



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL REVISION PETITION NO. 163 OF 2023

BETWEEN:

SRI JAYAPRAKASH
S/O SADANANDA BHANDARY,
AGED ABOUT 37 YEARS,
R/AT KOLA, MALPE BEACH,
UDUPI

PERMANENT RESIDENT OF
KASHI MUTT HOUSE, VITLA POST
BNTWALA TALUK-572 101

...PETITIONER

(BY SRI. K. PRASANNA SHETTY, ADVOCATE)

AND:

THE STATE BY PSI
MALPE POLICE STATION, UDUPI,
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE - 560 001

...RESPONDENT

(BY SRI RAJAT SUBRAMANYAM, HCGP)

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C
PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF
CONVICTION DATED 12.01.2023 IN CRL.A.NO.104/2021
PASSED BY THE LEARNED II ADDL.DISTRICT AND SESSIONS
JUDGE AT UDUPI AND ALSO SET ASIDE THE JUDGMENT OF
CONVICTION DATED 29.11.2021 IN C.C.NO.1360/2016





PASSED BY THE COURT OF PRL.CIVIL JUDGE AND J.M.F.C
UDUPI FOR THE OFFENCE P/U/S 32 AND 34 OF THE
KARNATAKA EXCISE ACT IN SO FOR AS THE PETITIONER.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL ORDER

This revision petition is directed against the judgment and order of conviction dated 12.01.2023 passed in Crl.A.No.104/2021 by the II Additional District and Sessions Judge, Udupi (for short, "the First Appellate Court") whereby partly allowed the appeal by confirming the judgment and order of conviction and sentence passed against the revision petitioner/accused No.1 in C.C.No.1360/2016 dated 29.11.2021 by the Principal Civil Judge & JMFC., Udupi (for short, "**the Trial Court**").

2. The factual matrix, as borne out from the record is that on 02.10.2015 at about 1:00 p.m., near the fish storage shed at Kodavoor Village, Udupi Taluk, within the jurisdiction of Malpe Police Station, the petitioner along with accused No.2 was found engaged in the unlawful sale of liquor to the public without holding any valid licence. Acting upon credible



information, P.W.3, the Police Inspector of Coastal Security Police, accompanied by panch witnesses-P.Ws.1 and 2 and his staff-P.Ws.4 and 5, conducted a raid at the said location and apprehended the accused persons. Upon inspection, the raiding party recovered 48 whisky tetra packets of 180 ml each, 40 Old Tavern whisky packets of 180 ml each, 48 whisky bottles of 180 ml each, and 12 bottles of whisky containing 180 ml each.

3. On further enquiry, it was revealed that the accused were unauthorisedly selling whisky to the public without any licence. Consequently, P.W.3 drew up a Ex.P1-spot mahazar and effected the arrest of the accused under an Ex.P2-arrest mahazar. Samples of the seized liquor were drawn for analysis and forwarded to the Forensic Science Laboratory.

4. Thereafter, a case was registered in Crime No.2/2015 dated 02.10.2015 for offences punishable under Sections 32 and 34 of the Karnataka Excise Act, and the accused were produced before the jurisdictional Magistrate. Upon completion of the investigation, P.W.3-Investigation Officer filed a charge sheet before the learned Magistrate. After



securing the presence of the accused, the learned Magistrate proceeded to frame charges against them.

5. In order to prove the charges levelled against the accused before the Trial Court, the prosecution examined, in all, five witnesses as P.Ws.1 to 5, produced and marked 10 documents as Exs.P1 to P10, and identified 11 material objects, which were marked as M.Os.1 to 11.

6. After assessment of the oral and documentary evidence, learned Magistrate convicted the petitioner/accused No.1 and accused No.2 for the charges levelled against them and sentenced them to undergo simple imprisonment for a period of one year and Rs.10,000/- fine for the offence punishable under Section 32 of the Karnataka Excise Act, in default to undergo simple imprisonment for a period of six months. Further, they are sentenced to undergo simple imprisonment for a period of one year and Rs.10,000/- for the offence punishable under Section 34 of the Karnataka Excise Act, in default, to undergo simple imprisonment for a period of six months.



7. Aggrieved by the impugned judgment, the petitioner/accused No.1 along with Accused No.2 preferred an appeal before the First Appellate Court in Crl.A. No.104/2021. The First Appellate Court, upon re-appreciation of the oral and documentary evidence on record, partly allowed the appeal by confirming the judgment of conviction and order of sentence passed by the Trial Court insofar as it relates to the petitioner/accused No.1, while setting aside the same in respect of Accused No.2.

8. Being dissatisfied with the affirmation of his conviction and sentence, the petitioner/Accused No.1 has approached this Court by way of the present revision petition.

9. Heard the learned counsel Sri. K. Prasanna Shetty for the revision petitioner and the learned High Court Government Pleader Sri. Rajat Subramanyam for the respondent-State.

10. Apart from urging several grounds, the learned counsel for the revision petitioner has primarily contended that the impugned judgment suffers from perversity and illegality. It is submitted that both the Trial Court and the First Appellate



Court have failed to appreciate the evidence on record in its proper perspective, thereby resulting in a miscarriage of justice.

11. It is further contended that there are material inconsistencies in the evidence of the prosecution witnesses, particularly P.Ws.1 and 2, who are the independent panch witnesses to the spot mahazar (Ex.P1). It is pointed out that these witnesses have, in their cross-examination, categorically admitted that the spot mahazar (Ex.P1) was drawn at the police station by P.W.3 and that they merely affixed their signatures thereafter. They have also admitted that the police subsequently proceeded to the spot. Additionally, both witnesses have stated that they are unaware of the contents of Ex.P1. In such circumstances, it is contended that no reliance can be placed on the testimony of P.Ws.1 and 2. It is further urged that, apart from these witnesses and the police officials, the prosecution has failed to examine any independent witnesses to substantiate its case.

12. It is further contended that, as reflected in Ex.P1 – spot mahazar, the person who was allegedly selling liquor fled



from the spot on noticing P.Ws.3 to 5, and only the person who was allegedly collecting money from the customers came to be apprehended. Despite the alleged presence of customers at the spot, the Investigating Officer neither enquired with them nor cited them as witnesses. In such circumstances, it is urged that a serious doubt arises with regard to the genesis of the prosecution case.

13. It is also contended that the evidence of P.Ws.3 to 5, who are official witnesses, is not free from contradictions and omissions. In particular, P.W.3 has admitted that Ex.P2 – the arrest mahazar was drawn at the police station. According to the learned counsel, both the Trial Court and the First Appellate Court have failed to properly consider these material aspects of the case. With these submissions, he prays to allow the revision petition.

14. *Per contra*, the learned HCGP, opposing the petition, has contended that both the Trial Court and the First Appellate Court, upon a detailed appreciation of the evidence on record, have passed well-reasoned judgments which do not warrant interference by this Court in exercise of its revisional



jurisdiction. It is further submitted that the evidence of P.Ws.1 to 5 clearly establishes the guilt of the accused for the offences with which he has been charged. Further, contended that the independent panch witnesses-P.Ws.1 and 2, have supported the case of the prosecution, and there exists no motive or enmity on their part to falsely depose against the accused.

15. It is also contended that the evidence of P.Ws.1 and 2 stands corroborated by the testimony of P.W.3-Investigating Officer. Further, it is urged that the liquor bottles seized at the instance of the accused, marked as M.Os.1 to 11, were duly subjected to forensic examination, and the reports thereof, marked as Ex.P5 and Ex.P8, substantiate the prosecution case. According to him, these material aspects have been rightly appreciated by both the Trial Court and the First Appellate Court. Accordingly, he prays for dismissal of the revision petition.

16. Having heard the learned counsel for the respective parties and having given my anxious consideration on the trial Court records including the impugned judgment passed by the



trial Court so also the Appellate Court the sole point that would arise for my consideration is:

Whether the Trial Court and the First Appellate Court were justified in convicting accused No.1 - petitioner herein for the offences punishable under Sections 32 and 34 of the Karnataka Excise Act?

17. As could be gathered from the record, it is the specific case of the prosecution that on 02.10.2015, acting upon credible information, P.W.3-Investigation Officer conducted a raid at the alleged spot, namely the fish storage shed situated at Kodavoor within the jurisdiction of Malpe Police Station, where the accused were found selling liquor to customers without any valid licence and were in possession of liquor bottles and tetra packets.

18. A careful perusal of Ex.P1 – spot mahazar indicates that upon reaching the spot, P.Ws.3 to 5, along with panch witnesses - P.Ws.1 and 2, noticed a person allegedly selling liquor to the public from a distance of about 50 meters. On confirming the said activity, they attempted to apprehend him; however, the said person fled from the spot. Another individual,



who was allegedly receiving money from the customers, was apprehended, and thereafter, upon seizure of the liquor bottles, the petitioner/accused No.1 was arrested. This version has also been reiterated by P.W.3 in his evidence. P.W.3 has further deposed that customers were present at the spot and were purchasing liquor. However, it is an admitted position that P.W.3 neither enquired with such customers nor cited them as charge-sheet witnesses.

19. On examining the evidence of the independent panch witnesses-P.Ws.1 and 2, it emerges that both have admitted that Ex.P1-spot mahazar was drawn at the police station and that they affixed their signatures thereto at the police station. P.W.1 has, however, stated that he had gone to the spot along with the police and had reached the spot by boat via Padukere. He has also stated that he was taken into custody by the police one day prior to the alleged incident and admitted in his cross-examination that he had not given any statement before the police.

20. Similarly, P.W.2 has deposed that in his presence, the accused sold whisky to two customers; however, P.W.3 did



not examine those customers. He has further stated that by the time he reached the spot, the police were already present there. In contrast, the evidence of P.W.3 reveals that he, along with P.Ws.1 and 2 and P.Ws.4 and 5, proceeded together from the police station to the spot. In view of these inconsistencies, a careful correlation of the testimonies of P.Ws.1 and 2 with that of P.W.3, the Investigating Officer, gives rise to a doubt regarding the veracity and reliability of the evidence of the said witnesses.

21. It is contended by the learned counsel for the accused that P.Ws.1 and 2 are stock witnesses of the police, and that P.W.1, having been arrested one day prior to the incident, has signed Ex.P1 - spot mahazar and was subsequently chargesheeted as a panch witness. This Court finds that the said contention appears to be probable, inasmuch as P.W.1 has specifically admitted that he was arrested one day prior to the incident.

22. Apart from the evidence of P.Ws.1 & 2 - panch witnesses and P.Ws.4 & 5 - police officials, have deposed that they participated in the raid on the date of the incident along



with P.W.3. However, the admission of P.W.3 regarding the arrest of the accused at the spot gives rise to doubt in the mind of this Court, inasmuch as he has admitted that Ex.P2 - arrest mahazar was drawn at the police station. Further, although the seized whisky bottles were sent for FSL examination and the reports were produced as per Exs.P5 and P8, the author of the said reports has not been examined before the Court, thereby affecting the evidentiary value of such material.

23. Be that as it may, insofar as the primary aspect of possession of liquor by accused No.1 is concerned, the testimony of P.Ws.1 and 2, the mahazar witnesses, is wholly inconsistent and unreliable. Moreover, these witnesses are not local residents of the area nor can they be regarded as respectable inhabitants thereof, as contemplated under Section 100(4) of Cr.P.C. This omission once again gives rise to doubt in the credibility of testimony of PWs.1 and 2.

24. Indeed the evidence of the official witnesses cannot be discarded merely on the ground that they are the police officers and are either interested in the investigating or the prosecuting agency. But prudence dictates that, their evidence



needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in material particulars should be sought as held by the Hon'ble Apex Court in the case of ***PRADEEP NARAYAN MADGAONKAR AND OTHERS VS. STATE OF MAHARASTRA - (1995) 4 SCC 255***. In the instant case, as discussed supra the evidence of PWs.1 and 2 does not corroborate with the testimony of P.W.3. As such, much weightage cannot be attached to the evidence of P.W.3 as also the other officials - P.Ws.4 and 5.

25. It is pertinent to note that accused No.2 has been acquitted by the First Appellate Court on the ground that his implication in the crime was solely based on the voluntary statement of the co-accused, i.e., accused No.1, and the said finding has not been challenged by the State. As stated supra, Ex.P1 indicates that accused No.2 was allegedly selling liquor to the public, while the petitioner was allegedly receiving money. However, the amount seized from the petitioner is only Rs.400/-, and on that basis, it cannot be conclusively held that he was receiving sale proceeds from the liquor allegedly sold by accused No.2 to customers.



26. On overall appreciation of entire evidence on record, the prosecution has failed to prove the charges levelled against the accused No.1 - petitioner herein beyond reasonable doubt. It is the cardinal principle of criminal jurisprudence that the prosecution has to prove its case beyond reasonable doubts. The golden thread which runs through web of criminal justice is that, if two views are possible, the view which favours the accused should be taken into consideration. Hence, I am of the considered view that the Trial Court and the First Appellate Court erred while appreciating the evidence on record. In that view of the matter, interference is required in the impugned judgment passed by the Trial Court as well as the First Appellate Court. Accordingly, I answer the point raised above in the '*negative*' and proceed to pass the following:

ORDER

- i) The revision petition is ***allowed***.
- ii) The conviction and order of sentence imposed by the Principal Civil Judge and JMFC, Udupi in C.C.No.1360/2016 dated 29.11.2021, which was confirmed in respect of this revision petitioner/accused



No.1 by the II Addl. District and Sessions Judge, Udupi in Crl.A.No.104/2021 dated 12.01.2023 is set-aside.

- iii) The revision petitioner/accused No.1 is acquitted for the offences punishable under Sections 32 and 34 of the Karnataka Excise Act.
- iv) The bail bond, if any, executed by the revision petitioner/accused No.1 shall stand cancelled.
- v) The fine amount, if any, deposited by the revision petitioner/accused No.1 shall be refunded to him on due identification.
- vi) Registry is directed to return back the Trial Court records along with a copy of this order to the concerned Court forthwith.

SD/-
(RAJESH RAI K)
JUDGE