committed an offence under Section 4(1)(aa) of Tamil Nadu Prohibition Act, 1937 and hence this trial court is not likely to give any leniency about quantum of sentence.

16 . In the result, the first accused is found guilty for the charge framed under section 4(1)(aa) of Tamil Nadu Prohibition Act, 1937 and he is convicted and sentenced to undergo a simple imprisonment for a period of three months and also to pay a fine amount of Rs.1,000/- (Rupees one thousand) in default to undergo simple imprisonment for a period of three weeks. The prosecution has not proved the charges framed under section 4(1-A) of Tamil Nadu Prohibition Act, 1937 against the first accused and the prosecution has not proved the charges under section 4(1)(aa) and 4(1-A) of Tamil Nadu Prohibition

Act, 1937 against second accused to sixth accused beyond all reasonable doubts and the first accused is acquitted from the charge under section 4(1-A) of Tamil Nadu Prohibition Act, 1937 and second accused to sixth accused are acquitted from the charges under section 4(1)(aa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 as contemplated under Section 235(1) of Cr.P.C. It is to be noted that the first accused had already undergone judicial custody from 13.11.2015 to 12.01.2016 (91 days) during his initial remand period so that the above said period already undergone the accused is ordered to be set off for quantum of sentence under section 428 of Cr.P.C. M.O.1 (Series) 750 ml Bombay Deluxe Grape brandy bottles 69 Nos. and M.O.2 750 ml Bombay Deluxe Grape brandy bottle one No. (which was sent to Chemical Analysis) are ordered to be destroyed after the appeal time is over.

Directly dictated by me to stenographer, computerized by her, corrected and pronounced by me in the open court, this the 30th day of October 2017.

VI ADDL. & SESSIONS JUDGE

PROSECUTION SIDE WITNESSES:

P.W.1 Thiru. Albert

P.W.2 Thiru. Gopi

P.W.3 Thiru. Umashankar

P.W.4 Thiru. Selvam

P.W.5 Tmt. Kala

P.W.6 Dr. M.N. Rajamani Beem Rao

P.W.7 Thiru. Rajini, Investigation officer

PROSECUTION SIDE DOCUMENTS:

Ex.P1 Seizure mahazur