

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS, NAGARI

PRESENT :- Smt. D. Durga Kalyani,
Judicial Magistrate of First Class,
Nagari.

Monday, the 21st day of January, 2019.

C. C. No. 01 OF 2019

The Prohibition and Excise Sub -Inspector, Nagari.
(In Crime No.151/2018 of Prohibition and
Excise Station, Nagari)

... Complainant

Versus

R.Sudhakar Naidu, S/o Nallama Naidu, age 59 years, resident of 122, O.G.Kuppam
village, Nagari Mandal, Chittoor District.

..... Accused

This case is presented before me on 18.01.2019 for final hearing in the presence of the Assistant Public Prosecutor for the Complainant and of Sri M.Babu, Advocate for accused, and upon hearing arguments, and upon perusing the material on record, and having stood over for consideration till this day, this Court delivered the following :

J U D G M E N T

01. The Prohibition and Excise Sub Inspector, Nagari, filed charge sheet against the accused in Crime No.151/2018 for the offence U/Sec.34 (a) of A.P. Excise Act 1968.

02. **The brief facts of the Charge sheet are as follows:-**

On 24.09.2018 at about 8.00 a.m. on the instructions of Prohibition and Excise Inspector, Nagari, the Proh and Excise Sub Inspector, Nagari conducted excise raids along with mediators and other Proh. & Excise officials. In that regard when they reached to O.G.Kuppam village cross, situated on Nagari - Krishnapuram bus road, Vijayapuram mandal they found accused in possession of one urea bag containing 10 nips of Heaven's Door whisky bottles. On enquiry the accused confessed that he has purchased the same from some unknown person for selling it to higher price. Further he also confessed that he do not have any valid permit for possessing the same. Then PW1 has drawn sample for chemical analysis by following due procedure and arrested accused by virtue of Panchanama. Subsequently, he registered a case in Cr.No.151/2018 U/Sec.34 (a) of AP. Excise Act 1968. Hence, charge sheet is filed against the accused for the offence U/Sec.34 (a) of AP. Excise Act 1968.

03. This Court has taken cognizance for the offence punishable U/Sec. 34 (a) of AP. Excise Act 1968, against the accused.

04. On appearance of accused, copies of documents as required U/sec. 207 of Cr.P.C furnished.

05. Accused was examined U/Sec. 239 Cr.P.C. He pleaded not guilty and claimed to be tried, thereby charge U/Sec. 34 (a) of AP. Excise Act 1968 was framed, read over and explained to him. He denied the charge.

06. In order to establish the guilt of the accused, the prosecution examined PWs. 1 to 3 and exhibited Exs. P1 to P5 besides marking M01.

07. After closure of the prosecution evidence, on production of accused, he was examined U/sec. 313 Cr.P.C. Accused denied the incriminating evidence found from the evidence of prosecution witnesses and reported that no evidence on his behalf. No witnesses are examined and no documents are marked on behalf of the accused.

08. Heard both sides.

09. Now, the point for determination is :

"Whether the prosecution has succeeded in establishing the guilt of the accused for the offence U/Sec. 34 (a) of AP. Excise Act 1968 of beyond reasonable doubt or otherwise?"

10. POINT:-

The case of the prosecution is that the accused was in possession of one white colour urea bag containing 10 nips of Heaven's Door whisky bottles, having no valid license and further on chemical analysis, it was opined that the sample taken from the seized contraband was illicit distilled liquor unfit for human consumption and hence, accused is liable for the offence punishable U/Sec. 34 (a) of AP. Excise Act 1968.

11. To substantiate the same, PW.1 Sub-Inspector of Police deposes that on 24.09.2018 at about 08.00 a.m. he conducted raids and in pursuance of the same near O.G. Kuppam village cross, on Nagari to Krishnapuram bus road, they found accused in possession of one urea bag containing 10 nips of Heaven's door whisky bottles. On enquiry the accused confessed that he has purchased the same from some unknown person for selling it to higher price. Later he also

confessed that he do not have any valid permit for possessing the same. Then P.W.1 has drawn sample for chemical analysis by following due procedure. Thereupon, he arrested the accused by virtue of arrest and seizure mahazarnama under Ex.P1 besides drawing sample for chemical analysis. The said sample was marked under M01. Later he registered a case in Cr.No.151/2018, issued FIR under Ex.P.2 and sent the accused for remand. Subsequently, he received chemical analysis report under Ex.P3 with the opinion that the sample was illicit distilled liquor unfit for human consumption.

12. To support his contention the prosecution relied upon the evidence of PWs.2 and 3 i.e., the mediators said to have been present at the time of arresting of accused as well seizing of contraband from the possession of accused. But the said mediators turned hostile and did not support the case of the prosecution.

13. On careful perusal of evidence on record, though prosecution relied upon the evidence of PWs.2 and 3 they did not support the case of the prosecution. Thus remains only the evidence of the police officials whose evidence is devoid of corroboration from independent witnesses. Moreover, PW.1 also did not speak about securing mediators in his chief examination. Hence, in the said circumstances stated above, it is clear that prosecution failed to prove the guilt of the accused beyond reasonable doubt. Accordingly, accused is entitled for benefit of doubt.

14. In the result, accused is found not guilty for the offence punishable U/sec.34 (a) of AP Excise Act, thereby acquitted him U/Sec.248 (1) Cr.P.C. The bail bonds of the accused shall be stands cancelled after six months. M.O.1 shall be destroyed after appeal time.

Typed to dictation by the Addl. Personal Assistant, corrected and pronounced by me in Open Court, this the 21st day of January, 2019.

Sd/-D. Durga Kalyani,

JUDICIAL MAGISTRATE OF FIRST CLASS,
NAGARI.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED ON BEHALF OF :

PROSECUTION :
P. W. 1 : K. Babu
P. W. 2 : K. Sathish
PW3 : M. Venkatesulu

DEFENCE :
-None -

EXHIBITS MARKED ON BEHALF OF :PROSECUTION :

Ex.P1 : Panchanama dt. 24.09.2018
 Ex.P2 : First Information Report in Cr.No. 151/2018 of Proh and Excise Station, Nagari.
 Ex.P3 : Chemical Analysis report
 Ex.P4 : Signature of P.W.2 in panchanama
 Ex.P5 : Signature of P.W..3 in panchanama.

DEFENCE : - Nil -

MATERIAL OBJECTS MARKED

M.01: 180ml of Sample bottle.

Ild/- D.D.K
 J.F.C.M
 Nagari.

// True Copy //

Judicial Magistrate of I Class,
 Nagari.

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS :: NAGARI.

Calender in C.C.No. 01 OF 2019

Date of offence	:	24.09.2018
Date of complaint	:	24.09.2018
Date of Arrest	:	24.09.2018
Date of release	:	01.10.2018
Date of taken on file	:	03.01.2019
Date of apprehension of accused	:	09.01.2019
Date of commencement of trial	:	17.01.2019
Date of close of trial	:	18.01.2019
Date of Judgment	:	21.01.2019
Explanation for Delay	:	-
Complainant	:	The Prohibition & Excise Sub-Inspector, Nagari. (Crime No. 151/2018)

Particulars of accused:-

Name of accused	father Name	Age	Calling	Religion	Residence
R. Sudhakar Naidu	Nallama Naidu	59 yrs	coolie	Hindu	r/o 122, O. G. Kuppam village, Nagari Mandal, Chittoor Dist

Nature of offence		:	Possession of liquour without having license.
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Section of law	:	Under Sec.34 (a) of AP Excise Act 1968
Finding of the Court	:	Accused is found not guilty for the above offence.
Sentence or Order	:	
In the result, accused is found not guilty for the offence punishable U/sec.34 (a) of AP Excise Act, thereby acquitted him U/Sec.248 (1) Cr.P.C. The bail bonds of the accused shall be stands cancelled after six months. M.O.1 shall be destroyed after appeal time.		

JUDICIAL MAGISTRATE OF FIRST CLASS,
NAGARI.