

FORM-A

**IN THE COURT OF THE SUB-DIVISIONAL
JUDICIAL MAGISTRATE, JEYPORE,
DISTRICT-KORAPUT.**

**Present : Sri Santosh Kumar Barik, O.J.S.,
Sub-Divisional Judicial Magistrate,
Jeypore, District-Koraput.
J.O. Code : OD00674.**

Dated this 16th day of October, 2025.

2(a)CC. No. 349/2025.
T.R. No. 1012/2025.

(Arising out of Jeypore Excise Station vide P.R. No.105/2025-26)

e-COURT No. 2(a)CC 349/2025.

(Details of FIR/PR/Crime and Police/Excise Station)

COMPLAINANT	State of Odisha
REPRESENTED BY	Sri Gupteswar Bisoi, Sri Biswamber Swain, Ld. A.P.P. Jeypore.
ACCUSED	Bhima Nayak, aged about 33 years, S/o- Lalit Nayak, At-village Dongaguda, P.S.- Jeypore Town, Dist-Koraput
REPRESENTED BY	Advocate Shri. Narayan Mallik and his Associate Advocates, Jeypore.

FORM-B

Date of Offence	07.07.2025
Date of FIR/PR	07.07.2025
Date of Charge sheet/Sanctioned PR	07.07.2025
Date of Framing of charges	07.07.2025
Date of commencement of evidence	04.09.2025
Date on which judgment is reserved	---
Date of Judgment	16.10.2025
Date of Sentencing Order, if any	---

Accused Details :

Rank of the Accused	Name of the Accused	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.
1.	Bhima Nayak	07.07.2025	07.07.2025	U/s.52(a) of Odisha Excise Act, 2008	Acquitted	---	---

Status of Accused:

Absent

J U D G M E N T

1. The above named accused stands charged for commission of offence U/s.52(a) of Odisha Excise Act, 2008 for illegal possession of 08.600 liters of OS liquor.

2. The prosecution case in brief as reveals from the prosecution report is that on dated. 07.07.2025 at about 11.30 AM, Shri. Subrat Kishore Hiran who is the Complainant-cum-IO of this case who

was working as the OIC at Jeypore Excise Station was performing patrolling duty along with his staff at Dangaguda village area under Jeypore Police Station. Meanwhile he saw a person who was going on the village road by carrying a white colour plastic jerry bag on his right shoulder in a suspicious manner. Out of suspicion, the OIC detained him by giving his identity as an excise official and on search she found the jerry bag to be containing some poly pouches that contained some liquor like liquid substance emitting acute smell of OS liquor. To ascertain the nature of the liquid substance the OIC conducted hydrometer test which indicated temperature of 71° F, indication of 88.6° and strength of 70.5° UP. Finally, from the aforesaid tests, smell, colour and from his departmental service experience he confirmed the liquid substance in that jerry bag to be nothing but OS liquor. On being asked the accused disclosed his name as Bhima Nayak of village Dangaguda under Jeypore Sadar Police Station but on demand he failed to produce any authoritative license or permit towards the possession of said OS liquor. So he seized the 43 poly pouches each containing 200 ml of OS liquor under a seizure and took the signature of the accused and the official witnesses therein and then he arrested the accused and forwarded him to this Court. Later, on completion of investigation, he submitted the PR against the accused

U/s.52(a) of Odisha Excise Act, 2008 to face trial in the Court of law. Accordingly, cognizance was taken and charge was framed and the contents of the charge were read over and explained to the accused to which he pleaded not guilty and claimed for trial. Hence, this case.

3. The plea of accused is one of complete innocence and his false implication in this case.

4. The sole point for determination in this case is that:

(i) Whether on dated. 07.07.2025 at about 11.30 AM on Dangaguda village road under Jeypore Town Police Station the Excise official recovered a jerry bag containing 08.600 liters of O.S liquor from the exclusive and conscious possession of the accused?

(ii) Whether recovered liquors are nothing but O.S liquor?

5. In order to substantiate the charge, the prosecution has examined as many as three witnesses i.e. P.W.1 the Complainant-cum-IO of this case. P.W.1 and P.W.3 are official seizure witnesses. The prosecution has marked its evidences from Ext.P-1/P.W.1 to Ext.P-3³/P.W.3. On the contrary the defense

has examined none on its behalf.

6. In order to prove the allegations U/s.52(a) of Odisha Excise Act, the prosecution has to prove that ID liquor has been seized from the exclusive and conscious possession of the accused.

During the course of trial, the Complainant-cum-IO, P.W.1 has deposed that he came to know the accused person on the date of the incident. He further deposed that on dated. 07.07.2025 at about 11.30 AM, Shri. Subrat Kishore Hiran who is the Complainant-cum-IO of this case who was working as the OIC at Jeypore Sadar Excise Station was performing patrolling duty along with his staff at Dangaguda village area under Jeypore Sadar Police Station. Meanwhile he saw a person who was going on the village road by carrying a white colour jerry bag in a suspicious manner. Out of suspicion, he detained him by giving his identity as an excise official and on search he found the jerry bag containing some poly pouches to be containing some liquor like liquid substance emitting acute smell of OS liquor. To ascertain the nature of the liquid substance the OIC conducted blue litmus paper test which turned to red in colour. He also conducted hydrometer test which indicate temperature of 71⁰ f, indication of 88.6⁰ and strength of 70.5⁰ UP. Finally, from the above tests, smell, colour, taste and from his departmental service experience he confirmed the liquid substance in that

jerry bag to be nothing but OS liquor. On being asked the accused disclosed his name as Bhima Nayak of village Dangaguda under Jeypore Sadar Police Station but on demand she failed to produce any authoritative license or permit towards the possession of said OS liquor. He drew up a sample of 600 ml in a plastic bottle for chemical examination. As the accused could not produce any license, he seized the 43 poly pouches each containing 200 ml of OS liquor from the exclusive and conscious possession of the accused and prepared seizure list and the rest of the liquor was destroyed at spot. Subsequently, he prepared spot map of the alleged place of seizure and then arrested the accused and forwarded her to this Court. He further deposed that on dated. 07.07.2025 after completion of his investigation he submitted the Final PR vide PR No.105/2025-26 against the accused U/s.52(a) of Odisha Excise Act. He proved the seizure list as Ext.P-1/P.W.1, the tested blue litmus paper as Ext.P-1¹/P.W.1, his signature thereon as Ext.P-1²/P.W.1 and his signature on the seizure list as Ext.P-1³/P.W.1. He proved the Hydrometer Test Chart as Ext.P-2/P.W.1 and his signature thereon as Ext.P-2¹/P.W.1. He further proved the spot map as Ext.P-3/P.W.1 and his signature thereon as Ext.P-3¹/P.W.1.

He during his cross-examination stated that he had no prior acquaintance with the accused; no command certificate was issued to the accompanying

staff; the alleged place of seizure was a busy road; he has not mentioned the detail description of the seized motor tube; he has not verified the Aadhar card of the accused to ascertain his identity; he has not submitted any certificate of Government regarding the correctness of the measuring apparatus; he has not sent the sample so collected by him for chemical examination; he has not undergone any distillery training and that he has not submitted the inventory list. The seized articles and samples were not produced in the Court on the date of his deposition for identification.

P.W.2 and P.W.3 the official seizure witnesses have deposed identically like that of the Complainant-Cum-IO of this case. However, P.W.1 proved his signature on the seizure list, on the Hydrometer Test and on the spot map as Ext.P-1⁴/P.W.2, Ext.P-2²/P.W.2 and Ext.P-3²/P.W.2. P.W.3 proved his signature thereon as Ext.P-1⁵/P.W.3, Ext.P-2³/P.W.3 and Ext.P-3³/P.W.3 respectively. They during their cross-examination stated that they had no prior acquaintance with the accused; no command certificate was issued as the OIC had accompanied them; they have not undergone distillery training to identify the excise articles; they cannot say the detail description of the motor tube; what chemical a blue litmus paper contains; why a blue litmus paper turns into red when it comes in contact with any acidic substance; that the OIC has not

verified the ID proof of the accused; that the alleged place of seizure was a busy public road and they cannot say that in which hand the accused was carrying the plastic jerry cane. The seized articles were not produced in the Court on the date of their deposition for identification.

7. To establish the first point of determination, the prosecution has to prove that the accused was in exclusive and conscious possession of 08.600 liters of OS. liquor without having any license or authority. It is well established that the duty is cast upon the prosecution to prove the fact that the O.S liquor was seized from the exclusive and conscious possession of the accused and he had no license or authority for the same. As per the testimony the complainant-cum-IO i.e. P.W.1 he caught the accused with a jerry bag while he was walking on the village road. It is also found that no documents regarding the identity of the accused has been verified. As per the testimony of P.W.1, the spot was a busy public road but not a single independent witness has been cited as a witness in this case. It is further admitted by him that the samples were not sent for chemical examination. These facts seriously blur the prosecution story and leave room for doubts. So far this case is concerned, no clear picture regarding the exclusive possession of the accused is depicted by the prosecution. Hence, the exclusive and conscious

possession of the accused person is not established beyond all shades of doubts, it may be suitably held that the prosecution has failed to establish its case against the accused beyond all reasonable doubt.

8. To prove the next point for determination, the prosecution has to prove that the seized liquors were I.D. liquor. P.W.1 who is the Complainant-cum-IO of this case deposed that after conducting some tests, they came to know that these liquid were nothing but I.D. liquor. It is revealed from the record that no requisition for chemical test is attached in this record and that P.W.1 too has admitted that he has not sent the sample so collected by him for chemical examination. The evidence of an experience and specially trained officer can however be accepted only as an expert evidence as contemplated U/s.39(1) of Bharatiya Sakshya Adhiniyam, 2023.

That section requires inter-alia says that the opinion of only person especially skilled in the relevant science or art is acceptable as expert evidence. Hence, unless an Excise Officer shows that he was especially skilled which may be resultant upon special training in the line, he would not be acceptable as an expert. The necessary conclusion must be that a mere statement that he has served in the Excise department for number of years either as a Sub Inspector or else,

would not be acceptable as an expert. It is further shown that unless he has been specially trained for the purpose or has acquired special skill in the matter, he cannot be rightfully termed as expert. In the instant case P.W.1 has not filed his departmental service experience or training experience to prove himself to be an expert in the line of identification of liquor. Thus, P.W.1 cannot be said to be an expert or skillful person in identifying the liquor.

9. Next come to the question on the types of tests conducted, it is well known that Blue litmus paper turns into red when it comes in contact with any acidic substance. Because of its acidic nature, it turns from blue to red in colour, when dipped into it. The blue litmus paper test only shows that liquid to be acidic and no more. As held by the *Hon'ble Court in Simanchal Choudhary Vrs. State reported in (2005) 32 OCR 173* that Blue litmus paper turning red on being introduced to be liquid only goes to show that the nature of liquid is acidic and no more.

So far as the hydrometer test is concerned, it is a test to measure the density of liquid and possibility of any other liquid (solution) having the same density cannot be ruled out. The law on this point is well settled that the blue litmus paper test and the hydrometer test are not accurate test. Where one test shows the acidic nature of the liquid other shows the

density of the liquid in which that instrument is put. I find in the present case that the seized liquor was not sent for chemical test, in order to come to a conclusion that the seized liquor was I.D. liquor and nothing else and these are the aspects discussed above go against the case of prosecution.

It was held in **Minaketan Muduli vrs State of Orissa 2002 (II) OLR 647** that prosecution should make all endeavor to get the seized materials tested by chemical analysis. That may be regarded as the surest test to establish that the seized material was nothing but any kind of liquor.

Considering the above facts and circumstances as well as the decision made above, I am of the opinion that the prosecution failed to prove the charge against the accused U/s.52(a)(i) of Odisha Excise Act, 2008 and he is found not guilty for committing the said offence and he is acquitted there from, as per provision of U/s.271(1) of BNSS.

10. The accused be set at liberty forthwith and his bail bond shall remain in force for a period of six months U/s.481(1) of BNSS.

11. The seized article if any be disposed after expiry of four months of the appeal period in case of no appeal. In case of appeal, the same be dealt as per

the order of the Appellate Court.

Enter this case as “mistake of fact”.

**Sub-Divisional Judicial Magistrate,
Jeypore.**

This Judgment is typed to my dictation and corrected by me. The Judgment is pronounced in the open Court today, on this the **16th day of October, 2025** under my signature and seal of this Court.

**Sub-Divisional Judicial Magistrate,
Jeypore.**

FORM-C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES		
A .Prosecution Witnesses		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
P.W.1	Subrat Khosre Hiran	Complainant-cum-Investigating Officer
P.W.2	Mahadev Muduli	Official seizure witness
P.W.3	Satya Suban Patra	Official seizure witness
B. Defence Witness, if any :		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL		
C. Court Witness, if any		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL		

LIST OF PROSECUTION/DEFENCE/COURT/COURT EXHIBITS		
A. Prosecution Exhibits		
Sl. No.	Exhibit Number	Description
1	Ext.P-1/P.W.1	Seizure list
2	Ext.P-1 ¹ /P.W.1	Blue litmus paper test
3	Ext.P-1 ² /P.W.1	Signature of P.W.1 on Ext.P-1 ¹
4	Ext.P-1 ³ /P.W.1	Signature of P.W.1 on Ext.P-1
5	Ext.P-1 ⁴ /P.W.2	Signature of P.W.2 on Ext.P-1
6	Ext.P-1 ⁵ /P.W.3	Signature of P.W.3 on Ext.P-1
7	Ext.P-2/P.W.1	Hydrometer test
8	Ext.P-2 ¹ /P.W.1	Signature of P.W.1 on Ext.P-2
9	Ext.P-2 ² /P.W.2	Signature of P.W.2 on Ext.P-2
10	Ext.P-2 ³ /P.W.3	Signature of P.W.3 on Ext.P-2
11	Ext.P-3/P.W.1	Spot map
12	Ext.P-3 ¹ /P.W.1	Signature of P.W.1 on Ext.P-3
13	Ext.P-3 ² /P.W.2	Signature of P.W.2 on Ext.P-3
14	Ext.P-3 ³ /P.W.3	Signature of P.W.3 on Ext.P-3
B. Defence Exhibits, if any		
Sl. No.	Exhibit Number	Description
N I L		
C. Court Exhibits, if any		
Sl. No.	Exhibit Number	Description

N I L		
D. Material Objects :		
Sl. No.	Exhibit Number	Description
N I L		

**Sub-Divisional Judicial Magistrate,
Jeypore.**