

Form A

IN THE COURT OF LD. JUDICIAL MAGISTRATE (1st CLASS).

5th COURT, BANKURA, WEST BENGAL

Present: ALI ASGOR ALLAUUDIN AHMAD, JM [WB01267]

[Date of the Judgment: 20-09-2023]

[Case No. GR - 507/2021]

TR No. 570T/2022

CIS Registration No. 1506/2022

CNR NO. WBBK-02-003192-2022

Saltora P. S Case No. 39/2021 dated 22-05-2021 under section 46 A(C) of the Bengal Excise Act, 1909.

Complainant	STATE OF WEST BENGAL
REPRESENTED BY	Ld AP.P Susanta Bhattacharya
ACCUSED	1. Subash Mondal (A-1), s/o- Kartick Mondal, Vill- Gote, P.S- Saltora, Dist- Bankura, and 2. Mukul Mondal (A-2), s/o- late Lalmohan Mondal, Vill- Gote, P.S- Saltora, Dist- Bankura.
REPRESENTED BY	Koushik Patra

Form B

Date of offence	22-05-2021
Date of FIR	22-05-2021
Date of submission of PR	14-03-2022
Date of framing charge	20-10-2022
Date of commencement of evidence	08-12-2022
Date on which judgment is reserved	20-09-2023
Date of the Judgment	20-09-2023
Date of Sentencing Order, if any.	No

Accused details:

Rank of the accused persons	Name of accused persons	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 428 Cr.P.C
A-1.	Subash Mondal	23/5/21	05/06/21	46 A (C) of Bengal Excise Act, 1909	Acquitted	N.A.	N.A.
A-2.	Mukul Mondal	23/5/21	05/06/21	46 A (C) of Bengal Excise Act, 1909	Acquitted	N.A.	N.A.

Form C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	ASI Samir Mondal	Eye witness
PW 2	Constable- Hemanta Mukherjee	Eye witness
PW-3	Constable- Azim Ansary	Eye witness

B. Defence Witnesses, if any: No witness was examined on behalf of defence.

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS,PANCH WITNESS, OTHER WITNESS)
DW 1		
DW 2		

C. Court Witnesses, if any: No such type witness was examined in this case.

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW 1		
CW 2		

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit P-1/PW 1	Signature of PW-1 over Seizure list
2.	Exhibit P-2/PW 1	FIR
3.	Exhibit P-1/1/PW 2	Signature of PW-2 over Seizure list
4.	Exhibit P-1/2/PW 3	Signature of PW-3 over Seizure list

B. Defence: Nothing was exhibited on behalf of accused / defence.

Sr. No.	Exhibit Number	Description
1.	Exhibit D-1/DW 1	
2.	Exhibit D-2/DW 2	

C. Court Exhibits, if any: Nothing was exhibited as Court Exhibit.

Sr. No.	Exhibit Number	Description
1.	Exhibit C-1/CW 1	
2.	Exhibit C-2/CW 1	

D. Material Objects: None

Sr. No.	Material Object Number	Description
1.	MO 1	
2.	MO 2	

J-U-D-G-E-M-E-N-T

The instant case has been initiated on the basis of a written complaint lodged by the de-facto complainant ASI Samir Mondal of Saltora PS, at Saltora to the O/C Saltora PS, on 22-05-2021, against the above named accused persons. The fact of the complaint is that on 22-05-2021 at about 07:05 PM on the basis of a secret source of information, de-facto complainant along with force held raid at the house of the accused persons, at Gote village, under- Saltora PS; and found that accused persons was selling the illicit distilled liquor and country spirit to the customers in exchange of money; without any valid paper. It is alleged that seeing the police party; some people managed to escape and the de-facto complainant seized 21 bottles of country spirit, namely, "CAPTAIN". On the basis of this written complaint; Saltora P.S. Case No. 39/2021 dated 22-05-2021 was started against the accused persons and after completion of investigation, the Excise Officer submitted prosecution report against the above named accused persons u/s- 46 A (c) of the Bengal Excise Act, 1909. The order dated 20-10-2022 goes to show that after having considered the materials on case record, this court has been pleased to frame charge for commission of offences punishable u/s- 46 A (c) of the Bengal Excise Act, 1909 against the accused persons and the contents of the Charge was read over and explained to them, in Bengali to which they pleaded not guilty and claimed to be tried. Hence, trial of this case has been started.

On the other hand, the defence case, as it transpires from the trend of cross-examination of the de-facto complainant as well as cross examination of other witnesses; and examination of the accused persons u/s 313 Cr.P.C. by this Court; is that of total denial of prosecution's allegation.

POINT FOR DETERMINATION

In my considered view, the points for determination in the instant case are as follows: -

1. Whether the Prosecution has been able to establish the charge u/s- 46 A (c) of the Bengal Excise Act, 1909 and against the accused persons beyond the shadow of reasonable doubt?

2. Whether the accused persons are guilty of the offences u/s 46 A (c) of the Bengal Excise Act, 1909 for which he has been charged?

EVIDENCE ADDUCED

To prove the prosecution case, the prosecution side has examined only three witnesses in this case. They are as follows: -

1. PW1– ASI Samir Mondal,
2. PW2- Constable- Hemanta Mukherjee and
3. PW3- Constable- Azim Ansary.

The following documents were marked as exhibit in this case during trial on behalf of the prosecution side to prove it's case against the accused persons: -

Seizure list dated 22/05/2021, FIR and Signatures of PW-2 and PW-3 over the seizure list have been marked as exhibit no. 1, exhibit no. 1/1, exhibit no. 1/2, respectively, in this case.

DECISION WITH REASONS

Both the points for consideration being inter linked with each other are taken up together for the brevity and convenience of discussion.

First and foremost; de-facto complainant has been examined as PW-1 in this case. The PW-1 in his examination in chief stated that on 22-05-2021, he was posted at Saltora PS as ASI. On that day he along with Constable- Hemanta

Mukherjee and Constable- Azim Ansary went at the house of the accused persons at village- Gote, under- Saltora PS and found that the accused persons were selling ID liquor illegally to the customer in exchange of money, without any valid paper. It is stated by de-facto (PW-1) that seeing the police party; some people managed to escape and he seized 21 bottles of “Captain” Country Spirit; and seal and leveled same properly. Thereafter, he produced the seized alamat before O/C Saltora PS; and lodged FIR at Saltora PS. In his cross-examination, the PW-1 has admitted by stating that I am not carrying any CC to show that I went to conduct a raid at Gote, under- Saltora PS village on the said day. He has also admitted by stating that local people refused to sign in seizure list but I did not note down this fact in my FIR. In addition to that, seized alamat were not produced before the witness for identification at the time of his deposition before this Court.

Secondly, the PW-2 in his examination in chief stated that on 22-05-2021, he was posted at Saltora PS as Constable. On that day, he along with ASI Samir Mondal and Constable- Azim Ansary went to Gote village, under- Saltora PS, at the house of the accused persons; and found that the accused persons were selling CS liquor illegally to the customer in exchange of money, without any valid paper. ASI Samir Mondal seized 21 bottles of “Captain” Country Spirit. In his cross-examination, the PW-2 stated that he could not produce any document to show that he was on duty 22-05-2021. In his cross-examination, the PW-2 also admitted by stating that I cannot say whether any documents were seized to ascertain the ownership of the house. In his cross-examination, the PW-2 also admitted by stating that I did not open said bottles to ascertain about materials on it. Last but not the least; seized alamat were not produced before the witness for identification.

Thirdly; evidences of PWS are also not in conformity with other in respect of time and date of occurrence of this case. In others words, PWS have failed to state time and date

of incident accurately which makes their evidence unreliable. According to FIR, incident of this case had taken place on 22-05-2021 at about 07:05 PM at house of accused at village-Gote, under- Saltora PS. But according to de-facto (P.W-1), incident of this case had taken place on 22-05-2021, at village-Gote, under- Saltora PS whereas colleague of de-facto as P.W-2 has stated that incident of this case had taken place on 22-05-2021 at house of accused at village- Gote, under- Saltora PS. Again, another colleague of de-facto as P.W-3 has stated that incident of this case had taken place on 22-05-2021 at evening at house of accused at village- Gote, under- Saltora PS. But remaining PWS have stated nothing regarding time and date of incident of this case. Thus, there is no doubt that witnesses of this case have failed to state time and date of incident of this case properly; and as such, their evidences have little value in eye of law; and consequently, same should be discarded.

Fourthly; the PW-3 in his examination in chief stated that on 22-05-2021, he was posted at Saltora PS as constable. On that day, he along with ASI Samir Mondal and Constable-Hemanta Mukherjee went to village- Gote, under- Saltora PS village at the house of the accused persons and found that the accused persons were selling CS liquor illegally to the customer in exchange of money, without any valid paper. ASI Samir Mondal seized 21 bottles of “Captain” Country Spirit. In his cross-examination the PW-3 stated that he could not produce any command certificate dated 22-05-2021 before the Court. During his cross-examination, the PW-3 has also admitted by stating that I did not open said bottles to ascertain about materials on it. Moreover, seized alampatti were not produced before the witness for identification at the time of his deposition before this Court.

Heard the Ld. APP and the Ld. Defence counsel in full. Upon scanning the evidence adduced along with hearing the argument advanced by the Ld. Defence counsel, it becomes transparent that seized alampatti were not produce before the Court for identification. No chemical examination report has

been submitted by the prosecution to show that the seized alamat contains ID liquor. Without chemical examination report it cannot be presumed that the seized liquors contents CS liquor or otherwise. There is lack of evidence against the accused persons for convicting him. So, it follows that the prosecution has failed to prove the guilt of the accused persons beyond all reasonable shadow of doubt and consequently; the accused persons is entitled to get an order of acquittal.

Hence,

it is,

O-R-D-E-R-E-D

that the accused persons, namely, Subash Mondal and Mukul Mondal are found not guilty of the offence u/s- 46 A (c) of the Bengal Excise Act, 1909 and is acquitted thereof in view of section 248 (1) of the Criminal Procedure Code.

The accused persons are discharged from their bail bond and set at liberty at once. The surety is also discharged from their surety ship.

Seized alamat, if any, be deposed of as per state rules.

Informed all concerned. Note in the Register.

The complainant/victim has the right to prefer an appeal under proviso to section 372 of the Code of Criminal Procedure and if necessary, to avail free legal assistance through the legal services authorities concerned to prefer and prosecute such appeal.

Let a copy of this order be sent to the District Magistrate, Bankura and concerned District Legal Service Authority, Bankura for due intimation to the victim as defined under section 2 (wa) of the Code of Criminal Procedure.

D/C by me

(Ali Asgor Allauddin Ahmad)
Judicial Magistrate, 5th Court
Bankura Sadar, Bankura.

(Ali Asgor Allauddin Ahmad)
Judicial Magistrate, 5th Court,
Bankura Sadar, Bankura.